

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

Oppn. No.1 of 2022

IN THE MATTER OF: PV-5 filed by Opponent for seeking extension of time for filing of Final Opposition in Opposition filed by PAN Seeds against registration of BANGABANDHU-1 filed by Mali Agri Tech Pvt. Ltd., for registration of rice variety.

IN THE MATTER OF: -

M/S. PAN SEEDS PVT. LTD.,

..... Opponent

-Versus-

M/S. MALI AGRI TECH PVT. LTD.,

..... Applicant

For the Opponent: Mr. Abhishek Saket, Advocate for M/s. Infini Juridique.

For Applicant : Dr, Anushri Gupta, Attorney for M/s. Anushri Gupta & Associates

**ORDER**

By this order I shall dispose of the PV-5 filed by Opponent to condone the delay in filing of Final Opposition in the instant Opposition proceedings. The parties are referred to in the nomenclature as in the Opposition Proceedings for the sake of convenience.



Heard the parties through video conferencing on 01.11.2022

**FACTS: -**

The Applicant on 1<sup>st</sup> May, 2013 has filed application No. N15 OS68 13 293 for registration of rice variety denominated as "BANGABANDHU-1" under new variety category with Acknowledgement Receipt No.REG/2013/293. The same was advertised in Plant Variety Journal Vol.15 No.12, 1<sup>st</sup> December, 2021 uploaded on the website with digital signature of Registrar on 6<sup>th</sup> January, 2022 inviting for Oppositions under Section 21 of the Act. The Opponent filed PV-3 (Notice of Opposition) against the registration of said variety. The same was forwarded to the Applicant by Letter No. PPVFRA/Legal/01/2022/490 dated 1<sup>st</sup> June, 2022 for filing of counter-statement in accordance with Section 21(4) of the PPVFR Act, 2001. The Applicant duly filed the Counter-Statement on 29<sup>th</sup> July, 2022 which was taken on record. As per Section 21(5) of PPVFR Act, 2001, the Counter-Statement was forwarded to the Opponent vide this Registry Letter No. PPVFRA/Legal/01/2022/1986 dated 10<sup>th</sup>/12<sup>th</sup> August, 2022 for filing of Final Opposition and Evidence under Rule 31(6) and Rule 33(1) of PPVFR Rules, 2003 respectively. The Counter-Statement was forwarded to the Opponent vide Speed Post Article Number ED 102594123IN dated 12<sup>th</sup> August, 2022. The same was received by the Opponent on 13<sup>th</sup> August, 2022 as per the speed post



tracking records on file. Accordingly, as per Rule 31(6), the final opposition has to be filed within a period of thirty days from the receipt of the Counter-Statement and the evidence has to be filed within a period of one month from the date of receipt of Counter-Statement under Rule 33(1). The Opponent filed the Final Opposition and Evidence vide his letter dated 12<sup>th</sup> September, 2022 which Registry states was received on 15<sup>th</sup> September, 2022 through Speed Post. The Registry vide Letter No. PPVFRA/Legal/01/2022/2247 dated 21<sup>st</sup> September, 2022 objected to the same as the final opposition should have been filed by 12<sup>th</sup> September, 2022. Consequently, the Opponent filed PV-5 to take on record the belatedly filed Final Opposition. The Applicant has opposed the PV-5 by filing their written submissions.

**CASE OF THE APPLICANT: -**

The Applicant is an Indian Private Company limited by guarantee and incorporated under the Companies Act, 1956. The Applicant was established on 3<sup>rd</sup> April, 2000 in India with registration No.21-91595 under the Companies Act, 1956. The Applicant filed the registration of new rice variety with varietal denomination BANGABANDHU-1. The Application was published in PVJ Vol. 15 No.12. The Opponent filed Notice of Opposition on 26<sup>th</sup> May, 2022 which was received by the Applicant on June, 4, 2022. The Counter Statement to the Notice of





