**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN**

**FRIDAY, THE 3RD DAY OF NOVEMBER 2023 / 12TH KARTHIKA, 1945**

**WP(C) NO. 36271 OF 2023**

**PETITIONER:**

M/S.FOAB SOLUTIONS PVT LTD.
REGISTERED OFFICE AT MELETTU PLAZA,
MUNTHIRIKAVALA, KURISUMMOODU P.O., KURISUMMOODU,
CHANGANACHERRY, KOTTAYAM, KERALA, INDIA,
REPRESENTED BY ITS DIRECTOR SAJI THOMAS,
PIN - 686104

BY ADVS.
P.ABRAHAM CHERIAN
AASHIKA ANIL ERANEZHUTH
NIMMY K. JOSEPH
AJAI BABU
JOE JOSEPH
DYUTHI KURIAN PULIYELI

**RESPONDENTS:**

1 THE CONTROLLER OF DESIGNS PATENT OFFICE,
INTELLECTUAL PROPERTY OFFICE
BUILDING CP-2, SECTOR V, SALT LAKE CITY KOLKATA,
PIN - 700091

2 CONTROLLER GENERAL OF PATENTS, DESIGNS AND TRADEMARKS
BHOUDHIK SAMPADA BHAVAN, ANTOP HILL,
S.M. ROAD, MUMBAI, PIN - 400037

SMT MINI GOPINATH-CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

# JUDGMENT

The petitioner has approached this Court with a singular plea that the 1st respondent – Controller of Designs Patent Office, be directed to take up their application for cancellation of registration of Design Nos.377555-001, 377556-001, 377557-001 in Class 09-09, in the name of an entity by name M/s.SMB Enterprises, under Section 19 of the Designs Act, 2000.

2. However, this writ petition reveals that the entity against which the afore request has been made has not been arrayed as a respondent; and the learned Central Government Counsel – Smt.Mini Gopinath, asserts that there are civil suits between the petitioner and the said entity. She submitted that, however, if the petitioner only requires the 1st respondent to take up its application and to dispose it of in terms of law, she will not stand in the way of such orders being issued; however, praying that this Court may not make any affirmative declarations with respect to either of the parties, in this judgment.

3. As I have said above, when the entity against which the request has been made by the petitioner has not been arrayed as a respondent, this Court cannot issue any affirmative orders. However,

since the 1st respondent now offers to take up the application of the petitioner and deal with it as per law, I do not think that this Court requires to deny that opportunity to the petitioner.

4. In the afore circumstances, without entering into the merits of any of the contentions of the petitioner and leaving them all open, I direct the 1st respondent to deal with the application filed by them, for cancellation of registration stated to be in favour of M/s.SMB Enterprises, after affording both sides necessary opportunities of being heard; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible.

5. I reiteratingly make it clear that, since I have not entered into the merits of the contentions, every issue including the pendency of suits between the parties will be kept in mind by the 1st respondent, while any decision as he may deem apposite is taken.

This writ petition is thus disposed of.

**Sd/-**

**DEVAN RAMACHANDRAN**

**JUDGE**

**MC/3.11**

**APPENDIX OF WP(C) 36271/2023**

PETITIONER EXHIBITS

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| Exhibit P1 | A TRUE COPY OF THE CERTIFICATE OF REGISTRATION DATED 04-02-2020 FOR THE DESIGN OF THE OF THE PETITIONER UNDER THE DESIGN ACT, 2000 |
| Exhibit P2 | A TRUE COPY OF THE FORM 8 APPLICATION DATED 31.05.2023 FOR CANCELLATION OF THE REGISTRATION IN DESIGN NO. 377555-001 |
| Exhibit P3 | A TRUE COPY OF THE FORM 8 APPLICATION DATED 31.05.2023 FOR CANCELLATION OF THE REGISTRATION IN DESIGN NO. 377556-001 |
| Exhibit P4 | A TRUE COPY OF THE FORM 8 APPLICATION DATED 31.05.2023 FOR CANCELLATION OF THE REGISTRATION IN DESIGN NO. 377557-007 |
| Exhibit P5 | A TRUE COPY OF THE LETTER DATED 22.06.2023 AGAINST DESIGN NO. 377555-001 SENT BY THE RESPONDENT |
| Exhibit P6 | A TRUE COPY OF THE LETTER DATED 22.06.2023 AGAINST DESIGN NO. 377556-001 SENT BY THE RESPONDENT |
| Exhibit P7 | A TRUE COPY OF THE LETTER DATED 22.06.2023 AGAINST DESIGN NO. 377557-001 SENT BY THE RESPONDENT |
| Exhibit P8 | PRINT OUT OF THE TRACK CONSIGNMENT DATED 13.7.2023 TAKEN FROM THE OFFICIAL WEBSITE OF INDIA POST CONFIRMING THE DELIVERY |
| Exhibit P9 | PRINT OUT OF THE TRACK CONSIGNMENT DATED 13.7.2023 TAKEN FROM THE OFFICIAL WEBSITE OF INDIA POST CONFIRMING THE DELIVERY |
| Exhibit P10 | PRINT OUT OF THE TRACK CONSIGNMENT DATED 13.7.2023 TAKEN FROM THE OFFICIAL WEBSITE OF INDIA POST CONFIRMING THE DELIVERY |
| Exhibit P11 | A TRUE COPY OF THE REPRESENTATION DATED 20.09.2023 BEFORE THE 1ST RESPONDENT |
| Exhibit P12 | A TRUE COPY OF THE REPRESENTATION DATED 20.09.2023 BEFORE THE 1ST RESPONDENT |
| Exhibit P13 | A TRUE COPY OF THE REPRESENTATION DATED 20.09.2023 BEFORE THE 1ST RESPONDENT |