2026:BHC-OS:6327
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION JURISDICTION
COMM. MISC. PETITION NO. 46 of 2025

Saurabh Arora …. Petitioner

Versus

Deputy Controller of Patents & Anr. …. Respondents

Mr. Hiren Kamod a/w. Mr. Nishank Barolia, Mr. Abhijeet Deshmukh, Mr. Tapan Shah, Mr. Shon Gadgil i/b. Khurana & Khurana, for the Petitioner.
Mr. Niranjan Prabhakar Shimpi a/w. Revaa Kadam and Ms. Bhagyashri Waghmare, for Respondent No.1.
Mr. Himanshu Kane a/w. Kanak Kadam and Ms. Sharwani Kane i/b. W. S. Kane & Co., for Respondent No.2.

CORAM : ARIF S. DOCTOR, J.
RESERVED ON : 23rd FEBRUARY, 2026
PRONOUNCED ON : 10th MARCH, 2026

JUDGEMENT

1. The present Commercial Miscellaneous Petition impugns an Order dated 7th July 2023 ("**impugned order**"), by which Respondent No. 1, i.e., the Deputy Controller of Patents, has dismissed the post-grant opposition

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filed by the Petitioner in respect of Patent No. IN 283059 ("**impugned patent"**) which was granted to Respondent No. 2.

Background and Challenge:

2. The Petitioner's post-grant opposition was under Section 25(2)(c) of the Patents Act 1970 ("**the Patents Act**") and was based on an Indian Patent Application bearing no. 1249/DEL/2010, i.e., the prior art ("**D1**") cited by the Petitioner (which was subsequently granted as Patent No. IN568478), of which the Petitioner was one of the inventors.

3. It is the Petitioner's case that despite filing detailed pleadings in the opposition proceeding, the post-grant opposition proceedings came to be disposed of after five years on the sole ground that the prior art cited by the Petitioner cannot be considered as an "appropriate disclosure" as per the provisions of Section 25(2)(c) of the Patents Act for establishing priority.

4. It is the Petitioner's case that Respondent No. 1 has passed the impugned order without giving any reasons and without even considering or

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assessing the invention claimed in the impugned patent vis-à-vis the invention claimed in the prior art cited by the Petitioner.

Submissions on behalf of the Petitioner:

5. Mr. Kamod, learned counsel appearing on behalf of the Petitioner, at the outset invited my attention to Section 25(2)(c) of the Patents Act to point out that the post-grant opposition requires the following legal and technical requirements to be fulfilled in order to uphold an opposition to a patent, viz.

Legal Requirements:

i. that there is an invention for which an application for a patent has been made in India;

ii. that such prior art document must be published on or after the priority date of the claim of the impugned patent;

iii. the claim of the prior art document has a priority date that is earlier than that of the claim of the impugned patent;

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Technical requirements:

iv. that the invention as claimed in the claims of the patent is 'claimed in any claim' of the patent application of the prior art document.

6. In the above context, Mr. Kamod then invited my attention to the following bibliographic particulars of the impugned patent and the prior-art document D1, which are as follows:

	Impugned Patent by the Respondent No. 2	**Prior-Art (D1) by the Petitioner**
Provisional Specification (priority date)	15th September 2010	31st May 2010
Complete Specification (filing date)	3rd September 2011	23rd March 2011
Publication date	21st June 2013	2nd March 2012

7. Mr. Kamod then invited my attention to Section 11(2)(a) of the Patents Act, to point out that where a complete specification is filed pursuant to a single application accompanied by a provisional specification, and the claim is fairly based on the matter disclosed therein, the priority date of such claim shall be the date of filing of the relevant provisional specification. Mr. Kamod therefore submitted that in the present case the

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priority date of D1 would be 31st May 2010, being the date on which the provisional specification in respect of D1 was filed. He then pointed out that the impugned order itself recorded that D1 had a priority date of 31st May 2010 and also notes that the claims are identical, neither of which was disputed by Respondent No. 2. He thus submitted that it was an undisputed position that D1 had a priority date earlier than that of the impugned patent.

8. Basis the above, Mr. Kamod submitted that the legal requirement for provision of Section 25(2)(c) was squarely met by the Petitioner. He then pointed out that insofar as the technical requirement was concerned, Respondent No. 1 had not considered the same at all and had in fact, for the reasons best known to Respondent No. 1, recorded the following finding viz.

