

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7326 OF 2011
(Arising out of SLP(C) No.9397/2011)

POLYDRUG LABORATORIES P. LTD.

Appellant(s)

:VERSUS:

CONTROLLER OF PATENTS & ORS.

Respondent(s)

O R D E R

1. Leave granted.
2. We have heard the learned counsel for the parties.
3. Learned counsel for the appellant has drawn our attention to Rule 138 of the Patent Rules, 2003, which reads as under:

“138. Power to extend time prescribed.-

(1) Save as otherwise provided in the rules 24B, sub-rule (4) of rule 55 and sub-rule (1A) of rule 80, the time prescribed by these rules for doing of any act or the taking of any proceeding thereunder may be extended by the Controller for a period of one month, if he thinks it fit to do so and upon such terms as he may direct.

(2) Any request for extension of time made under these rules shall be made before the expiry of prescribed period."

4. According to a plain reading of Rule 138, it is clear that the Controller may extend the time for filing evidence for a period of one month. Learned counsel for the appellant submits that the Assistant Controller of Patents and Designs has not considered the said Rule 138 of the Patent Rules, 2003 in its proper perspective. He further submits that he has filed the evidence but the same has not been taken on record. We are of the considered view that according to Rule 138, the Controller has the power to extend the time for a period of one month.

5. Mr. Grover, learned counsel appearing on behalf of respondent No.4 submits that the evidence, which has already been filed, may be taken on record subject to the objections available to him under the rules.

6. In the facts and circumstances of the case, we

deem it appropriate to set aside impugned judgment and remit the matter to the Assistant Controller for adjudication afresh in accordance with law. The appeal is accordingly disposed of.

.....J
(DALVEER BHANDARI)

.....J
(GYAN SUDHA MISRA)

New Delhi;
August 16, 2011.



ITEM NO.12

COURT NO.4

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).9397/2011

(From the judgement and order dated 28/02/2011 in WP No.2029/2010 of the HIGH COURT OF BOMBAY)

POLYDRUG LABORATORIES P.LTD.

Petitioner(s)

VERSUS

CONTROLLER OF PATENTS & ORS.

Respondent(s)

(With prayer for interim relief)

Date: 16/08/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DALVEER BHANDARI
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Petitioner(s) Mr. Saikrishna Rajagopal, Adv.
Mr. Hari Shankar K, Adv.
Ms. Ushal Chandrasekharan, Adv.
Mr. Vikas Singh Jangra, Adv.

For Respondent(s) Mr. Anand Grover, Adv.
Mr. K.S. Prasad, Adv.
Mr. Chanchal Kumar Ganguli, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard the learned counsel for the parties.

The impugned judgment is set aside, the matter is remitted to the Assistant Controller for adjudication afresh in accordance with law and the appeal is disposed of in terms of the signed order.

(A.S. BISHT)
COURT MASTER

(NEERU BALA VIJ)
ASSISTANT REGISTRAR

(Signed order is placed on the file)