Opposition was filed on 29<sup>th</sup> July, 2022. The Ld. Registrar vide letter dated 10<sup>th</sup>/12<sup>th</sup> August, 2022 directed the Opponent to file the final opposition within 30 days from the date of receipt of the letter. The alleged final opposition is submitted by the Opponent on 15<sup>th</sup> September, 2022 and defaulted to submit the final opposition within limitation time under the Act and the Rules. The Opponent much after the lapse of stipulated time limits filed PV-5 dated 12<sup>th</sup> October, 2022 for one month extension of time to submit the final opposition and to condone the delay in submitting the final opposition. The Applicant vehemently objects to the grant of extension of time and condonation of delay. The relevant sections in play in the opposition by the Applicant are 21(5) and the relevant rules in play in the opposition by the Applicant are 31(6) and 32. Rule 31(6) states that the final opposition must be filed within 30 days from the date of service of counter statement from the applicant and Rule 32 provides the time schedule provided under the Rules for final opposition and evidence shall not ordinarily be extended except by the special order of the Authority or Registrar.

The Applicant relies on the following landmark cases the first one is the Judgement of Hon'ble Apex Court in Jugal kishore Saraf -Vs- Raw Cotton Co., Ltd., (1955 AIR 376) wherein it has held that the cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If



however, such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation.

Again in Commissioner of Income Tax -Vs- Ram Mohan Kabra (12<sup>th</sup> January, 1999) (downloaded from India Kanoon - <http://indiakanon.org/doc/1535460/>, para 3 page wherein it was held that the provisions relating to prescription of limitation in every statute must not be construed so liberally that it would have the effect of taking away the benefit accruing to the other party in a mechanical manner. Where the legislature spells out a period of limitation and provides for power to condone the delay as well, there such delay can be condoned only for sufficient and good reasons supported by cogent and proper evidence. Now it is settled principle of law that the provisions relating to specified period of limitation must be applied with their rigour and effective consequences.

As held by the Apex court in the above referred case law the relevant provision do not pose any difficulty in interpreting the provisions by applying cardinal rule of construction of the statutes is to read the statute literally by giving to the words used by the legislature their ordinary, natural meaning therefore in regard to Section 21(5) read with Rule 31(6) and 32, compliance with time schedule, the intent of the legislature for compliance with the time



schedule under rules for final opposition is mandatory in nature. Further the Authority or Registrar shall not ordinarily extend the prescribed time schedule to the person seeking extension of time except by granting the special order and judiciously apply his discretion on the merits, therefore as held by the Hon'ble High Court in above referred case law delay may be condoned only for sufficient and good reasons supported by cogent and proper evidences. In this particular case, the alleged speed post is done on the last date of statutory time limit that is 12<sup>th</sup> September, 2022, therefore the reason for the delay in submission of final opposition due to postal department has no merit. The Hon'ble Ld. Registrar-General is requested not to allow the condonation and the time extension to submit the final opposition to the opponent.

The proposition that the legal right which has accrued to a party by lapse of time should not be light heartedly disturbed was held by the Apex Court in Ramlal Motialal and Chhotelal -Vs- Rewa Coal Fields Ltd., (1962 AIR 361) wherein it was held that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. In present case the final opposition is not submitted by the Opponent within





stipulated time limits therefore legal right has accrued to the Applicant by lapse of time should not be light heartedly disturbed. Section 21 of the Act and Rule 31(6) are mandatory provisions and should be read strictly and not be usurped. The Opponent has conspicuously has neither stated nor provided the evidence any sufficient cause for his prayer on PV-5 and is therefore the Opponent is bound to submit the final opposition if any within limitation period (that is within 30 days from August 13, 2022 the date of the receipt of letter PPVFRA/Legal/01/2022/1986 dated 10/12thAugust, 2022)

That the Opponent conspicuously has neither stated nor provided the evidence of the date of receipt of the letter PPVFRA/Legal/01/2022/1986 dated 10/12<sup>th</sup> August, 2022 by them. The Applicant humbly submits that the date of receipt of the letter No. PPVFR/Legal/01/2022/1986 dated 10<sup>th</sup>/12<sup>th</sup> August, 2022 sent through speed post by the Authority to the Opponent is relevant fact in computing the limitation period.

