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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2024

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MR.JUSTICE N.SESHASAYEE

(T)CMA(PT)//217/2023
(OA/SR.43/2020/PT/CHN)

BASF SE
67056 Ludwigshafen
Germany
Through its Authorised Representative
Dr.Alexander Franz Wallon ... Appellant

Vs.

Assistant Controller of Patents and Designs
Patent Office Delhi
Boudhik Sampada Bhawan, Plot No.32
Sector 14, Dwarka
New Delhi 110 078 ... Respondent

PRAYER: Transfer Civil Miscellaneous Appeal (Patents) is filed under Sections 117 A of the Indian Patents Act, 1970, praying to (a) allow the present appeal; (b) to set aside the impugned order of the respondent dated 23rd October, 2019; and (c) pass an order granting a patent on Indian Patent Application No.1420/CHENP/2010 and issue consequential directions to effectuate such grant.

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For Appellant : Mr.Mr.Kiran Manokaran
for Lakshmikumaran & Sridharan

For Respondent : Mr.K.Subbu Rangabharathi
Central Govt. Standing Counsel

JUDGMENT

Having lost its application for grant of patent to its invention titled 'Auxiliary spring having axially running contour elements' that relates to a spring element (i) with a basic geometry which is concentric along the spring axis (ii) comprising at least one elastomer, the basic geometry of which that is concentric about the spring axis (iii) comprising constrictions and / or widening which are axially symmetrical along the spring axis, the applicant before the Patent Office has approached this Court with this appeal.

2.The material facts now relevant for the current purpose may be bullet pointed:

- Along with his specifications, the appellant had made seven claims of which the first claim alone is its independent claim.
- The Patent Office would now come out with its FER raising

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objection to patenting the invention of the appellant under Section 2(1)(ja) and cited four prior arts in D1 to D4. This apart, it also raised certain procedural objections vis-a-vis the format of the application etc. The appellant responded to the same and came out with some amendment to its seventh claim (the last of its dependent claims).

- The stage is now set for a hearing for which the respondent had issued its hearing notice dated 30.08.2019, as per which the hearing was scheduled to take place on 13.09.2019.

- In the hearing notice, the Controller had given up his only major objection under 2(1)(ja), but listed few other new objections, all of which are either technical or procedural and nothing on the merit of the invention.

- On the appointed day for hearing, the agent of the appellant could not appear due to certain personal emergency. It is in these

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circumstances, the Controller had passed the impugned proceedings rejecting the appellant's application for grant of patent.

3.1 Heard both sides. The learned counsel for the appellant took this Court to the 3rd paragraph in the one page order of the Controller, which reads as follow:

"3.Declaration to be given when the application in India is filed by the applicant(s) in the convention country:-

We the applicant(s) in the convention country hereby declare that our right to apply for a patent in India is by way of assignment from the true and first inventor(s)."

3.2 The learned counsel added that this objection was there even in the FER and necessary amendments had already been made as was sought. It appears that the Controller had not taken note of it.

4. The objection raised by the respondent is cosmetic in character and that

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should not deny the appellant its entitlement to have its invention patented. Here is a scenario where the appellant even makes a statement that it had already complied with the declaration as was sought. It must however be conceded that the situation could have been averted if the appellant or the agent participated in the hearing on the date appointed for hearing. Here, the appellant would submit that due to certain personal emergency the agent of the appellant could not appear on the appointed day. This failure of the agent to appear on the appointed day should not cause the appellant its right to have its invention patented.

5.In these circumstances, this Court considers it appropriate to allow this appeal and remands the matter back to the same Controller, who may now give an opportunity of hearing to the appellant on the objection raised in the hearing notice dated 30.08.2019 and to dispose of the matter within a period of three (3) months from the date of receipt of a copy of this order.

N.SESHASAYEE , J.

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6. In the result, this appeal stands allowed. There is no order as to costs.

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Index: Yes / No
Neutral Citation

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