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

+ **CS(COMM) 259/2025**

HERO INVESTCORP PVT. LTD. AND ANR.Plaintiffs

Through: **Mr. Kunal Khanna, Advocate.**

versus

ASHOK KUMAR (JOHN DOE)Defendant

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **24.03.2025**

I.A. 7540/2025 (exemption from filing original/ certified/ dim/ legible/ clearer/ translated/ electronic documents)

1. Allowed, subject to the plaintiffs filing dim/ clearer/ translated/ electronic copies of the documents within four (4) weeks from today.
2. Plaintiffs are exempted from filing original/ certified documents at this stage.
3. The application stands disposed of.

I.A. 7541/2025 (seeking exemption from advance service to defendant)

4. The plaintiffs seek urgent interim relief against infringing products and for this purpose, an *ex-parte* appointment of Local Commissioner is also sought to confiscate the goods. It is submitted that there is a probability that the defendant may remove the infringing products if the defendant is given advance service of the plaint paper book. Therefore, in the peculiar facts and



circumstances of this case, exemption from effecting advance service upon the defendant is granted.

5. The application is disposed of.

I.A. 7542/2025 (u/s 149 of the CPC)

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

6.1. The aforesaid statement of counsel is taken on record.

7. The application is disposed of.

I.A. 7539/2025 (u/s 12A of Commercial Courts Act, 2015)

8. 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.

9. The application stands disposed of.

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10. Let the plaint be registered as a suit.

11. Issue summons.

12. Summons be issued to the defendant through all modes. The summons shall state that the written statement shall be filed by the defendant within thirty 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.

13. Liberty is given to the plaintiffs to file replication(s), if any, within thirty days from the receipt of the written statement. Along with the replication(s) filed by the plaintiffs, affidavit of admission/denial of the



documents of the defendant be filed by the plaintiffs.

14. 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.

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

16. List before the Joint Registrar on 28th April, 2025 for completion of service and pleadings.

17. List before the Court on 27th August, 2025.

I.A. 7537/2025 (u/O-XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908)

18. The present suit has been filed seeking permanent/perpetual injunction restraining the defendant from infringing the design, trademark, copyright of the plaintiffs, along with passing off and other ancillary reliefs.

19. Plaintiffs are group companies engaged in the manufacture and sale of motorcycles, scooters and their parts, and accessories under the well-known trademark 'HERO'.

20. The plaintiff no.1, [Hero Invest Corp Private Limited] and plaintiff no.2 [Hero MotoCorp Limited], are companies incorporated under the laws of India. It is stated that the plaintiff no.1 has been continuously, uninterruptedly and extensively using the 'HERO' trademarks, devices and label attached to it for more than 60 years in India and globally. The plaintiffs use the label and

device marks   for its diverse range of



products which include auto parts of motorcycles and scooters as well as lubricant oil and engine oil under the name ‘HERO GENUINE ENGINE OIL’.

21. It is averred that the mark ‘HERO’ has been protected by the plaintiff no.1 through numerous registrations across several countries. The plaintiff no.1 has also obtained the registrations of the trademark ‘HERO’, both as a word mark and its various artistic representations in India. The details of the registrations of the ‘HERO’ trademarks in favour of the plaintiff no.1 are given as under:

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)	4, 12, 16, 25, 35, 36, 37, 4, 42	2191293	16.08.2011	16.08.2031
 (Device mark)	9, 12, 16, 25, 35, 36, 37,	2191294	16.08.2011	16.08.2031



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

22. The plaintiffs are also the registered owner of the artwork of the unique



device and label . The plaintiffs own the exclusive rights in the



artwork of the device and by virtue of the Copyright Act, 1957, the plaintiffs hold the exclusive rights to its use on all their products.

23. The plaintiffs manufacture and sell lubricant oils under their sub-brand ‘HERO GENUINE ENGINE OIL’. The aforesaid product is sold using a bottle with a novel and unique design. The design of the bottle has been registered by the plaintiffs via two design applications bearing nos. 311300 and 311301 on 25th October, 2018 (hereinafter, “suit designs”). It is averred in the plaint that the aforesaid registrations are valid and subsisting.

24. The sales figures and advertising and promotional expenses incurred by the plaintiffs in respect of its ‘HERO GENUINE ENGINE OIL’ are given in paragraph 23 of the plaint.



25. The defendant [Ashok Kumar] is an unidentified entity carrying out business from its premises located at Nangloi, Delhi, from where it is manufacturing and supplying plastic bottles bearing the trademark ‘HERO’ with the design which is identical to the suit designs. However, it is stated that the plaintiffs are not aware of the exact constitution of the defendant.

