

**BEFORE THE PLANT VARIETIES REGISTRY
AT NEW DELHI**

**IN THE MATTER OF: PV-5 filed by Cancellation Applicant
for seeking extension of time for depositing costs for taking
on record the Rejoinder to the Reply to Cancellation
Application against registration of Application No. N19 OS19
10 252 for varietal denomination PAN 804 having
registration number 51 of 2018 registered in favour of M/s.
Pan Seeds Pvt. Ltd., (Registered Breeder).**

IN THE MATTER OF: -

SEED ASSOCIATION OF BENGAL

..... Cancellation Applicant

-Versus-

M/S. PAN SEEDS PVT. LTD.,

..... Registered Breeder

**For the Cancellation Applicant: Ms. Neeti Wilson, Advocate
for M/s. Anand and Anand.**

**For Registered Breeder: Mr. Abhishek Saket, Advocate for
M/s. Infini Juridique.**

ORDER

By this order I shall dispose of the Form PV-5 (Petition for
Extension of Time to deposit Costs for taking on record the



Rejoinder) filed by the Cancellation Applicant on 28th October, 2022. For the sake of convenience the nomenclature of the parties are referred to as in the Cancellation proceedings.

The Parties were heard through online on 15th November, 2022. Both the parties have filed their written submissions which were taken on record.

The facts, reasoning and conclusion are dealt hereunder: -

FACTS OF THE CASE: -

The facts of the case are that the Cancellation Applicant filed an application to cancel the registration of rice variety denominated as PAN 804 and registered in favour of Registered Breeder. The Registry vide letter No. PPV&FRA/Legal/05/2021/2057 dated 7th February, 2022 notified the Registered Breeder of the Cancellation Application. In the said letter one month time was granted for filing reply along with supporting affidavit. The same was served on the Registered Breeder on 14th February, 2022. The Reply to the Cancellation Application was filed by Registered Breeder in the Registry on 14th March, 2022. The said reply was dispatched to the Cancellation Applicant vide letter No. PPVFRA/Legal/05/2021/2489 dated 21st/ 22nd March, 2022 which was served on the Cancellation Applicant on 25th March, 2022. In the said letter one month time was granted to the Cancellation Applicant to file their rejoinder to reply in Cancellation Application. The Cancellation Applicant vide letter



No. PPVFRA/Legal/05/2021/323 dated 2nd May, 2022 was informed by this Registry that the time limit for filing rejoinder by Cancellation Applicant is granted till 30th May, 2022 as per Public Notice No.1 of 2022. On 25th April, 2022, the Cancellation Applicant filed the earlier PV-5 praying for time extension of three months. The case of the Attorney of the Cancellation Applicant is that in view of COVID 19 they were able to report the said notice to the Cancellation Applicant only after four weeks. That the additional time is needed due to the time required by the Attorney to coordinate with the Cancellation Applicant based in Kolkata and difficulty is in availability of the management of the Cancellation Applicant. The Registered Breeder opposed the grant of extension of time. He argued that even if extended it must be extended from the lapse of time and not from date of order.

On 21st July, 2022, this Registry heard both the Cancellation Applicant and the Registered Breeder and allowed the time extension application filed by the Cancellation Applicant. The operative portion of the order is extracted hereunder: -

“Costs cures the delay. Hence, I have no hesitation to allow conditionally the instant PV-5 petition as prayed for on payment by Cancellation Applicant costs of Rs.15000/- (Rupees Fifteen Thousand Only) to National Gene Fund on or before 4th August, 2022. If the Cancellation Applicant fails to pay the same, the instant order shall stand automatically vacated and the PV-5 will stand dismissed on ground of non-payment of costs. The Cancellation Application upon payment must inform the undersigned of the compliance and accordingly the time limit for filing reply to notice of opposition is extended for a period of three months from 31st May, 2022 to 30th August, 2022.”



Thus it is clear from the above the time extension of three months from 31st May, 2022 to 31st August, 2022 was granted in favour of the Cancellation Applicant by the Registrar conditionally on payment of costs of Rs.15,000/- to National Gene Fund.

