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

+ CS(COMM) 457/2025 with I.A. 11938/2025, I.A. 11939/2025, I.A. 11940/2025, I.A. 11941/2025 and I.A. 11942/2025

HERO INVESTCORP PVT LTD AND ANRPlaintiffs

Through: Mr. Kunal Khanna, Mr. Madhav Anand, Mr. Krtin Bhasin, Mr. Yashveer Singh and Mr. Udit Sharma, Advocates.

versus

ASHOK KUMAR (JOHN DOE)Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **13.05.2025**

I.A. 11940/2025 (u/s 12A of Commercial Courts Act)

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. 11941/2025 (for exemption from advance service to defendant)

3. 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.

4. The application is disposed of.

I.A. 11942/2025 (u/s 149 of the CPC)

5. Mr. Kunal Khanna, counsel appearing on behalf of the plaintiffs submits that the requisite court fees shall be paid within two weeks.

6. The statement of counsel is taken on record.

7. The application is disposed of.

CS(COMM) 457/2025

8. Let the plaint be registered as a suit.

9. Issue summons.

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

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

12. 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.

13. If any of the parties wish to seek inspection of any documents, the



same shall be sought and given within the timelines.

14. List before the Joint Registrar on 1st August, 2025 for completion of service and pleadings.

15. List before the Court on 6th October, 2025.

I.A. 11938/2025 (u/O-XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908)

16. The present suit has been filed seeking relief of permanent injunction restraining the defendant from infringing the trademark of the plaintiffs, passing off, along with other ancillary reliefs.

CASE SET UP IN THE PLAINT

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

18. Plaintiff no.1, [Hero Invest Corp Private Limited], is a company incorporated under the laws of India. It is stated that 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. Plaintiff no.2 manufactures and sells two-wheeler spare parts under the sub-brand 'HERO GENUINE PARTS' and it is stated to have become one of the leading manufacturers and sellers of two-wheeler spare parts in India and all across the globe.

19. The plaintiffs use the label and device marks



for their diverse range of products, which include auto parts



for motorcycles and scooters under the name 'HERO GENUINE PARTS'. These include spark plugs, gear shifts, radial dials, clutch plates, and shoe comp brakes, etc.

20. It is averred that the mark 'HERO' has been protected by the plaintiff, no. 1, through numerous registrations across several countries. The plaintiff 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' trade marks in favour of the plaintiff no. 1 are as given 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

21. The plaintiff no. 1 is 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 all the exclusive rights to its use on all its products.

22. It is stated that the plaintiffs' 'HERO GENUINE PARTS' holds a significant position in the plaintiffs' premium product line-up and enjoys great popularity among consumers, contributing substantially to the plaintiffs' overall revenue.

23. It is stated that the 'HERO' spare parts packaging/ labelling is specially designed by the plaintiffs after extensive efforts in terms of research and development, and substantial amounts have been invested by the plaintiffs in developing the same. The plaintiffs' products look aesthetically pleasing to the eyes and are a rage amongst their customer base



due to their unique design and novel features. As a result of the promotional activities undertaken by the plaintiffs and the superior quality of their products, the plaintiffs' original designs of the packaging relating to their products enjoy an unmatched reputation and goodwill throughout India. Additionally, the plaintiffs' packaging/designs have gained a secondary meaning, with the general public widely associating the same exclusively with the plaintiffs, their products, and their business, and not with any other entity.

24. It is stated that the plaintiff no. 2 recently launched the initiative – 'Fight Fake, Stay Safe' in order to safeguard its reputation amassed by it by way of its sale of premium two-wheeler spare parts as well as the interest of its valued customers. Under this initiative, the plaintiff no. 2 has conducted 216 raids across India, on manufacturers and traders involved in the business of selling spurious/counterfeit products of the plaintiffs.

25. The defendant [John Doe] is an unidentified entity carrying out the manufacturing and sale of the counterfeit spare parts of two-wheelers. However, it is stated that the plaintiffs are not aware of the exact constitution of the defendant. The plaintiff also apprehends that the defendant is printing counterfeit packaging material under the "HERO" marks.

26. In the first week of April 2025, the plaintiffs came across the defendant(s) selling spare parts of two-wheelers in the markets of Karol Bagh, New Delhi. The plaintiffs discovered that the defendants were selling counterfeits of 'HERO GENUINE PARTS' and bearing the plaintiff's no.1's HERO trademarks. It is submitted that the plaintiffs were surprised to discover that the products being sold by the defendant were imitations of the



plaintiffs' unique packaging, which the plaintiffs exclusively use to sell their products. In addition, the said impugned products were similar to those of the plaintiffs' products, and the defendant was selling the said products with the intent to deceive the public as originated from the plaintiffs.

