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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 167/2025 & I.A. 5038/2025, I.A. 5039/2025, I.A.
5040/2025, I.A. 5041/2025, I.A. 5042/2025, I.A. 5043/2025
HERO INVESTCORP PRIVATE LIMITED & ANR.Plaintiffs

Through: Mr. Pramod K. Singh, Mr. Kirat
Singh and Ms. Aastha, Advocates
Mob: 9718209970
Email: aastha@thelegist.com

versus

NISHA ENTERPRISESDefendant
Through: None.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER
27.02.2025

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I.A. 5041/2025 (Exemption from filing original and certified copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiffs, seeking exemption from filing original clear copies and documents with proper margin.
2. Exemption is granted, subject to all just exceptions.
3. Plaintiffs shall file legible, clear, and translated copies of the documents, on which the plaintiffs may seek to place reliance, before the next date of hearing.
4. Accordingly, the present application is disposed of.



I.A. 5043/2025 (Exemption from undergoing Pre-Institution Mediation)

5. The present is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of CPC, seeking exemption from undergoing Pre-Institution Mediation.

6. Having regard to the facts of the present case and in the light of the judgments of Supreme Court in the case of *Yamini Manohar Versus T.K.D. Keerthi*, 2023 SCC OnLine SC 1382, and Division Bench of this Court in *Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd.*, 2022 SCC OnLine Del 3529, exemption from undergoing Pre-Institution Mediation is granted.

7. Accordingly, the application stands disposed of.

I.A. 5040/2025 (Application seeking leave to file additional documents)

8. This is an application under Order XI Rule 1(4), read with Section 151 CPC, as amended by the Commercial Courts Act, 2015, seeking leave to file additional documents.

9. The plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of Commercial Courts Act, 2015, and the Delhi High Court (Original Side) Rules, 2018.

10. The application is disposed of with the aforesaid directions.

I.A. 5042/2025 (Exemption from advance service to the defendants)

11. The present is an application under Section 151 CPC, seeking exemption from advance service to the defendant.

12. The plaintiffs seek urgent interim relief, and have also sought appointment of Local Commissioner. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants is granted.



13. For the reasons stated in the application, the same is allowed and disposed of.

CS(COMM) 167/2025

14. Let the plaint be registered as suit.

15. Upon filing of the Process Fee, issue summons to the defendant by all permissible modes. Summons shall state that the written statement be filed by the defendant within thirty days from the date of receipt of summons. Along with the written statement, the defendant shall also file affidavit of admission/denial of the plaintiff's documents, without which, the written statement shall not be taken on record.

16. Liberty is given to the plaintiffs to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiffs, an affidavit of admission/denial of documents of the defendant, be filed by the plaintiffs, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given within the timelines.

17. List before the Joint Registrar (Judicial) for marking of exhibits on 28th April, 2025.

18. List before the Court on 28th August, 2025.

I.A. 5038/2025 (Application under Order XXXIX Rules 1 and 2 CPC)

19. The present suit has been filed for permanent/perpetual injunction, infringement of trademark, copyright, passing off, delivery up, rendition of accounts, damages, etc.

20. It is submitted that the present suit is being filed by the plaintiffs *qua* the defendant to *inter-alia* restrain the defendant from manufacturing,



selling and offering for sale auto parts, including, but not limited to Cap Assy Noise Suppressor, Shoe Comp. Brake, Disk Clutch Friction and Brake shoes which bear the falsified marks “HERO”, **Hero/Hero** and



which are identical and/ or deceptively and confusingly similar to the registered ‘HERO MARKS’ of the plaintiffs and copyright vested in artistic work.

21. The plaintiffs’ original product and the defendant’s infringing product are being depicted herein below for ready reference of this Court:

Plaintiffs’ Original Product	Defendant’s Infringing Product
	
	

22. It is submitted that the plaintiffs are group companies and plaintiff no. 2 is engaged in manufacturing and sale of motorcycles, scooters and their



parts and accessories under the well-known mark “HERO” and prominently uses on all its products one or the other device marks depicted as below:



23. It is submitted that the plaintiffs’ two-wheeler range of products sold under its mark ‘HERO’ by reason of its excellent quality, durability and high performance combined with high volume of sales have garnered enviable reputation and goodwill amongst the members of trade and public and the mark ‘HERO’ is always associated with that of plaintiffs only and to this day its ‘HERO’ two-wheelers stands as a symbol of excellence, confidence, affordability, power and elegance.

24. It is submitted that the mark HERO today has become a household name and has thousands of dealers and millions of satisfied customers. The well known mark HERO has come to be associated with the plaintiffs for a diverse range of products and services manufactured, marketed and offered by plaintiffs or their associates, affiliates etc. The said well-known trademark HERO of the plaintiff no.1 has been in open and extensive use for the past 67 years in respect of the various products and services. The products manufactured and marketed by the plaintiff no. 1, its group companies and affiliates under the world renowned and celebrated well-known mark HERO are sold not only in India but are also exported to various other parts of the world and have acquired name and fame across the barriers of the country.