> *"9. It is further not examined on the technical disclosure being in the para 8. Document D1 is not found an appropriate document within the meaning of Section 25(2)(c)".*

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9. Mr. Kamod submitted that the impugned order had thus been passed by merely recording that D1 was not an "appropriate disclosure" within the meaning of Section 25(2)(c), without assigning any reasons whatsoever as to how or why such a conclusion was arrived at. He submitted such a finding, was particularly untenable in view of the fact that D1 had a publication date of 2nd March 2012, a priority date of 31st May 2010, and contains claims identical to those of the granted patent, all of which were accepted. He thus submitted that the impugned order was required to be set aside, as the same was a wholly unreasoned and non-speaking order.

10. Mr. Kamod then submitted that reasons constitute the essence and foundation of every judicial or quasi-judicial determination, and that an order which is bereft of cogent reasons is unsustainable and becomes vulnerable to challenge. He submitted that a litigant is entitled to know the reasons which have weighed with the authority in arriving at a particular conclusion, and also an appellate court could only assess the correctness (or otherwise) of an order if the same contained reasons. In support of these contentions Mr. Kamod placed reliance upon the

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decisions in ***M/s. Woolcombers of India Ltd. v. Woolcombers Workers Union and Anr.***[1], ***S.N. Mukherjee v. Union of India***[2], and ***Assistant Commissioner, Commercial Tax Department v. Shukla & Brothers***[3].

11. Mr. Kamod also submitted that the impugned order reflected complete non-application of mind. He pointed out that Respondent No. 1 had expressly acknowledged that D1 was published on 2nd March 2012, that it carries a priority date of 31st May 2010, which was earlier than that of the impugned patent, and also that the claims were identical. In these circumstances, he submitted that there was no conceivable basis to conclude that D1 was not an "appropriate disclosure" within the meaning of Section 25(2)(c).

12. He thus submitted that the Petition be allowed.

Submissions on behalf of Respondent No. 1:

13. Mr. Shimpi, learned counsel appearing on behalf of the Respondent No.1, submitted that the Petition was wholly misconceived, not maintainable and liable to be dismissed in limine. He submitted that the

[1] (1974) 3 SCC 318.
[2] (1990) 4 SCC 594.
[3] (2010) 4 SCC 785.

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impugned order was passed strictly in accordance with Section 25(2)(c) of the Patents Act, after due consideration of the pleadings, documents, and the recommendation of the Opposition Board as well as the oral and written submissions of the parties.

14. Mr. Shimpi submitted that the Petitioner had filed a provisional application, being No. 1249/DEL/2010, on 31st May 2010 without any claims, and Respondent No. 2 had thereafter filed its own provisional application, being No. 2553/MUM/2010, on 15th September 2010, and both parties subsequently filed complete specifications on 6th September 2011. He submitted that the Petitioner's application was published on 2nd March 2012, whereas Respondent No. 2's application was published on 24th June 2013, and Patent No. IN 283059 was ultimately granted to Respondent No. 2 on 2nd May 2017. The Petitioner thereafter filed a post-grant opposition under Section 25(2)(c) on 27th April 2018, which came to be rejected by the impugned order dated 7th July 2023 after the constitution of an Opposition Board, issuance of a recommendation and hearing both sides.

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15. Mr. Shimpi submitted that the Petition proceeds on a fundamental misreading of Section 25(2)(c). He submitted that Section 25(2)(c) contemplates opposition only where the invention claimed in the impugned patent is claimed in a complete specification, published on or after the priority date and having an earlier priority date than that of the impugned patent. He submitted that the statutory requirement was clear that a prior claim must be based on claims contained in a complete specification.

16. According to Mr. Shimpi, the Petitioner's reliance on Document D1 (Application No. 1249/DEL/2010) was legally untenable because, on the relevant priority date, D1 existed only as a provisional specification and admittedly contained no claims as required under Section 10(4)(b) and (c) of the Patents Act. A provisional specification he submitted, by its very nature, does not define the scope of protection and cannot constitute a prior claim under Section 25(2)(c). He submitted that this position has been correctly appreciated in paragraphs 8 and 9 of the impugned order.

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17. He further submitted that although the Petitioner's provisional specification was filed on 31st May 2010, its complete specification was filed only on 6th September 2011 and published on 2nd March 2012. Respondent No. 2 had filed its provisional application on 15th September 2010 and its complete specification on 06th September 2011, i.e., within the statutory period. He pointed out that the Controller has also taken into consideration Respondent No. 2's International Application No. PCT/IB/2011/053974 dated 12th September 2011 while deciding the issue, as reflected in the impugned order.

18. Mr. Shimpi then, without prejudice, submitted that even assuming D1 could be considered as prior art, the claims in the two specifications were materially different. He submitted that the Petitioner's Claim 1 relates broadly to a "self-emulsifying drug delivery system" covering curcuminoids as a class, whereas Respondent No. 2's Claim 1 is directed to a "stable pharmaceutical composition of curcumin" with specific compositional ratios and concentrations. He submitted that a priority under Section 25(2)(c) requires the claimed subject matter to be identical

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and not mere similarity or an overlap. In the present case he submitted that the claims were different and therefore Section 25(2)(c) did not apply.

