

IN THE COMMERCIAL COURT AT ALIPORE

Present: Smt. Suparna Ray (JO Code: WB00711)

T.S. (Com) 27 of 2025
CNR No. WBSP18-000174-2025

Shalimar Chemical Works Private Limited.

....Plaintiff

vs.

Samsuddin Sk.

....Defendant

Order: 02

Date: 23.12.2025

Appearance:

Mr. Sayantan Basu.

.....Ld. Sr. Advocate.

Mr. Kavach Kashyap

Ms. Sagarika Dhar

Ms. Aheli Ghoshal

.....Ld. Advocates.

Order

By way of a put up petition the plaintiff herein instigates to roll on the present suit with an intention to move the applications being I.A. No. 01 of 2025 filed under Section 12A of the Commercial Courts Act, 2015 and I.A. No. 02 of 2025 under Order XXXIX Rule 1 and 2 read with Section 151 of Code of Civil Procedure, 1908.

Office notes no caveat.

At this stage, Mr. Basu, learned Senior Advocate moves the matter.

I.A. no. 01 of 2025

I.A. No. 01 of 2025 is corresponding with an application filed on behalf of the plaintiff/petitioner seeking exemption from instituting the pre-litigation mediation, in accordance with Section 12A of the Commercial Courts Act, 2015.

In respect of the instant application, Mr. Basu, learned Sr. Advocate for the plaintiff/petitioner submits that the plaintiff/petitioner is a well known to all and sundry for his brand "Shalimar" and duly registered its mark in the Trademark as well as in the Copyright registries in respect of its get up or trade dress.

Such get up and/or trade dress is being infringed by the respondent by using the same in his product. Therefore, the plaintiff/petitioner has hurriedly filed the instant case before this Court without going through the pre-litigation mediation.

Mr. Basu has as regards relied on judgment of the Hon'ble Supreme Court of India reported in **2025 SCC Online SC 2278 [Novenco Building and Industry A/S vs. Xero Energy Engineering Solutions Private Limited and Anr.]**.

I have heard the learned senior Advocate and also perused the present application being no. I.A. No. 01 of 2025 on great length.

On bare perusal of the plaint it appears that the suit contemplates an urgent relief by filing necessary application under Order XXXIX Rule 1 and 2 with Section 151 of Code of Civil Procedure, 1908. Therefore, the leave as sought for by the plaintiff in this instant interlocutory application is granted.

Accordingly, the instant interlocutory application being no. 01 of 2025 is hereby **disposed off**.

I.A. No. 02 of 2025

At this stage, learned Counsel appearing on behalf of plaintiff moves the present interlocutory application under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 being registered at I.A. No. 02 of 2025, in terms of prayers expounded on the said application.

Upon hearing of the learned Advocate appearing for the plaintiff/petitioner and further on perusal of the materials on record, it appears that the present action has been filed for infringement of the trade mark.

The plaintiff/petitioner in the early part of the 1990 started manufacturing and marketing a wide range of Spices, Mixed Spices, Mixed Masala under its trade dress and from the year 1994, the plaintiff has been marketing such products, openly and continuously to the knowledge of all concerned persons in the trade. Further, the plaintiff adopted CHEF and/or CHEF with the Device of Chef for the use/commercial use of the products of the plaintiff/petitioner particularly in the segment of Spices, Mixed Spices, Edible Oil and other Edible Products, which was adopted by the plaintiff/petitioner in the year 1994.

Plaintiff's contention is that in the month of March, 2024, the plaintiff/petitioner received several complaints from the market that certain inferior quality of goods, viz, masala powders and spices are being pushed in the market for the purpose of sales in identical ploy pouches/wrappers with an uncannily resembling get up, ornamentation, configuration and colours scheme, as the petitioner's trade dress. Thereafter, the petitioner immediately issued a cease

and desist notice dated March 28, 2024, calling upon the defendant to cease and desist from using the identical trade dress. The defendant acknowledged receipt of such notice and replied vide the letter dated April 8, 2024. The plaintiff gave counter reply dated April 17, 2024 establishing prior right of the plaintiff over the artistic work in the subject label and prior registration thereof. Further, the defendant flooded the market with identical trade dress/label for similar nature of goods, in July 2024 the plaintiff made necessary representation before the concerned police authorities within the jurisdiction of the defendant. The authorized representative also lodge police complaint, registered as complaint August 2, 2024 bearing complaint no. 315 of 2024 against such imitation on large scale. However, the defendant continued selling such sub-standard spices under identical trade dress and also filed Caveats before various Courts within Kolkata jurisdiction, therefore, the plaintiff gave final Cease and Desist Notice dated July 19, 2025 calling upon the defendant to immediately desist such sale under identical trade dress.

Defendant is continuously and widely selling such goods under identical trade dress/mark, by using identical trade dress, packaging, colour scheme and get up, the defendant has been deceiving and defrauding the ordinary unsuspecting customers making them into believing that their impugned products are those of the plaintiff's and/or associated with the plaintiff's business. Thus, the plaintiff prefers the instant suit with along with the instant application.

During the course of hearing, Mr. Basu has relied on the judgment of the Hon'ble Supreme Court of India reported in **(2004) 3 SCC 90 [Midas Hygiene Industries (P) Ltd. and And vs. Sudhir Bhatia and Ors.]**.

In view of above, Mr. Basu has prayed for an order in respect of prayer (ii) of the instant application.

In the instant case, on comparing the get up and/or trade dress of the products of both sides, it is found to this Court that the trade dress and/or get up of the products is akin to be deceived on behalf of any gullible person who uses to go to shop to buy plaintiff/petitioner's products. From the submission of the learned senior Advocate for the plaintiff/petitioner it appears that there is no hesitation in the mind of the petitioner to restrain the respondent from selling their product with the identical get up but the get up and/or trade dress should be another one.

However, in this case, it is found that a deliberate attempt of the respondent to use the century long kudos of the petitioner in their infringed products by way of using the get up akin to the

petitioner's product. Therefore, a restraint order needs to be passed in favour of the petitioner.

Therefore, it is opined that petitioner has established a prima facie case in support of their prayers (ii) for getting an ex parte interim injunction in its favour. The balance of convenience and inconvenience is also tilted in favour of the petitioner as well.

As such, the relief is granted by way of ad interim form in respect of prayer (ii) as expounded in the instant application being I.A. No. 02 of 2025 herein till the next date as fixed hereunder. Other prayers will be considered after appearance of the defendant.

The petitioner is directed to serve the copy of this order upon the respondent at once and file affidavit of service to that effect within 48 hours (excluding winter vacation).

To date i.e. **22.01.2026 at 10:30 a.m.** for S/R and appearance of the respondent/defendant.

Parties are to act forthwith on the basis of the downloaded copy of this Order.

Dictated and corrected by me

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram