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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CS(COMM) 223/2024, I.A. 5958/2024, I.A. 5959/2024, I.A.  
5960/2024 & I.A. 5961/2024

SAERA ELECTRIC AUTO LIMITED ..... Plaintiff

Through: Mr. Neeraj Grover, Mr. Yatin  
Chadha, Mr. Mayank Chadha, Ms.  
Shikha Sagar and Mr. Gurvinder  
Singh, Advs.

versus

MALAK TECHNO PRIVATE LIMITED ..... Defendant

Through:

**CORAM:**  
**HON'BLE MR. JUSTICE ANISH DAYAL**

**ORDER**

% **14.03.2024**

**I.A. 5959/2024 (Seeking leave to file additional documents)**

1. The present application has been filed on behalf of plaintiff under Order 11 Rule 1(4) of the Code of Civil Procedure, 1908 ('CPC') as applicable to commercial suits under the Commercial Courts Act, 2015 seeking to place on record additional documents.

2. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

2. Accordingly, the present application is disposed of.

**I.A. 5960/2024 (Seeking exemption from pre-litigation mediation)**

1. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in **Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.**, FAO (COMM) 128/2021, exemption from attempting pre institution mediation is allowed.



2. Accordingly, the application stands disposed of.

**I.A. 5961/2024 (Exemption from filing clearer copies)**

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

2. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance before the next date of hearing.

3. Accordingly, the present application is disposed of.

**CS(COMM) 223/2024**

1. Let the plaint be registered as a suit.

2. Upon filing of process fee, issue summons to the defendant by all permissible modes. Summons shall state that the written statement be filed by the defendant within 30 days from the date of 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 shall not be taken on record. Liberty is given to the plaintiff to file a replication within 30 days of the receipt of the written statement. Along with the replication, if any, filed by the plaintiff, affidavit of admission/denial of documents filed by the defendants, be filed by the plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

3. List before the Joint Registrar for marking of exhibits on 20<sup>th</sup> May, 2024.

4. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.



**I.A. 5958/2024 (Application under Order XXXIX Rule 1 and 2 CPC)**

1. This application has been filed under Order XXXIX Rule 1 and 2 of CPC as a part of the accompanying suit filed by plaintiff seeking decree of permanent injunction against defendant from using the marks ‘MAYUR’,



, and



(‘impugned

marks’) thereby infringing plaintiff’s trademarks ‘MAYURI’,







, and



(‘plaintiff’s marks’) and

copyright, passing off, delivery up, rendition of accounts, damages, and other attendant reliefs.

2. Plaintiff herein is a company incorporated on 18<sup>th</sup> August, 2011 having its registered office in Rajasthan and corporate office at Dwarka, New Delhi. Plaintiff is aggrieved by defendant’s adoption of the impugned marks; a comparative chart of the same is extracted below:

Plaintiff’s Marks	Defendant’s Marks
MAYURI	MAYUR
	
	

3. The impugned marks have been adopted for identical goods i.e. e-rickshaws. Plaintiff adopted its marks in 2011 in relation to e-rickshaws,



electric carts, electric three-wheelers and other electric vehicles (**‘e-vehicles’**) and its accessories and parts (**‘e-vehicle parts’**). Plaintiff also claims ownership of copyright in the artistic work in the two device marks as extracted above. **It further claims that its Director, Mr. Vijay Kapoor, an Engineer, is considered as the father of the e-rickshaws in India.** Simultaneous with adoption of the trademark **‘MAYURI’**, on 30<sup>th</sup> September, 2011, plaintiff filed its trademark application bearing no.2213610 in Class 12 for registration of the same with user claimed since 16<sup>th</sup> August, 2011. **Since 2011, the plaintiff claims to have been one of the leading e-rickshaw manufacturers in India.** Paragraphs 8-10 of the plaint narrate further facts relating to reputation and goodwill generated by plaintiff in its marks.

4. Year wise total sales’ figures of goods with plaintiff’s aforesaid **‘MAYURI’** marks have been claimed as under:





S.No.	Financial Year	Sale of MAYURI E-Rickshaws (in Rs.)
1.	2019-20	73,97,53,665
2.	2020-21	46,68,12,120
3.	2021-22	1,50,91,89,827
4.	2022-23	3,82,45,29,758

5. Plaintiff’s products are sold through its website <https://www.saeraauto.com/> as also on its social media handles.

6. Trademarks registered in favour of the plaintiff are tabulated as under:

Sr. No.	Application no.	Trademark	Class	User Date	Applicat ion Date	Status
1.	2213610		12	August 16, 2011	Septemb er 30, 2011	Registered
2.	2935497		12	August 16, 2011	April 02, 2015	Registered



