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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **10.12.2024**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA (PT) No.28 of 2024

TVS MOTOR COMPANY LIMITED,
"Jayalakshmi Estates", No.29,
(Old No.8), Haddows Road,
Chennai 600 006,
Tamil Nadu, India. .. Appellant

-vs-

The Controller of Patents and Designs,
The Patent Office,
Intellectual Property Building,
G.S.T. Road, Guindy,
Chennai - 600 032. .. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 91 of the Trade Marks Act, 1999 to set aside the order dated 14.02.2024 passed by the respondent in Indian Patent Application No.4836/CHE/2014 and allow Indian Patent Application No.4836/CHE/2014 to proceed for grant or based on the facts and circumstances, Patent Application No.4836/CHE/2014 be remanded back to a different Controller for a fresh consideration.

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For appellant : Mr.Thriyambak Kannan

For respondent : Mr. A.R. Sakthivel
SPCGSC

JUDGMENT

This appeal has been filed, challenging the impugned order dated 14.02.2024 passed by the respondent under Section 15 of the Patents Act, 1970, refusing to grant patent to the appellant in respect of its innovation.

2. The appellant filed the patent application with the respondent on 29.09.2014 titled "MOUNTING STRUCTURE FOR A TWO WHEELER CHASSIS FRAME" with a provisional specification and subsequently the complete specification was filed on 22.09.2015. The appellant's patent application relates to a rear structure of a frame of a vehicle. Under the impugned order, the appellant's patent application has been rejected on the ground that the claims in the appellant's patent application are obvious to a person skilled in the art and therefore, there is no inventive step as per Section 2 (1)(ja) of the Patents Act, 1970. Under the impugned order, certain prior art documents have been referred to by the respondent viz., D1 to D5

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for the purpose of rejecting the appellant's patent application. The appellant has challenged the impugned order on the following grounds:

a) The respondent has passed a non speaking order with regard to the contentions of the appellant in respect of the prior art documents referred to under the impugned order viz., D1 to D5;

b) There is no reasoning whatsoever given by the respondent as to why the prior art documents viz., D3 to D5 were considered for the purpose of refusing to grant patent in favour of the appellant;

c) Even though the oral arguments of the appellant got completed as early as on 05.09.2022, the respondent chose to pass the impugned order only on 14.02.2024 without considering the contentions of the appellant as raised in the written arguments as well as through the oral submissions.

3. The learned counsel for the appellant drew the attention of this Court to the impugned order, more particularly to para - 3, wherein, the respondent has highlighted all the prior art documents D2 and D5. The same reads as follows:

"Regarding claim 1

D2 is found the closest prior art.

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D2 discloses,

A vehicle frame rear structure comprising:

At least two side tubes (115), the two side tubes (115) being extending rearwardly upwardly towards vehicle (10) rear;

a side cover (27) on each side portions of the side tubes (115);

a rear fender mounted in between the two side tubes, the rear fender (268) being extending in rearwardly downward direction with respect to the side tubes;

a tail lamp cover being configured to house a tail lamp, the tail lamp cover is attached on an end portion of the side tubes (115);

a rear integrated bracket (135) joining the side tubes (115);

Characterized in that:

The rear integrated bracket (135) is rigidly joined at substantially end portions of the side cover (27), the rear integrated bracket is equipped with plurality of mounting holes to mount the side cover (27), the tail lamp cover and the rear fender (268) to the vehicle (10).

D5 discloses,

A vehicle frame rear structure comprising:

At least two side tubes (73), the two side tubes (73)

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being extending rearwardly upwardly towards vehicle (10) rear;

a side cover (317) on each side portions of the side tubes (73);

a rear fender mounted in between the two side tubes, the rear fender being extending in rearwardly downward direction with respect to the side tubes;

a tail lamp cover being configured to house a tail lamp, the tail lamp cover is attached on an end portion of the side tubes (73);

a cross member joining the side tubes (73);

and a rear integrated bracket (77),

Characterized in that:

The rear integrated bracket (77) is rigidly joined at substantially end portions of the side frame (317), the rear integrated bracket (77) is equipped with plurality of mounting holes to mount the side frame (317), the tail lamp cover and the rear frame/fender to the vehicle (10).

Therefore claim 1 is not inventive in view of D2 & D5."

