

\$~40

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

+ **CS(COMM) 290/2025**

M/S. HARI CHAND SHRI GOPALPlaintiff

Through: Ms. Prachi Agarwal and Mr. Manan Mondal, Advocates.

versus

THE BHARAT ZARDA FACTORYDefendant

Through:

**CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL**

ORDER
02.04.2025

%

I.A. 8530/2025 (exemption from filing original/ certified/ clear/ translated documents)

1. Allowed, subject to just exceptions.
2. The plaintiff is exempted from filing the original/certified/clear/translated documents at this stage.
3. The application stands disposed of.

I.A. 8529/2025 (seeking exemption from advance service to defendant)

4. The plaintiff seeks urgent interim relief against 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 defendant may remove the infringing products if the defendant is given advance service of the plaint paper book.

5. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendant is granted.

6. The application is disposed of.

I.A. 8526/2025 (O-XI R-1(4) of the Commercial Courts Act)

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

8. 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.

9. Accordingly, the application is disposed of.

I.A. 8528/2025 (u/s 149 of the CPC)

10. Ms. Prachi Agarwal, counsel appearing on behalf of the plaintiff submits that the requisite court fees shall be paid within two weeks.

11. The aforesaid statement of counsel is taken on record.

12. The application is disposed of.

I.A. 8527/2025 (u/s 12A of Commercial Courts Act, 2015)

13. 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.

14. The application stands disposed of.

CS(COMM) 290/2025

15. Let the plaint be registered as a suit.

16. Issue summons.

17. Summons be issued to the defendant through all modes. The summons shall state that the written statement shall be filed by the defendant within thirty days from the date of the receipt of summons. Along with the written statement, the defendant shall also file affidavit of admission/denial of the documents of the plaintiff, without which the written statement(s) shall not be taken on record.

18. Liberty is given to the plaintiff to file replication, if any, within thirty days from the receipt of the written statement. Along with the replication filed by the plaintiff, affidavit of admission/denial of the documents of the defendant be filed by the plaintiff.

19. 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.

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

21. List before the Joint Registrar on 24th July, 2025 for completion of service and pleadings.

22. List before the Court on 17th September, 2025.

I.A. 8524/2025 (w/O-XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908)

23. The present suit has been filed on behalf of the plaintiff seeking permanent injunction restraining the defendant from infringing the

plaintiff's trademarks, trade dress and copyright, passing off along with other ancillary reliefs.

24. The plaintiff is the registered partnership firm belonging to the Gopal group which was founded in the year 1942. The plaintiff is the registered proprietor of the trademark 'GOPAL' and its formative marks in Class 34 in respect of tobacco products. Details of the registration of the trademarks of the plaintiff are given in paragraph 11 of the plaint.

25. It is stated in the plaint that the plaintiff's products are widely sold under the trademark 'GOPAL' (written in English and Hindi) which was conceptualized in the year 1950 and is often used in conjunction with a logo of the Hindu God, i.e., Lord Krishna playing the flute with a cow in the background (hereinafter referred to as "the Lord Krishna device"). The aforementioned mark and the device are often used with an array of prefixes or suffixes including 'GOPAL DELUXE', 'GOPAL GRENE', 'GOPAL ZARDA 60', 'DELUXE GOPAL ZARDA 60', 'GOPAL G-606', 'GOPAL 40', 'GOPAL 24' etc.

26. The plaintiff also has copyright protection granted to its labels bearing the trademark GOPAL in conjunction with the Lord Krishna device in respect of its tobacco products. The details of the copyright registrations of the plaintiff are mentioned in paragraph 14 of the plaint.

27. It is averred in the plaint that the plaintiff's mark 'GOPAL' and its formative marks have garnered immense goodwill and reputation, which is evident upon a perusal of the financial highlights placed on record by the plaintiff. The turnover of the plaintiff for the year 2023-2024 was to the tune of Rs.379.67 crores and the advertising and marketing expenditure of the plaintiff for the year 2023-2024 was approximately Rs. 3.93 crores. Details

of the plaintiff's sales figures and advertising expenses are set out in paragraphs 8 and 9 of the plaint respectively.

28. The case set up in the plaint is that during the course of a regular market survey by the plaintiff's representative in the 2nd week of March, the plaintiff first became aware of the defendant selling an identical product, chewing tobacco under the marks 'GOKUL', 'GOKUL DELUXE' which were deceptively similar to the plaintiff's trademark GOPAL and its variants including GOPAL DELUXE. The plaintiff's representative purchased samples of the defendant's product.

