

Yc Electric Vehicle vs Vishwas Automobiles Llp on 13 September, 2024

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 788/2024
YC ELECTRIC VEHICLE
Through:

VISHWAS AUTOMOBILES LLP

Through: None

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE
ORDER

% 13.09.2024 I.A. 39397/2024 (pre-litigation mediation)

1. The plaintiff vide the present application seeks exemption from instituting pre-litigation mediation.
2. Considering the averments made in the present application wherein the plaintiff seeks urgent ad-interim reliefs and in view of Yamini Manohar vs. T.K.D. Krithi 2023 SCC OnLine 1382 and Chandra Kishore Chaurasia vs. R. A. Perfumery Works Private Limited 2022:DHC:4454- DB, the plaintiff is exempted from instituting pre-litigation mediation.
3. Accordingly, the present application is allowed and disposed of. I.A. 39395/2024 (Exp)
4. Exemption allowed as sought, subject to all just exceptions.
5. The application stands disposed of.

I.A. 39396/2024 (additional documents)

6. The plaintiff vide the present application seeks time to file This is a digitally signed order.

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7. The plaintiff will be at liberty to file additional documents at a later stage, albeit, strictly as per the provisions of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018.

8. Accordingly, the present application is disposed of. I.A. 39398/2024 (Extension for filing hash report)

9. The plaintiff vide the present application seeks grant of extension of sixty days for filing Hash Report under Section 63(4)(c) of Bharatiya Sakshya Adhiniyam, 2023.

10. In terms of Rule 24 of Chapter XI of the Delhi High Court (Original Side) Rules 2018, let the electronic record by way of an encrypted CD/ DVD/ Medium with a hash value in a non-edited form be filed before the Registry within a period of four weeks.

11. Let the same accordingly form a part of the record of the present suit by way of an electronic folder in such a manner that it can be opened to view by this Court as and when required. Also let the hash value shall be kept separately by the Registry on the file.

12. Accordingly, the present application is allowed and disposed of. CS(COMM) 788/2024

13. The plaintiff by way of the present suit seeks permanent injunction restraining infringement of trade mark and copyright, passing off, acts of unfair competition, seeking damages/ rendition of accounts delivery, etc.

14. Let the plaint be registered as a suit.

15. Upon filing of the process fee, issue summons of the suit to the defendant through all permissible modes returnable before the Joint Registrar on 11.12.2024.

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16. The summons shall state that the written statement be filed by the defendant within a period of thirty days from the date of the receipt of the summons. Written statement be filed by the defendant along with affidavit of admission/ denial of documents of the plaintiff, without which the written statement shall not be taken on record.

17. Replication thereto, if any, be filed by the plaintiff within a period of fifteen days from the date of receipt of written statement. The said replication, if any, shall be accompanied by with affidavit of admission/ denial of documents filed by the defendant, without which the replication shall not be taken on record within the aforesaid period of fifteen days.

18. If any of the parties wish to seek inspection of any document(s), the same shall be sought and given within the requisite timelines.

19. List before the Joint Registrar for completion of pleadings on 11.12.2024. It is made clear that if any party unjustifiably denies any document(s), then it would be liable to be burdened with costs.

20. List before the Court on 22.01.2025.

I.A. 39394/2024(Order XXXIX rule 1 & 2 CPC, 1908)

21. The plaintiff vide the present application seeks an ex-parte ad- interim injunction against the defendant.

22. As per pleadings and the documents filed along with them before this Court and arguments addressed in support thereof by the learned counsel for plaintiff, the case of the plaintiff is as under:-

22.1 The plaintiff was established in the year 2014 and has since then grown to become India's largest e-rickshaw manufacturing/ selling entity.

As per the statistics issued from time to time by independent bodies/ entities pertaining to the sale of e-rickshaws in India, the plaintiff has been This is a digitally signed order.

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22.2 The plaintiff is the prior adopter, user and registered owner of the renowned 'YATRI' and various 'YATRI' formative marks including the device mark/ logo , , , and with rights and registration therein dating back at least to the year 2014 inter alia in relation to electric rickshaws, electric carts, electric three-wheelers and other electric vehicles and/ or their motors, controllers, differential, parts, components and accessories in Class 09, 12, 35 and 37. List of trade mark registrations are provided in paragraph 21 of the present application. These registered marks of the plaintiff are valid and subsisting. The trade mark 'YATRI' also serves as the house mark for the plaintiff. The plaintiff is the owner of the copyright and other proprietary rights in relation to the artistic work in the device mark/logo , , , and .

22.3 The plaintiff is amongst the few initial entities to receive the International Centre for Automotive Technology (ICAT) approval for its E-Rickshaw model namely 'YATRI'. Subsequently, the plaintiff further launched other e-rickshaw and e-cart models namely 'YATRI DLX', 'YATRI SUPER' and 'YATRI CART' which were also approved by This is a digitally signed order.

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'YATRI' is reflected, which is one such proof of the longstanding use of the 'YATRI' trade mark(s) by the plaintiff. The regulatory approvals granted to the plaintiff as per Indian Laws also endorse the quality and safety of the e-vehicles manufactured by the plaintiff. The quality e-vehicles sold by the plaintiff have attained extensive credibility.

