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

+ **CS(COMM) 582/2024**

VE COMMERCIAL VEHICLES LIMITED

.....Plaintiff

Through: Mr. J. Sai Deepak, Ms. Sneha Jain
and Mr. Saif Kahnani Ansari,
Advocates

Versus

JASWANT INDUSTRIES & ORS.

.....Defendants

Through: Mr. Vipul Singhvi and Mr. Ankit
Shah, Advocates for D-1

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

% **19.07.2024**

I.A. 33587/2024 (*pre-litigation mediation*)

1. The plaintiff seeks exemption from instituting pre-litigation mediation.

2. Considering the averments made in the present application wherein the plaintiff seeks urgent ad-interim reliefs as also appointment of Local Commissioner(s) and further in view of *Yamini Manohar v. T.K.D. Krithi* 2023 SCC OnLine 1382 and *Chandra Kishore Chaurasia vs. R. A. Perfumery Works Private Limited* 2022:DHC:4454-DB, the plaintiff is exempted from instituting pre-litigation mediation.

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

I.A. 33585/2024 (*exemption*)

4. Exemption allowed, subject to just exceptions.

5. The application is disposed of.

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I.A. 33586/2024 *(additional documents)*

6. The plaintiff seeks leave to file additional documents under the Order XI Rule 1(4) (as amended by the Commercial Court Division and Commercial Appellate Division of High Courts Act, 2015). The plaintiff will be at liberty to file additional documents at a later stage, strictly as per the provisions of the Commercial Courts Act and the Delhi High Court (Original Side) Rules, 2018.

7. Accordingly, the present application is allowed in terms of above and disposed of.

I.A. 33588/2024 *(extension of time for filing the court fees in the suit)*

8. The plaintiff seeks exemption from filing the court fee at present stage and grant of extension of two weeks to file the court fee.

9. However, since the learned counsel for the plaintiff submits that the same has already been filed, he wishes to withdraw the present application.

10. Accordingly, the present application is dismissed as withdrawn.

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11. The plaintiff by way of the present suit seeks permanent injunction against the defendants restraining infringement of its registered designs and for acts of unfair competition, dilution, misrepresentation, damages, rendition of accounts and delivery of ingraining materials etc.

12. Let the plaint be registered as a suit.

13. Issue summons to all the defendants.

14. Learned counsel appearing for the defendant no.1 appears on advance notice and submits that he has already filed his vakalatnama vide Diary No.2323927/2024 yesterday itself. He submits that the said



defendant no.1 is a proprietorship manufacturing and selling bus bodies/ designs to various travel companies as per instructions received from them and upon instructions from the said defendant no.1 wishes to give an undertaking for and on behalf of the said defendant no.1 as under:-

“UNDERTAKING(S)”

- 1. The Defendant no.1 is making/ manufacturing the infringing buses at the behest of Defendant nos.2 and 3 and its other customers based on the instructions received from them and other customers.*
- 2. The Defendant no.1 undertakes to share the inventory of the buses provided and sold to Defendant nos.2 and 3 wherein the plaintiff's registered design nos. 368680-001, 368681-001, 368682-001 or 368683-001 have been applied/ executed, or any other products or articles to which any design(s) or variants thereof, similar thereto have been applied/ executed.*
- 3. The Defendant no.1 undertakes that it will not publish, cause to be publish, make, manufacture, offer for sale, sell, use, import, advertise, or in any manner deal in articles or goods to which the Plaintiff's Registered Design Nos. 368680-001, 368681-001, 368682-001 or 368683-001 have been applied/ executed, or any other product(s) or article(s) to which any design(s)/ variant(s) of design(s) similar to either of the aforesaid plaintiff's registered designs have been applied/ executed.*
- 4. The Defendant no.1 undertakes to reveal the names of its other customers, apart from the defendant nos. 2 and 3, to whom the sale of the buses infringing the registered designs of 368680-001, 368681-001, 368682- 001 or 368683-001 alongwith the inventory of the buses sold and provided to those parties.*



5. *The Defendant no.1 undertakes to attempt/ make efforts to recall all buses from all parties/ entities/ persons wherein an identical/ deceptively similar design to the plaintiff's registered designs 368680-001, 368681- 001, 368682-001 or 368683-001 is applied/ executed, and to make necessary modifications therein such that the buses do not infringe the registered designs of the plaintiff.*

6. *The Defendant no.1 undertakes to provide names of the parties supplying infringing raw materials as provided in paragraph 25 of the plaint, including headlights and tail lamps that infringe the registered designs of the plaintiffs bearing numbers 368680-001; 368681-001, 368682-001 or 368683-001.”*

15. Learned counsel for the defendant no.1 seeks, and is granted, one week to file an affidavit of the sole proprietor of the defendant no.1 with respect to the aforesaid undertakings.