The Cancellation Applicant thereafter failed to deposit the costs on 04th August, 2022 but filed the rejoinder on 30th August, 2022. Thereafter the Cancellation Applicant belatedly submitted the cheque containing costs of Rs.15,000/- in the Registry on 1st September, 2022. This was objected to by the Registry on ground of non-deposit of costs within the time specified and the original cheque was returned vide letter No. PPVFRA/Legal/05/2021/2143 dated 5th September, 2022. The Attorney for Cancellation Applicant vide their letter dated 7th September, 2022 informed that the intent of applicant to submit the amount was conveyed during the last hearing and only there is a delay in the submission of cheque which is requested to be condoned in the interest of natural justice and by way of abundant caution, an opportunity was sought of being heard before any adverse action is taken against the cancellation applicant. This Registry vide letter No. PPVFRA/Legal/5/2021/2200 dated 12th September, 2022 informed the cancellation applicant they may file fresh PV-5 with requisite fees and with a copy served to the Registered Breeder in advance for further extension of time for depositing of costs and consequently taking on record the rejoinder to the Opposition to Cancellation Application. Thereafter, the Attorney of



Cancellation Applicant vide their letter dated 23rd September, 2022 deposited the cheque of Rs.20,000/- (Rs.15,000/- in respect of costs and Rs.5,000 in respect of fees towards PV-5) on 26.09.2022 in this Registry. Thereafter, this Registry finding the fees for Form PV-5 without the Form PV-5 vide letter No. PPVFRA/Legal/05/2021/2340 dated 10th October, 2022 informed the Cancellation Applicant to file fresh PV-5 and consequently the Cancellation Applicant has filed the instant PV-5 on 28th October, 2022 vide their letter of same date.

CASE OF THE CANCELLATION APPLICANT

1. That Rejoinder in the subject matter was filed on time as provided by the Learned Registrar. However there was inadvertent delay in submission of penalty fee of INR 10000/- imposed in view of previous PV-5.
2. That check for National Gene Fund was made on time, though submitted later than the appointed date of August 4, 2022. However, the rejoinder was duly submitted on time i.e. before August 4, 2022.
3. That delay in submission of the fee amount was due to required coordination related to accounts, filing team and the advocate, working at different places due to work from home being applicable for different dates at the attorney office in view of Covid-19.



4. That there was no intentional delay and also no third party is harmed, nor any other harm is caused due to late submission of the check.
5. That the penal fee to be submitted to the National Gene Fund was erroneously delayed and the intention to submit fee was clearly conveyed to the authority by the undersigned verbally at the time of hearing stating that there was no objection to the payment of the same. There was no protest towards the said payment and that the docketing error with respect to the fee payment.
6. That the accounts team of the attorney office was intimated that the check is required, however, the follow up with the accounts team to collect the check and deposit the same at PPVFRA did not get clearly docketed.
7. That Two separate deadlines in the same order, i.e. August 4, 2022 for fee payment and August 31, 2022 for rejoinder submission created the confusion, and even though the check dated August 4, 2022 was prepared by the accounts the team, the same was missed to be submitted,
8. That condonation of genuine unintentional error at attorney office is in interest of natural justice. The Applicant should not be penalized for such mistakes.
9. That the intent of the applicant to submit the amount was conveyed at the time of last hearing and therefore the delay is



submission of the check is requested to be condoned in the interest of natural justice.

10. The attorney at their own accord has submitted further penalty to the National Gene Fund a check of INR 5000/- requesting the returned check to be taken on record which was submitted before September 4, 2022, the additional one month time from August 4, 2022. In the interest of saving the time and accordingly cost of the Registry, the same is requested to be kindly taken on record, and allowance of the timely filed rejoinder be notified.

11. That the penalty fee to be submitted to the National Gene Fund was erroneously delayed and the intention to submit fee was clearly conveyed to the Learned Registrar by the undersigned verbally at the time of hearing to Dr. Nagarathna stating that there was no objection to the payment of the same. There was no protest towards the said payment and that the docketing error with respect to the fee payment.

12. That the intent of the not obtaining unnecessary extension and therefore also not insisting for extension of three months from date of hearing i.e. from July 21, 2022 to October 21, 2022 was conveyed at the time of last hearing before Dr. Nagarathna. If the complete extension would have been provided as per the PPVFRA practice of providing extended time period, all proceedings would have been considered to be timely completed.