The Opponent deliberately has not complied with the directions of the Hon'ble Registrar-General and vaguely alleging the delay in submitting the final opposition due to postal department. As a matter of fact the Opponent has sent the alleged final opposition through speed post on the last date of the limitation period that is 12<sup>th</sup> September, 2022. Therefore, it is evident that there is no chance that the Opponent could meet the



limitation period. The Applicant humbly submits to the Hon'ble Learned Registrar-General takes due care that Opponent supports his application of condoning delay and time extension with the sufficient cause with cogent and proper evidence as the Opponent has not supported his PV-5 with any document. In this regard, the Applicant would like to draw attention of Hon'ble Learned Registrar-General to various landmark judgements of Apex Court on condonation of delay in following paras in Ramlal, Motilal and Chhotelal Vs Rewa Coalfields Ltd., (1962 AIR 361) wherein it was held that it is however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of sufficient cause is a condition precedent for the exercise of discretionary jurisdiction vested in the Court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground. If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is necessary at this stage that diligence of the party or its bonafides may fall for consideration but the scope of enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant.





In Brijesh Kumar & Ors., -Vs- State of Haryana & Ors., (dated 24,, 2014 para No.8, page 3 41333.pdf(sci.gov.in) held that ".....if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the judge cannot on applicable grounds, enlarge the time allowed by the law, postpone its operation or introduce exceptions not recognized by law."

The Apex court in Esha Bhattacharjee Vs Raghunathpur Nafar Academy & Ors., (2013 12 SCC 649, Brijesh Kumar & Ors., Vs State of Haryana & Ors., (Dated 24, 2014) para No.10 page 4 it was held that lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact. The concept of liberal approach has to be encapsulating the conception of reasonableness and it cannot be allowed to totally unfettered free play. The conduct, behaviours and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principles is that the courts are required to weigh the scale of balance of justice in respect of both the parties and the said principle cannot be given a total go by in the name of liberal approach. The increasing tendency to perceive delay as a non-serious matter and hence lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course within legal parameters.

It is evident from the above facts that the Opponent had allegedly sent the alleged final opposition through speed post on



the last date of limitation period and claiming the delay in submitting the alleged final opposition is due to postal department delay is unreasonable and frivolous, therefore the Opponent has clearly failed to establish his sufficient cause, bonafides, diligence and balance of justice in his favour by cogent and impeachable evidence. The Hon'ble Ld. Registrar-General is humbly requested not to grant the condonation, refuse the extension of time and do not take the alleged final opposition on record.

The Opponent is duty bound to submit the final opposition, if any, in reasonable time so as the prescribed limitation limits are met. It is submitted that the opponent has failed to act reasonably and should not be allowed to take plea of alleged postal delay and not be allowed to abuse the due process established under the Act and Rules. In the matter of Esha Bhattacharjee -Vs- Raghunathpur Nafar Academy & Ors., (2013 12 SCC 649) the Apex Court held that "the conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration." The Applicant humbly draws the attention of Learned Registrar-General that the alleged final opposition is submitted by the Opponent on September, 15, 2022. The alleged final opposition is time barred as per the time schedule prescribed under Rule 31(6) read with Section 21 and the conduct, behaviour and attitude of the Opponent is unreasonable and casual. Therefore, the request of the Opponent for extension of time to



submit the final opposition and prayer to condone the delay should outrightly be rejected by the Hon'ble Ld. Registrar-General.

The Opponent has failed to act reasonable to submit the final opposition in time by other means to meet the limitation period. The Opponent is neither vigilant nor has any cause to pursue the instant opposition. Further, the Applicant submits that a delay in submitting final opposition is with intention to gain time and play unfair tactics to unduly delay the granting of registration of plant variety in favour of the applicant.

The Opponent has failed to discharge burden to prove the submission of the final opposition, if any, within limitation time. The PV-5 is frivolous and filed on obscure grounds. The Opponent has not approached to PPVFRA with clean hands for the condonation of delay and extension of time to submit the final opposition. The filing of final opposition by the Opponent, if any, through mail is neither allowed under the Rules nor is the practice of PPVFRA to receive the final Opposition Per Se.

The Opponent raised a contention in the hearing that the limitation period of 30 days to submitting final opposition and one month to submitting the evidence has to be read together as one month was vehemently denied and argued by the Applicant. The Applicant submitted that the specific provisions of the Act and Rules should not be usurped and must be read strictly. The





contention of the Opponent is in complete disregard to the Section 21(6) and Rules 31(6) and 33(1) and established position in law.

