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

% *Date of Decision : 07.04.2026*

+ **FAO (COMM) 79/2026 & CM APPL. 17286/2026**

RITIK KUMAR

.....Appellant

Through: **Mr. Vinay P. Tripathi, Mr. Abhinav
Jaganathan and Ms. Preeti Shukla,
Advocates**

versus

R.H. AGRO OVERSEAS

.....Respondent

Through: **Ms. Swathi Sukumar, Senior
Advocate with Ms. Rima Majumdar,
Ms. Deboleena Dutta, Ms. Prashni
Kathuria, Mrs. Bindra Rana and Mr.
Vikrant Rana, Advocates**

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

MANMEET PRITAM SINGH ARORA, J. (ORAL)

1. The present appeal has been preferred by the Appellant/defendant assailing the order dated 02.02.2026 [‘impugned order’] passed by the Ld. District Judge (Commercial)-02, Central District, Tis Hazari Courts, Delhi [‘Trial Court’] in CS (Comm) No. 127 of 2026 titled ‘**R.H. Agro Overseas v. Shri Ritik Kumar and Anr.**’.

2. By way of the impugned order, the Trial Court, proceeded to grant an ex-parte ad-interim injunction restraining the Appellant from using the impugned mark NAFEEZA as well as the impugned Label/trade-dress in



exercise of its jurisdiction under Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 [‘CPC’]. Through a common order, the Trial Court also allowed the applications seeking (i) exemption from pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 [‘Act of 2015’]; and (ii) appointment of Local Commissioners under Order XXVI Rule 9 read with Order XXXIX Rule 7 CPC.

3. The Respondent/plaintiff filed a commercial suit alleging trademark infringement and passing off, claiming statutory rights in the registered mark ‘NAFIS’ in Class 30 for selling rice. The Appellant is engaged in the identical rice business, and has applied for registration of the mark ‘NAFEEZA’ (with BTR device) under Class 30, on 17.05.2025 and had commenced sale of its products in the market in December 2025.

The Respondent alleging that the Appellant’s mark and packaging were deceptively similar instituted the suit against it on 29.01.2026 along with multiple applications, including applications for exemption from pre-litigation mediation, interim injunction and appointment of Local Commissioners.

4. The Trial Court, on 31.01.2026, heard only the Respondent on all the applications and reserved for orders on 02.02.2026. By the impugned order dated 02.02.2026 the Trial Court granted exemption from pre-litigation mediation, passed an ex-parte ad-interim injunction restraining the Appellant, and appointed Local Commissioners, without issuing notice or affording any opportunity of hearing to the Appellant. While disposing of the applications, subsequently, the Appellant was directed to be served with summons.



Submissions by the Appellant

5. Mr. Vinay P. Tripathi, learned counsel for the Appellant submits that the impugned order is vitiated as it has been passed in complete breach of the principles of natural justice¹. He states that the Trial Court granted and finally disposed of the application for interim injunction under Order XXXIX Rules 1 and 2 CPC by the impugned order without issuing notice to or affording any opportunity of hearing to the Appellant. He contends that such an injunction, passed ex-parte and intended to operate for the entire pendency of the suit, is contrary to the settled scheme of Order XXXIX CPC and is liable to be treated as a nullity in law.

6. He further argues that since the Appellant's products were already in the market since December 2025 prior to the institution of the suit in January 2026, the grant of injunction without hearing the Appellant is impermissible, and in such circumstances, Courts are required to adopt a more cautious approach, as held in **Wander Ltd. v. Antox India Pvt. Ltd.**² and followed by the judgment of the Division Bench of this Court in **Dabur India Ltd. v. Emami Ltd.**³, mandating at least a rudimentary opportunity of hearing to the Defendant before granting ad-interim relief.

7. He states that the Trial Court adjudicated the application seeking exemption from advance service by a separate order of 02.02.2026. He states that this application ought to have been considered prior to the application under Order XXXIX Rules 1 and 2 CPC.

8. He submits that the Trial Court also failed to comply with the mandatory requirements under Order XXXIX Rules 3 and 3A CPC, as no

¹ Reliance placed on 'State of U.P. v. Mohammad Nooh', 1957 SCC OnLine SC 21, at paragraph no. 11.

² 1990 (Supp) SCC 727, at paragraph no. 9.



reasons were recorded to justify grant of ex parte injunction, nor was such relief limited in its duration.

9. He submits that the order appointing Local Commissioners is unsustainable as it is consequential to and dependent upon the invalid ex-parte injunction order, therefore, once the injunction itself is vitiated, the appointment of Local Commissioners cannot stand independently.

10. He also submits that Trial Court erred in mechanically granting exemption from pre-institution mediation under Section 12A Act of 2015 without examining the existence of any urgent interim relief.

11. He submits that he is not inviting adjudication on the merits of the Respondent/plaintiff's claim of infringement in this appeal. He states that Appellant/defendant will file its pleadings in a time bound manner and the injunction application can be heard by the Trial Court after the pleadings are complete. However, the ex-parte ad-interim injunction ought to be vacated in this appeal and injunction application be restored, before parties are sent to the Trial Court for hearing on merits of the injunction application.





