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IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 23.10.2024

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(IPD).No.18 of 2024
and W.M.P.No.3431 of 2024

Mr.Rahul Bagga … Petitioner

Vs

The Controller of Patent,
Patent Office Intellectual Property Building,
G.S.T.Road, Guindy,
Chennai – 600 032. … Respondent

PRAYER:- This Writ Petition has been filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the record of abandonment order issued in Indian Patent Application No.202041009246 and quash the same and direct the respondent to revive the application and take on record the response filed by the petitioner to the First Examination report issued in Indian Patent Application No.202041009246 and to further process and examine the Indian Patent Application No.202041009246 for patent grant procedure and pass such other orders.

For Petitioner :- Ms.Afrina Idaayath

For Respondents : Mr.A.R.Sakthivel SPC

ORDER

The present writ petition has been filed to call for the record of abandonment order issued in Indian Patent Application No.202041009246 and quash the same and direct the respondent to revive the application and take on record the response filed by the petitioner to the First Examination report issued in Indian Patent Application No.202041009246 and to further

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process and examine the Indian Patent Application No.202041009246 for patent grant procedure.

2. Ms.Afrina Idaayath, learned counsel appearing for the petitioner would submit that the petitioner had filed an application on 19.03.2020 before the respondent titled robotics device for cleaning surface of buildings. The application was published on 24.09.2021. On 27.01.2022 the first examination report was also issued and the petitioner had uploaded the response to the first examination report on 27.07.2022. On that day the website of the respondent was down due to inclement weather in Delhi-NCR. Immediately on 28.07.2022, the petitioner had also informed the respondent by mail and also had telephonic discussion of the filing of the response to the first examination report. On 10.08.2022, the petitioner had also filed a complaint with the department of administrative reforms and public grievance. However, there was no response from them.

3. The learned counsel for the petitioner would further submit that when the petitioner had verified with the online portal with regard to the status of the application the same had indicated that the claim of the applicant had been abandoned. He would contend that it was not the fault of the petitioner that it was unable to upload the response to the FER and it was only due to the error in the website, the petitioner was unable to upload the

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same. To substantiate the claim, he had also produced the screen shots of the website on that particular date which indicated that there has been a runtime error on that particular day. Therefore, he would pray this Court to quash the record of abandonment order and direct the respondent to revive the application and take on record the response filed by the petitioner to the first examination report and proceed in accordance with the law.

4. Mr.A.R.Sakthivel SPC, the learned counsel appearing on behalf of the respondent would submit that there is no power for receiving an application after the time line fixed under the statute. Therefore, he would submit that the hands of the respondents are tied and they cannot receive the response as the time line had expired as on the last date of submission of the response was 27.07.2022.

5. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

6. It is the case of the petitioner that the petitioner had attempted to upload the response on 27.07.2022 which was the last date of giving the response to the first examination report. The learned counsel for the petitioner had produced the screen shots of the respondent's website which indicates that there has been a server error in the patent search application. The website had also indicated that due to the technical maintenance on the

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website, it would not be available.

7. In such an event, I do not find any impediment in ordering the Writ Petition as prayed for. The respondent refused to receive the response of the petitioner since the response was not uploaded within the time frame and the same was declared to be abandoned under Section 21 (1) of the patents act. It is not the fault of the petitioner as on that date the petitioner had attempted to submit the response and the server of the respondent had failed. He had also conclusively proved that he had attempted to file the response on 27.07.2022.

8. In such circumstances, I am inclined to order the Writ Petition as prayed for, the order of abandonment shall stand quashed and the respondent is directed to receive the response to the first examination report from the petitioner. The petitioner is granted time till 08.11.2024 for submitting the response.

23.10.2024

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Index : Yes/ No
Speaking Order/ Non-speaking Order
Note: Issue order copy on 24.10.2024

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