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

+ **CS(COMM) 610/2025**

HERO INVESTCORP PVT LTD AND ANR

.....Plaintiffs

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

versus

**SHIVANSH LUBE & ANR THROUGH ITS PROPRIETOR
SHALEEN GOEL & ANR**

.....Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

30.05.2025

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I.A. 14664/2025 (*Court Fee*)

1. The plaintiffs, *vide* the present application under *Section 149* and *Section 151* of the CPC, seek time of two weeks for filing the requisite Court fee.

2. Let the deficient Court fee be filed by the plaintiffs till tomorrow i.e. 31.05.2025.

3. Accordingly, the present application is allowed and disposed of.

I.A. 14662/2025 (*Exemption from pre-institution mediation*)

4. The plaintiffs, *vide* the present application under *Section 12A* of the Commercial Courts Act, 2015, read with *Section 151* of the Code of Civil Procedure, 1908 (**CPC**), seek exemption from instituting pre-litigation mediation.

CS(COMM) 610/2025

Page 1 of 11



5. Considering the averments made in the present application, as also since the plaintiffs are seeking grant of an *ex-parte ad interim* injunction in an accompanying application as also appointment of a Local Commissioner, and in view of the judgment passed by the Hon'ble Supreme Court in ***Yamini Manohar v. T.K.D. Krithi*** 2024 (5) SCC 815, which has been followed by a Division Bench of this Court in ***Chandra Kishore Chaurasia v. R. A. Perfumery Works Private Limited*** 2022:DHC:4454-DB, the plaintiffs are exempted from instituting pre-litigation mediation.

6. Accordingly, the present application is allowed and disposed of.

I.A. 14663/2025 (*Exemption from advance service*)

7. The plaintiffs, *vide* the present application under *Section 151* of the CPC, seek exemption from effecting advance service upon the defendants.

8. Learned counsel for the plaintiffs submits that considering the position involved, particularly since appointment of a Local Commissioner for execution of search and seizure of evidence/ counterfeit products at the premises of defendants is being sought in an accompanying application, there is a likelihood that the apprehensions of the plaintiffs will become a reality in case advance service is effected and therefore, an exemption from effecting advance service is necessary.

9. For the reasons stated in the application as also taking into account the aforesaid factors and in the interest of justice, the plaintiffs are granted exemption from effecting advance service upon the defendants.

10. Accordingly, the present application is allowed and disposed of.

CS(COMM) 610/2025

11. By way of the present plaint, the plaintiffs seek grant of permanent



injunction against the defendants for infringement of design, trademark, delivery up and damages.

12. Let the plaint be registered as a suit.

13. Upon filing of the process fee, issue summons of the suit to the defendants through all permissible modes returnable before the learned Joint Registrar on 09.09.2025.

14. The summons shall state that the written statement(s) be filed by the defendants within a period of *thirty days* from the date of the receipt of the summons. Written statement(s) be filed by the defendants along with affidavit(s) of admission/ denial of documents of the plaintiffs, without which the written statement(s) shall not be taken on record.

15. Replication(s) thereto, if any, be filed by the plaintiffs within a period of *fifteen days* from the date of receipt of written statement(s). The said replication(s), if any, shall be accompanied by with affidavit(s) of admission/ denial of documents filed by the defendants, without which the replication(s) shall not be taken on record within the aforesaid period of *fifteen days*.

16. If any of the parties wish to seek inspection of any document(s), the same shall be sought and given within the requisite timelines.

17. List before the learned Joint Registrar for marking exhibits of documents on 09.09.2025. It is made clear that if any party unjustifiably denies any document(s), then such party would be liable to be burdened with costs.

I.A. 14660/2025 (Order XXXIX Rule 1 & 2 of the CPC)

18. The plaintiffs, *vide* the present application under *Order XXXIX Rules 1 & 2* of the CPC, seek grant of an injunction for infringement of its



trademarks and design against the defendants.

19. As per plaintiff, the plaintiff no.1, Hero MotoCorp Limited, formerly known as Hero Honda Motors Limited and the plaintiff no.2, Hero InvestCorp Private Limited are companies incorporated under the Companies Act, 1956 and continue to subsist under the Companies Act, 2013.

