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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **FAO (COMM) 170/2025, CM APPL. 39059/2025, CM APPL. 39060/2025, CM APPL. 39061/2025 & CM APPL. 39062/2025**

**PAWAN KUMAR MITTAL PROPRIETOR,  
SALASAR DEV BASMATI HOUSE** .....Appellant  
Through: Mr. Shravan Kumar Bansal,  
Adv.

versus

**VIJAY GUPTA & ORS.** .....Respondents  
Through:

**CORAM:  
HON'BLE MR. JUSTICE C. HARI SHANKAR  
HON'BLE MR. JUSTICE AJAY DIGPAUL**

**ORDER (ORAL)**  
**07.07.2025**

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**C. HARI SHANKAR, J.**

1. The order passed by the learned District Judge (Commercial Courts), by which the appellant is aggrieved, reads thus:

“ CS (COMM.) 331/25  
Pawan Kumar Mittal Proprietor Of Salasar Dev Basmati House  
Vs. Vijay Gupta And Ors.

14.05.2025

Present: None.

Earlier Sh. Vibhor Garg, ld. Counsel for the plaintiff appeared.

At this stage, the Court is not inclined to ex parte ad interim injunction order. Subject to just exceptions, issue summons for settlement of issues to the defendants through all permissible



modes i.e. RC/Speed Post/ Courier/E-mail/Whatsapp and FAX etc. of filing of PF and soft copy of complete paper book of the suit in PDF format. For service through electronic mode, plaintiff to file affidavit with respect to the correctness of the address and contact details.

Steps for service and process fee be filed within one week.

Directions:

1. service of defendants;
2. written statement along with statement of truth, admission and denial of documents, list of documents as well as the documents etc. be filed by defendants within statutory period of 30 days from the date of service.

Advance copy be given;

3. replication be filed by plaintiff along with affidavit of admission and denial of documents, within statutory

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period of 45 days of receipt of copy of written statement, if any.

Advance copy be given.

Put up for 23.07.2025.

Anurag Sain  
District Judge (Commercial Court)-01  
Patiala House Court, New Delhi.  
07.05.2025"

2. It is clear that the impugned order is completely unsustainable in law, as it adduces no reasons for the view for disinclination to issue any *ex parte ad interim* order.

3. While it is open to the Court to take a view as to whether any *ex parte ad interim* injunction should or should not be granted, either way, some reason is required to be given.

4. In cases of trademark infringement, following judgments of the Supreme Court, including *Laxmikant V Patel v Chetanbhai Shah*<sup>1</sup>

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<sup>1</sup> (2002) 3 SCC 65



the law is that, where a *prima facie* case of passing off is made out, the Court is required on the very first day to issue notice and appoint a Local Commissioner to seize the injurious goods. In such cases, a party is also entitled to seek waiver of the requirement of advance service, so that the commission is not defeated. This principle also applies *mutatis mutandis*, to infringement.

5. We find that the appellant has specifically sought an injunction along with an application under Order XXIX of the CPC, seeking appointment of a Local Commissioner with an application for waiver from the requirement of advance service.

6. The impugned order gives no reasons for rejecting these requests.

7. Inasmuch as the appellant is seeking appointment of a Local Commissioner, issuance of notice in this appeal would be counter-productive.

8. In that view of the matter, the impugned order is quashed and set aside. The applications in CS (COMM) 331/2025 for waiver of the requirement of advance service, for grant of *ex parte ad interim* injunction, and appointment of Local Commissioner are remitted for *de-novo* consideration to the learned District Judge (Commercial Courts). The appellant would appear before the learned Commercial Court on 10 July 2025 at 11 am.



9. We express no view on the entitlement of the appellant either to waiver of advance service or appointment of Local Commissioner or grant of *ex parte ad interim* relief. We have not examined the merits of the matter.

10. The learned Commercial Court is requested to hear these applications on 10 July 2025 itself and take a view thereon as expeditiously as possible.

11. The appeal stands allowed in the aforesaid terms.

12. Needless to say, the impugned order dated 7 May 2025 would not influence the learned Commercial Court while complying with the order passed today.

13. A copy of the order be given *dasti* under signature of the Court Master.

**C. HARI SHANKAR, J.**

**AJAY DIGPAUL, J.**

**JULY 7, 2025**

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*Click here to check corrigendum, if any*