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

+ **CS(COMM) 1128/2025 & I.A. 26102-26107/2025**

X

.....Plaintiff

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

versus

Y

.....Defendant

Through: None

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **16.10.2025**

I.A. 26104/2025 (seeking exemption from pre-institution mediation)

1. This is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of the Code of Civil Procedure, 1908 ['CPC'], filed by the Plaintiff seeking exemption from instituting pre-litigation mediation.

2. Having regard to the facts that the present suit contemplates urgent interim relief, and in light of the judgment of the Supreme Court in **Yamini Manohar v. T.K.D. Keerthi**¹, exemption from the requirement of pre-institution mediation is granted to the plaintiff.

3. Accordingly, the application stands disposed of.

I.A. 26105/2025 (seeking leave from serving advance service)

4. The present application has been filed under Section 151 of CPC, on



behalf of the Plaintiffs seeking exemption from service to the Defendant.

5. In view of the fact that the plaintiffs have sought an ex parte ad-interim injunction along with the appointment of a Local Commissioner, the exemption from effecting service upon the Defendant at this stage is granted.

6. Accordingly, the application stands disposed of.

I.A. 26106/2025 (to mask identities of the parties)

7. This is an application under Section 151 CPC to mask the identities of the parties.

8. The Plaintiffs apprehend the failure of the Local Commissioner if the identity of the Defendant is revealed and have requested masking of the identities of parties, till the filing of the report of the Local Commissioner in compliance with the Practice Direction No.139/Rules/DHC dated 27.05.2025.

9. Exemption is granted, subject to all just exceptions.

10. Accordingly, the application stands disposed of.

I.A. 26107/2025 (seeking extension of time for filing Court fees)

11. This application has been filed under Section 149 read with Section 151 of CPC, seeking extension of time for filing Court fees.

12. Learned counsel for the Plaintiffs states that the Court fees has been deposited and the court fees certificate will be filed with the registry within a week.

13. In view of the aforesaid submission, the time to file deposit Court Fees is extended by one (1) week.

14. Accordingly, the application stands disposed of.

¹ (2024) 5 SCC 815



CS(COMM) 1128/2025

15. Let the plaint be registered as a suit.
16. Summons be issued to Defendant by all permissible modes on filing of the process fees. Affidavit of service be filed within two (2) weeks.
17. The summons shall indicate that the written statement must be filed within thirty (30) days from the date of receipt of the summons. The Defendant shall also file an affidavit of admission/denial of the documents filed by the Plaintiffs, failing which the written statement shall not be taken on record.
18. The Plaintiffs are at liberty to file replication thereto within thirty (30) days after filing of the written statement. The replication shall be accompanied by affidavit of admission/denial in respect of the documents filed by the Defendant, failing which the replication shall not be taken on record.
19. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.
20. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.
21. List before the learned Joint Registrar (J) on **10.12.2025**.
22. List before Court on **23.03.2026**.

I.A. 26102/2025 (under Order XXXIX Rules 1 and 2 CPC)

23. This is an application filed under Order XXXIX, Rules 1 and 2, read with Section 151 of CPC, seeking ex parte ad-interim injunction against the Defendant.
24. Mr Kunal Khanna, learned counsel for the Plaintiffs, sets up the Plaintiffs' case as under:



24.1. Plaintiff Nos. 1 and 2 are group companies carrying on business under the house mark HERO. The trademark HERO is also used in label and

device marks  [‘HERO marks’].

24.2. Plaintiff No. 2 is engaged in the business of manufacturing and selling motorcycles, scooters, their parts and accessories, under the trademark 'HERO' since 09.04.1985. The said business of the Plaintiff No. 2 is being carried on under the tradename, i.e., 'HERO MotoCorp.', and HERO marks.

24.3. Plaintiff No.1's earliest registration of the word mark HERO in Class 4 is Trademark Registration No. 220577, with the date of registration being 15.09.2011².