Submissions by the Respondent

12. Ms. Swathi Sukumar, learned senior counsel for the Respondent submits that the impugned order rightly grants an ex-parte ad-interim injunction upon proper application of the law relating to trademark infringement under Section 29 of the Trade Marks Act, 1999. She submits that the Trial Court correctly found a prima facie case of deceptive similarity between the Respondent's mark 'NAFIS' and the Appellant's mark 'NAFEEZA', particularly as both are used for identical goods, i.e., rice. She relies upon the comparison set out at paragraph 5 of the impugned order to

³ FAO(OS) (COMM) 171/2023, judgment dated 21.08.2023, at paragraph no. 8.



contend that the Appellant has adopted identical packaging for its goods. She states that therefore considering the deceptively similar marks, identical packaging, identical customers and identical trade channels, the Trial Court rightly concluded that it was in the interest of the general public that Appellant is enjoined. She states that the paragraph 26 of the impugned order records these reasons which justify the grant of the ex-parte ad-interim injunction and exercise of jurisdiction by the Trial Court under Order XXXIX Rule 3 CPC. The comparison set out by the Respondent in its written submissions is as under:

View	Respondent's Trademark/Packaging	Appellant's Trademark/Packaging
Trademark	<p style="text-align: center;">NAFIS</p> 	<p style="text-align: center;">NAFEEZA</p> 
Identical Packaging		



Logo		
Seller Details		
Identical Content		

So also, paragraph 26 of the impugned order reads as under:

“26. Further, prima facie the plaintiff firm has also been able to establish that the impugned trade mark used by the defendant no.1 is not only identical or similar to the registered trademark of the plaintiff but also that the goods on which the defendant no.1 is using its mark, are also identical or similar, which is likely to cause confusion in the mind of the general public or is likely to have an association with the registered trademark belonging to the plaintiff firm. In the present case, it is not in dispute that the same are used on the similar products rice bags. In the given facts and circumstances, it would be difficult not to accept that the infringing trademark is such that it is likely to cause deception or confusion in the minds of the persons accustomed to the existing trademark. The plaintiff firm has been able to pass the triple test required for



passing the ad-interim order as in addition to the prima facie case in its favour, the balance of convenience also lies in favour of the plaintiff firm and in case exparte interim relief, as prayed, is not granted, the plaintiff firm would suffer irreparable loss which cannot be compensated in terms of money.”

13. She however, fairly concedes that the injunction application could not have been disposed off on 02.02.2026 and the said order has to be held to be an ad-interim order. She states that the observation in the interim order recording that the injunction application is disposed of appears to be inadvertent and for this purpose refers to paragraph 31 of the impugned order. She states that this Court may consider clarifying this aspect and restore the application while maintaining the injunction as an ad-interim order. She submits that a mistake of the Court ought not to prejudice the Respondent as such an error is curable under Section 152 CPC, and procedural lapse of recording that the injunction application is disposed of, cannot defeat substantive rights of the Respondent.

14. She states that parties may be directed to complete the pleadings in a time bound manner, and to appear before the Trial Court for time bound adjudication of the injunction application.

15. She contends that the Appellant ought to have sought correction of the order before the Trial Court, instead of filing the present appeal.

16. She submits that the appeal is not maintainable insofar as it challenges the appointment of Local Commissioners under Order XXVI Rule 9 CPC and that such appointment is justified to preserve evidence in cases of infringement, particularly where there is a risk of concealment or destruction⁴.

⁴ Autodesk Inc. & Anr. v. A.V.T. Shankardass & Anr., 2008 (105) DRJ 188 (DB), at paragraph nos. 10, 12,



17. She further submits that no appeal lies against the grant of exemption under Section 12A of the Act of 2015 as the exemption was rightly granted in view of the urgency arising from the Appellant's alleged infringing activities.

18. She contends that therefore the impugned order does not warrant interference, and at most, any procedural irregularity may be corrected by this Court without disturbing the injunction granted on merits.

Court Findings

19. The Court has considered the impugned order, perused the record and heard the submissions advanced by learned counsel for the parties.

20. We shall first take up the issue of ex-parte interim injunction granted by the impugned order and the disposal of the Order XXXIX Rules 1 and 2 CPC application.

21. There can be no dispute that the application under Order XXXIX Rules 1 and 2 CPC could not have been decided finally, against the Appellant/defendant, by the Trial Court on 02.02.2026, as the Appellant/defendant was not before it. On the said date, the Trial Court could have only considered merits of grant of ex-parte ad-interim injunction against the Appellant/defendant. This position in law is well settled and does not require any further deliberation.

22. Upon perusal of the impugned order, it is evident that the Trial Court, while intending to grant an ad-interim ex-parte injunction, has, by a common order, while disposing of the application for appointment of Local Commissioners also unintentionally disposed of the application under Order XXXIX Rules 1 and 2 CPC at the threshold without issuance of notice to the

and 13.