25. It is submitted that the mark HERO has been advertised extensively by the plaintiffs, its group companies and affiliates on a very large scale



through various media of advertisements and publicities, including, print media, television, Internet and the said well-known trademark HERO has received worldwide media coverage over the last six decades of its use and existence. The sales figures and advertisement expenses incurred by plaintiffs, its predecessors, and group companies, is indicative of the goodwill that accrues to the said mark HERO.

26. It is submitted that on account of long, continuous, open, exclusive and extensive use, coupled with the large-scale advertisements and publicity, the trademark 'HERO', has come to be exclusively identified and associated with the plaintiffs, and none else among the public and trade.

27. It is submitted that plaintiff no. 1 is the honest adopter, true owner and lawful proprietor of the trademark HERO and on account of superior quality of the goods and services provided under the said trademark and due to the continuous use of the said trademark, the same has acquired a secondary significance in favor of plaintiff no.1 so much so that any goods/services sold and/or provided under the well-known mark HERO or any other deceptively similar mark, are bound to be confused by the members of public and trade emanating from the plaintiff no.1. The said trademark HERO of plaintiff no.1 is one of the 100 super brands of India.

28. It is further submitted that the plaintiffs are the proprietor of copyright in the artistic works vested in the logo and 'HERO' mark, bearing unique and fanciful styles amounting to original artistic work within the meaning of section 2(c) of the Copyright Act 1957, which is reproduced as under:



29. It is submitted that the plaintiff no. 2 sells auto spare parts to be used in its two wheelers vehicles manufactured in a unique packaging consisting of unique colour combinations Red and White. The packaging prominently displays the trademark 'HERO' and its 'H' logo. The packaging further mentions the word 'Genuine Parts' right below the trademarks and prominently mentions its trade name. The said packaging is an original and novel creation of plaintiffs and the plaintiffs are proprietors of Copyright vested in original artistic work on the packaging and labels of the plaintiffs HERO spare parts, comprising of distinctive arrangement of features, get-up, artwork and layout, which are represented as under:





30. It is submitted that the said trademark 'HERO' has been registered applied for registration in more than 121 countries and the plaintiff no.1 holds more than 2000 registrations applications for the said trademark. The same also reflect the wide and extensive use and registration of the said trademark.

31. It is submitted that during the periodical market survey carried out by the authorized personnel of plaintiff no. 2 in the month of February, 2025, in the markets of Faridabad, Haryana, it was learnt that defendant from his premises is openly engaged in manufacturing, stocking and selling auto parts, including, but not limited to Cap Assy Noise Suppressor, Shoe Comp. Brake, Disk Clutch Friction and Brake shoes without packaging which bear



the falsified marks which are identical and/or deceptively and confusingly similar to the registered 'HERO MARKS' of the plaintiffs and copyright vested with plaintiffs.

32. It is submitted that the use of falsified trademarks 'HERO'





and by defendant, which is visually and structurally



identical to plaintiffs' well-known trademark 'HERO', tantamount to infringement of plaintiffs right vested in its 'HERO MARKS'.

33. It is submitted that from the above depiction of the photographs and differences, it is made sufficiently clear that the defendant has adopted the



falsified marks "HERO",  and  which are identical and/or deceptively, confusingly, phonetically and visually similar to registered 'HERO MARKS' of the plaintiffs, in respect of identical goods, which creates the same commercial impression, thereby, causing confusion amongst the purchasing public and trade in general.

34. It is submitted that the end purchaser of the said impugned products are mechanics who are either illiterate/less literate and they may be easily deceived or misled by the infringing products sold by defendant bearing the plaintiffs' trademark 'HERO' and the copyright vested in the packaging.

35. It is submitted that having regard to the similarity of the impugned marks used by the defendant in respect of identical goods in respect of which plaintiffs' trademark is registered, plaintiffs take strong objection to such deliberate, dishonest and blatant misuse of its well-known trademarks and copyright by the defendant as there cannot be any plausible reason for the dishonest adoption by the defendant of the identical marks for its products. It is unlikely that being engaged in the business of storing/selling/manufacturing accessories/auto parts and other related goods, the defendant is unaware of the popularity of the plaintiffs and/or the plaintiffs identical products sold in the market, under its well-known



trademark “HERO”,  and  and copyright vested therein.

36. It is submitted that by adopting falsified marks “HERO”,  and  and copyright/ trade dress, which are identical and/or deceptively, confusingly, phonetically and visually similar to registered ‘HERO MARKS’ of the plaintiffs and copyright vested in plaintiffs for identical goods, the defendant is not only riding upon the immense and valuable goodwill and reputation enjoyed by the plaintiffs, but is also attempting to show some association or nexus with plaintiffs, where none exists. It is submitted that unwary consumers will be duped into buying impugned products by mistaking it for plaintiffs’ products which is subjected to stringent quality test to ensure safe and quality products reach the consumers.