Plaintiff No.2, being a HERO Group Company, uses these trade marks by virtue of an authorisation letter dated 10.05.2022 issued by Plaintiff No.1 to Plaintiff No.2.

24.4. The Plaintiffs are the owners of the original artistic work as defined in Section 2(c) of the Copyright Act, 1957, subsisting in the HERO marks, featuring distinctive and imaginative styles, as depicted under:



24.5. The Plaintiffs also use the HERO marks on a diverse range of products, including industrial oils and lubricants. One such product of the

² Details of Plaintiff No.1's trademark registrations have been set out in paragraph '16' of the plaint.

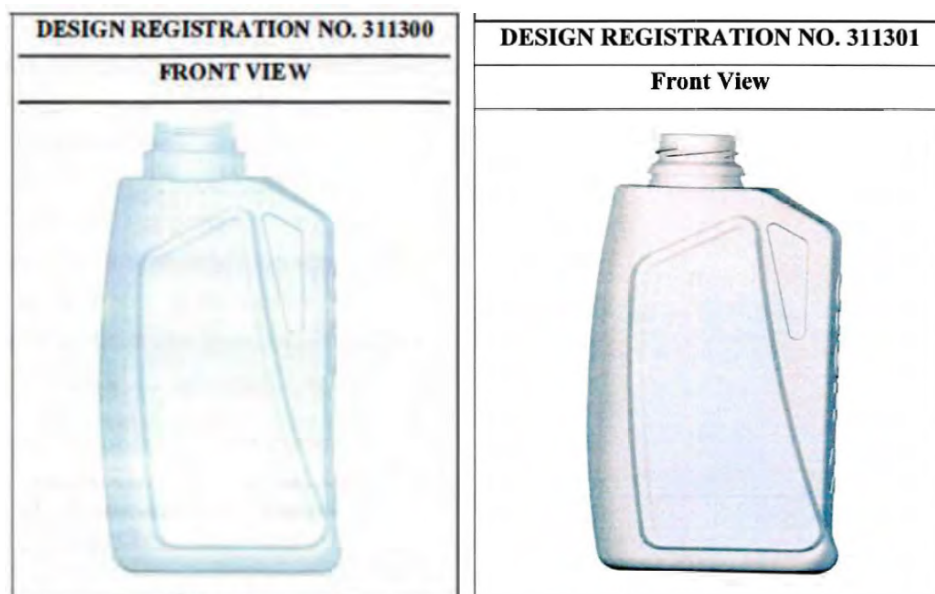


Plaintiffs is the HERO Genuine 4t plus motorcycle engine oil [‘HERO Oil’], which is designed to cater to modern driving behaviour and road conditions in India. HERO Oil’s superior quality results from extensive research by the Plaintiffs, and its unique elements sets HERO Oil apart, making it distinct and superior to others.

24.6. For the financial year 2021-2022, the Plaintiffs’ sales of HERO Oil amounted to Rs. 483.14 crores, and they incurred advertisement expenses of Rs. 9.21 crores.

24.7. Plaintiff’s HERO GENUINE ENGINE OIL 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 that distinguish them from other products in a similar category.

24.8. Plaintiff No.2 is the owner of the two bottle designs bearing registration nos. 311300 and 311301, applied on 25.10.2018 [‘suit designs’].





24.9. By virtue of extensive and continuous use, the Plaintiffs' suit designs and their accompanying label have become uniquely associated with the Plaintiffs, and consumers now identify the shape and configuration of the HERO Oil bottle as originating exclusively from the Plaintiffs.

Knowledge about Defendant's Infringement

24.10. The Defendant/Freshtech Petroleum Corporation is engaged in the manufacturing and supply of lubricant plastic bottles. The subject matter of the suit is two (2) products sold by the Defendant bearing the impugned mark HEERO.

