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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(COMM) 206/2025 & I.A. Nos. 6086/2025, 6087/2025,
6088/2025, 6089/2025, 6090/2025 & 6091/2025

HERO MOTOCORP LTD AND ANRPlaintiffs

Through: Mr. Kunal Khanna, Advocate.

(M): 9999757185

Email: ip.kunalkhanna@gmail.com

versus

ASHOK KUMAR (JOHN DOE)Defendant

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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06.03.2025

I.A. No. 6089/2025 (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 documents, certified copies, clearer copies, translated copies, left side margins, electronic documents etc.

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. 6088/2025 (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 attempting Pre-Institution Mediation is granted.

7. Accordingly, the application stands disposed of.

I.A. 6090/2025 (Exemption from advance service to the defendant)

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

9. 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 defendant is granted.

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

I.A. No. 6091/2025 (Application seeking extension of time for filing Court Fees)

11. The present application has been filed under Section 149, read with Section 151 CPC, seeking extension of time for filing Court Fees.

12. Learned counsel appearing for the plaintiffs submits that two weeks time may be granted for depositing the requisite Court Fees.

13. Liberty is so granted.

14. Noting the aforesaid, the present application is disposed of.

CS(COMM) 206/2025

15. Let the plaint be registered as suit.



16. 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 plaintiffs' documents, without which, the written statement shall not be taken on record.

17. 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.

18. List before the Joint Registrar (Judicial) for marking of exhibits on 21st May, 2025.

19. List before the Court on 21st August, 2025.

I.A. 6086/2025 (Application under Order XXXIX Rules 1 and 2 CPC)

20. The present suit has been filed by the plaintiffs to *inter-alia* restrain the defendant from manufacturing, selling and offering for sale automotive lubricant bottles/ bottles which are identical, fraudulent and an obvious imitation of the plaintiff's unique and novel registered design no. 311300



and 311301 dated 25th October, 2018, sold under the trademark "HERO", specifically under the brand name HERO GENUINE OIL with its unique Label. The present suit has also been filed to prevent the defendant



from making use of the trade mark “HERO”, “HERO GENUINE OIL” as well as the unique packaging which is on the bottle of oil of the plaintiffs that infringes the plaintiffs’ trade mark HERO and the copyright subsisting in the original artistic work of the packaging.

21. Learned counsel appearing for the plaintiffs submits that plaintiffs are group companies and plaintiff no. 1 is engaged in manufacturing and sale of motorcycles, scooters and their parts, and accessories under the well-known trademark mark “HERO” and prominently uses on all its products one or the other device marks depicted as under:



22. It is submitted that the plaintiff no. 1 is engaged in the business of manufacturing and selling motorcycles, scooters and their parts and accessories under the trademark ‘HERO’ since 09th April, 1985. Since the dissolution of the joint venture and consequently company name change, plaintiff no. 1 continued its business under its new trade name Hero MotoCorp and the known trademark ‘HERO’. Plaintiffs also use label and

device marks  for its diverse range of its products, which include auto parts of motorcycles and scooters as well as lubricant oil and engine oil under its much renowned sub-brand name HERO GENUINE ENGINE OIL. The said trademark ‘HERO’ is well known and reputed in the automotive industry and associated exclusively with plaintiffs and their products.

23. It is further submitted that the plaintiff no. 1, for the manufacture and sale of its premium quality products of engine lubricant oil, under its sub-



brand HERO GENUINE OIL, created its novel bottle designs with an eye-catching configuration and features that make it easy for its customers to associate its products with the plaintiff and in the year 2018, got the same registered in order to secure its intellectual property rights of the same.

24. It is submitted that the plaintiff no. 1 company is one of the 8 Indian companies to have entered the Forbes' top 200 list of world's most reputed companies, as per the April 2016 report of ICRJ, and the plaintiff no. 1 continues to be the leader in the Indian two-wheeler industry. In addition, Auto Car Professional, which is India's premier B2B automotive magazine, while analyzing the Q2-2015 sales in the industry, declared that the plaintiff no. 1 commands 71 percent market share in the commuter bike segment. In the year 2020, The plaintiff no. 2 was awarded Motorcycle of the year- Exhibit Auto Tech Awards 2020, Tourer Bike of the Year (upto 250cc) - Flywheel Auto Awards 2020, Business Leader of the Year Awards and Scooter of the year; Bike of the Year up to 200 cc and Two-wheeler of the year from Bike India.