20. The plaintiff no.2 is engaged in the business of manufacturing and selling motorcycles, scooters and their parts and accessories under the trademark 'HERO' since 1985 and use the label and device mark(s)



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 OIL.

21. For carrying on with its business activities, the plaintiffs have, upon application, been granted registration for the trademark 'HERO' and its label and device mark(s) in Class(s) 4, 9, 12, 16, 25, 35, 36, 37, 42 and 99 *qua* which not only spent considerable amount of money and also generated a huge turnover.

22. The plaintiffs' flagship product, i.e., HERO GENUINE ENGINE OIL/ automotive lubricant 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 the similar category *qua* which the plaintiff no.2 applied and received registration *qua* two designs bearing nos. 311300 and 311301 on 25.10.2018, a detailed pictorial representation



of the said design registrations are enumerated at paragraph 21 of the plaint.

23. The defendant no.1, Shaleen Goel, trading as Shivansh Lube, is engaged in the business of refilling the impugned plastic bottles from its premises located at F-13, Loni Road, Loni Border, Opp. Kamal Dhannkhanta, Nazdeek Doulak Dharmkhanta, Delhi – 110094 and is selling the infringing/ counterfeit products bearing the falsified label and design of plaintiffs.

24. The defendant no.2, S.P. Goel, trading as Vipul Trading Company is engaged in the business of refilling the impugned plastic bottles from its premises located next to Shivansh Lube, F-13, Loni Road, Loni Border, Opp. Kamal Dhannkhanta, Nazdeek Doulak Dhannkhanta, Delhi – 110094 and is selling the infringing/ counterfeit products bearing the falsified label and design of plaintiffs.

25. It was in the third week of May, 2025 when the plaintiffs first became aware of the defendants, when one of the plaintiffs' investigator visited their premises and found that the defendants are engaged in the business of refilling and selling infringing/ counterfeit products bearing the falsified label and design of plaintiffs.

26. Since the defendants are still continuing with the usage of the impugned mark/ label/ design, the plaintiffs have instituted the captioned suit against the defendants wherein the present application has been filed.

27. This Court has heard the submissions advanced by the learned counsel for the plaintiffs and gone through the pleadings as also perused the documents on record.



28. Based on what is before this Court, given hereinbelow is the pictorial representation in the form of a comparative table of the defendants' lubricant bottles with that of the plaintiffs:-

<u>Plaintiffs' Products</u>	<u>Defendants' Products</u>
	 <u>Defendant no.1</u>
	 <u>Defendant no.2</u>

29. Considering what is borne out from the aforesaid, especially the comparative table hereinabove, is that not only is the product of the defendants visually and structurally identical to that of the plaintiffs' but also has the same colour combination having the same dotted pattern therein. In fact, the unique, novel rectangular shape and configuration of the plaintiffs' bottle has been entirely copied, leaving no visual dissimilarity between the product of the plaintiffs' and that of the



defendants.

30. So much so, the impugned products is similar to a level that the layout, color scheme, typography, key essential elements, and the overall look, feel, getup and object placement, including the '4T PLUS' mark in bold red and black font is identical to that of the product of the plaintiffs and that there is likeliness that any average man of imperfect recollection will not be able to discern/ distinguish *inter-se* the two labels/ trade dress/ design/ product thus, *prima facie* it can be safely concluded that the products of the plaintiffs are indeed counterfeit goods and the defendants cannot not be allowed to continue.

31. Moreover, the defendants are operating in the same line of business as the plaintiffs and through the same trade channels and same customer base and as such the defendants would have been aware of the plaintiffs' product and there is no reasonable explanation for the defendants to adopt the said labels/ trade dress/ design for its product. Therefore, there is more than one chance of causing confusion amongst not only the members of the trade but also the members of the general public and the impression that is being created here is that the impugned products of the defendants are originating from the house of the plaintiffs, when clearly that is not the case.

32. In view of the above, there exists a *prima facie* case in favour of the plaintiffs and with *balance of convenience* tilting in their favour and they will incur *irreparable loss and injury* if an *ex parte ad interim* injunction is not granted in their favour.