26. On 2nd March, 2025, the plaintiffs’ investigator visited the defendant’s premises and came across the defendant’s impugned products which were identical imitations of the plaintiffs’ registered designs. In addition, the plaintiffs have a credible apprehension that the impugned bottles sold by the defendant bear the identical “HERO GENUINE OIL” labels of the plaintiffs as well as the registered ‘HERO’ trademark and device mark.

27. It is further submitted that by adopting and using the deceptively similar designs as the plaintiffs’ registered designs for identical goods, i.e. lubricants, the defendant is misrepresenting and deceiving the public and tarnishing the plaintiffs’ goodwill, reputation, and globally recognised brand image.

28. A comparative table illustrating the similarities between the design and labels of the products of the plaintiffs and the impugned products of the defendant is set out below:



PLAINTIFFS' PRODUCT	DEFENDANTS' PRODUCT
	

29. The comparison above categorically shows that the defendant has copied the registered suit designs of the plaintiffs almost in its entirety including the hexagonal shape, the dotted surface pattern, the gold colour composition, and the unique composition of lines. Along with the designs, the defendant has blatantly copied the printing label/artworks similar to the plaintiffs' label affixed to the design bottle.

30. Based on the averments made in the plaint, the plaintiffs have established their statutory as well as common law rights over the designs used for products sold under the 'HERO GENUINE OIL' mark, the mark 'HERO' and its labels and packaging.

31. On a *prima-facie* view, the goods being sold by the defendant appear



to be infringing the registered trademark, registered designs as well as copyright of the plaintiffs. The impugned design used by the defendant appears to be a slavish imitation of the plaintiffs' registered designs. Clearly, an attempt has been made by the defendant to create an impression that the impugned products being sold by the defendant are connected to the plaintiffs, therefore, a *prima facie* case of passing off is also made out.

32. Balance of convenience is in favour of the plaintiffs and against the defendant. Irreparable injury would be caused to the plaintiffs if the defendant continues to use the impugned labels/design/mark. Prejudice would also be caused to the public as the labels/design/mark of the defendant is deceptively similar to that of the plaintiffs and likely to cause confusion in the market.

33. In view of the discussion above, till the next date of hearing, the defendant, its proprietor or partners, its associates and agents, officers, employees, distributors, franchisees, representatives and assignees are restrained from manufacturing, trading, supplying, selling, marketing, in any manner including online sale or dealing in any other way:

- i. Any packaging/bottle which is identical and/or obvious imitation of the suit designs.
- ii. Any goods and/or any other product/products including accessories under the plaintiffs' 'HERO' trademarks including the device marks

 and , or any other mark/logo which is identical or deceptively similar to the plaintiffs' 'HERO' trademarks and/or device marks.

- iii. Any goods and/or any other products including accessories under



similar/identical packaging including the device marks or any other mark/logo/labels/artistic work which are identical and similar to the plaintiffs' 'HERO' logo, labels, packaging and/or artistic work.

34. In view of the fact that the plaintiffs have sought appointment of a Local Commissioner to seize the infringing goods, 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. The affidavit in terms of Order XXXIX Rule 3 of CPC shall be filed by the plaintiffs within one (1) week thereafter.

35. Issue Notice.

36. Notice be issued to the defendant *via* all permissible modes, including e-mail.

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

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

39. List before the Joint Registrar on 28th April, 2025 for completion of service and pleadings.

40. List before the Court on 27th August, 2025.

I.A. 7538/2025 (O-XXVI R-9 of CPC)

41. The present application has been filed under Order XXVI Rule 9 of the CPC seeking appointment of Local Commissioner to visit the premises of the defendant, make an inventory of all the goods having the impugned design/labels/mark and effect seizure of the same.

42. In view of what is stated above, the plaintiffs have made out a case for



appointment of a Local Commissioner.

43. Accordingly, Mr. Aditya Gulliya, Advocate (Mobile No. +91 9311241555) is appointed as Local Commissioner to visit the premises of the defendant “Ashok Kumar (John Doe)” situated in:

*G 162, Adhyapak Nagar, Naresh Park Extension,
Nangloi, Delhi, New Delhi - 110041.*

44. The following directions are passed in this regard:

44.1. 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.

44.2. The Local Commissioner shall make an inventory of all the infringing products including but not limited to label/packaging material (hereinafter referred to as ‘*infringing material*’).

44.3. The Local Commissioner shall conduct a search at the defendant’s premises and seize the infringing goods, including any packaging/ promotional material reflecting infringement.

44.4. 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.

44.5. 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



products.

44.6. The defendant and its representatives are directed to provide full assistance to the Local Commissioner for executing the present commission.

44.7. 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.

44.8. 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.

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

45. The Local Commissioner shall file his report within two (2) weeks of executing the commission, along with photographs taken and photocopies of the books of account and stock and the inventory procured pursuant thereto.

46. 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.

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

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



49. *Dasti.*

MARCH 24, 2025

kd

AMIT BANSAL, J