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

+ **CS(COMM) 228/2025 with I.A. 6617-6622/2025**

HERO INVESTCORP PVT. LTD AND ANR.Plaintiffs

Through: **Mr. Kunal Khanna and Mr. Madhav
Anand, Advocates.**

versus

ASHOK KUMAR (JOHN DOE)Defendant

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **12.03.2025**

I.A. 6619/2025 (u/s 12A of the Commercial Courts Act, 2015)

1. As the present suit contemplates urgent interim relief, in light of the judgment of the Supreme Court in *Yamini Manohar v. T.K.D. Krithi*, 2023 SCC Online SC 1382, exemption from the requirement of pre-institution mediation is granted.

2. The application stands disposed of.

I.A. 6620/2025 (seeking exemption from filing original documents)

3. For the reasons stated in the application, the plaintiffs are exempted from filing the originals at this stage.

4. The application stands disposed of.

I.A. 6621/2025 (seeking exemption from advance service of the suit paper book upon the defendant)

5. The plaintiffs seek urgent interim relief against the defendant with regard to counterfeit products and for this purpose, an *ex-parte* appointment



of a Local Commissioner is also sought to confiscate the counterfeit products. It is submitted that there is a probability that the defendant may remove the counterfeit products if the defendant is given advance service of the suit paper book.

6. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendant is granted.

7. The application is disposed of.

I.A. 6622/2025 (u/s 149 of the CPC)

8. Mr. Kunal Khanna, counsel appearing on behalf of the plaintiffs, submits that the requisite court fees shall be paid within one (1) weeks.

9. The aforesaid statement of counsel for the plaintiffs is taken on record.

10. The application is disposed of.

CS(COMM) 228/2025

11. Let the plaint be registered as a suit.

12. Issue summons.

13. Summons be issued to the defendant through all permissible modes. The summons shall state that the written statement shall be filed by the defendant within thirty (30) days from the date of the receipt of summons. Along with the written statement, the defendant shall also file affidavit of admission/ denial of the documents of the plaintiffs, without which the written statement shall not be taken on record.

14. Liberty is given to the plaintiffs to file replication, if any, within thirty (30) days from the receipt of the written statement. Along with the replications filed by the plaintiffs, affidavit of admission/ denial of the documents of the defendant be filed by the plaintiffs.



15. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document, which is not in their power and possession, its detail and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.

16. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

17. List before the Joint Registrar on 14th May, 2025 for completion of service and pleadings.

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

I.A. 6617/2025 (u/O-XXXIX Rules 1 & 2 of the CPC)

19. The present suit has been filed seeking relief of permanent/ perpetual injunction restraining the defendant from infringement of trade mark and copyright of the plaintiffs and passing off, along with other ancillary reliefs.

20. The plaintiffs are group companies of the HERO Group. The plaintiff no.1, (Hero InvestCorp Private Limited) is a company incorporated under the laws of India. It is stated that the plaintiff no.1 is the owner and

proprietor of the marks HERO,  and  (hereinafter 'HERO marks') and has been continuously, uninterruptedly and extensively using the same for nearly 60 years in relation to scooters, motorcycles and parts thereof.

21. The plaintiff no.2 (Hero MotoCorp Limited) is engaged in the manufacturing, marketing and sale of motorcycles, scooters and their parts and accessories under the HERO marks. The plaintiff no.2 is stated to be a top manufacturer and seller of two-wheelers such as motorcycles and



scooters and their spare auto parts in India as well as globally.

22. It is averred that the plaintiff's HERO marks have become a household name in India and are well-renowned across the world. The plaintiffs have thousands of dealers and several manufacturing facilities in India and other countries including Columbia and Bangladesh.

23. The HERO marks have been protected by the plaintiff no.1 through numerous registrations across several countries. The plaintiff no.1 has also obtained registrations for the HERO marks in India. The details of the registrations of the HERO marks in favour of the plaintiff no.1 are given below:

Trademark	Class	TM Application No.	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
 (Device mark)	9, 12, 16, 25, 35, 36, 37, 41, 42	2191294	16.08.2011	16.08.2031
 (Device mark)	4	2314273	12.04.2012	12.04.2032
 (H device)	4	2314274	12.04.2012	12.04.2032



24. It is stated that the plaintiff no.2, *vide* authority letter dated 10th May, 2022, is exclusively authorized to use the HERO marks.