33. Accordingly, till the next date of hearing, the defendants, its proprietor or partners, its associates and agents, officers, employees,



distributors, franchisee, representatives and assigns are restrained from trading, supplying, selling, marketing, refilling 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 25.10.2018 or any other registered design of the plaintiffs, thereby infringing the plaintiffs registered suit Designs as also from trading, supplying, selling, marketing, whether through physical or online channels or dealing in any manner in goods and/ or any other product/ products including accessories, that bear a mark, logo, or label identical or similar to the plaintiffs' trademark 'HERO'.

34. Upon the plaintiffs taking requisite steps, issue notice to defendants through all permissible modes returnable before the Court on 14.10.2025.

35. Reply(s), if any, be filed within *four weeks* from the date of service. Rejoinder(s) thereto, if any, be filed within *two weeks* thereafter.

36. List before Court 14.10.2025.

I.A. 14661/2025 (*For appointment of Local Commissioner*)

37. The plaintiffs, *vide* the present application under Order XXVI Rule 9 of the CPC, seek appointment of a Local Commissioner to visit the premises of the defendants.

38. Learned counsel for the plaintiffs submits that the defendants are aware of the plaintiffs and their products. The plaintiffs believe that the infringing products are being marketed from the location set out in the memo of parties annexed with the plaint and the defendants are likely to remove all physical evidence or deny their involvement in the infringing activities.



39. In view of the aforesaid as also considering the factual matrix involved, and most relevantly, in order to preserve the infringing materials involved, if any, in the considered opinion of this Court, it is deemed appropriate to appoint a Local Commissioner to visit the premises of the defendants.

40. Accordingly, Mr. Anil Saini, Advocate (+91-9811714245) is appointed as the Local Commissioner with a direction to visit the premises of the defendant no.1 at F-13, Loni Road, Loni Border, Opp. Kamal Dhannkhanta, Nazdeek Doulak Dharmkhanta, Delhi – 110094 and defendant no.2 at premises adjacent to F-13, Loni Road, Loni Border, Opp. Kamal Dhannkhanta, Nazdeek Doulak Dharmkhanta, Delhi – 110094.

41. The Local Commissioner is to execute the commission in the premises of the defendants with the following directions:-

- a) The Local Commissioner be accompanied by a representative and or a technical expert of the plaintiffs and/ or their counsel, who shall be permitted to enter into the premises of both the defendants as per the address hereinabove.
- b) The Local Commissioner is directed to seize, pack and seal the infringing products and handover the same on *Superdari* to the said defendants upon the said defendants giving an '*Undertaking*' that they shall not tamper with or remove the sealed products as also shall in compliance of the orders of this Court, as and when passed, produce the sealed products under *Superdari*.
- c) The Local Commissioner is permitted to take photocopies and/ or screenshots of all the books of accounts including ledgers,



cashbooks, bill books, purchases and sales records or any documents deemed necessary and found in the premises of the defendants, etc. for placing the hard copies or e-copies thereof on record.

d) The Local Commissioner is permitted to make a video recording of the execution of the commission at the premises of both the defendants in compliance of the present order.

e) The Local Commissioner is permitted to take the assistance of the Station House Officer [SHO] of the local Police Station within whose jurisdiction the premises of the defendants is situated. The said SHO is directed to render and provide all and every necessary assistance and protection to the Local Commissioner, if as and when sought for ensuring unhindered and effective execution of the commission at the premises of the defendants in compliance of the present order.

f) If the premises of the defendants is found under lock(s), the Local Commissioner is permitted to break open the said lock(s) in the presence of the SHO/ any designated police officer from the local Police Station.

42. The fee of the Local Commissioner is fixed at Rupees Two Lakh Only [Rs.2,00,000/-] in addition to all the related expenses for travel as also any other miscellaneous out of pocket expenses for the execution of the commission. All the aforesaid expenses shall be borne by the plaintiffs and paid in advance to the Local Commissioner.

43. The commission be executed within a period of *five days* from today, i.e. on or before 04.06.2025.



44. A copy of this order be provided to the Local Commissioner.
45. The report of the Local Commissioner be filed within two weeks from the date of execution of the commission.
46. Accordingly, the application is allowed and disposed of.
Dasti.

SAURABH BANERJEE, J

MAY 30, 2025/ NA