Impugned Product I

24.11. The Defendant manufactures and sells *white* bottles for engine oil bearing the impugned mark HEERO, which is deceptively similar to the Plaintiffs' trademark HERO.

Impugned Product II

24.12. The Defendant is also manufacturing and selling *golden* bottles for engine oil bearing the impugned mark HEERO, which is deceptively similar to the Plaintiffs' trademark HERO. In addition, the design of the said bottle is a piracy of the Plaintiffs' registered suit design used for its product-engine Oil.

24.13. The Defendant's Impugned Products I and II are collectively referred to as 'impugned products' hereinafter. The similarities in the Plaintiff's suit design and Impugned Product II are set out at paragraph '35' of the plaint.

24.14. The Plaintiffs came to know about the Defendant's infringement in the last week of September 2025, when the Plaintiffs' investigator discovered that the Defendant is engaged in the manufacturing and sale of impugned products on **IndiaMart**.



24.15. Upon investigation of the Defendant's premises, the Plaintiffs procured the bottle of Impugned Product I; however, the investigator was unable to obtain Impugned Product II as the Defendant stated that the said bottle is only available on order. The investigator in his affidavit dated 06.10.2025 has confirmed the availability of the Impugned Products in the premises of the Defendant. A comparison of the impugned products alongside the Plaintiffs' original product is reproduced below:

Impugned Product I: Trademark/Trade dress Infringement

PLAINTIFF'S ORIGINAL PRODUCT	DEFENDANT'S INFRINGING PRODUCTS
	



Impugned Product II: Design Infringement



25. Mr. Kunal Khanna, learned counsel for the Plaintiffs, states that the design of Defendant's impugned Product II is identical to the Plaintiffs' suit designs. The Defendant is selling the same in the lubricants oil market, a sizable portion of which is Plaintiffs' customers who are likely to associate the Impugned product with the Plaintiffs' premium products.

25.1. He states that the Defendant's Product II's design is a clear imitation of Plaintiff No. 2's registered suit designs. The similarity is apparent in the shape, configuration, and surface pattern of the bottles, which, when viewed from any angle, appear virtually identical. Such unauthorised replication of the design constitutes an infringement of Plaintiff No. 2's registered designs (bearing registration numbers 311300 and 311301) under Section 22 of the Designs Act, 2000.

25.2. He states that not only has the Defendant copied the Plaintiffs' suit design for its impugned Product II, but it has also adopted a trademark HEERO for both of its impugned Products I and II, which is deceptively similar to the Plaintiffs' registered HERO marks.



25.3. He states that the Defendant's Impugned Product II, packaged identically, makes a direct and brazen reference to the Plaintiffs' distinctive packaging. The Defendant's lubricant bottles feature labels and stickers closely resembling the Plaintiffs' trade dress, including a similar layout, colour scheme, typography, key features, overall look and feel, object placement, and the '4T PLUS' mark in bold red font. Such imitation is likely to confuse customers into believing that the Defendant's products are associated with or endorsed by the Plaintiffs. This unauthorised use is causing continuous harm to the Plaintiffs, including brand dilution, loss of sales, and reputational damage.

Court's Findings

26. This Court has heard the learned counsel for the Plaintiffs and has perused the record.

27. From the comparison of products reproduced at paragraph '24.15' of the order, it is evident that the Defendant, in its impugned Product II bearing the impugned design, has copied the registered suit designs of the Plaintiffs almost in their entirety, including the hexagonal shape, the dotted surface pattern, the gold colour composition, and the composition of unique lines. Also, in Impugned Product II, the Defendant has used a label that is substantially similar to the trade dress of Plaintiffs' product.

28. In addition, the Defendant has adopted the impugned mark HEERO, which is visually, structurally and phonetically deceptively similar to the Plaintiffs' registered HERO marks.

29. The Impugned Product I declares that it is packed by 'HEERO Lubricants' and gives an address which is wholly incongruous and therefore appears to be incorrect. However, the use of the alleged name 'HEERO



Lubricants' is also likely to mislead the consumer into believing that the product originates from the Plaintiffs.