That the Opponent raised a contention in the hearing that the Connaught Place India during 13, August, 2022 to 15, August, 2022 was under complete lock down was vehemently denied. The applicant submitted that the instant contention of the Opponent has no force as the postman of the postal department (Ministry of Communication, Govt. of India) was on duty to distribute the speed post letters and delivered the referred letter on 13<sup>th</sup> August, 2022 at Opponent's office. The contention of the Opponent that speed post was dropped in letter box and he received it on August, 16, 2022 is frivolous and completely unreasonable. The tracking details of the opponents alleged consignment No.ED102594123IN as provided by the PPVFRA under PV 33 confirms the delivery of letter No. PPVFRA/Legal/01/2022/1986 dated 10/12 August, 2022 on August 13, 2022 and it conclusively proves the delivery of the letter on the Opponent on August, 13, 2022. The contentions of the Opponent are foreign to the grounds of filing PV-5 and are contrary to the grounds in PV-5. Accordingly, the PV-5 be dismissed.

**CASE OF THE OPPONENT: -**

The present PV-5 is being filed by the Opponent without prejudice to its rights and contentions and without admitting the



fact that there is any delay in filing present Final Opposition. It is submitted that the Opponent firmly believes that the Final Opposition was filed on 12<sup>th</sup> September, 2022 by email as well as by post. The present application is being filed as a matter of abundant precaution with a belief that the hard copy of the Final Opposition which was dispatched on 12<sup>th</sup> September, 2022 would have been received on or about 15<sup>th</sup> September, 2022 and therefore to avoid any technical objection. The delay in receipt by the Authority was solely due to the postal department and the Opponent has no role to play in the said late delivery of the Speed Post. Accordingly the opponent is seeking a condonation of delay and extension of a month. The Opponent has been vigilant enough to file the Opposition well within the time. As regards the Final Opposition is concerned the delay if any is only due to postal services and the Opponent had no role to play in the same. The Opponent had filed the soft copy well within the time on 12<sup>th</sup> September, 2022 itself by Speed post as well as Courier. The Opponent shall suffer irreparable harm if the delay on the part of the postal services is not condoned. It is humbly submitted that the Opponent is opposing the Application which is actually the variety of the Opponent and the Applicant has filed the said application with a different denomination and if the delay is not condoned the same would cause serious prejudice to the Opponent. The Applicant shall not suffer any harm nor there is any statutory right created in its



favour. The balance of convenience lies in favour of the Opponent and the final opposition be taken on record.

Further the case of the Applicant is that Counter Statement was delivered on 13<sup>th</sup> August, 2022 (Saturday) at 15:30 PM in the post box of the Counsel for Opponent when the office was closed on Saturday and Sunday and on Monday due to Independence Day holidays. The actual receipt of Counter Statement was on 16<sup>th</sup> August, 2022. Final Opposition and Evidence was filed through Speed Post and E mail and hence no application for extension of time was filed. Even vide the speed post the final opposition and evidence was received by the PPVFR Authority well within time on 13<sup>th</sup> September, 2022. On 21<sup>st</sup> September, 2022, letter from PPVFR Authority was received that final opposition and evidence has been received on 15<sup>th</sup> September, 2022. In reality the same was received by PPVFR on 13<sup>th</sup> September, 2022 as per the tracking record of speed post.

It was submitted that the Letter dated 21<sup>st</sup> September, 2022 from the PPVFR Authority was purely wrong calculation of dates as evidenced from the Speed Post tracking record. The final opposition as well as evidence has been filed well within time and in this respect some of the previous orders of the Learned Registrar is relied and is cited. Order on time extension in MRC 7031 dated 5<sup>th</sup> May, 2010 wherein it was held that Counter Statement was received by the Opponent on 21<sup>st</sup> October, 2009 and evidence ought





to have been filed on 21.11.2009 (Saturday). Since, 21<sup>st</sup> November, 2009 was a Saturday the evidence could have been filed only on 23.11.2009 (Monday). Hence, time limit has to be computed from 23<sup>rd</sup> November, 2009.

