



\$~36

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

+ **CS(COMM) 1146/2024 with I.A. 48734/2024, I.A. 48735/2024, I.A. 48736/2024, I.A. 48737/2024, I.A. 48738/2024 and I.A. 48739/2024**

DUNAR FOODS LIMITED

.....Plaintiff

Through: Mr. Junaid Alam, Mr. Nishant
Mahtta, Mr. S. Nithin and Mr. Akash
Bhambri, Advocates

versus

ZIYA ENTERPRISES & ORS.

.....Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **18.12.2024**

I.A. 48738/2024 (exemption from filing original documents)

1. Allowed, subject to the plaintiff filing original/true typed/certified copies of the dim documents within four weeks.
2. The application stands disposed of.

I.A. 48739/2024 (seeking exemption from advance service to defendants)

3. The plaintiff seeks urgent interim relief against counterfeit/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 defendants may remove the counterfeit/infringing products if the defendants are 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 defendants



is granted.

4. The application is disposed of.

I.A. 48737/2024 (O-XI R-1(4) of the Commercial Courts Act)

5. The present application has been filed on behalf of the plaintiff seeking leave to file additional documents.

6. The plaintiff is permitted to file additional documents in accordance with the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

7. Accordingly, the application is disposed of.

I.A. 48736/2024 (u/s 12A of Commercial Courts Act, 2015)

8. 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.

9. The application stands disposed of.

CS(COMM) 1146/2024

10. Let the plaint be registered as a suit.

11. Issue summons.

12. Summons be issued to the defendants through all modes. The summons shall state that the written statement(s) shall be filed by the defendants within thirty days from the date of the receipt of summons. Along with the written statement(s), the defendants 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.

13. Liberty is given to the plaintiff to file replications, if any, within thirty days from the receipt of the written statement(s). Along with the replications



filed by the plaintiff, affidavit of admission/denial of the documents of the defendants be filed by the plaintiff.

14. 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.

15. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

16. List before the Joint Registrar on 20th February, 2025 for completion of service and pleadings.

17. List before the Court on 15th April, 2025.

I.A. 48734/2024 (u/O-XXXIX Rule 1 & 2 of CPC)

18. The present suit has been filed seeking permanent injunction restraining the defendants from infringing the trademarks and copyright of the plaintiff, along with passing off and other ancillary reliefs.

19. The case set up in the plaint is that the plaintiff is engaged in the business of sale of rice under its trademarks “DUNAR”, “DUNAR ELONGA” and “ELONGA” as well as various other sub-brands. The plaintiff is the registered proprietor of various “DUNAR” trademarks and its sub-brands as well. The plaintiff has been using its trademark “DUNAR” since 2002 and has been in continuous use of its trademarks “DUNAR ELONGA/ELONGA” since 2011. The details of the plaintiff’s trademark registrations are given in paragraph 12 of the plaint. It is stated in the plaint that the plaintiff is also the registered proprietor of the copyright in the



artistic work ‘’ and has obtained a registration under the Copyright Act, 1957 via registration no. A-99788/2013 which is valid and subsisting.

20. The plaintiff has also provided the details of its sales figures from the year 2011-12 to 2023 in paragraph 29 of the plaint. It is pertinent to note that in the financial year 2023, the annual sales for the plaintiff’s ‘DUNAR’ brand were to the tune of 273.39 lakhs. It is also stated in the plaint that the plaintiff has widely advertised/published the products sold under the “DUNAR” brand in India as well as overseas.

21. It is the case of the plaintiff that in the month of November 2024, the plaintiff came across counterfeit products being sold by the defendant no. 1 bearing the marks ‘DONAR ELONGA’, and the counterfeit products being sold by the defendant no. 2 bearing the marks ‘DONAR ELONGA’ and bearing the plaintiff’s marks and packaging. The aforesaid products were being sold at the premises of the defendants no.3 to 5.

22. It is averred in the plaint that upon inquiry, the plaintiff found out from the defendant no.5, that the counterfeit goods being manufactured by the defendants no.1 and 2 bearing the plaintiff’s marks and packaging are all being supplied from the same source, which the defendant no.5 indicated to be in Naya Bazaar, Delhi.

23. The Plaintiff has provided a comparative analysis of the counterfeit products of the defendants no.1 and 2 with that of the plaintiff in paragraph 52 of the plaint. The aforesaid comparison is set out below:



“

COMPARISON OF PLAINTIFF’S TRADE MARK AND TRADE DRESS WITH IMPUGNED MARK/ TRADE DRESS CONTAINING DETAILS OF DEFENDANT NO. 1	
FRONT	FRONT
	
CHARACTERS APPEARING ON THE SAID TRADE DRESS/ LABEL	CHARACTERS APPEARING ON THE IMPUGNED TRADE DRESS/ LABEL
	
ARTISTIC WORK IN THE SAID TRADE DRESS/ LABEL	ARTISTIC WORK IN THE IMPUGNED TRADE DRESS/ LABEL



BACK	BACK
DESCRIPTION PROVIDED IN THE BACK	DESCRIPTION PROVIDED IN THE BACK



COMPARISON OF PLAINTIFF'S TRADE MARK AND TRADE DRESS WITH IMPUGNED MARK/ TRADE DRESS CONTAINING DETAILS OF DEFENDANT NO. 2	
FRONT	FRONT
	