13. Therefore, the delay in submission of the penalty cheque is requested to be condoned in the interest of natural justice.
14. That several correspondences were exchanged with the PPVFRA for taking the fee on record since August 31, 2022 and thereafter on order of PPVFRA to file a PV-5 to take the penalty fee on record, the attorney of the petitioner filed the present PV-5 on 28 October 2022.
15. That the order of Hon'ble Registrar Dr. Nagarathna of July 21, 2022 in the PV-5 related to present rejoinder to cancellation application clearly states

Sufficient cause has to be construed liberally. The balance of convenience is in the favor of cancellation applicant. If the cancellation applicant does not file rejoinder to reply to the cancellation application then the cancellation applicant will be put to a repairable loss and hardship. On the other hand the registered breeder will not be put to any prejudice by allowing the instant petition.

Cost cures delays.

16. Further, the attorney of the petitioner at their own accord had already submitted further penalty to the National Gene Fund, a cheque of INR 5000/- on 23 September 2022 requesting the returned cheque to be taken on record which was submitted before September 4, 2022. In the interest of saving the time and accordingly cost of the Registry.
17. In AIR 1976 SC 1177: The State of Punjab and Anr Vs Shamlal Murari and Anr, the Hon'ble Supreme Court of India, while dealing with the scope of the procedural law, observed



that we must always remember that procedural law is not to be tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the hand-maid and not the mistress, a lubricant, not a resistant in the administration of justice.

18. The Hon'ble Supreme Court of India, in its Judgement AIR 1987 SC 1353: Collector, Land Acquisition, Anantnag and Anr Vs mst. Katiji and Ors, observed that substantial justice has to be preferred upon the procedural technicalities. Therefore, when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

19. The Hon'ble Supreme Court of India discussed the provisions of the Limitation Act in the Judgment AIR 1998 SC 3222: N. Balakrishnan Vs M. Krishnamurthy and found that Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury.

20. In view of the above, the PV-5 is requested to be allowed.



CASE OF THE REGISTERED BREEDER

The earlier Form PV-5 filed on 25 April, 2022 seeking extension from 31 May, 2022 to 30 August, 2022 was conditionally allowed and upon the cancellation. Petitioner not meeting the condition the said form PV-5 stood dismissed as on 4th August, 2022 itself. Thus, the right to file rejoinder stands closed on 30th May, 2022 itself. The cancellation applicant has filed two Form PV-5 applications.

On 30th May, 2022 cancellation applicant was to file the rejoinder by this date in terms of the order of Hon'ble Supreme Court in view of the extension granted by it generally due to COVID restriction. Rejoinder was not filed within the extended period.

On 25 April, 2022, the first Form PV-5 filed by the Cancellation Applicant seeking extension from 31st May, 2022 to 30th August, 2022 was filed. The said Form PV-5 was allowed conditionally.

On 4th August, 2022, the Cancellation Applicant was to pay costs of Rs.15,000/- (Rupees Fifteen thousand Only) to National Gene Fund on or before 4th August, 2022. If the Cancellation Applicant fails to pay the same, the instant order shall stand automatically vacated and the PV-5 will stand dismissed on ground of non-payment of costs. Admittedly, the amount has not been deposited. Thus by virtue of order dated



21st July, 2022 of Registrar the PV-5 stands dismissed and the time to file Rejoinder expired on 30th May, 2022.

On 25th October, 2022 another Form PV-5 for extension was filed seeking extension for deposit of cost by one month. The said application cannot be allowed nor the rejoinder can be taken on record as by virtue of the earlier order dated 21st July, 2022, the earlier Form PV-5 stood dismissed on 4th August, 2022 itself and the time expired on 30th May, 2022.

The Cancellation Petitioner has filed the present Form PV-5 extension of time from 1st September, 2022 to 30th November, 2022 on the following grounds

- (i) That the Petitioners failed to deposit the penalty amount within the time given that is 4th August, 2022.
- (ii) That the Cheque was prepared however due to Covid restrictions the Counsel was working from home and failed to deposit the amount.
- (iii) That they have to coordinate with various members of the Organisation
- (iv) That the Registered Breeder has filed an infringement action.