37. It is further submitted that considering that the products being offered by defendant are of an identical nature and end users to be catered to are also the same, such a situation is not only going to confuse amongst the general public, but also cause confusion in the trade circles thereby causing loss of revenue and sales to the plaintiffs and compromising the reputation of the plaintiffs.

38. Learned counsel appearing for the plaintiffs has handed over the products in question to this Court to show the use of the mark of the plaintiff on the product of the defendant.

39. Learned counsel appearing for the plaintiffs has also drawn the



attention of this Court to the order dated 12th February, 2025, passed by this Court in *CS(COMM) 115/2025*, wherein, in similar circumstances, the defendant was found to be selling its products infringing the mark of the plaintiffs, and thus, interim injunction was passed in favour of the plaintiffs herein.

40. In the above circumstances, the plaintiffs have demonstrated a *prima facie* case for grant of injunction and, in case, no *ex-parte ad-interim* injunction is granted, the plaintiffs will suffer an irreparable loss. Further, balance of convenience also lies in favour of the plaintiffs, and against the defendant.

41. Accordingly, till the next date of hearing, the defendant, its associates and agents, directors, officers, employees, distributors, franchisee, representatives, assignees and anyone associated with the defendant are restrained from manufacturing, storing, stocking, selling and offering for sale auto parts including but not limited to Cap Assy Noise Suppressor, Shoe Comp. Brake, Disk Clutch Friction, Brake shoes and any other product under the mark “HERO” bearing the mark “HERO” or using the marks



which are identical and/or deceptively, confusingly, phonetically and visually similar to registered “HERO” marks of the plaintiffs and/or any other mark deceptively and confusingly similar to “HERO” marks of the plaintiffs, or using the copyright vested in



used by the plaintiffs, thereby



infringing the trademarks and copyright of the plaintiffs' and passing off its products as that of the plaintiffs. .

42. Issue notice to the defendant by all permissible modes upon filing of the Process Fee, returnable on the next date of hearing.

43. Let reply be filed within a period of four weeks.

44. Rejoinder thereto, if any, be filed within two weeks, thereafter.

45. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of three weeks, from today.

46. List before the Court on 28th August, 2025.

I.A. 5039/2025 (Application for appointment of Local Commissioner)

47. The present application has been filed on behalf of the plaintiff under Order XXVI Rule 9 read with Order XXXIX Rule 7 CPC, seeking appointment of a Local Commissioner.

48. It is submitted that in order to preserve evidence of infringement, it is necessary that a Local Commissioner be appointed to visit the premises of the defendant.

49. Accordingly, the following directions are issued:

I. Ms. Archita Nigam, Advocate (M: 7448028909), is appointed as Local Commissioner, with a direction to visit the following premises of the defendant:

Nisha Enterprises

House No-155, Gali No-48,

Sanjay Colony, Sector-23,

Faridabad-121005,

Haryana

II. The learned Local Commissioner, along with a representative of the



plaintiffs and its counsel, shall be permitted to enter upon the premises of the defendant mentioned hereinabove, or any other location/premises, that may be identified, during the course of commission, in order to conduct the search, and seize the infringing products.

III. After seizing the infringing material, the same shall be inventoried, sealed, and signed by the learned Local Commissioner, in the presence of the parties, and released on *superdari* to the defendant, on their undertaking to produce the same, as and when further directions are issued, in this regard.

IV. The learned Local Commissioner shall also be permitted to make copies of the books of accounts, including ledgers, cash books, stock registers, invoices, books, etc., in so far as they pertain to the infringing products.

V. Further, the learned Local Commissioner shall be permitted to undertake/arrange for photography/videography of the execution of the commission.

VI. Both the parties shall provide assistance to the learned Local Commissioner, for carrying out the aforesaid directions.

VII. In case, any of the premises are found locked, the learned Local Commissioner shall be permitted to break open the lock(s). To ensure an unhindered and effective execution of this order, the Station House Officer (“SHO”) of the local Police Station, is directed to render all assistance and protection to the Local Commissioner, as and when sought.

VIII. The fee of the learned Local Commissioner, to be borne by the plaintiff, is fixed at ₹ 1,00,000/- (Rupees One Lakh only). The plaintiff shall also bear all the expenses for travel of the Local Commissioner and other



miscellaneous out-of-pocket expenses, for the execution of the commission. The fee of the Local Commissioner shall be paid in advance by the plaintiff.

IX. The Local Commission shall be executed within a period of two weeks from today. The Local Commissioner shall file the report within a period of two weeks from the date, on which the commission is executed.

50. The order passed today shall not be uploaded for a period of two weeks.

51. In terms of the foregoing, the present application stands disposed of.

52. *Dasti* under signatures of the Court Master.

MINI PUSHKARNA, J

FEBRUARY 27, 2025

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