The cited judgement is relevant to show that time is calculated excluding the date when the copy is received and also Saturday as well as Sunday has been excluded. Copy of the counter statement was delivered in the letter box on Saturday which was followed by Sunday and Monday being a holiday on account of Independence Day. Thus actually, it was received on 16<sup>th</sup> August, 2022. Again 10 September, 2022 and 11 September, 2022 was a Saturday and Sunday and thus the filing was done on 12 September, 2022 vide email as well as Speed Post and delivered on 13 September, 2022 well within time. In the same cited order Registry further held that opportunity to file evidence should not be shut out to any party. An opportunity to file evidence ought to be granted even if delay has not been reasonably explained relying on Tarlochan Singh Vs Prern Flour Mills & Others reported in 2009 (41) PTC 559 (IPAB). Similar view has been taken in order for extension on MRC 7031 and MRC 7017 in order of 10<sup>th</sup> May, 2011, 15<sup>th</sup> July, 2011 and umpteen number of various orders in Pioneer Vs Kaveri matter, NSL Vs Mahyco matters etc. The Rules of Limitation are not meant to destroy the rights of parties and 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 law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus well founded on public policy it is enshrined in the maxim *interest reipublicae ut sit finis litium* it is for the general welfare that a period be put to litigation. In particular case whether explanation furnished would constitute "sufficient cause" or not will be depended upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of an explanation furnished should be the rule and refusal an exception.

Reliance is placed on Rule 32 as well as the Delhi High Court Judgement in Prabhat -Vs- UOI wherein the Hon'ble Court has held that extension can be granted and that the provision of time line is merely directory in nature and not mandatory. Another



argument is that why the Opponent has sought a month's extension when the filing was done after two days of delay that is 15<sup>th</sup> September, 2022. This argument is factually as well as legally incorrect. The Speed Post tracking report clearly suggests that the PPVFR Authority received the Final Opposition as well as Evidence on 13<sup>th</sup> September, 2022 and not on 15<sup>th</sup> September, 2022. Secondly, the time extension does not provide for extension of time in terms of "DAYS" but "MONTHS" and the fee is also to be deposited in terms of months and not on a pro-rata basis in terms of days. Another argument of the Applicant is that the Opponent has been negligent and why they waited until the last date to file the Final Opposition. This argument is also factually as well as legally wrong. The law does not provide that the filing has to be done on the first day nor does the law prevent filing on the last day. Secondly on facts Final Opposition has been filed well within time and there was no requirement to file PV-5 and the fees for PV-5 be refunded.

**ANALYSIS: -**

The core issue involved in the instant application is that whether the Final Opposition filed belatedly could be taken on record. The Final Opposition should be filed by the Opponent within a period of thirty days from the date of receipt of counter statement by the Opponent.





At the outset I have to consider the issue of date of receipt of counter-statement by the Opponent as the Opponent has stated that he received the Counter-statement in his post box on 13<sup>th</sup> August, 2022 but since 13<sup>th</sup> August, 2022 was Saturday and 14<sup>th</sup> August, 2022 was Sunday and subsequently 15<sup>th</sup> August, 2022 was Independence Day he actually received it only on 16<sup>th</sup> August, 2022 and accordingly time-limit for computing final opposition should be computed from 16<sup>th</sup> August, 2022 only. The case of the Applicant is that time-limit is to be computed from 13<sup>th</sup> August, 2022 only. In favour of his argument, the Counsel for Opponent cited the order of the Registry dated 5<sup>th</sup> May, 2010 in MRC 7031 but the said order cannot be made applicable in the instant case as in that case the last date for filing of evidence was on Saturday and it was extended till Monday. This was based on the settled principle of law that if the last date for filing is a holiday the limitation automatically gets extended to the next working day. This principle is applicable only in cases of 'filing' of documents and not in case of 'receipt' of documents as in the instant case. Further the case of the Opponent here is of converse that he physically received it on Saturday (13.08.2022) but he got knowledge of the same on Tuesday (16.08.2022) and this does not absolve Opponent from counting of limitation against him. Accordingly, I had to hold that even based on the tracking records available with the Registry the Counter Statement dispatched by Speed Post Article Number ED



102594123IN dated 12<sup>th</sup> August, 2022 was received by the Opponent on 13<sup>th</sup> August, 2022. Accordingly, I have no hesitation to hold that the Opponent has received the Counter-statement on 13<sup>th</sup> August, 2022 and time limit for filing final opposition under Rule 31(6) is to be computed from 13<sup>th</sup> August, 2022 and not from 16<sup>th</sup> August, 2022.

