

(2012) 03 BOM CK 0003

In the Bombay High Court

Case No : Writ Petition No. 2308 of 2011

Sergi Transformer Explosion Prevention Technologies Pvt. Ltd.	APPELLANT
Vs	
The Controller of Patents and Designs and Others	RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 03 BOM CK 0003

Hon'ble Judges : Mohit S. Shah, C.J.;Ranjit More, J

Bench : Division Bench

Advocate : Atul Rajadhyaksha, Mr. Sanjay Kher and Ms. Rani Boazz instructed by Boazz Law Chambers, for the Appellant; Ravi Kadam, Venkatesh Dhond, Mr. Vishal Kanade, Amit Jajoo and Mr. Atul Singh instructed by . Paras Kuhad and Associates, advocates, for the Respondent

Final Decision : Disposed Off

Judgement

1. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for various reliefs which essentially pertain to pre-grant opposition proceedings filed by the petitioner in connection with Patent Application No. 1425/MUM/2005. At the hearing of this petition, the learned counsel for the petitioner seeks leave to place on record a copy of order dated 27th January, 2012, which has been recently passed, obviously after filing of the petition. In the operative order, the Senior Joint Controller of Patents and Designs passed the following order:

(iv) In view of para (i) to (iii) above, I order that the Opponent's demand of reserving their right to pursue the pre-grant opposition during the post-grant proceedings is not tenable. Further, the Documents A-I annexed to the Miscellaneous Petition filed on 17th January, 2011, which were argued upon during the instant hearing, are not be taken on record under Rule 60 of Patents (amendment) Rule, 2003. The said post-grant opposition is mature for referring to the Opposition Board along with the documents filed under Rules 57-59 for

further proceedings under the Act.

2. The learned counsel for the petitioner invites our attention to the finding given by the Senior Joint Controller of Patents and Designs ("Controller" for brevity) in paras (ii) and (iii) of the said order dated 27th January, 2012, and submits that the petitioner will be prejudiced in the post grant proceedings on account of the aforesaid findings.

3. As regards the finding given by the Controller regarding documents under the heads C, D, E, F, G, H and I, it appears that what is required to be done is to permit the petitioner to produce the documents on record along with an affidavit, which the petitioner shall do within two weeks from today.

4. As regards the documents under the heads A and B, the Controller has taken the view that permitting the petitioner to produce the said documents will delay the hearing of the post grant proceedings.

5. In the facts and circumstances of the case and having regard to the fact that the patent in question in favour of the contesting respondent is in force since 2005, it appears to us that no prejudice will be caused to the said respondent, if the petitioner is granted permission to produce the documents under the heads A and B within two weeks from today.

6. The learned counsel for the petitioner states that after filing of all the documents within two weeks from today, the petitioner will not pray for any adjournment from the Controller. This statement should take care of the apprehension voiced by the Controller about delay in completion of the proceedings. This petition is, accordingly, disposed of subject to the above directions to the Controller to permit the petitioner to produce the documents under the heads A and B and to file affidavit in respect of documents under the heads C, D, E, F, G, H & I within two weeks from today. It is clarified that upon the petitioner producing the aforesaid documents and affidavit within two weeks from today, the respondents shall be granted opportunity to file their counter.