16. In view thereof, learned counsel appearing for the plaintiff as well as the defendant no.1 urge both parties to be referred for mediation before the Delhi High Court Mediation and Conciliation Centre.

17. Accordingly, let the plaintiff and the defendant no.1 are referred for mediation proceedings before the Delhi High Court Mediation and Conciliation Centre on 09.08.2024 at 04:00 PM. The nominated/ authorised representatives of both plaintiff and defendant no.1 will be allowed to appear either physically or through video conferencing before the Delhi High Court Mediation and Conciliation Centre.

17. Upon filing of the process fee, issue summons of the suit to both the remaining defendant nos. 2 and 3 through all permissible modes returnable before the Joint Registrar on 25.09.2024.

18. 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.

19. 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, 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*.

20. Needless to say, the written statement(s) be also filed by the defendant no.1 within a period of *thirty days* from the date of the receipt of the summons along with affidavit(s) of admission/ denial of documents of the plaintiffs, without which the said written statement shall not be taken on record

21. Replication thereto, if any, be filed by the plaintiffs within a period of *fifteen days* from the date of receipt of written statement. The said replication, if any, shall be accompanied by with affidavit(s) of admission/ denial of documents filed by the defendant no.1, without which the replication(s) shall not be taken on record within the aforesaid period of *fifteen days*.

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

23. List before the Joint Registrar for marking exhibits of documents on 25.09.2024. It is made clear that if any party unjustifiably denies any document(s), then it would be liable to be burdened with costs.



24. List before the Court on 20.11.2024.

I.A. 33583/2024 (u/O XXXIX r 1&2 of the CPC)

25. The plaintiff by way of the present application filed alongwith the plaint seeks the following reliefs as against the defendant nos.2 and 3:-

a) *an order of interim injunction restraining the Defendants by themselves, their principal officers, assignees, family members, servants and agents and all other persons claiming under the Defendants by an order from this Hon'ble Court from publishing, causing to be published, making, manufacturing, offering for sale, selling, using, importing, advertising, or in any manner dealing in articles or goods to which the Plaintiff's Registered Design Nos. 368680-001, 368681-001, 368682-001 or 368683-001 have been applied, or any other product(s) or article(s) to which any design(s)/variant(s) of design(s) similar to the Plaintiff's Registered Designs have been applied;*

b) *An order of interim injunction restraining the Defendants by themselves, their principal officers, assignees, family members, servants and agents and all other persons claiming under the Defendants by an order of this Hon'ble Court from publishing, causing to be published, making, manufacturing, offering for sale, selling, using, importing, advertising, or in any manner dealing in articles or goods to which the Plaintiff's Registered Designs Nos. 368680-001, 368681-001, 368682-001, and 368683-001 have been applied leading to unfair competition and dilution of the Plaintiff's registered designs;*

c) *An ex parte ad interim/ad interim order of injunction for prayers above."*

26. In view of the aforesaid undertakings given by the learned counsel for the defendant no.1 appearing on advance notice, learned counsel for the plaintiff does not wish to press for any reliefs against the said defendant no.1.

27. The plaintiff claims to be a joint venture of two of the most successful vehicle companies, Volvo Group and Eicher Motors, having vision of infusing modernization into commercial transport business in



India, which started in the year 2008 with a wide-ranging product portfolio in the automobile industry comprising a complete range of Eicher Trucks and Buses, Volvo Buses in India, exclusive distribution of Volvo Trucks in India, engine manufacturing, non-automotive engines and Eicher Engineering component business.

28. The plaintiff claims to provide high class intercity buses, one among which is the Volvo 9600 design. These buses are uniquely designed and are a benchmark of luxury, comfort and safety. The design of the Volvo 9600 buses follows a distinct Volvo visual impression and quality which is one of the hall-marks of the Volvo buses globally.

