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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision:13th February, 2025*

\+ C.A.(COMM.IPD-PAT) 4/2025, I.A. 3780/2025 & I.A. 3781/2025

MR ABHISHEK SHARMA & ANR. .....Appellants
Through: Ms. Moni Cinmoy, Advocate

versus

ASSISTANT CONTROLLER OF PATENTS AND DESIGNS .....Respondent
Through: Mr. Gaurav Barathi, Senior Panel Counsel with Ms. Laavanya Kaushik, G.P.

**CORAM:**
**HON'BLE MR. JUSTICE AMIT BANSAL**

**AMIT BANSAL, J. (Oral)**

**I.A. 3780/2025 *(exemption from filing original, fair and true typed copies of the documents)***

1. Allowed, subject to the appellants filing originals, fair and true typed copies of the dim and illegible annexures within four weeks.

2. The application stands disposed of.

**C.A.(COMM.IPD-PAT) 4/2025 and I.A. 3781/2025 *(seeking condonation of delay in filing present appeal)***

3. The present appeal has been filed under Section 117A of the Patents Act, 1970 (hereinafter '*Patents Act*') against the impugned order dated 10th November, 2022, passed by the respondent refusing the patent application

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bearing no. 202111053480 filed by the appellant.

4. The appeal has been filed along with an application for condonation of delay [I.A. 3781/2025] seeking condonation of delay of 701 days in filing the present appeal.

5. The only reasoning given for the delay in filing the appeal is the fact that the appellant was following up with the respondent to re-examine the refused application.

6. It is stated in the application that on 6th January, 2025, the respondent conveyed to the appellant that the respondent could not do anything in the matter and directed the appellants to pursue his legal remedies. In support thereof, the appellants have filed chats exchanged between the appellants and the patent office through the patent office's Open House Helpdesk portal (hereinafter *'the portal'*).

7. A perusal of the chats filed by the appellants shows that the first chat/ticket raised is of 21st August, 2024, well beyond the period of limitation for filing the present appeal.

8. In my considered view, these chats on the portal cannot be the ground for condoning the inordinate delay in filing the appeal by the appellants.

9. The subject patent application titled "*Innovative Change To Solve Any Dispute, Unexpected Business Loss, Closures, Financial Loss, Unexpected Accidents*", relates to the colour of wearing and their forces, how it affects the brain and the impact of those energies to self or to the others.

10. The appellants filed the said application for the subject patent at the Patent Office, Delhi on 21st November, 2021. Furthermore, the request for examination (hereinafter '*RQ*') under Rule 24B of the Patent Rules, 2003

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(hereinafter '*Patent Rules'*), was converted into an expedited examination as requested by the appellants' RQ filed on 7th June, 2022 under Rule 24C of the Patent Rules.

11. The said application was examined under Sections 12 and 13 of the Patents Act and the First Examination Report (hereinafter '*FER*') was issued on 10th June, 2022. The appellants submitted their reply to the FER on 13th June, 2022

12. Thereafter, considering the reply filed in response to the FER and report of the examiner, the hearing notice was sent to the appellants *via* e-mail dated 23rd August, 2022 and the hearing was conducted on 5th September, 2022.

13. The Patents Office, *via* the impugned order, has rejected the subject patent holding that the aforesaid is not an invention under Section 2(1)(j) of the Patents Act. The relevant extracts from the impugned order are set out below:-

> *"10. The applicant had submitted that the claimed invention is a technical, novel, inventive and industrial applicable process, but applicant's submission is not persuasive as subject-matter of claim 1 is a black coloured wearing comprising cloth, band, footwear, accessory, asset, coating. A black coloured wearing is very general and common in public use. Also no technical features of black coloured wearing is claimed in claims. Only an aesthetic property i.e. colour, is disclosed. Hence it is not required to provide a citation for the black coloured wearing as claimed in claim 1. Therefore subject-matter of claim 1 is not considered novel and inventive u/s 2(1)(j) of the Act.*
>
> *Further, dependent claims 2 and 3 discloses negative effect of said black coloured wearing on human and outside environment. Subject-matter of claims 2 and 3 is non-technical*

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*in nature and mere abstract assertion without any technical aspect. For the support of this abstract assertion applicant has provided various frivolous and vague examples in the description without providing any scientific evidence. Therefore subject-matter of said claims 2 and 3 is not considered inventive u/s 2(1)(ja) of the Act.*

***Applicant argued in the hearing as well as written submission that his invention is dispute solving mechanism by not using the black-coloured wearing. This aspect is not claimed. Also this is a mere abstract theory which is not supported by any scientific evidence. This theory is not related to any technology and do not aim at solving a technical problem.***
***Hence, the claimed subject matter is not an invention under section 2(1)(j) of the Patents Act, 1970 (as amended),***

***11. Without prejudice to objection raised u/s 2(1)(j), alleged invention is formulation of an abstract theory. Also said alleged invention is frivolous as there is no scientific evidence provided for the support of this theory. Only some vague and hypothetical examples were submitted which has no scientific or technical basis. Hence subject matter of claims falls within scope of clause (a) and (c) of section (3) of the Patents Act, 1970 (as amended).***

*12. Claims do not define the technical structural and functional features of the alleged invention. Also claims are not definite and not defining the scope of the invention. Hence claims are not allowable as per section 10 of the Patents Act, 1970 (as amended).”*

[emphasis is mine]

14. Counsel for the appellants submits that the patent in respect of this invention has been granted in Germany. In this regard, attention of the Court has been drawn to document no.8 filed along with the appeal. However, the

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appellants have neither filed, nor given any details of the patent application that has been granted in Germany.

15. The Controller has correctly observed that the subject application is only in the nature of an abstract theory not supported by any scientific evidence. It is not aimed at solving a technical problem and therefore, would not qualify as an invention under Section 2(1)(j) of the Patents Act.

16. In my opinion, the Controller has passed a well-reasoned order dealing with all contentions raised on behalf of the appellant. No grounds for interference have been made out.

17. Accordingly, the present appeal is dismissed both on the grounds of delay as well as on merits.

**AMIT BANSAL, J**

**FEBRUARY 13, 2025/ds**

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