25. It is further submitted that plaintiff no. 2 has always diligently protected and enforced its valuable intellectual rights in its trademarks in India as well as abroad. The said mark HERO has been protected by plaintiff no. 2 through a plethora of registrations in several countries across the globe. The trademark HERO, both as a word and its various artistic representations, has been registered by plaintiff no. 2 in India. The plaintiff no.2 currently owns over 2,000 registrations/applications for registrations of mark HERO in 121 countries across the world. The details of the registrations of the HERO trademarks in favour of the plaintiffs, as given in the plaint, are reproduced as under:



Trademark	Class	TM Application no.	Date of Registration	Valid upto
HERO (word mark)	4	2205777	15.09.2011	15.09.2031
HERO (word mark)	12	235780	13.06.1966	13.06.2028
 (H device)	9, 12, 16, 25, 35, 36, 37, 4, 42	2191293	16.08.2011	16.08.2031
 (H device)	9, 12, 16, 25, 35, 36,	2191294	16.08.2011	16.08.2031

(Device Mark)	37, 41, 42 and 99			
 (Device Mark)	4	2314273	12.04.2012	12.04.2012
 (H device)	4	2314274	12.04.2012	12.04.2032

26. It is submitted that in addition, plaintiff no. 2 is the registered owner of the artwork of the unique  device and label and the plaintiff no. 1 has the exclusive rights in the use of artwork of the  device, by virtue of Copyright Act, 1957, on all its products, as a result of which, its wide customer base exclusively associates the original  artwork with plaintiff no. 1's high-quality products, including, spare parts of two wheelers, lubricant oils and engine oils.

27. It is submitted that the suit designs are inherently crucial to the plaintiff no. 1's flagship product, i.e., engine oil / automotive lubricant. For the very reason the plaintiff no. 1's HERO GENUINE ENGINE OIL is sold



in distinctive, unique bottles /containers with its trademarks prominently displayed on its distinguishing label. The bottles consist of a unique shape with a variety of novel features which distinguish it from other products of similar category. In order to protect its intellectual property rights in the suit designs, plaintiffs filed applications to register two designs bearing nos. 311300 and 311301 on 25th October, 2018. Accordingly, the plaintiff no. 1 owns valid and subsisting design registrations in its products.

28. It is further submitted that the plaintiff no. 1 has been continuously and exclusively using the suit designs and being the registered owner of these designs, plaintiff no. 1 holds the sole and exclusive right to their use, unless specifically permitted, assigned, or authorized by the said plaintiff. Therefore, any unauthorized use or clear imitation of the registered designs by any third party, other than the plaintiffs, constitutes an infringement of the plaintiff no. 1's registered design and the copyright associated with the label attached to the design.

29. It is submitted that plaintiff no. 1's 'HERO GENUINE OIL', is sold in its distinctively designed bottles (suit design) and holds a significant position in the plaintiffs' premium product line up and enjoys great popularity among consumers, contributing substantially to the plaintiffs' overall revenue which has crossed the mark of Rs.29,802.30 Crores in the financial year 2021-2022. Consumers widely associate the product with its unique bottle design and attached label, with its success further linked to the strong reputation and goodwill the plaintiff no. 1 enjoys under the 'HERO' brand.

30. It is submitted that defendant ASHOK KUMAR (JOHN DOE) is carrying out business of manufacturing and supplying plastic bottles of various kinds, as well as bottle caps, for usage in different industries like



engine oil, cosmetics, medicines, household products etc. From the investigation carried out by the plaintiffs, the location where the defendant is carrying out its business is *Behind Jungle Wali, Masjid, Beriwalla Bagh, Azad Market, Delhi -110006*.

31. It is further submitted that the plaintiffs in the last week of January 2025, came across the defendant's counterfeit products, i.e., counterfeit HERO GENUINE OIL products being sold in Azad Market area. The plaintiffs discovered that the products being sold by the defendant were identical imitations of plaintiff no. 1's rightfully owned suit designs bearing no. 311300 and 311301, which the said plaintiff exclusively uses to sell its lubricant engine oils under the sub-brand HERO GENUINE OIL.

32. It is submitted that in order to reach the very depth of defendant's infringing activities, the plaintiff hired an investigating team who determined that the defendant is running their business from its manufacturing unit and is manufacturing and selling plastic bottles and caps as well as plastic moulds and caps of multiple bottles, such as medicinal, cosmetic and lubricant oil products in an unauthorized and illegal manner and is brazenly indulging in design infringement activities.

33. It is further submitted that a comparison of the plaintiffs' HERO GENUINE OIL Bottle with the defendant's impugned product will show that the look and feel of the products is such that an unwary customer with an imperfect memory and average intelligence is bound to get confused as to the source of the products. The plastic mould identical to plaintiff's suit design is being sold by the defendant in the lubricants oil market, a sizable portion of which are plaintiffs' customers who associated the design solely with the plaintiffs. The infringing plastic bottles are directly being sold to dealers who might sell these impugned products by affixing their own



trademark on them, or worse, by affixing plaintiffs’ HERO trademarks on the same, and passing their products as plaintiffs’ products. A comparative table depicting the plaintiffs’ product and the infringing product of the defendant, is reproduced as under:

Plaintiffs’ Product/ Registered Suit Designs	Defendant’s Infringing Product/Design
FRONT VIEW 	FRONT VIEW 
REAR VIEW 	REAR VIEW 
SIDE VIEWS  	SIDE VIEWS  



34. It is submitted that the defendant is not an authorised dealer of the plaintiffs and has never been in any such capacity *vis-a-vis* the plaintiffs. The plaintiffs diligently maintain an extensive record of all its authorized dealers, vendors, stockiest and representatives in the due course of business and therefore when the plaintiffs came across the defendant's infringing activities it discovered the depth of defendant's malicious acts, given that the defendant has never been associated with the plaintiffs in any capacity.