29. As per plaintiff, being the proprietor of its new, novel, original and distinctive designs with respect to Volvo 9600 buses, it applied for registration of the said designs on 02.08.2022 with the Controller of Designs Patent Office and has been granted registration under registered designs no. 368680-001, 368681-001, 368682-001 and 368683-001 in Class 12-08, which are design registrations valid and subsisting. List of design registrations with respect to Volvo 9600 bus are as under:-

S.No.	Application No.	Picture	Date of Application	Date of Grant
1.	368680-001		02.08.2022	21.12.2023



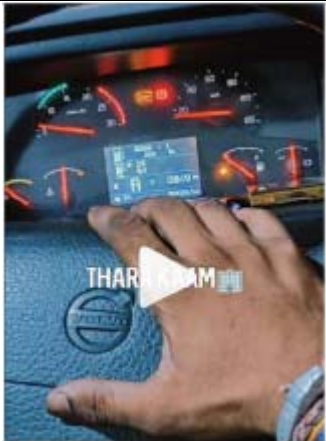
2.	368681-001		02.08.2022	01.08.2023
3.	368682-001		02.08.2022	19.01.2024
4.	368683-001		02.08.2022	09.02.2024

30. As per plaintiff, the defendant nos.2 and 3 are travel companies that provide buses to the customers for their travel. The defendant nos.2 and 3 happen to purchase the bus bodies/ designs from defendant no.1, who in turn provide the finished product to the customers. The buses that are provided to the customers have logos of both manufacturer, i.e. defendant no.1 and the service provider i.e. defendant no. 2/ defendant no.3. The defendants have copied the entire shape and configuration of the plaintiff's registered design. The impugned design is a complete imitation of the plaintiff's registered design(s) which is evident from a cursory look and comparison of photographs from various angles of the buses of both the plaintiff and that of the defendants. That said comparison of buses of both the parties is as under:-



COMPARITIVE TABLE OF PLAINTIFF'S VOLVO 9600 WITH THE BUSES OF DEFENDANT NO. 2	
The Plaintiff's Volvo 9600 Buses with their Original, Novel Design under Registration Certificate No. 368683- 001	The Defendant No 2's Buses with the Impugned Design
	
	
	



COMPARITIVE TABLE OF PLAINTIFF'S VOLVO 9600 WITH THE BUSES OF DEFENDANT NO. 3	
The Plaintiff's Volvo 9600 Buses with their Original, Novel Design under Registration Certificate No. 368683-001	The Defendant No 3's Buses with the Impugned Design



31. On coming to know of the infringing activities of defendant nos.1 and 2 in November, 2023, the plaintiff issued a Cease & Desist Notice on 16.11.2023 to them. The defendant no.1 in response thereto on 25.11.2023 undertook to refrain from manufacturing, use, sell, etc. any such buses which bears the impugned design. In the interregnum, design no. 368681-001 was registered for the Volvo 9600 buses as well.



32. However, the plaintiff in June, 2024 again discovered that despite the aforesaid undertaking, the defendant no.1 was, and is, still manufacturing and selling the buses with impugned design to both defendant nos. 2 and 3.

33. This Court has heard the learned counsel for the plaintiff and perused the documents on record.

34. In effect, the plaintiff is the *bona fide* proprietor of the registered design nos. 368680-001, 368681-001, 368682-001 or 368683-001. Each of the said design registrations are valid and subsisting till date. The newness, originality, distinctiveness and uniqueness of the said designs lies in the shape and, configuration, pattern and composition thereof.

35. The stand out features borne out from the documents on record, particularly the pictural representation of the said registered design nos. 368680-001, 368681-001, 368682-001 or 368683-001 of the plaintiff reflect that the defendants have copied all the basic and essential features of the buses belong to the plaintiff. In fact, as borne out from the documents on record, the defendants are *prima facie* guilty of having the same identically similar features of the registered design nos. 368680-001, 368681-001, 368682-001 or 368683-001 of the plaintiff as under:-

- a. The V-Shaped Headlights as in the bus of the defendants, is identically similar to those of the bus of the plaintiff.; and
- b. The Top Dome over the windshield with a protrusion at the top and Top Marker Lamps at the depressed areas on both sides as in the bus of the defendants, are identically similar to those of the bus of the plaintiff.; and



c. The rear Windshield at the end of the bus containing the hexagonal design as in the bus of the defendants, is identically similar to those of the bus of the plaintiff; and

d. The design and placement of the Air Inlet Grill at the rear end of the bus and air inlet on the rear face as in the bus of the defendants, are identically similar to those of the bus of the plaintiff; and

e. The design and placement of the Tail Lamps, Reflectors and Small Lamps inside the Headlights at the rear end as in the bus of the defendants, are identically similar to those of the bus of the plaintiff; and

f. The beak shaped glass cut out design at the Door as visible from the side profile as in the bus of the defendants, are identically similar to those of the bus of the plaintiff; and

g. A fragment of a window at the bottom of the Door as in the bus of the defendants, are identically similar to those of the bus of the plaintiff; and

h. The rear view mirror at the front as in the bus of the defendants, are identically similar to those of the bus of the plaintiff.