CHARACTERS APPEARING ON THE SAID TRADE DRESS/ LABEL	CHARACTERS APPEARING ON THE IMPUGNED TRADE DRESS/ LABEL
	
ARTISTIC WORK IN THE SAID TRADE DRESS/ LABEL	ARTISTIC WORK IN THE IMPUGNED TRADE DRESS/ LABEL



BACK	BACK
DESCRIPTION PROVIDED IN THE BACK	DESCRIPTION PROVIDED IN THE BACK

”



24. A perusal of the comparison above suggests that the defendants no.1 and 2 have slavishly copied the registered trademarks as well as the trade dress/packaging/artistic work of the plaintiff. The points of distinction between the plaintiff's and the defendants no.1 and 2's products would not ordinarily be discernible to an average consumer of the plaintiff's products, who would be misled into purchasing the counterfeit products that may be of an inferior quality.

25. It is the case of the plaintiff that the defendants no.1 and 2 are selling inferior quality counterfeit goods under the plaintiff's 'DUNAR' trademarks, causing confusion and deception among customers.

26. Clearly, an attempt has been made by the defendants no.1 and 2 to create an impression that the products being sold by the defendants no.1 and 2 are connected to the plaintiff. The products being sold by the defendants no.1 and 2, on a *prima facie* view, are counterfeits of the plaintiff's products. Balance of convenience is in favour of the plaintiff and against the defendants no.1 and 2. Irreparable injury would be caused to the plaintiff if the defendants no.1 and 2 continue to sell the impugned counterfeit products. Prejudice would also be caused to the public as the products of the defendants no.1 and 2 are counterfeits of the plaintiff's products and likely to cause confusion in the market.

27. Consequently, till the next date of hearing, the defendants no.1 and 2 by themselves and through their directors proprietors/ partners, associates, assigns or assignees in interest, heirs, successors or successors in interest, permitted assigns, sister concerns or group companies, distributors, dealers, wholesalers, retailers, stockist, agents and all others acting for and on their



behalf are restrained from using, soliciting, manufacturing, selling, offering for sale, importing, exporting and advertising in any manner including on the internet and e-commerce platform, directly or indirectly dealing in



impugned marks/trade dresses ‘



/DONAR ELONGA/DUNAR ELONGA’ or any other mark/trade dress identical and/or deceptively similar to the plaintiff’s trademarks and trade dress.

28. Issue Notice.

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

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

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

32. List before the Joint Registrar on 20th February, 2025 for completion of service and pleadings.

33. In view of the fact that the plaintiff has 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 (2) weeks from today.

34. List before the Court on 15th April, 2025.

I.A. 48735/2024 (O-XXVI R-9 of CPC)

35. The present application has been filed under Order XXVI Rule 9 & 10 of the CPC seeking appointment of Local Commissioners to visit the premises of the defendants, make an inventory of all the goods having the impugned marks and effect seizure of the same.

36. In view of what is stated above, the plaintiff has made out a case for appointment of Local Commissioners.

37. Accordingly, the following Local Commissioners are appointed to visit the premises of the defendants in the following manner:

Sl. No.	Address of the premises to be visited	Name of the LCs
1.	Sankata General Store Opposite Sankata Devi Mandir, Near Galla Mandi, Lakhimpur, Uttar Pradesh – 262 701	Mr. Rohi Singh, Advocate Phone no. -9560586712
2.	Aman Gupta S/O Ghanshyam Gupta Galla Mandi, Lakhimpur, Uttar Pradesh – 262 701	Mr. Nachiket Chawla, Advocate Phone no. -9953826296
	Pintu General Store Galla Mandi, Lakhimpur, Uttar Pradesh – 262 701	

38. The following directions are passed in this regard:



- i. The Local Commissioners, along with a representative of the plaintiff and its counsel, shall be permitted to enter upon the premises of the defendants 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 Commissioners shall conduct a search at the defendants' premises and seize the counterfeit/infringing goods, including any packaging/promotional material reflecting infringement.
- iii. After seizing counterfeit/infringing material, the same shall be inventoried, sealed and signed by the Local Commissioners, in the presence of the parties, and released on *superdari* to the defendants on their undertaking to produce the same as and when further directions are issued in this regard.
- iv. The Local Commissioners 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.
- v. The defendants and their representatives are directed to provide full assistance to the Local Commissioners for executing the present commission.
- vi. In case, the aforesaid premises of the defendants or any part thereof is found locked, the Local Commissioners is permitted to break open the locks and doors for execution of the commission.
- vii. 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 commissioners, if and when sought.

viii. The Local Commissioners 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.

39. The Local Commissioners shall file their 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.

40. The fees of the Local Commissioners, to be borne by the plaintiff, is fixed at Rs.1,50,000/- each. The plaintiff shall also bear expenses for travel and lodging of the Local Commissioners and other miscellaneous out-of-pocket expenses for the execution of the commission.

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

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

43. *Dasti.*

AMIT BANSAL, J

DECEMBER 18, 2024
ds