25. The plaintiff no.1 is also the registered owner of the artwork in the

unique  device.

26. The plaintiff no.2 manufactures and sells two-wheeler spare parts



under the marks HERO GENUINE PARTS and (hereinafter 'HGP marks') in addition to the HERO marks. The plaintiffs use the HGP marks, in addition to the HERO marks, for their diverse range of products including but not limited to auto parts of motorcycles and scooters such as spark plugs, gear shift, radial dial, clutch plate, shoe comp. brakes, etc.



27. It is submitted that the mark  is an original artistic work under Section 2(1)(c) of the Copyright Act, 1957.

28. The plaintiffs' high-quality products under the HGP marks include lever comp. L STRG HNDL., shoe comp. brake, sectionized engine assy., cable set throt, tube, set, seal set piston, pad set front, crank case comp. R, rub. Bush eng. Hanger, pipe comp air suction, plate bearing set, gasket crank case, crankcase comp. L, etc.



29. It is submitted that the plaintiffs' products under the HGP marks are specially designed by them after extensive efforts in terms of research and development, and substantial amounts have been invested by the plaintiffs in developing the same. As a result of the promotional activities undertaken by the plaintiffs and the superior quality of their products, the plaintiffs enjoy an unmatched reputation and goodwill across India. Resultantly, the plaintiffs' HERO and HGP marks are widely and exclusively associated by the general public with the plaintiffs and not with any other person/ entity.

30. It is stated that the plaintiffs' products under the HGP marks bear the verifiable unique parts identification (UPI) code and are distributed through an extensive network of over 90 super stockists, 350 Hero Genuine Parts distributors and 6500 authorized service centres across India. The plaintiffs' two-wheelers and spare parts are also exported to over 40 countries across the world.

31. It is averred that the plaintiffs have also received several awards, accolades and recognition for their excellent quality products and customer service. The plaintiff no.2's annual revenue for the financial year 2023-24 has been stated to be Rs. 37,456 crores.

32. It is submitted that the defendant is an unidentified entity/ person carrying out a business of wholesale of two-wheeler auto-parts from its manufacturing unit cum warehouse located in New Delhi where it manufactures and makes sale of counterfeit two-wheeler auto parts disguised as the plaintiff no.2's products.

33. It is submitted that in the third week of February 2025, the plaintiffs came across the defendant carrying out manufacturing of two-wheeler auto-parts (hereinafter 'impugned products') in the markets of New Delhi. The



plaintiffs discovered that the impugned products are being sold in packaging material identical with that of the plaintiff no.2's products under the HGP marks and also bears the HERO marks.

34. In order to ascertain the defendant's infringing and counterfeiting activities, the plaintiffs engaged an investigating team that discovered that the defendant is packaging and selling the impugned products from its manufacturing unit. However, it is stated that further information with regard to the defendant could not be gained due to the clandestine manner in which the defendant operates.

35. A comparison of the original products of the plaintiffs and the impugned products of the defendant is reproduced below:

PLAINTIFFS' PRODUCT ALONG WITH PACKAGING	DEFENDANT'S INFRINGING PRODUCT ALONG WITH PACKAGING
	



36. A perusal of the table above would show that the impugned products of the defendant bear the falsified HERO marks and the HGP marks.

37. It is submitted that the HERO marks and the HGP marks are widely associated with the plaintiffs' premium quality products, recognized not only in India but globally. It is further submitted that by adopting and using identical marks/ product packaging in relation to the impugned products which are identical with those of the plaintiffs, the defendant is misrepresenting and deceiving the public and tarnishing the plaintiffs' goodwill, reputation and globally recognized brand image.

38. Based on the averments made in the plaint, the plaintiffs have established their statutory and/ or common law rights over the HERO marks and the HGP marks.



39. On a *prima-facie* view, the impugned products being sold by the defendant appear to be counterfeits of the plaintiffs' goods under the HERO marks and the HGP marks. Clearly, an attempt has been made by the defendant to create an impression that the impugned products being sold by the defendant are associated with the plaintiffs.

40. Balance of convenience is in favour of the plaintiffs and against the defendant. Irreparable loss, harm and injury would be caused to the plaintiffs if the defendant continues to sell the impugned products. Prejudice would also be caused to the public as the impugned products of the defendant are counterfeits of the plaintiffs' products under the HERO marks and the HGP marks and are likely to cause confusion in the market.

