OCD-5

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
[Commercial Division]

IPDPTA/14/2022

TELEFONAKTIEBOLAGET LM ERICSSON (PUBL) (SR. NO. 10/2021/PT/KOL)
VS
CONTROLLER GENERAL OF PATENTS, DESIGNS AND TRADEMARKS AND ANR

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 3rd May, 2023

Appearance:
Mr. Sidhartha Das, Adv.
Mr. Akash Munshi, Adv.
Ms. Manisha Singh, Adv.
Mr. Abhai Pandey, Adv.
Ms. Swati Mittal, Adv.
Mr. Souvik Kundu, Adv.

Mr. Indrajit Dasgupta, Adv.
Mrs. Priti Jain, Adv.

The Court:- This is an appeal under section 117A of the Patents Act, 1970 arising out of an order dated September 22, 2020, passed by the Controller of Patents, Designs and Trade Marks under section 15 of the Act in Indian Patent Application No. 321/KOLNP/2014.

By the impugned order, the Controller has inter-alia held as follows:

> *"During the hearing the applicant's agent has agreed to delete objected BS and UE claims 15-28 in view of the citations and agreed to make amendments in the claims 1-14. However, the applicant's agent has not done as agreed during the hearing. Hence the application cannot proceed further."*

It is contended on behalf of the appellant that the aforesaid recording is incorrect and would defeat the very purpose of filing the subject patent application. Moreover, there was no consent given by the appellant to delete the objected BS and UE claims 15-28, as recorded in the impugned order. The appellant also relies on similar orders in different proceedings by the Controller to contend that this is a stereotype and a copy-paste recording in numerous orders passed by the Controller.

The respondent authorities are represented and submit that they have no objection to the filing of an application for review or any appropriate application for correction of the impugned order, before the Controller who passed the impugned order.

In *State of Maharashtra vs. Ramdas Shrinivas Nayak and Another, (1982) 2 SCC 463* it has been held as follows:

> "The *principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent, upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."*

In view of the settled position of law and the rationale involved in such a factual scenario, the appellant is granted liberty to file an application within a period of two weeks from the date of communication of this order before the Controller seeking appropriate modification and/or correction of the impugned order as narrated hereinabove. If such application is filed, the Controller is directed to consider and dispose of the same on merits within a period of four weeks from the date of filing of this order.

It is made clear that this Court has not gone into the merits of the appeal and all questions remain open to be decided at the appropriate stage, if necessary.

In view of the aforesaid directions, IPDPTA/14/2022 stands disposed of.

(RAVI KRISHAN KAPUR, J.)

D.Ghosh