The Counsel for the Registered Breeder, while countering the above reasons argued that the Second Form PV-5 (extension of time from September, 1, 2022 to November 30, 2022) cannot be



allowed and that the Rejoinder cannot be taken on record. The arguments were four folds namely: -

1. The order dated July 21, 2022 when the first extension was granted from May 31, 2022 to August 30, 2022, clearly bars taking the Rejoinder on record as the said order was conditional and non payment of costs within stipulated time resulted in dismissal of the said Form PV-5 on August 4, 2022.
2. The order dated July 21,2022 is a conditional order and the Form PV-5 (First Extension seeking extension of time from May 31,2022 to August 30,200) was allowed subject to payment of cost and upon failure to pay the same, the Form PV-5 stood automatically dismissed. The relevant part of the order is being reproduced herein below:

“Cost cures delay. Hence, I have no hesitation to allow conditionally the instant PV-5 petition as prayed for on payment of cancellation Applicant costs of Rs. 15000/-(Rs. Fifteen Thousand Only) to National Gene Fund on or before 4th August, 2022. If the Cancellation Applicant fails to pay the same, the instant order shall stand automatically vacated and the PV-5 will stand dismissed on ground of non-payment of costs. The Cancellation Application upon payment must inform the undersigned of the compliance and accordingly the time limit for filing reply to the notice of Opposition is extended for a period of three months from 31st May 2022 to 30th August 2022.”

3. The above order is clearly conditional and the Form PV-5 seeking extension from May 31, 2022 to August 30,2022 was allowed subject to :

(I) Payment of costs on or before 4th August 2022.



(II) If the Cancellation Applicant failed to make the payment, then the order stood vacated and the Form PV-5 filed on April 25, 2022 for extension of time till August 30, 2022 stands dismissed.

4. It is an admitted case that the Cancellation Applicant failed to make the payment within the stipulated time. In terms of the above order. Thus, the earlier Form PV-5 filed on April 25, 2022, seeking extension from May 31, 2022 to August 30, 2022, was conditionally allowed and upon the Cancellation Petitioner not meeting the condition, the said Form PV-5 stood dismissed. Thus, the right to file Rejoinder stands closed on May 30, 2022 itself with the dismissal of first Form PV-5 on August 4, 2022.
5. By virtue of the present Form PV-5 the Cancellation Applicant is seeking extension of time for depositing the amount and has been filed with an assumption that the earlier extension still survives, which is not the case. The time to file rejoinder closed on May 30, 2022 by virtue of the order of July 21, 2022.
6. APJ Laboratories (P) Ltd. v. Union of India, (2017) 1 SCC 80 Wherein the Hon'ble Supreme Court passed a conditional order directing the Petitioner to deposit dues and it was made clear that failure to deposit within the stipulated time, the Writ petition shall stand dismissed. The Petitioner failed to make the deposit, thus the Writ Petition was dismissed.



7. **B.Himmatlal Agrawal Vs. Competition Commission of India and Ors. (18.05.2018-SC): Manu/SC/0595/2018.** In the said matter the order of CCI was challenged by filing appeal Under Section 53B of the Act. Along with this appeal, the Appellant had also filed application for stay of the operation of the order of the CCI during the pendency of the appeal. Appeal was admitted insofar as stay is concerned, which was granted subject to the condition that the Appellant deposit 10% of the amount of penalty imposed by the CCI. It needs to be understood, in this context, that the condition of deposit was attached to the order of stay. In case of non-compliance of the said condition, the consequence would be that stay has ceased to operate as the condition for stay is not fulfilled.
8. There are several other judgments of the Hon'ble Supreme Court as well as Hon'ble High Court on the same issue and the Hon'ble Courts have taken the same position that once the condition in the order is not met, the logical conclusion is the consequences mentioned in the order.
9. Any further order allowing the form PV-5 of the Cancellation Petitioner to deposit the amount and thereby taking the Rejoinder on record would amount to setting aside/review of the order dated July 21, 2022 and the Learned Registrar has no powers to either review its own order under the statute or hear an appeal.