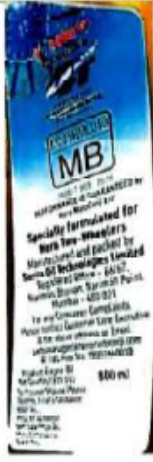
35. It is submitted that the defendant has copied the plaintiffs' rightfully owned suit designs in entirety and are manufacturing and supplying the impugned products not just in the jurisdiction of this Court but across India. It is further submitted that it may be taken note of that most of the plaintiffs' customer base is of average intelligence who isn't capable of distinguishing the inferior quality products from plaintiff's superior quality products on account of identical design.

36. It is submitted that the defendant is neither the registered owner nor has obtained any license or written permission to use the plaintiffs' registered designs for its 'HERO GENUINE OIL' bottles. The defendant's bottle design is a clear imitation of the plaintiffs' registered designs. This is evident when the designs are viewed from any angle front, back, or side as they appear identical. The defendant has replicated not only the surface pattern but also the shape and configuration of the plaintiffs' registered designs. Consequently, this unauthorized use of the bottle shape, design, and surface pattern constitutes infringement of the plaintiff's registered designs, i.e. nos. 311300 and 311301, under section 22 of the Design Act, 2000.

37. It is submitted that the apprehension of the plaintiffs, the scale at which the defendant is manufacturing the suit design bottle, the defendant would most likely, would also be engaged in printing label / artworks similar



to that of the plaintiffs which is affixed on the suit design bottle. Accordingly, there is credible and imminent threat and apprehension that the defendant is also infringing the copyright of the plaintiff no. 1, which is subsisting in the original artistic work of the label, which is affixed on the suit bottle design. The representation of the said label of the plaintiff no. 1, as given in the plaint, is reproduced as under:

Front Side of artwork	Back side of artwork
	
	



38. It is further submitted that the said labels are the original artistic work of the plaintiffs within the meaning of Section 2(c) of the Copyright Act, 1957.

39. It is submitted that the look, shape, surface pattern, trade dress, and label of the infringing product are blatant copies and an undeniable imitation of the plaintiffs' product. This unauthorized use amounts to an infringement of the plaintiffs registered designs and copyright, as the defendant has neither been authorized nor given express permission by the plaintiff to use or distribute these elements.

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 proprietor



or partners, its associates and agents, officers, employees, distributors, franchisee, representatives and assigns are restrained from manufacturing, trading, supplying, selling, marketing, in any manner, including, online sale or dealing in any other way, any goods and/or any other product which is identical and/or obvious fraudulent imitation of the Suit Designs, namely, design no. 311300 and 311301 dated 25th October, 2018, or any other registered design of the plaintiff no. 1, thereby, infringing plaintiff no. 1's registered Suit Designs/which may amount to infringement of the plaintiff no. 2's registered trademarks/copyright/which may amount to passing off.

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.

46. List before the Court on 21st August, 2025.

I.A. 6087/2025 (Application for appointment of Local Commissioner)

47. The present application has been filed on behalf of the plaintiffs under Order XXVI Rule 9 read with Order XXXIX Rule 7 CPC, seeking appointment of 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. Anshul Sharma, Advocate (M: 8595785688), is appointed as Local Commissioner, with a direction to visit the following premises of the defendant:



ASHOK KUMAR (JOHN DOE)
Behind Jungle Wali, Masjid,
Beriwala Bagh,
Azad Market,
Delhi 110006

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, i.e., bottles, which are identical and/or obvious fraudulent imitation of the suit designs, namely, design no. 311300 and 311301 dated 25th October, 2018, or any other registered design of the plaintiff no. 1.

III. The learned Local Commissioner is directed to open the lock and door of the godown/warehouse/premises, if any, where the defendant is keeping spurious and infringing products used by the defendant which are identical and/or deceptively, confusingly, phonetically and visually similar to registered trade mark HERO/devices/logo of the plaintiff no. 2, as well as visually similar or identical to the original artistic work of the plaintiffs, in any form and manner.

IV. 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 plaintiff.

V. 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.

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



commission.

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

VIII. 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.

IX. The fee of the learned Local Commissioner, to be borne by the plaintiffs, is fixed at ₹ 1,00,000/- (Rupees One Lakh only). The plaintiffs 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 plaintiffs.

X. The Local Commission shall be executed within a period of two weeks from today. The Local Commissioner shall file its 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

MARCH 6, 2025

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