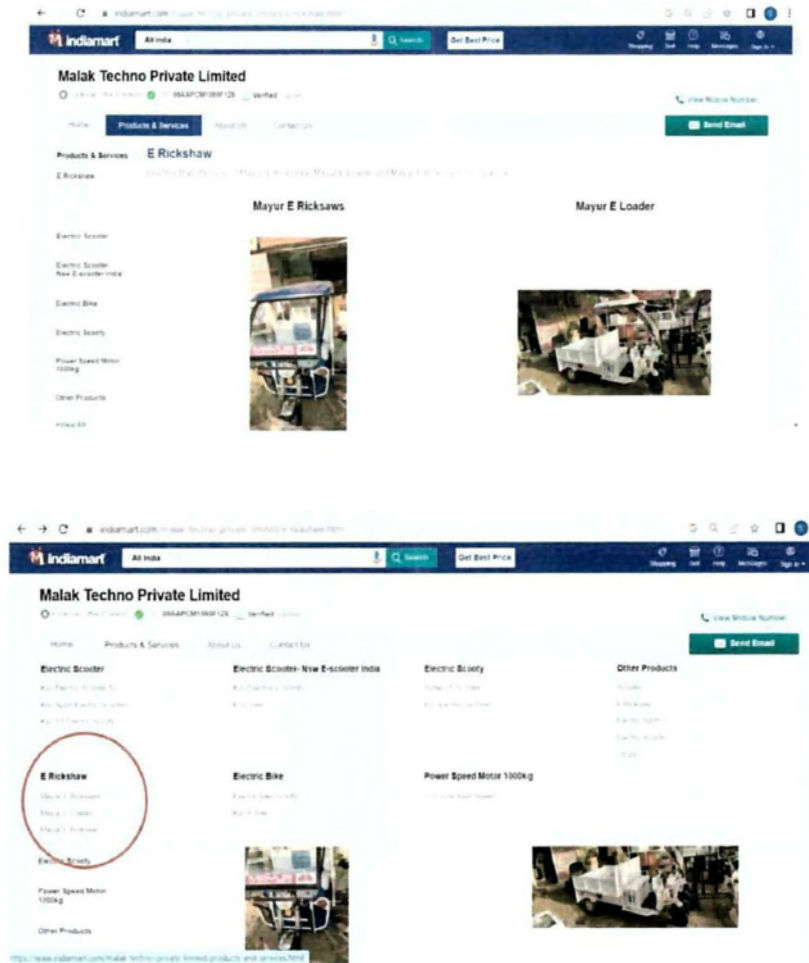
						
3.	5411334		09	Proposed to be used	April 15, 2022	Opposed by Vikram Bansal (Director of M/S Mayur Electromech Pvt. Ltd.) and Rajdhani Electricals
4.	5411335	MAYURI	12	August 16, 2011	April 15, 2022	Objected
5.	5411336		35	August 16, 2011	April 15, 2022	Objected
6.	5411337		39	Proposed to be used	April 15, 2022	Registered

7. The plaintiff came to know about the use of the impugned marks

‘MAYUR’,  and  by the defendant for e-rickshaws as well.

8. A Cease-and-Desist Notice (‘C&D Notice’) was sent to the defendant on 16<sup>th</sup> June, 2023 to which no response was received. Despite the C&D Notice, defendant has been advertising its products on India Mart on the following link: <https://www.indiamart.com/malak-techno-private-limited/erickshaw.html>

9. Screenshots of the said listing are as under:



10. Service has already been effected in advance. However, no one appears on behalf of the defendant.

11. Counsel for plaintiff further states that recently they have come to know that the defendant is approaching plaintiff's dealers, namely, R.R. Automobiles and Kalindi E-rickshaw located in Delhi to sell their products. WhatsApp messages sent to said dealers are appended as Document-30 to the plaint, which show that defendant is advertising the impugned products.


12. Based on these facts and circumstances, this Court is satisfied that plaintiff has made out a *prima facie* case for grant of an *ex-parte ad interim injunction* till the next date of hearing. Balance of convenience lies in favour




of plaintiff, and plaintiff is likely to suffer irreparable harm in case injunction, as prayed for, is not granted.

13. Accordingly, till the next date of hearing, an *ex-parte ad interim* injunction is passed in favour of plaintiff and against defendant in the following terms:

Defendant, associates, affiliates and all those acting for/on their behalf are restrained from manufacturing, promoting, selling, directly or indirectly dealing with e-vehicles or e-vehicle parts

bearing the impugned marks 'MAYUR',  and

 or any other mark identical or deceptively

similar to plaintiff's registered trademarks 'MAYURI',

 and 

14. Issue notice to defendant through all permissible modes including through e-mail on plaintiff taking steps.

15. Reply be filed within four weeks with advance copy to counsel for plaintiff, who may file rejoinder thereto, if so desired, before the next date of hearing.

16. Compliance of Order XXXIX Rule 3, CPC be effected within one week.

17. List on 22<sup>nd</sup> July, 2024.

18. Order be uploaded on the website of this Court.

**ANISH DAYAL, J**

**MARCH 14, 2024/MK/sc**