41. Consequently, till the next date of hearing, the defendant, its proprietor/ partners, servants, affiliates, associates, agents, stockiests, officers, employees, distributors, franchisees, representatives and assigns are restrained from printing, distributing, supplying, marketing, or in any manner dealing with counterfeit products bearing the plaintiff's HERO marks and the HGP marks including but not limited to the marks HERO,

 ,  ,  ,  , HERO GENUINE PARTS



and or any other mark/ logo/ label/ artistic work identical with or deceptively similar to the plaintiff's HERO and HGP marks.

42. In view of the fact that the plaintiffs have sought appointment of a



Local Commissioner to seize the counterfeit products, the very purpose of grant of *ex-parte ad interim* injunction would be defeated if the defendant is given notice contemplated in Order XXXIX Rule 3 of Code of Civil Procedure, 1908 (hereinafter 'CPC') prior to the execution of the commission. Hence, it is directed that the plaintiffs shall serve notice under Order XXXIX Rule 3 of CPC at the time of execution of the commission which shall not be later than two (2) weeks from today.

43. Issue Notice.

44. Notice be issued to the defendant through all permissible modes, including e-mail.

45. Reply be filed within four (4) weeks.

46. Rejoinder thereto, if any, be filed within two (2) weeks thereafter.

47. List before the Joint Registrar on 14th May, 2025 for completion of service and pleadings.

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

I.A. 6618/2025 (O-XXVI R-9 of the CPC)

49. The present application has been filed under Order XXVI Rule 9 of the CPC seeking appointment of a Local Commissioner to visit and inspect the premises of the defendant, make an inventory of all products, labels, packaging/ promotional material, etc. bearing the impugned marks (hereinafter referred to as 'infringing material') and effect seizure of the same.

50. In view of what is stated above, the plaintiffs have made out a case for appointment of a Local Commissioner.

51. Accordingly, Ms. Muskan Sethi, Advocate (Mobile No. +91 9871880548) is appointed as a Local Commissioner to visit the premises of



the defendant situated in:

Building No. 1587, Gali No. 31, Hardhayan Singh Road,
Naiwala, Karol Bagh, New Delhi – 110005.

52. The following directions are passed in this regard:

- a. The Local Commissioner, along with a representative of the plaintiffs and their counsel, shall be permitted to enter upon the premises of the defendant mentioned above or any other location/ premises that may be identified during the course of commission, in order to conduct the search and seizure.
- b. The Local Commissioner shall conduct a search at the defendant's premises and seize the infringing material.
- c. The Local Commissioner shall make an inventory of all the infringing material.
- d. After seizing infringing material, the same shall be sealed and signed by the Local Commissioner, in the presence of the parties, and released on *superdari* to the plaintiffs on their undertaking to produce the same as and when further directions are issued in this regard.
- e. The Local Commissioner shall also be permitted to make copies of the books of accounts including ledgers, cash registers, stock registers, invoices, books, etc. insofar as they pertain to the infringing material.
- f. The defendant and its representatives are directed to provide full assistance to the Local Commissioner for executing the present commission.
- g. In case, the aforesaid premises of the defendant or any part



thereof are found locked, the Local Commissioner is permitted to break open the locks and doors for execution of the commission.

h. To ensure an unhindered and effective resolution of this order, the SHO of the local police station having jurisdiction of the aforesaid premises and the DCP concerned are directed to render the necessary protection and assistance to the Local Commissioner, if and when sought.

i. The Local Commissioners shall have the liberty to take photographs and/ or videos of the stock seized and to take a sample of the infringing material to be filed along with the Report.

53. The Local Commissioner shall file her Report within two (2) weeks of executing the commission, along with photographs/ videos taken and photocopies of the books of account and stock and the inventory procured pursuant thereto.

54. The fees of the Local Commissioner, to be borne by the plaintiffs, is fixed at Rs. 1,00,000/-. The plaintiffs shall also bear expenses for travel and lodging of the Local Commissioner and other miscellaneous out-of-pocket expenses for the execution of the commission.

55. The application stands disposed of in the above terms.

56. The order passed today shall not be uploaded for a period of two (2) weeks from today.

57. *Dasti.*

AMIT BANSAL, J

MARCH 12, 2025

kd