19. Mr. Shimpi further submitted that the Opposition Board was constituted strictly in accordance with Section 25(3), and its recommendation correctly held that Document D1 could not qualify as a prior claim. He submitted that the Controller had, after affording both parties, full opportunity of hearing and considering their written submissions, independently evaluated the matter and passed a reasoned order.

20. Mr. Shimpi placed reliance upon the decisions of the Hon'ble Supreme Court in the case of ***Zarif Ahmad v. Mohd. Farooq***[4] and ***Maya Devi v. Raj Kumari Batra & Ors.***[5] to submit that the Appellate Court is not always required to remand a matter merely because the order under challenge is deficient in reasoning. He pointed out that the Hon'ble Supreme Court had, in the case of ***Zarif Ahmad***, held that an Appellate Court, particularly while exercising appellate jurisdiction, could itself examine the material on record and render a final decision where the facts

[4] (2015) 13 SCC 673.
[5] (2010) 9 SCC 486.

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were clear and no further adjudicatory exercise was required, instead of mechanically remanding the matter back. Similarly, he pointed out that in the case of ***Maya Devi***, the Hon'ble Supreme Court had observed that while recording of reasons is essential, the question as to whether to remand the matter or to decide it on merits lies within the discretion of the Appellate Court, depending on the nature of the defect and the adequacy of the material available on record. He thus submitted that given the narrow compass of facts in the present case, this Court could take up and decide the issue without remanding the matter back in the event the Court found any infirmity in the impugned order, however reiterating that there was infact none.

21. Basis the above, Mr. Shimpi submitted that the present Petition under Section 117A of the Patents Act was devoid of merit and the impugned order dated 7th July 2023 warrants no interference.

Submissions on behalf of the Petitioner in Rejoinder:

22. In rejoinder, Mr. Kamod submitted that the contentions advanced on behalf of Respondent No. 2 were wholly untenable. He submitted that

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Respondent No. 2 had *inter alia* contended (i) that there was no requirement for Respondent No. 1 to undertake any technical analysis of the claims of D1 and the claims of the impugned patent, since the differences between them were obvious, and therefore no separate reasoning was necessary, and (ii) that, having regard to the stage of the proceedings and the remaining term of the patent, no useful purpose would be served by remanding the matter, and that this Court ought instead to decide the Petition on merits.

23. Mr. Kamod submitted that the stand of Respondent No. 1 could not be accepted for several reasons. *First*, the present proceedings were appellate in nature and arise from the impugned order, and therefore this Court was not exercising original jurisdiction but was required to examine the correctness and legality of the reasoning adopted by Respondent No. 1. *Second*, in appellate proceedings, the Court must assess the validity of the reasons furnished by the authority who passed the impugned order and in the present case, he pointed out that, admittedly, not a single reason has been recorded by Respondent No. 1 for rejecting the Petitioner's

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opposition under Section 25(2)(c). *Third*, a technical comparison of the claims of D1 and those of the impugned patent were essential for determining whether the requirements of Section 25(2)(c) were satisfied. Such an analysis was required to be undertaken by Respondent No. 1 in the first instance, which had admittedly not been done in the present case. *Fourth*, if the differences between the claims were indeed so obvious, as suggested by Respondent No. 2, there would have been no occasion for the opposition proceedings to remain pending for nearly five years. *Finally*, he submitted that in the absence of any recorded reasons, the Court had no material on the basis of which the Court could evaluate the correctness of the impugned order. In these circumstances, Mr. Kamod submitted that the only appropriate course would be to set aside the impugned order and remand the matter for fresh consideration in accordance with law.

24. Mr. Kamod then, in dealing with the decision of the Hon'ble Supreme Court in ***Zarif Ahmad v. Mohd. Farooq*** submitted that reliance upon the same by Respondent No. 3 was wholly misplaced. He pointed out that in

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Zarif Ahmad, the Hon'ble Supreme Court was dealing with a civil dispute in the context of a second appeal, where the High Court had reversed concurrent findings and restored the decree of the trial court. He thus pointed out that the issue before the Hon'ble Supreme Court in that case pertained to the scope of appellate interference and whether remand was warranted in the facts of that case and therefore the said decision arose in a completely different factual and statutory context and would have no application to the facts of the present case more so in the context of proceedings involving revocation of a patent under the Patents Act in which the Controller was duty-bound to undertake a detailed legal and technical analysis and to record clear reasons in support of the conclusion reached. He submitted that the absence of such reasoning cannot be cured by inviting this Court to undertake the exercise in the first instance. He thus submitted that the decision in the case of ***Zarif Ahmad*** would have absolutely no application to the facts of the present case.