The next issue I have to decide is the date by which the Opponent should have filed the Final Opposition. The Applicant duly filed the Counter-Statement on 29<sup>th</sup> July, 2022 which was taken on record. As per Section 21(5) of PPVFR Act, 2001, the Counter-Statement was forwarded to the Opponent vide this Registry Letter No. PPVFRA/Legal/01/2022/1986 dated 10<sup>th</sup>/12<sup>th</sup> August, 2022 for filing of Final Opposition under Rule 31(6) of PPVFR Rules, 2003. The Counter-Statement was forwarded to the Opponent vide Speed Post Article Number ED 102594123IN dated 12<sup>th</sup> August, 2022. The same was received by the Opponent on 13<sup>th</sup> August, 2022 as per the speed post tracking records on file. Accordingly, as per Rule 31(6), the final opposition has to be filed within a period of thirty days from the receipt of the Counter-Statement that is on or before 12<sup>th</sup> September, 2022.

The next issue that has to be examined is whether the Final Opposition sent through E-Mail on 12<sup>th</sup> September, 2022 by Counsel for Opponent could be taken on record. The Counsel for Opponent had argued that the Final Opposition was sent through



E-mail on 12<sup>th</sup> September, 2022 and also dispatched through Speed Post on 12<sup>th</sup> September, 2022. Per Contra the Counsel for Applicant argued that the Final Opposition sent through E-Mail cannot be taken on record. In this regard, I agree with the contention of the Counsel for Applicant that the Final Opposition sent through E-Mail cannot be taken on record and this reasoning of mine is based on Rule 6(9)(b) of PPVFR Rules, 2003 which provides that in case of transmission by electronic mail, the electronic receipt with the recognized digital signature by the applicant or the person who has made it shall be the proof of the receipt. The said Rule is extracted hereunder: -

*"Rule 6(9)(b) In case of transmission by electronic mail, the electronic receipt with the recognised digital signature, by the applicant or the person, who has made the representation, shall be the proof of the receipt."*

In the instant case, it is not in dispute that the Final Opposition has been sent through E-Mail on 12<sup>th</sup> September, 2022 without recognized digital signature and hence as per Rule 6(9)(b) of PPVFR Rules, 2003, same cannot be taken on record. Accordingly, I have to answer this issue in favour of the Applicant and against the Opponent.

Having held that the Final Opposition sent through e-mail on 12<sup>th</sup> September, 2022 could not be taken on record, next issue that has to be examined is date of filing of Final Opposition by the





Opponent. As the Registry had stated vide their letter No. PPVFRA/Legal/01/2022/2247 dated 21<sup>st</sup> September, 2022 to the Counsel for Opponent that the Final Opposition has been received on 15<sup>th</sup> September, 2022 whereas the Counsel for Opponent had submitted the tracking record of the postal department (Annexure-3 to their written submission) wherein it clearly proves that the Registry has received the same on 13<sup>th</sup> September, 2022. It is not in dispute that the Opponent has dispatched the Final Opposition on 12<sup>th</sup> September, 2022 vide Speed Post Article Number ED233083224IN and as per the tracking record the same has been received by this Registry on 13<sup>th</sup> September, 2022. In all cases, the Registry is relying on postal tracking records to determine the date of receipt and hence there cannot be an exception to this in the instant case also. Accordingly, I place reliance on the postal tracking records for determining the filing date of final opposition and in the instant matter I take 13<sup>th</sup> September, 2022 as the date of filing of final Opposition.

The next issue I have to consider is whether there is a delay in filing final opposition. Having held that the last date for filing of final Opposition is on 12<sup>th</sup> September, 2022 and also having held that the Opponent has filed the final Opposition on 13<sup>th</sup> September, 2022. Now I have to come to the conclusion that the Opponent has filed the final Opposition on 13<sup>th</sup> September, 2022 with a delay of one day as the time limit of 30 days from receipt of counter



statement (13<sup>th</sup> August, 2022) fell on 12<sup>th</sup> September, 2022 on which day the final opposition was not filed. Accordingly, I have to hold that there is one day delay in filing of the final opposition.