Appellant. This, in the considered view of this Court, constitutes an inadvertent error apparent on the face of the record and this irregularity in the impugned order cannot form the sole basis for setting aside the interim injunction. The nature of the injunctory relief, as is also fairly accepted by the Respondent, was only ad-interim and ex parte, and the injunction application ought not to have been finally disposed of by the Trial Court, without affording an opportunity of hearing to the Appellant as the decision was against the Appellant/defendant.

23. As noted above, the Appellant does not seek any adjudication on merits of the rival claims of the parties to the marks NAFIS v. NAFEEZA. In view thereof, this Court is of the opinion that it is neither necessary nor appropriate at this stage to examine the merits of the rival claims pertaining to alleged infringement or deceptive similarity.

The limited interference warranted in the present appeal is to correct the procedural irregularity in the impugned order so as to ensure adherence to principles of natural justice, before the final disposal of the injunction application. The Appellant is undoubtedly entitled to an opportunity to file its reply and be heard before the application for interim injunction is finally adjudicated by the Trial Court.

24. We are of the considered opinion that the Trial Court has at paragraph 26 of the impugned order recorded reasons to justify grant of the ex-parte interim injunction and the said reasons satisfy the test of Order XXXIX Rule 3 CPC. As held by the Supreme Court in **A. Venkatasubbiah Naidu v. S. Chellappan**⁵, the contents of the ad-interim order are to be read to examine if the requirements of Order XXXIX Rule 3 CPC have been met by the Trial



Court, and as noted by us above the said reasons have been recorded in the impugned order.

25. The submission of the Appellant that since it had commenced selling its products in the market since December, 2025, no ex-parte ad-interim injunction could have been granted in a suit instituted in January 2026, is without any merits. This cannot be an absolute proposition. The fact that a defendant is selling goods by using a deceptively similar mark, infact, gives rise to a cause of action in favour of the plaintiff for seeking injunction against use of the impugned mark, and if a plaintiff succeeds in satisfying the concerned Court that the marks are identical or deceptively similar then the Court is well within its jurisdiction to grant interim injunction. In the facts of this case as noted above, the Trial Court has recorded reasons at paragraph 26 of the impugned order for granting interim injunction, which should have rightly been an ad-interim injunction.

26. Accordingly, while sustaining the grant of ad-interim ex-parte injunction, the impugned order is modified to the extent that the application under Order XXXIX Rules 1 and 2 CPC shall be treated as pending and shall be decided afresh by the Trial Court after granting an opportunity to the Appellant to file its reply and advance submissions, in accordance with law. The application will be decided by the Trial Court without being influenced by the findings returned by it in the impugned order and any observation made in this appeal. All rights and contentions of the parties are left open.

27. The Appellant is directed to file its reply to the injunction application and its written statement within one (1) week, along with affidavit of

⁵ (2000) 7 SCC 695 at paragraph 15



admission/denial of documents. The Respondent is directed to file its rejoinder and replication within one (1) week thereafter, along with affidavit of admission/denial of documents. The Trial Court is requested to hear and adjudicate the injunction application within a period of one (1) month from the date of completion of pleadings and no later than 30.05.2026.

28. We note that the Trial Court disposed of the application filed by the Respondent/plaintiff seeking exemption from serving the defendant on 02.02.2026. The Appellant has contended that the said application ought to have been disposed of on 31.01.2026 before the injunction application was heard ex-parte on 31.01.2026. In our considered opinion, the sequence of disposal of the said application does not constitute an irregularity which would merit setting aside of the ex-parte ad-interim injunction.

29. Insofar as the challenge to the appointment of Local Commissioners is concerned, this Court is not inclined to interfere at this stage. The commission was directed to be executed within two weeks of the impugned order, and, in the absence of any interim stay granted by this Court, we have been informed that the said exercise has already been carried out. In such circumstances, no useful purpose would be served by interfering with the said directions at this stage. We also agree with the submission of the Respondent that no appeal is maintainable against the order appointing Local Commissioners under Section 13 of the Act of 2015 read with Order XLIII Rule 1 CPC.

30. Similarly, this Court finds no ground to interfere with the exemption granted under Section 12A of the Act of 2015, as such an order falls within the discretionary domain of the Trial Court, exercised upon considering the fact that urgent interim relief was prayed for, as held in **Yamini Manohar v.**



T.K.D. Keerthi⁶. In the present case, the Trial Court, being satisfied of the need for immediate injunctive relief in the context of alleged ongoing infringement, invoked the exception carved out under Section 12A, and therefore it does not warrant this Court's interference. We also agree with the submission of the Respondent that no appeal is maintainable against the order granting the said exemption under Section 13 of the Act of 2015.

31. With the aforesaid directions, the appeal stand disposed of.

32. Before we conclude, we would like to however observe that the error in the order of the Trial Court recording the disposal of the injunction application was avoidable and the Trial Court ought to exercise caution of proof-reading its orders, before releasing the final order.

33. Pending applications disposed of. No order as to costs.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

APRIL 7, 2026/AM

⁶ (2024) 5 SCC 815