10. As stated above, the order is conditional and once the Petitioner has failed to comply with the condition, whatever the reason may be, the first Form PV-5 filed on April 25, 2022 stands dismissed. The Second Form PV-5 has been filed seeking extension with an assumption that earlier Form PV-5 still survives.
11. It is submitted that no further order can be passed altering the July 21, 2022 order as it would amount to restoration/review or setting aside the condition in the order. Such an order can be passed only by an Appellate Authority i.e Hon'ble High Court in the instant case The Statute does not provide powers to the Learned Registrar to review or modify or sit in an appeal against its own order.
12. The order dated July 21, 2022 is clear and the Form PV-5 filed by the Cancellation Applicant seeking extension of time from May 31, 2022 to August 30, 2022 stands dismissed on August 4, 2022 and thus the time to file Rejoinder stands extinguished on May 30, 2022 itself. The Learned Registrar by any order cannot reverse its own order or restore the said Form PV-5.
13. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. Under the PPV&FR Act, there is no provision from which it could be gathered that the Learned Registrar has any power to review its own order.



14. In Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844 : AIR 1970 SC 1273, it has been held that that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. It does not stand to reason that, if the power of review is not present with the Tribunal, it, nevertheless, can exercise such power indirectly when it cannot do so directly, if the contention of learned counsel for the respondent is correct, then it could mean that, even on merits, the Tribunal can recall its earlier order and then hear the case afresh and pass a different order. If this is so, it would amount to the Tribunal exercising power of review when it does not have any such power.
15. In Kuritesh Gupta (Dr.) V. Hindu Kanya Mahavidyalaya (1987) 4 SCC 525 the Hon'ble Supreme Court has held that in the absence of an express provision in the Act conferring upon the Tribunal the Power of review, the Tribunal could not review its earlier award.
16. In Rajeev Hitendra Pathak v. Achyut Kashinath, decided by Hon'ble Supreme Court it has been held that on a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised.”



17. There are plethora of judgments on this aspect, however the Registered Breeder has sighted only a few of them while placing reliance on all. The explanation given by the counsel for the petitioner is that due to COVID restrictions they were working from home and despite the cheque having been made on August 4, 2022, the same could not be deposited, is a blatant lie and not genuine.

18. The submission that the money was not deposited within time due to COVID restriction and blatant lie. The Cancellation Applicant is being represented through a Law Firm and even the authorization has been filed by several lawyers. They have all been appearing before the Hon'ble High Court and other Tribunals in various matters from time to time. Further the COVID restrictions stood withdrawn in February 2022 itself. This excuse has been manufactured and is not a genuine one.

19. Moreover, it has been allegedly stated that a cheque was made on 4th August, 2022 itself. Firstly it is denied that the cheque was made on 4th August, 2022 as one can draw the cheque of any past date even today. Assuming that the cheque was drawn on 4th August, 2022 (though denied) the same must have been drawn only after reading the order and not in isolation. The cheque could have been deposited on the same day itself.



20. Thus it is stated that the entire argument is filled with falsehood. This excuse has been manufactured to get a favourable order. Nonetheless, it does not help the cancellation applicant now upon its failure to deposit the amount within the time provided.
21. The infringement suit has been filed against one individual company and not against the seed association of Bengal and therefore it has no bearing in the instant matter and that too for Form PV-5.
22. It has been argued that the Registered Breeder has filed an infringement suit and therefore the Cancellation Applicant needs time to file the reply. The said infringement suit contains voluminous documents. It has been suggested as if the said suit has been filed by the Registered Breeder against the Cancellation Applicant. The truth is that the suit has not been filed against the Cancellation Applicant but one individual company by the name of Ramnagar Seeds Farm Private Limited & its dealers. The said company is a habitual infringer and the Registered Breeder has filed infringement action against it even in the past on various occasions. The said suit has not been filed against the seed association of Bengal and has no relevance with the present matter.
23. Accordingly PV-5 must be dismissed.