22.4 The plaintiff has established its manufacturing plant in Greater Noida, Gautam Buddha Nagar, Uttar Pradesh and this mega factory spread over 56,135 sq. ft. (approximately), is being used by the plaintiff to manufacture e-vehicles under 'YATRI' trade mark(s). The plaintiff has assembly units in different states to assemble and finish the e-vehicles under its 'YATRI' trade mark(s). The plaintiff has established huge, sophisticated manufacturing unit(s) and has invested significantly in product development and research, and evolved stringent protocol, inhouse manufacturing norms and know-how for manufacturing the e- vehicles and e-vehicles parts under 'YATRI' trade mark(s), which are highly regarded and have established a niche in the Indian markets and are known for their premium quality, reliability, standards of technological advancement and innovation. The products manufactured and/or marketed by the plaintiff under the 'YATRI' trade mark(s) conform to uncompromising standards and have gained recognition, goodwill and reputation among the members of the trade and public. 22.5 The plaintiff has a significant presence on various social media platforms. The information pertaining to the plaintiff's e-vehicles under the 'YATRI' trade mark(s) is also easily accessible far and wide to the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/09/2024 at 08:44:05 world at large through the internet. Apart from plaintiffs own website and social media pages, the plaintiff's 'YATRI' branded e-vehicles have been widely promoted, propagated, and offered for sale through other third- party platforms such IndiaMart, TradeIndia and other third-party websites and trade listings which are globally and instantly accessible to the world at large.

22.6 The plaintiff is aggrieved by the unlawful, dishonest, and mala fide adoption and use of impugned marks 'YATRI', 'YATRI STAR' and by the defendant in respect of the identical goods as that of the plaintiff. Comparative chart of the plaintiff's and defendant's marks is reproduced as under:

22.7 In April 2024, the plaintiff found that the defendant has been unauthorizedly using the plaintiff's copyrighted photographs/ images of its product i.e., e-rickshaws on its social media pages and catalogues. The photographs/ images of e-rickshaws of the plaintiff which the defendant has used in its social media posts also bear the plaintiff's registered trade mark 'YATRI'. Being aggrieved, the plaintiff issued a cease-and-desist This is a digitally signed order.

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address of the defendant and the email was delivered and did not receive bounce back. The defendant did not reply to the first cease-and-desist notice.

22.8 In June 2024, the plaintiff found from the market sources that the defendant has launched its e-rickshaw under the brand name 'YATRI STAR' which completely subsumes the plaintiff's trade mark 'YATRI'. The Plaintiff again issued a cease-and-desist notice dated 24.06.2024 to the defendant. The copy of the second cease-and-desist notice sent on the registered place of business of the defendant was delivered on 28.06.2024. The plaintiff sent a copy of the second cease-and-desist notice dated 24.06.2024 through email on 08.07.2024 to the available email address of the defendant and the email was delivered and did not receive bounce back. The defendant did not even reply to the second cease-and-desist notice.

22.9 The defendant very recently on 09.08.2024 approached the plaintiff's dealer namely Wadhwa Motors located at Delhi and offered to sell the defendant's e-rickshaw under the impugned marks. The defendant has also sent to the plaintiff's dealer over WhatsApp its product brochure, dealer's price list, company profile, visiting card, photos and other details bearing the impugned marks.

22.10 On 10.08.2024 the plaintiff's attorney conducted a search on the Trademarks Registry website and came to know that the defendant has This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/09/2024 at 08:44:05 filed an application bearing number 6535808 dated 20.07.2024 in respect of the impugned 'YATRI STAR' mark with user claim since 15.12.2023. The claim of use of December 2023 is false as the defendant has not filed any document with trademark application to show sale of goods or commercial use of the impugned marks.

22.11 Screenshots of the social media platforms showing the use of the impugned marks by the defendant are provided in paragraphs 39 and 40 of the application.

22.12 In order to deceive the customers, who in this case comprise mostly of uneducated class of rickshaw drivers, who recognize the goods on the basis of visual appearance, the defendant has also blatantly imitated/ reproduced the artistic and distinguishing elements/ features from the plaintiff's 'YATRI' branded e-rickshaw.

22.13 Learned counsel for plaintiff submits that the defendant's act of approaching the plaintiff's dealer with the purpose to sell the defendant's e-rickshaw under the impugned marks clearly establish that the defendant has bad intention and pre-plan to adopt the identical mark 'YATRI', almost identical and/ or deceptively similar impugned marks 'YATRI STAR' and with prior knowledge of the plaintiff's 'YATRI' trade mark(s) and with the mala fide intention to divert the plaintiff's business. The defendant's act of copying the plaintiff's images and using them in its company's profile and imitating the distinguishing elements of the plaintiff's e-rickshaw clearly establishes the prior knowledge of the defendant as clearly mentioned in detail. Furthermore, being in the same industry, the defendant is deemed to be This is a digitally signed order.

