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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 519/2024, I.A. 31641/2024, I.A. 31642/2024, I.A.
31643/2024, I.A. 31644/2024 & I.A. 31645/2024

MR RANJIT PRASAD MATHURI Plaintiff

Through: Mr. Pravin Anand, Mr. Shantanu
Sahay, Ms. Imon Roy and Ms.
Vareesha Irfan, Advs.

versus

MR GOPAL CHOUDHARY & ANR. Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **31.05.2024**

I.A. 31642/2024 (*Seeking leave to file additional documents*)

1. The present application has been filed on behalf of the plaintiff under Order XI Rule 1(4) of the Code of Civil Procedure, 1908 as applicable to commercial suits under the Commercial Courts Act, 2015 seeking to place on record additional documents.
2. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the DHC (Original Side) Rules, 2018.
3. Accordingly, the present application is disposed of.

I.A. 31643/2024 (*Exemption from filing clearer copies*)

1. Exemption is granted, subject to all just exceptions.
2. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance before the next date of hearing.
3. Accordingly, the present application is disposed of.



I.A. 31644/2024 (Exemption from instituting pre-litigation mediation)

1. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in *Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.*, FAO (COMM) 128/2021, exemption from attempting pre institution mediation is allowed.
2. Accordingly, the application stands disposed of.

I.A. 31645/2024 (Seeking extension of time to file Court Fees)

1. This application has been filed seeking extension of time to file Court Fees.
2. Counsel for plaintiff undertakes that the Court Fees will be deposited within this week,
3. Application is disposed of with the above said undertaking.

CS(COMM) 519/2024

1. Let the plaint be registered as a suit.
2. Upon filing of process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statements be filed by the defendants within 30 days from the date of receipt of summons. Along with the written statements, the defendants shall also file affidavits of admission/denial of the documents of the plaintiff, without which the written statement shall not be taken on record. Liberty is given to the plaintiff to file a replication within 30 days of the receipt of the written statements. Along with the replication, if any, filed by the plaintiff, affidavits of admission/denial of documents filed by the defendants, be filed by the



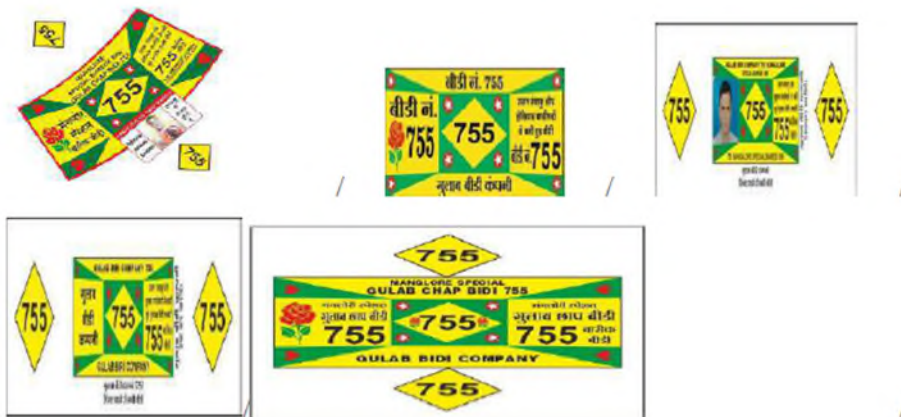
plaintiff, without which the replications shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

3. List before the Joint Registrar for marking of exhibits on 03rd September, 2024.

4. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 31641/2024 (Application under Order XXXIX Rules 1 and 2 CPC)