REASONING: -

Having heard the parties and gone through the records meticulously, the first issue that has to be considered is whether extension of time for depositing the costs and consequently taking the rejoinder on record would amount to review of the earlier order dated 21st July, 2022 passed by Registrar in earlier PV-5 filed seeking time extension for filing of Rejoinder. I agree to the limited extent with the point of law raised by the Counsel for Registered Breeder that the power of review is not an inherent power and it has to be granted by the law specifically. But the same is not applicable to the instant case. In the instant case, by an order Registrar granted time extension for filing a document with a condition of payment of costs and that condition as to payment of costs was not complied but document was filed within the time granted. It is needless to say that the document filed cannot be taken on record without payment of costs. Accordingly, by any stretch of imagination granting time extension for payment of costs and thereby consequently taking on record the document filed, does not amount to review of the earlier order. If the first order granting extension of time is a review then every order granting further extension of time would be a review of the earlier order granting extension of time. This cannot be the case as when there is power to extend the time for filing a document then consequently power to further extend the time for filing a document is also inherent and again power to extend the time for filing a document would also include the power to extend the time for payment of costs for taking on record a document. Accordingly, the cases cited by Counsel for



Registered Breeder namely Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844 : AIR 1970 SC 1273, and Kuritesh Gupta (Dr.) V. Hindu Kanya Mahavidyalaya (1987) 4 SCC 525 in support of the proposition that power of review is not inherent and it has to be provided specifically in the statute is not applicable in the instant case. Further the relief sought and cause of action are distinct and different in both the PV-5. In the earlier PV-5 allowed by the order dated 21st July, 2022 the cause of action relate to time extension for filing of rejoinder and the subsequent PV-5 which is the subject matter of this order relates to extension of time for payment of costs granted by earlier order dated 21st July, 2022. Even the reason cited for allowing both the PV-5s are different. In the earlier PV-5 which was subject matter of earlier order dated 21st July, 2022 the reason was time required by the Attorney to co-ordinate with client in Kolkata for filing of rejoinder and in the instant PV-5 which is the subject matter of this order it is due to lack of co-ordination between accounts and filing team of the Attorney due to work from home on account of COVID restrictions. When the cause of action and reason furnished for condonation of delay are different in earlier and in the instant PV-5, then how come the instant PV-5 could be treated as a petition to review the earlier order dated 21st July, 2022 passed in the instant matter. Accordingly, I hold that the power to extend time for depositing costs for taking on record the rejoinder does not amount to review of the earlier order dated 21st July, 2022 imposing costs to take on record the rejoinder in the instant matter



The next issue that has to be considered is whether the Cancellation Applicant has shown sufficient cause for extending time for depositing costs thereby to take on record the rejoinder filed. The cause shown by the Cancellation Applicant namely that delay in submission of the fee amount was due to required coordination relating to accounts, filing team and the advocate, working at different places due to work from home being applicable for different dates at the attorney office in view of COVID-19 and that the penal fee to be submitted to the National Gene Fund was erroneously delayed could be accepted. It is well settled that sufficient cause has to be construed liberally and it also equally well settled that it is golden and trite law that a party should not suffer for the mistake of the Counsel.

The Counsel for Cancellation Applicant cited the judgement of Hon'ble Supreme Court of India in State of Punjab and Anr Vs Shamlal Murari and Anr, AIR 1976 SC 1177 wherein it was held that procedural law is not to be tyrant but a servant, not an obstruction but an aid to justice and procedural prescriptions are the hand-maid and not the mistress, a lubricant, not a resistant in the administration of justice. Again the Judgement of Hon'ble Supreme Court of India in Collector, Land Acquisition, Anantnag and Anr Vs Mst. Katiji and Ors, was cited in support of the premise that substantial justice has to be preferred upon the procedural technicalities. Therefore, when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. Again the



judgement Hon'ble Supreme Court of India in N. Balakrishnan Vs M. Krishnamurthy [AIR 1998 SC 3222] was cited wherein it was held that Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The cases cited by Counsel for Cancellation Applicant mainly relate to support the point that procedural law cannot hamper substantive justice.

The Hon'ble Tripura High Court Swapan Gope v. ONGC Ltd., 2018 SCC OnLine Tri 102, dated 30-05-2018 opined that *a litigant should not suffer due to the conduct of the counsel*. A counsel is an officer of the Court. Placing reliance on the maxim "actus curiae neminem gravabit", which means that a litigant should not suffer due to act of the court, The High Court held it just and proper to remand the matter back to the Land Acquisition Judge while directing the appellant to file claim statement. The Hon'ble Supreme Court in Rafiq and Anr. v. Munshilal and Anr [AIR 1981 SC 140] held that "What is the fault of the party who has done everything in his power expected of him, would suffer because of the default of his advocate.... The problem that agitates us is whether it is proper that a party should suffer for the inaction, deliberate omission, or misdemeanor of his agent.... We cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted."