27. In order to reach the depth of the defendant's infringing activities, the plaintiffs engaged an investigating team that determined that the defendant(s) are manufacturing and selling the impugned products from its manufacturing unit located at T-2500, Subhash Mohalla, Naiwalan, Karol Bagh, New Delhi. However, further knowledge regarding the defendant could not be gained due to the clandestine manner in which the defendant(s) operate.

28. It is stated that the defendant is engaging in these counterfeiting activities in a clandestine manner, deliberately avoiding the issuance of invoices to evade detection. It is stated that the defendant neither owns any registration nor has obtained a license or written permission to use the plaintiffs' designs for Hero Genuine Parts or other spare parts for two-wheelers.

29. It is submitted that the defendant's counterfeit products and infringing materials, sold under an identical mark, blatantly reference the plaintiffs' distinctive HERO trademarks and device marks. These marks are widely associated with the plaintiffs' premium quality products, recognised not only in India but globally. It is further submitted that by adopting and using the identical marks and logos for identical goods, the defendant is misrepresenting and deceiving the public and tarnishing the plaintiffs' goodwill, reputation, and globally recognised brand image.



30. A comparison of the infringing products of the defendant and the original product of the plaintiffs, along with their respective packaging, bearing the trademark 'HERO' is reproduced below:

PLAINTIFF'S PRODUCT	DEFENDANT'S INFRINGING PRODUCT
	
	

31. The comparison above categorically demonstrates that the defendant's products are similar to the plaintiff's products and the same bears the falsified mark "HERO" which is identical to the plaintiff no.1's registered "HERO MARKS" which plaintiff no.2 is exclusively authorised to use upon its products.

32. Based on the averments made in the plaint, the plaintiffs have established their statutory rights over the mark 'HERO'.

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



to be counterfeits of the plaintiffs' goods. Clearly, an attempt has been made by the defendant to create an impression that the impugned goods being sold by the defendant are connected to the plaintiff.

34. 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 sell the impugned products. Prejudice would also be caused to the public as the impugned goods of the defendant are counterfeits of the plaintiffs' products and are likely to cause confusion in the market.

35. Accordingly, 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, any goods and/or any other products, including accessories under the plaintiffs 'HERO TRADEMARKS' device marks or any other mark/ logo which is identical and similar to the plaintiffs 'HERO TRADEMARKS' and/or device marks.

36. Further, the defendant, its proprietor or partners, servants, agents, affiliates, associates stockiest 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 products, including accessories, under similar/identical packaging including the device marks or any other mark/logo/labels/packaging/artistic work which are identical and similar to the plaintiffs mark, logo, labels, packaging and/or artistic work.

37. 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 defendants are



given notices 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 notices under Order XXXIX Rule 3 of CPC at the time of execution of the commission, which shall not be later than two weeks from today. The necessary affidavit in compliance with Order XXXIX Rule 3 of CPC shall be filed within one week thereafter.

38. Issue Notice.

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

40. Reply(ies) be filed within four (4) weeks.

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

42. List before the Joint Registrar on 1st August, 2025 for completion of service and pleadings.

43. List before the Court on 6th October, 2025.

I.A. 11939/2025 (O-XXVI R-9 of CPC)

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

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

46. Accordingly, Ms. Shalaka Garg, Advocate (Mobile No. +91 9711248657) is appointed as Local Commissioner to visit the premises of the defendants situated at:

“Building No. T-2500, Subhash Mohalla, Naiwala



Karol Bagh, Delhi – 110005”

47. The following directions are passed in this regard:
- i. The Local Commissioner, along with a representative of the plaintiffs and its 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.
 - ii. The Local Commissioner shall conduct a search at the defendant's premises and seize the infringing goods, including any packaging/promotional material reflecting infringement.
 - iii. 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').
 - iv. 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 defendant on their undertaking to produce the same as and when further directions are issued in this regard.
 - v. 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.
 - vi. The defendant and their representatives are directed to provide full assistance to the Local Commissioner for executing the present commission.
 - vii. In case, the aforesaid premises of the defendant or any part thereof is found locked, the Local Commissioner is permitted to break open the



locks and doors for execution of the commission.

- viii. 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.
- ix. 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.

48. The Local Commissioner shall file its Reports 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.

49. 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.

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

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

52. *Dasti.*

AMIT BANSAL, J

MAY 13, 2025

Vivek/-