25. Mr. Kamod then, in dealing with the decision in the case of ***Maya Devi v. Raj Kumari Batra & Ors.,*** pointed out that the said decision infact

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advances the Petitioner's case rather than that of Respondent No. 2. He pointed out that the Hon'ble Supreme Court had specifically noted the importance of recording reasons, particularly where an order is subject to appeal, and had observed that the Appellate Court must have the benefit of examining the reasons which weighed with the authority passing the order. He submitted that this principle squarely applies in the present case, where the impugned order is appealable under Section 117A of the Patents Act. He then also pointed out that the Hon'ble Supreme Court had, in the said case, specifically recognised that the question of remand was discretionary and that such discretion arises only where the original authority had undertaken a reasoned adjudication and the Appellate Court is in a position to examine the material based on which an order was passed. In the present case, he reiterated that the Controller had not provided any technical analysis or reasoning for rejecting the Petitioner's ground under Section 25(2)(c). Therefore, there was no basis or material for this Court to assess, and the impugned order must be set aside, with the matter remanded for fresh determination.

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Reasons and Conclusions:

26. After having heard learned counsel for the parties and having considered the provisions of the Patents Act as also the case law upon which reliance has been placed, I have no hesitation in holding that the present Petition would have to be allowed. I say so for the following reasons, viz.

A. In the present case, the bibliographic particulars of the impugned patent and the prior art document, i.e., D1, are not in dispute. D1 traces its priority date to 31st May 2010, being the date on which the provisional specification was filed, whereas the impugned patent traces its priority to 15th September 2010, which is after D1. Section 11(2)(a) of the Patents Act clearly provides that if a complete specification is submitted based on a provisional specification, the priority date for those claims will be the date the provisional specification was filed. Thus, the priority date of D1 clearly preceded that of the impugned patent. The impugned order infact reflects this and was never disputed by Respondent No. 2. Thus, the legal requirements under Section 25(2)(c), namely, the existence of an

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earlier Indian application, its publication, and its earlier priority date, were *prima facie* satisfied.

B. Despite the above, the Controller has not undertaken any technical analysis of the competing patents and instead merely recorded that D1 has "*not found an appropriate document within the meaning of Section 25(2)(c)*", without recording any reason as to why or on what basis such a conclusion was reached. Thus, the impugned order is, on the face of it, unreasoned, let alone bereft of cogent reasoning. Given that the impugned order is appealable, the Petitioner's reliance upon the decisions in ***M/s. Woolcombers of India Ltd. v. Woolcombers Workers Union***, ***S.N. Mukherjee v. Union of India***, and ***Assistant Commissioner Commercial Tax Department v. Shukla & Brothers*** is entirely apposite. Thus, the conclusions of the Controller, bereft of any reasoning, cannot be sustained.

C. *Crucially*, in the present case, though the Controller has acknowledged the relevant dates of priority and publication and has noted the existence of the rival claims, yet has inexplicably failed to

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explain why D1 does not qualify as an “appropriate disclosure". This is not a case of inadequate reasoning, but it is a case of absence of reasoning. The impugned order, therefore, reflects complete non-application of mind on the part of the Controller to the statutory requirements under Section 25(2)(c).The reliance placed by Respondent No. 2 on the decisions in ***Zarif Ahmad v. Mohd. Farooq*** and ***Maya Devi v. Raj Kumari Batra & Ors.*** is, in my view, entirely misplaced and has no application to the facts of the present case. As already noted above, the impugned order is entirely bereft of reasons, and therefore the question of this Court assessing the correctness of such reasoning does not arise. What the Controller is in effect seeking is for this Court to undertake the exercise of examining the matter afresh in the first instance. In my view, to countenance such a stand would, in my view, amount to effectively permitting the Controller to abdicate its statutory duties under the provisions of the Patents Act by considering opposition proceedings and passing a reasoned order.

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27. Hence, for the aforesaid reasons, I pass the following Order:

i. The Impugned Order dated 7th July 2023 passed by Respondent No. 1 in Patent No. IN 283059 is set aside.

ii. The Respondent No. 2's Patent No. IN 283059 (i.e. Patent Application No. 2553/MUM/2010) is remanded back for fresh consideration before a different Controller who shall adjudicate the application in accordance with law. Needless to state that all the rights and contentions of the parties are kept open.

iii. There shall be no order as to costs.

[ARIF S. DOCTOR, J.]

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