29. A comparison of the products of the plaintiff and the defendant is set out hereinbelow:

Plaintiff's product GOPAL GRENE	Defendant's product GOKUL DELUXE
	



30. The following similarities emerge from the aforesaid comparison:
- i. Identical placement and usage of a deceptively similar mark GOKUL along the perimeter of the circular lid of the container.
 - ii. Identical font style, manner of writing and placement of a deceptively similar GOKUL DELUXE on the lid of the container in yellow over a predominant green background along with a circular device above the mark.
 - iii. Identical usage of green colour, illustrating a peacock's feather, on the lid of the container.
 - iv. Identical manner of writing 'CHEWING TOBACCO'/'DELUXE CHEWING TOBACCO' in capitalised letters and white colour, just below 'GOKUL DELUXE' on the lid of the container.
 - v. Identical font style, placement and manner of writing of a deceptively similar GOKUL as artistic background of the container.

31. Additionally, it is averred that "GOKUL" and "GOPAL" are both names related to Lord Krishna. While 'GOPAL' is another name of Lord Krishna, GOKUL is the town where Lord Krishna was born and is commonly used in texts and stories pertaining to Lord Krishna. Thus, in the perception of a person of average intelligence and imperfect recollection, there is bound to be confusion regarding the product of the defendant *vis-a-vis* that of the plaintiff.

32. A perusal of the comparison table above would show that the defendant is using a deceptively similar trade dress along with the use of the mark 'GOKUL', 'GOKUL DELUXE' which is conceptually, visually and phonetically similar to the plaintiff's trademarks 'GOPAL', 'GOPAL DELUXE' and other formative marks. Further, the defendant is also using identical font, stylization, colour scheme and including multiple elements in their packaging as described above, which are deceptively similar to the packaging used by the plaintiff in respect of its tobacco products.

33. Based on the averments in the plaint, a *prima facie* case has been made out on behalf of the plaintiff. Balance of convenience is in favour of the plaintiff and against the defendant. Irreparable harm would be caused not only to the plaintiff but also to the public if an *ex-parte ad-interim* injunction as prayed is not granted in favour of the plaintiff.

34. Consequently, till the next date of hearing, the defendant, its proprietor, officers, servants and agents, distributors, wholesalers, dealers, retailers or any other person acting for or on its behalf are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in any manner with tobacco-related products including but not limited to chewing tobacco products bearing the trademark

GOKUL/GOKUL DELUXE, and the associated trade dress as depicted above and/or any other trademark/trade name which is deceptively similar to the plaintiff's trademarks 'GOPAL' (written in English and Hindi) and its variants thereof including but not limited to 'GOPAL DELUXE', 'GOPAL GRENE', by themselves or accompanied by numerals, words or variants or such products which employ a get-up, packaging, shape, layout, colour scheme i.e. trade dress which may be identical or deceptively similar to the trade dress of the plaintiff's products.

35. In view of the fact that the plaintiff has sought appointment of a Local Commissioners to seize the infringing goods, the very purpose of grant of *ex-parte ad interim* injunction would be defeated if the defendant is 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 plaintiff 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. The prescribed affidavit in terms of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 shall be filed within one week of the execution of the commission.

36. Issue Notice.

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

38. Reply be filed within four (4) weeks.

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

40. List before the Joint Registrar on 24th July, 2025 for completion of service and pleadings.

41. List before the Court on 17th September, 2025.

I.A. 8525/2025 (O-XXVI R-9 of CPC)

42. The present application has been filed under Order XXVI Rule 9 of the CPC seeking appointment of Local Commissioner to visit the premises of the defendant, make an inventory of all the goods having the impugned design and effect seizure of the same.

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

44. Accordingly, Mr. Abheet Mangleek, Advocate (Mobile No. +91 9871923291) is appointed as Local Commissioner to visit the premises of the defendant "The Bharat Zarda Factory" situated in:

38/57, Fakir Bagan Lane,

Howrah,

West Bengal-711101.

45. The following directions are passed in this regard:

i. The Local Commissioner, along with a representative of the plaintiff and its counsel, shall be permitted to enter upon the premises of the defendant 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 Commissioner shall make an inventory of all the infringing products including but not limited to label/packaging material (hereinafter referred to as '*infringing material*').

iii. The Local Commissioner shall conduct a search at the defendant's premises and seize the infringing goods, including any packaging/ promotional material reflecting infringement.

iv. After seizing infringing material, the same shall be sealed and signed by the Local Commissioner, in the presence of the parties, and released on *superdari* to the defendant on their undertaking to produce the same as and when further directions are issued in this regard.

v. The Local Commissioner 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.

vi. The defendant and its representatives are directed to provide full assistance to the Local Commissioner for executing the present commission.

vii. In case, the aforesaid premises of the defendant or any part thereof are found locked, the Local Commissioner are permitted to break open the locks and doors for execution of the commission.

viii. 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 necessar protection and assistance to the local commissioner, if and when sought.

ix. The Local Commissioner 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.

46. The Local Commissioner shall file his 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.

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

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

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

50. *Dasti.*

APRIL 2, 2025

kd



AMIT BANSAL, J