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22.14 Learned counsel further submits that because of long, open, continuous, uninterrupted, exclusive and extensive use coupled with promotional activities, 'YATRI' trade mark(s) have acquired enviable goodwill and impeccable trade reputation among the trade and public and it has come to be exclusively identified and associated with the Plaintiff only.

22.15 Learned counsel lastly submits that a bare look at the impugned marks leaves no doubt that the defendant has blatantly imitated the plaintiff's 'YATRI' trade mark(s). The defendant's adoption of identical mark 'YATRI', nearly identical word mark 'YATRI STAR' and/ or deceptively similar device mark in relation to identical goods is mala fide, utterly dishonest, and with prior knowledge of the reputation and goodwill of the plaintiff's 'YATRI' products. Such impugned adoption by the defendant is a calculated attempt to pass-off and ride on the enormous pan India reputation of the plaintiff's 'YATRI' trademark(s) and to earn illegal profit out of the hard-earned goodwill and reputation that has been acquired by the plaintiff over the 'YATRI' trade mark(s) by extensive use during the course of around ten years. By adopting the identical mark 'YATRI', nearly identical word mark 'YATRI STAR' and/ or deceptively similar device mark, the defendant has thus left no stone unturned to infringe the plaintiff's trade marks and/ or to pass-off its goods and business as those of the Plaintiff. This is a digitally signed order.

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23. This Court has heard the submissions advanced by the learned counsel for the plaintiff and gone through the pleadings as also perused the documents on record.

24. A comparison of the plaintiff's 'YATRI' branded e-rickshaw and the defendant's e-rickshaw under the impugned marks is reproduced as under:

Plaintiff's 'YATRI' branded e-rickshaw Defendant's e-rickshaw under the impugned marks This is a digitally signed order.

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25. The plaintiff is not only the prior adopter with a prior user, it is also the registered holder of the trade mark 'YATRI' and various 'YATRI' This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/09/2024 at 08:44:06 formative marks since and from the year 2014 with respect to electric rickshaws, electric carts, electric three-wheelers and other electric vehicles and/ or their motors, controllers, differential, parts, components and accessories in Class 09, 12, 35 and 37. Each of the said registrations is valid and subsisting in favour of the plaintiff. Additionally, the plaintiff is also the owner of the copyright and other proprietary rights in relation to the artistic work in the device mark/ logo.

26. The adoption and usage by the defendant, more so, since it is also operating in the same line of business and is bound to take services of the same type of trade channels for dealing with the same end users/ customers as that of the plaintiff, the same cumulatively taken lead to the conclusion that it was well aware of the plaintiff. Therefore, it had no meaningful reason to adopt and use the very same impugned mark as that of the plaintiff for the same purposes save and except that it would be getting a chance to come as close as possible to the plaintiff for encashing its image, repute and goodwill as also that of its registered trade mark for the least possible time by making the minimalistic effort and incurring marginal finances.

27. Since the same is for the very same e-rickshaws as that of the plaintiff, it is in all likelihood to lead to utter confusion amongst the members of general public, especially since such members may/ can be those who may be illiterate and/ or with less vision who go by the pictural/ graphic representation. In the present scenario, where the defendant has adopted and is using the exact replica of the plaintiff, the difference can never be decipherable to anyone that it is not the plaintiff or that it is different from the plaintiff.

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28. In view of the aforesaid, the plaintiff has been able to make out a prima facie case with the balance of convenience for grant of an ad interim ex-parte injunction in their favour and against the defendant. In case the defendant is not restrained by way of an ad interim ex-parte injunction, there is a likelihood of the plaintiff suffering irreparable harm, loss, injury and prejudice which cannot be compensated for in terms of money.

29. Accordingly, till the next date of hearing, the defendant, its assigns, associates, affiliates, successors, manufacturers, employees, agents, dealers, retailers, wholesalers, distributors, licensees, franchisees, stockiest or any persons/ entities as may be under the control of the defendant or are related or affiliated to the defendant and all others, acting through, for and on behalf of the defendant are restrained from using in any manner the impugned marks 'YATRI', 'YATRI STAR' and and/ or any other mark or marks, identical to or deceptively similar to or containing the plaintiff's trade mark(s) 'YATRI', and/ or and either as a brand name, trade mark, trading style, corporate name, domain name, metatag, hashtag, web-address or otherwise, on its website, social media webpages, online trade directories or otherwise for manufacturing, producing, offering for sale,

selling, displaying, advertising, marketing, stocking, whether directly or indirectly in relation to their business/ products/ services, whether on the internet or otherwise, in respect of the e-rickshaw, e-vehicles, their parts, components and accessories and/or any other similar/related/allied/cognate goods and/or in This is a digitally signed order.

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30. Upon filing of the process fee, issue notice to the defendant by all permissible modes returnable before the Joint Registrar on 11.12.2024.

31. Reply, if any, be filed within a period of thirty days from the date of service. Rejoinder thereto, if any, be filed within a period of fifteen days thereafter.

32. The provisions of Order XXXIX Rule 3 CPC be complied within two weeks.

33. List before the Court on 22.01.2025.

SAURABH BANERJEE, J SEPTEMBER 13, 2024/rr This is a digitally signed order.

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