36. Additionally, both defendant nos.2 and 3 have been advertising its buses as “Volvo 9600 buses” and “Volvo 9600 looking buses” on various platforms and the same is also covered by different bloggers as ‘Volvo buses’/ ‘Volvo 9600’ on various platforms such as YouTube and Instagram using hashtag such as #volvo9600.

37. In view of the aforesaid, the defendant nos.2 and 3 are hereby restrained from publishing, causing to be published, making,



manufacturing, offering for sale, selling, using, importing, advertising, or in any manner dealing in articles or goods to which the plaintiff has registered design nos. 368680-001, 368681-001, 368682-001 or 368683-001 or to any other product(s) or article(s) to which any design(s)/ variant(s) of design(s) similar thereto.

38. Issue notice to the defendants.

39. Mr. Vipul Singhvi, learned counsel appearing for the defendant no.1 accepts notice.

40. Issue notice to the defendant nos.2&3 by all permissible modes returnable before the Joint Registrar on 25.09.2024.

41. Reply, if any, be filed within a period of *thirty days* from the date of service. Rejoinder thereto, if any, be filed within a period of *fifteen days* thereafter.

42. List before the Court on 20.11.2024.

I.A. 33584/2024 (*appointment of Local Commissioner*)

43. Learned counsel for the plaintiff submits that the defendant nos.2 and 3 are aware of the plaintiff and its registered bus design, the infringing designs of buses placed on record are clear evidence of the intention of the defendants to ride upon the goodwill and reputation of the plaintiff. The plaintiff believes that buses having design identical and deceptively similar to the registered design of plaintiff are stored at the locations 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.



44. In light of the aforementioned factual matrix and in order to preserve the evidence of infringement, it is deemed necessary that Local Commissioner(s) are appointed to visit the premises of the defendant nos.2 and 3. Accordingly, the following are appointed as Local Commissioner(s) with a direction to visit the premises of the defendant nos.2 and 3 specified against their names:

S. No.	Name and contact details of Local Commissioner(s)	Location
1.	Mr. Varun Varma [+91-7982768448]	Anshi Rajshree Travels, Kanti Nagar, Sindhi Camp Jaipur, Rajasthan-302 016.
2.	Mr. Mohit Mudgal [+91-9818885995]	Mahadev Travels, VPO Kandrori, Teh Indora, Kangra, Himachal Pradesh, Kangara, Himachal Pradesh-176 402.

45. The commission be executed with the following directions:

a) Local Commissioner(s) shall be accompanied by the representative of the plaintiff as well as counsel of the plaintiff. Local Commissioner(s) shall visit the premises of the defendant nos.2 and 3 respectively and prepare an inventory of the infringing buses, take photographs/ videos of the infringing buses and seal all buses, material, products, etc, bearing the design or any other deceptively similar design of the plaintiff along with any marketing/packaging material, labels, brochures, advertisements, etc. and provide a copy of the same to the representative of the plaintiff who will accompany the Local Commissioner(s). The said buses and products shall after seizure, be returned on *superdari* to the



defendant nos.2 and 3 respectively after taking an undertaking that the defendants shall not tamper with the sealed products.

b) Local Commissioner(s) shall demand disclosure of the whereabouts of other outlets and locations of the defendant nos.2 and 3 respectively where similar goods have been stocked and upon receiving information visit the said premises and follow the aforesaid directions.

c) Local Commissioner(s) are permitted to take a photocopy/ screenshot of all the books of accounts including ledgers, cashbooks, purchases and sales records, etc. in physical, electronic form and place the same on record.

d) To ensure unhindered and effective execution of the commission, the Station House Officer (SHO) of the local police station within whose jurisdiction the premises of defendant nos.2 and 3 respectively lie, is directed to render all necessary assistance and protection to the Local Commissioner(s), if and when sought.

e) In the event, the Local Commissioner(s) finds the premises of the defendant nos.2 and 3 locked, the same are permitted to break open in the presence of the SHO/ designated police officer.

46. The commission be executed within a period of *one week* from today, i.e. on or before 26.07.2024.

47. The fee of the Local Commissioner(s) is fixed at Rupees One Lakh Fifty Thousand Only [Rs.1,50,000/-] each, to be borne by the plaintiff and paid in advance. The plaintiff shall also bear expenses for travel of the Local Commissioner(s) and other miscellaneous out of pocket expenses for the execution of the Commission.



48. A copy of this order be provided to the Local Commissioner(s) named hereinabove.

49. Accordingly, the application is allowed and disposed of.

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SAURABH BANERJEE, J

JULY 19, 2024/So