Based on the aforesaid decisions, I am of the firm view that the party had deposited the costs with the Attorney and due to Covid-19 there was delay in Attorney's office due to work from home and due to co-ordination required from accounts/ filing team and the delay in depositing of the costs was not intentional and accordingly the party should not suffer due to inadvertence of the Attorney. Hence, I hold that the Cancellation Applicant has shown sufficient cause in extending time for depositing the costs and thereby taking on record the rejoinder filed.

The next issue that has to be considered is whether the extension of time for deposition of costs can be considered within the ambit of Rule 32. Rule 32 provides that the time schedule provided for in the Rules relating to notice of opposition, final opposition, evidence, intervention, written statement and reply shall be extended by special order passed by the Registrar. Of course, the time for deposition of cost and rejoinder in cancellation proceeding is not mentioned therein. However, Rule 3(4) of PPVFR Rules, 2003 provides that where no form is specified for any purpose, the applicant may adopt as nearly as may be a Form specified in the First Schedule with such modifications and variations as may be considered necessary. In the PPVFR Rules, 2003, there is no specific form for condonation of delay in filing rejoinder in cancellation proceeding/ extension of time for deposition of costs to take on record the rejoinder filed in the cancellation proceeding. The nearest form for seeking extension of time for depositing costs to take on record the rejoinder filed in cancellation proceeding is



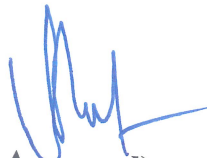
only PV-5 and hence, Rule 32 which is applicable on PV-5 becomes applicable in the instant case also. Accordingly time could be extended for depositing costs for taking on record the rejoinder filed in the cancellation proceeding under Rule 32 of PPVFR Rules, 2003. It is no doubt that the costs should have been deposited by 4th August, 2022 and the same was deposited only on 23rd September 2022 along with the fees for instant PV-5 petition. It is pertinent to note that as stated earlier the costs was submitted by the Counsel for Cancellation Applicant on 1st September, 2023 but the same was returned by Registry on account of belated submission and subsequently it was deposited on 23rd September, 2022 along with fees for instant PV-5 petition. In the interest of justice I have to take 1st September, 2022 as the date for deposition of costs. It is no doubt that rejoinder was filed on 30th August, 2022 (within the time specified in the earlier order). If time is not extended for deposition of costs then the rejoinder could not be taken on record and the cancellation applicant would be put to great hardship. If the same is taken on record by allowing the instant PV-5, no prejudice would be caused to Registered Breeder whose registration is in no way to be affected. Accordingly, in the instant case, I hereby extend time from 4th August, 2022 to 1st September, 2022 under Rule 32 for deposition of costs for taking on record the rejoinder filed in the instant cancellation proceedings. I am also of the firm view that additional costs should be imposed for delay in deposition of original costs as imposed by order dated 21.07.2022 in the instant matter.



Based on the aforesaid reasonings, I hereby allow the instant PV-5 filed by the Cancellation Applicant conditionally on payment of further costs of Rs.10,000/- (Rupees Ten Thousand Only) to National Gene Fund on or before 12th January, 2023 and consequently, the time for depositing costs granted by earlier order dated 21st July, 2022 in the instant matter is extended for a period from 4th August, 2022 to 1st September, 2022 (since the costs have been deposited on the said date though returned by the Registry and subsequently deposited on 23rd September, 2022). Subject to the payment of further costs as ordered within the said time, I accept the said date namely 1st September, 2022 as deposition of costs date and having extended the time for filing of costs from 4th August, 2022 to 1st September, 2022, the Rejoinder filed by the Cancellation Applicant on 30th August, 2022 is hereby taken on record as the costs imposed vide earlier order dated 21st July, 2022 have been deposited within the extended time. If the additional costs of Rs. 10,000/- imposed by this order is not paid on or before 12.01.2023 the instant order shall stand automatically vacated and consequently the rejoinder cannot be taken on record. No further time shall be granted for deposition of costs

Given under my hand and seal on this the 4th day of January, 2023




(D.K. Agarwal)

Registrar-General