The next important issue I have to consider is whether the Opponent has shown sufficient cause in extending time for filing final opposition by one day. It is also well settled that sufficient cause has to be construed liberally and no technical approach could be adopted and delay could be condoned by costs. The main reason cited by the Opponent is postal delay. The Opponent has dispatched it on 12<sup>th</sup> September, 2022 which was the last day for filing of final opposition and the same was received by the Registry on 13<sup>th</sup> September, 2022 and only the delay in the period for postal transit is sought to be condoned. The delay is of one day only and balance of convenience is also in favour of the Opponent if the final opposition is taken on record the Applicant will not be prejudiced in any way and on the other hand if the same is not taken on record the Opponent would be put to great hardship. I am also guided by the decision of IPAB in Asian Paints LTD., Vs Asst. Registrar of Trade Marks 2005 (30) PTC 444 while interpreting Section 131 of Trade Marks Act, 1999 which is identical to Rule 32 of PPVFR Rules, 2003 wherein it was held that the society has a vital interest in the purity of Register and for that matter to get to know the grounds for claiming the registration of the mark. It was further held that the Registrar should have insisted on the filing



of the evidence by the Respondent so that by putting his reliance there upon he could discuss and give his reasons in the impugned order. Similar is the case on hand, final opposition is essential to pass a detailed and speaking order and all the parties must be provided ample opportunities to file their pleadings and evidence more particularly when there are bonafides and no negligence on their part.

The cases cited by the Counsel for Applicant namely Jugalkishore Saraf -Vs- Raw Cotton Co., Ltd., (1955 AIR 376), Commissioner of Income Tax -Vs- Ram Mohan Kabra (12<sup>th</sup> January, 1999) (downloaded from India Kanoon - <http://indiakanoon.org/doc/1535460/>, to support the point that statutes must be construed literally and not liberally and another case Ramlal Motialal and Chhotelal -Vs- Rewa Coal Fields Ltd., (1962 AIR 361) cited to support the point that expiration of period of limitation gives rise to rights which must not be disturbed is not applicable in present case as even assuming the time limit for filing final opposition has lapsed without final opposition it never confirms the rejection of opposition and consequent registration of the variety.

The other cases cited by the Counsel for Applicant namely Brijesh Kumar & Ors., -Vs- State of Haryana & Ors., (dated 24,, 2014 para No.8, page 3 41333.pdf (sci.gov.in) to prove the point law of





limitation has to be enforced even at risk of hardship to a particular party does not arise in the instant matter as the time limit prescribed in the PPVFR Rules, 2003 for final opposition is not a limitation as it can be extended under Rule 32. Further the decision of Apex Court in Esha Bhattacharjee Vs Raghunathpur Nafar Academy & Ors., (2013 12 SCC 649, Brijesh Kumar & Ors., Vs State of Haryana & Ors., (Dated 24, 2014) para No.10 page 4 cited by Counsel for Applicant in support of her argument to prove that lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact is also not applicable in the instant case as the question of lack of bonafides to a party seeking condonation of delay is not in issue.

**CONCLUSION:**

Accordingly, I hereby allow the instant PV-5 conditionally on payment of costs of Rs.5,000/- (Rupees Five Thousand Only) to National Gene Fund on or before 15<sup>th</sup> December, 2022 and subject to payment of costs, the delay of one day in filing the final opposition is condoned and the final opposition is taken on record. I hereby direct the Registry to take on record the final opposition filed on 13<sup>th</sup> September, 2022 and proceed further in accordance with law on payment of costs within the said time limit. No further time extension will be granted for payment of costs and if the Opponent fails to pay the costs on or before 15<sup>th</sup> December, 2022



the instant order stands automatically vacated and consequently  
the final opposition cannot be taken on record.

Given under my hand and seal on this 7<sup>th</sup> day of December,  
2022.

(D.K. AGARWAL)  
REGISTRAR-GENERAL