1. This application has been filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (*hereinafter referred to as “CPC”*), as part of accompanying the suit seeking permanent injunction restraining defendants and all those acting for and on their behalf from manufacturing, selling, promoting, dealing in any manner directly or indirectly with Bidis bearing the mark GS GULAB BIDI 755, M/S Gulab G K S S Co,








or any other mark identical or deceptively similar to the Plaintiff's registered trade mark. The plaintiff is the sole proprietor of *Gulab Bidi Company* who commenced the business of manufacturing bidis in the name of *Gulab Chhap Bidi Company* in the year 1993. The "GULAB" remained the essential and dominant part of their tradename and plaintiff continued using the tradename "GULAB BIDI COMPANY". The plaintiff's products are sold under the 'GULAB' and '755' formatted trademarks through its distributors. The plaintiff's products in Bidis are sold under the various other trademarks:

- a. 'MANGALORE SPECIAL BAREEK BIDI GULAB CHAP BIDI 775',
'BIRI NO. 755',
 - b. 'GULAB CHAP BIDI 755 MANGALORE SPECIAL BAREEK BIDI'
and
 - c. 'GULAB BIRI COMPANY 755'.
2. The annual turnover claimed by the plaintiff for the year 2023-2024 is about Rs.75 Lacs.
 3. The plaintiff's registration is tabulated as under:



TRADE MARK	REGISTRATION NO.	DATE OF APPLICATION	USER CLAIM	CLASS AND GOOD
GULAB BIRI COMPANY (Word Mark)	5803489	11.02.2023	6.09.1993	Class 34: Tobacco and tobacco substitutes; Bidi; Matches;

4. Several other trademark applications have been filed for the various formatted marks of the plaintiff, which are tabulated as under:





Sr. No.	Trade Marks	Application No.	Class and Goods	User Date	Status
1.	MANGALORE SPECIAL BAREEK BIDI GULAB CHAP BIDI 755  (DEVICE MARK)	2557246 dated 01/07/2013	34	05/03/1993	Abandoned
2.	MANGALORE SPECIAL BAREEK BIDI GULAB CHAP BIDI 755 (Word Mark)	5102749 dated 25/08/2021	34	05/03/1993	Pending
3.	755  (Device Mark)	5095691 dated 19/08/2021	34	06/09/1993	Pending
4.	BIRI NO. 755 (Word Mark)	5156106 dated 01/10/2021	34	06/09/1993	Pending
5.	GULAB CHAP BIDI 755 MANGALORE SPECIAL BAREEK BIDI  (Device Mark)	5658136 dated 21/10/2022	34	21/08/2017	Pending
6.	BIRI NO. 755-GULAB BIRI COMPANY	5803490 dated	34	06/09/1993	Pending

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 03/06/2024 at 11:44:05



	 (Device Mark)	11/02/2023			
7.	MANGALORE SPECIAL GULAB CHAP BIDI 755 - GULAB BIDI COMPANY  (Device Mark)	5844294 dated 11/03/2023	34	11/05/2019	Pending
8.	755 MANGALORE SPECIAL BAREEK BIRI  (Device Mark)	6274786 dated 26/01/2024	34	18/08/2018	Pending
9.	GULAB BIRI COMPANY 755  (Device Mark)	6274788 dated 26/01/2024	34	12/05/2018	Pending
10.	GULAB BIRI COMPANY 755 (Word Mark)	6274787 dated 26/01/2024	34	06/09/1993	Pending
11.	GULAB BIRI 755 (Word Mark)	6274785 dated 26/01/2024	34	10/07/2018	Pending
12.	755 (Word Mark)	6283117 dated 01/02/2024	34	06/09/1993	Pending
13.	755 GULAB BIRI COMPANY (Word Mark)	6283118 dated 01/02/2024	34	06/09/1993	Pending
14.	GULAB CHAP BIDI (Word Mark)	5846196 dated 14/03/2023	34	06/09/1993	Pending

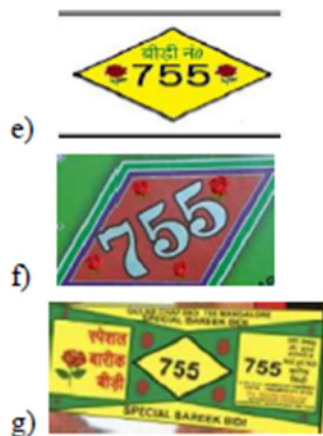
5. Plaintiff has also registrations in copyright in the artistic work, which are tabulated as under:



REGISTRATION NO.	DATE OF APPLICATION	ARTISTIC WORK
A-14727/2023	6.06.2023	
A-148876/2023	27.06.2023	





6. The grievance is against the defendant who are seemed to be selling bidis and other tobacco products under the trade marks/ trade dress/ labels (hereinafter referred to as '*impugned marks*') *inter alia* as under:

- a) BIRI NO. 755
- b) GULAB CHAP BIDI 755 MANGALORE SPECIAL BAREEK BIDI
- c) GS GULAB BIDI 755 MANGALORE SPECIAL BAREEK BIDI
- d) 755 SPECIAL BAREEK BIDI



7. Defendants have also filed trademark applications which are tabulated as under:



Sr. No.	Trade Marks	Application No.	Class and Goods	User Date	Status
APPLICATIONS FILED BY DEFENDANT NO. 1					
1.	BIRI NO. 755  (DEVICE MARK)	4479360 dated 20/03/2020	34	Proposed to be used basis	Pending
2.	BIRI NO. 755  (DEVICE MARK)	5937637 dated 15/05/2023	34	20/03/2020	Pending
3.	BIRI NO. 755 (Word Mark)	5939884 dated 17/05/2023	34	07/05/1986	Pending
4.	MANGALORE SPECIAL GULAB BAREEK BIDI 755  (DEVICE MARK)	5806041 dated 15/05/2023	34	21/11/2021	Pending
APPLICATIONS FILED BY DEFENDANT NO. 2					
5.	BIRI NO. 755 (Word Mark)	5088838 dated 14/08/2021	34	23/03/2021	Pending
6.	GULAB CHAP BIDI 755 MANGALORE SPECIAL BAREEK BIDI  (Device Mark)	4917629 dated 23/03/2021	34	Proposed to be used basis	Refused

8. The applications have been duly opposed by the plaintiff. The status of the various oppositions filed by the plaintiff and oppositions, and details regarding the status of the defendants' applications are detailed in paras 24-35 of the plaint.

9. The comparative of the plaintiff and the defendants' packaging are as under:



COMPARATIVE TABLE OF PLAINTIFF'S AND DEFENDANTS' PACKAGING

PLAINTIFF	DEFENDANTS
<p style="text-align: center;">(1993 Puda Packaging)</p> 	<p style="text-align: center;">(Packaging being used presently)</p> 
<p style="text-align: center;">(Present Day Bundle Packaging)</p> 	<p style="text-align: center;">(Present Day Bundle Packaging)</p> 

10. In this view of the matter, in the opinion of this Court, plaintiff has made out a *prima facie* case for grant of an *ex parte ad interim* injunction till the next date of hearing. Balance of convenience lies in favour of plaintiff, and plaintiff is likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.

11. Accordingly, till the next date of hearing, *ex parte ad interim* injunction is passed against defendant in the following terms:

- a) Defendants and all those acting for and on their behalf are restrained



from manufacturing, selling, promoting, dealing in any manner directly or indirectly with Bidis bearing the mark GS GULAB BIDI 755, M/S Gulab G K S S Co,



or any other mark identical or deceptively similar to the Plaintiff's registered trade mark

12. On steps being taken by plaintiff, issue notice to defendant through all permissible modes including speed post, courier, and email. Affidavit of service along with proof thereof be placed on record before the next date of hearing.

13. Reply, if any, be filed within six weeks with advance copy to the counsel for plaintiff, who may file rejoinder thereto, if so desired, before the next date of hearing.

14. Compliance with Order XXXIX Rule 3, CPC be effected.

15. List before this Court on 14th October, 2024.

16. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MAY 31, 2024/MK/ig