30. This conduct of the Defendant constitutes a deliberate misrepresentation intended to exploit the Plaintiffs' established goodwill and mislead the public into believing that the Defendants' goods are connected with or endorsed by the Plaintiffs, when no such association exists. Moreover, the Defendant is using the impugned mark 'HEERO' and impugned design for Product II on identical goods (engine oil) in the same line of business, distributed through the same trade channels, whilst catering to the same class of consumers as the Plaintiffs. Consequently, there is inevitably going to be a likelihood of confusion, and an unwary customer with average intelligence and imperfect recollection will associate the Defendant's impugned product with the Plaintiffs' products.

31. In the overall conspectus, Plaintiffs have made out a prima facie case for the grant of ex parte ad interim injunction against the Defendant. This court is satisfied that if an ex parte ad interim injunction is not granted at this stage, irreparable harm/ injury would be caused to the Plaintiff. Balance of convenience also lies in favour of the Plaintiffs, and against the Defendant.

32. Accordingly, till further orders, the Defendant, along with its proprietor/partners, associates, agents, officers, employees, distributors, franchisees, representatives and assigns are hereby restrained from:

- i. Using the design of Impugned Product II as well as from Manufacturing, trading, supplying, selling, marketing, in any manner whatsoever, including online sales or dealing in any other way, in any goods and/or product that is identical to and/or an obvious fraudulent imitation of the Suit Designs (Design No.



- 311300 and Design No. 311301 dated 25.10.2018), or any other registered design of Plaintiff No. 2, thereby infringing Plaintiff No. 2's registered Suit Designs;
- ii. Using the impugned mark HEERO and from manufacturing, trading, selling, supplying, marketing, whether through physical or online channels, or dealing in any manner in goods and/or any other products, including accessories, which is identical and similar to the Plaintiffs HERO trademarks and/or device marks which may amount to passing off and/or infringement of the Plaintiffs registered trademarks in any manner whatsoever;
 - iii. Using the labels applied to Impugned Product II, and
 - iv. Using any indicia, including the name 'HEERO Lubricants' whatsoever, to show any association or connection of the Defendant or its products with the Plaintiffs.
33. It is clarified that no injunction has been granted for the use of the *white* bottle used for Impugned Product I.
34. In view of the fact that the Plaintiffs have sought appointment of a Local Commissioner to seize the infringing product bearing the impugned mark and design, the very purpose of the grant of ex parte ad interim injunction would be defeated if the Defendant is given notice contemplated in Order XXXIX Rule 3 of 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 Local Commission, which shall not be later than two (2) weeks from today. An affidavit of compliance must be filed within two (2) weeks.
35. Upon steps being taken by the Plaintiff, issue notice to the Defendant



through all modes.

36. Reply be filed within four (4) weeks from receipt of notice. Rejoinder thereto, if any, be filed within four (4) weeks thereafter.

37. List before the learned Joint Registrar (J) on **10.12.2025**.

38. List before Court on **23.03.2026**.

I.A. 26103/2025 for appointment of Local Commissioner)

39. This is an application filed under Order XXVI Rule 9, read with Section 151 of CPC, for the appointment of a Local Commissioner.

40. In order to ensure that the injunction is fully complied with and to preserve the evidence of infringement, this Court deems it appropriate to appoint one Local Commissioner, the appointment is confined thereto.

<u>S.NO</u>	<u>ADDRESS</u>	<u>Name of Local Commissioner</u>
1.	FRESHTECH PETROLEUM CORPORATION situated at 'Plot No. G-87, Ratan Industrial Area, Harsuliya. Teh. Phagi. Jaipur, Rajasthan - 303904.	Mr. H. Saumitri E. No. D/1043/2022 P. No. 8368607044 E. Id. Hsaumitri123@gmail.com

41. The mandate of the Local Commissioner is as under: -

- i. The Local Commissioner shall visit the premises of the Defendant as mentioned above, to inspect and seize the impugned Products I and II.
- ii. The Local Commissioner is permitted to seize the impugned Products at the above premises, and if knowledge is acquired of any other premises where the goods could be stored, the Local Commissioner is free to record the same and then visit the other premises and conduct a seizure there as well.