4. The learned counsel for the appellant drew the attention of this Court to the complete specifications submitted by the appellant, which is found in page No.83 of the documents filed along with this appeal and

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would submit that as seen from the complete specification D2 (prior art documents) is a verbatim reproduction of the complete specifications found in page 83 of the typed set of documents filed along with this appeal. The amended claim relied upon by the learned counsel for the appellant is also reproduced hereunder:

" 1. A vehicle frame rear structure comprising:

atleast two side tubes (24A, 24B);

a side panel (91A,91B) on each side of the said side tubes (24A, 24B);

a rear fender (94) mounted in between the said two side tubes extending in rearwardly downward direction with respect to the said side tubes;

a tail lamp housing (93) which houses a tail lamp and is attached on end portion of the said side tubes (24A, 24B);

a cross member (25) joining the said side tubes (24A, 24B);

and a rear integrated bracket (51),

characterized in that:

the said rear integrated bracket (51) is rigidly joined at substantially end portion of the said side tubes (24A, 24B) and is equipped with plurality of mounting holes to receive the said side panel (914,91B), the said tail lamp housing (93) and the said rear fender (94),

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2. The vehicle frame rear structure as claimed in claim 1 wherein a fuel tank is placed inbetween the said cross member (25) and the said rear integrated bracket (51).

3. The vehicle frame rear structure as claimed in claim 1 wherein the space between the end portions of the said side tubes (24A, 24B) accommodates the said rear integrated bracket (51).

4. The vehicle frame rear structure as claimed in claim 1 wherein at a set of plurality of mounting holes (52, 53, 54A, 54B) side covers (91A, 91B) and tail lamp housing (93) is mounted and at another set of mounting hole (52, 53) the said rear fender (94) is mounted.

5. The vehicle frame rear structure as claimed in claim 1 wherein the said rear integrated bracket (51) and the said side tubes (24A, 24B) are joined to each other preferably by welding.

6. The vehicle frame rear structure as claimed in claim 1 wherein the said rear integrated bracket (51) is composed with dimples and curvatures as stiffening elements (55)."

5. As seen from the above, on a *prima facie* consideration, this Court

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finds that D2 and D5 (prior art documents) disclosed in the impugned order is almost a verbatim reproduction of the amended claims of the appellant as found in page 83 of the typed set of documents filed along with this appeal. Under the impugned order, the respondent has also not given any reason as to why the prior art documents viz., D1, D3 and D4 relied upon by the respondent for the purpose of refusing the grant of patent is applicable to the invention claimed by the appellant, which is the subject matter of this appeal. Excepting for stating that D1, D3 and D4 are found relevant to the claimed subject matter, no reasons whatsoever have been given by the respondent.

6. The learned standing counsel appearing for the respondent reiterated the contents of the impugned order and would submit that the respondent has rightly refused to grant patent since there are prior art documents viz., D1 to D5 which are reflected in the impugned order.

7. The grounds raised by the appellant in this appeal as submitted by the learned counsel for the appellant as stated supra has not been disputed by the learned standing counsel appearing for the respondent. Being an

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undisputed fact that in the impugned order, no reasoning whatsoever has been given as to why the prior art documents viz., D1, D3 and D4 have been applied for the appellant's claimed invention, this Court is of the considered view that by total non application of mind and by a non speaking order, the impugned order has been passed.

8. It is settled law that while considering the patent application, the respondent will have to adhere to the principles of natural justice and pass a speaking order with regard to the contentions raised by the party claiming an invention. In the instant case, as observed supra, the respondent by total non-application of mind has passed a non speaking order as seen from the observations made by this Court in the earlier paragraphs. It is also to be noted that even though, written arguments was submitted by the appellant as early as on 05.09.2022 itself, and the oral submissions were completed on 14.09.2022 itself, for reasons best known to the respondent, the impugned order came to be passed only on 14.02.2024, after more than a lapse of one and a half years. The said reason is also compelling this Court to quash the impugned order and remand the matter back to the respondent for fresh consideration on merits and in accordance with law.

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9. For the foregoing reasons, the impugned order dated 14.02.2024 passed by the respondent, refusing to grant patent to the appellant is hereby quashed and the matter is remanded back to the respondent for fresh consideration, of the appellant's patent application in Application No.4836/CHE/2014, on merits and in accordance with law. The respondent shall appoint another officer instead of the officer who had passed the impugned order for the purpose of adjudicating the patent application submitted by the appellant and the respondent is directed to process and pass final order within a period of four months from the date of receipt of a copy of this order. No Costs.

10.12.2024

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Index: Yes/No
Speaking/Non Speaking Order
Neutral Citation Case: Yes/No

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