- iii. The Local Commissioner shall also inspect and seize any goods/materials including pamphlets, brochures, stickers, packaging materials, dyes or blocks used for preparing the manufacturing materials, display boards, sign boards, advertising material, dyes or blocks, unfinished, packed, unpacked products bearing the impugned mark or any other documents, wrapper etc. so that it can be ensured that no fresh manufacturing of the impugned Products bearing the impugned mark and/or infringing design can take place.
- iv. The Local Commissioner shall also obtain the details as to since when the impugned products are being manufactured and/or sold by the Defendant and obtain copies of the account.
- v. The Local Commissioner shall obtain accounts, including ledgers, stock registers, invoice books, receipt books, cash books, purchase and sale records and any other books of record or commercial transactions kept at the premises of the Defendant and take a photocopy and/or record of all such transactions that pertain to infringing products, if any. The Defendant shall cooperate and give passwords to the computers and the files containing the accounts, if the same are stored on the computer or a specific software.
- vi. In case the Defendant contends that the bottles are purchased from a third party, the Defendant will also provide the details of the identity of the said entity/person from whom the bottles bearing the design of Impugned Product II and/or labels are purchased.



- vii. After preparation of the inventory, the impugned products in fully manufactured or unfinished condition, including packaging materials, advertising, promotional materials, pamphlets, brochures, boxes, videos, hoardings, brochures, banners, signage, cartons and other material bearing the impugned design and mark or the marks, which are similar to the Plaintiffs' trademarks, shall be released to the Defendant on *Superdari*. The monetary value of the stock shall also be ascertained.
- viii. The Local Commissioner is also permitted to break open the locks, with the help of the local police, if access to the premises where the impugned products have been stocked/manufactured is denied to the Commissioners.
- ix. Upon being requested, the concerned, the Station House Officer ['SHO'] and/or the concerned Commissioner of Police and/or Superintendent of Police ('SP') having jurisdiction over the aforesaid jurisdiction, shall render necessary cooperation for execution of the commission, as per this order.
- x. The Local Commissioner is permitted to take photographs and videography of the proceedings of the commission, if it is deemed appropriate.
- xi. The Local Commissioner, while executing the commission, shall ensure that there is no disruption to the business of the Defendant, except for the purposes of the execution of the commission. The commission shall be executed in a peaceful manner.
- xii. Copy of the order and complete paper book shall be served by



the Local Commissioner upon the Defendant at the time of execution of the commission.

42. The order passed today shall be communicated by the Local Commissioners to the Defendant.

43. The fee of the Local Commissioner is fixed at Rs. 2,50,000/-; (Rupees Two Lakhs Fifty Thousand Only), excluding out-of-pocket expenses, travel expenses, and accommodation expenses, etc., which are to be borne by the Plaintiffs.

44. Local commission is to be executed within two (2) weeks. The report of the Local Commissioners shall be filed within two (2) weeks thereafter.

45. The order passed today shall not be uploaded for a period of two (2) weeks to enable the execution of the commission.

46. Either the learned counsel for the Plaintiff or the learned Local Commissioner is directed to collect a certified copy of this order from the Registry (Dispatch Branch) before execution of the Commission.

47. The learned Local Commissioner shall carry the certified copy of this Order for execution of the Commission, and a copy of the same shall be served upon the Defendant by the learned Local Commissioner at the time of the execution of the Commission.

48. Coloured Copy of this order to be given *dasti* under the signatures of the Court Master.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 16, 2025/msh/aa