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

\# **CNR No. DLHC010156122026**

\+ CS(COMM) 399/2026

M/S NAYASA SUPERPLAST .....Plaintiff

Through: Mr. Surinder Singh, Adv.

versus

M/S SHREE JI INDUSTRIES .....Defendant

Through: Mr. Deepank Singhal, Mr. Sanidhya Sharma and Ms. Gauri Singhal, Advs.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 29.10.2026

I.A. 12420/2026 (under Order XXXIX Rule 4 of CPC)
I.A. 12421/2026 (under Order XXXIX Rules 1 and 2 of CPC)

1. Learned counsel appearing for the defendant presses his application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (CPC) seeking vacation of the *ex parte ad interim* injunction granted vide order dated 11.12.2025, and he contends that the *ex parte* injunction was granted, which is *de hors* the provisions of Sections 4 and 19 of the Designs Act, 2000 (Act).

2. The plaintiff claims to be the registered proprietor of Design Class 07-02 in respect of the article "Casserole", registered on 09.08.2019 and valid till 09.08.2029 (suit design). It also claims copyright in the floral artwork printed on its casserole. According to the plaintiff, it came across the

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defendant's casserole in the third week of July 2025 and issued a cease-and-desist notice on 22.07.2025, to which the defendant sent replies dated 31.07.2025 and 19.08.2025.

3. The plaintiff instituted a suit, being CS(COMM) 1001/2025, before the District Judge (Commercial)-05, West, Tis Hazari Courts, Delhi (Commercial Court), seeking permanent injunction against infringement of the suit design and of copyright, passing off, damages and delivery up. *Vide* order dated 11.12.2025, the learned Commercial Court granted an *ex parte ad interim* injunction in favour of the plaintiff, *inter alia*, observing as under:

> *"21. Plaintiff has filed photographs of its products along with those of impugned products being sold by defendant. A comparison of the plaintiff's registered design and artistic work with those used by the defendant shows, prima facie, that the impugned design, colour arrangement and artwork adopted by defendant are substantially identical to plaintiff's registered design and associated artistic work. … These acts, on the face of the record, amount to infringement as well as passing off, as the visual similarity is likely to mislead or confuse the public.*
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> *xxx xxx xxx*
>
> *… Till the next date of hearing, the defendant/its proprietors/ partners/ agents/ representatives/ distributors/ assigns/heirs/successors/stockists and all persons acting for or on its behalf are restrained from soliciting, importing, exporting, manufacturing, marketing, selling, displaying, advertising or otherwise dealing in any manner with products bearing the impugned design or any design that is deceptively similar to that of plaintiff."*

4. According to learned counsel for the defendant, the plaintiff is registered for a design with the novelty of shape and configuration. He has pointed out from the documents that almost similar design is being used by various other people. In this regard, he relies upon eight design registrations of third parties with filing dates between 26.05.2003 and 22.07.2019, images of porcelain tureens of the 18th and 19th centuries published by various

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museums, a listing of a bowl on www.etsy.com bearing reviews dated 16.11.2009, and listings of casseroles on www.amazon.in and of M/s Rishabh Plastic Products LLP. He further contends that the plaintiff's design, if considered in the right perspective, would not indicate any novelty, and that the design in question is not significantly distinguishable from known designs or combination of known designs. Its features, according to him, are dictated by function.

5. Learned counsel for the defendant also contends that the plaintiff has applied whitener to the registration certificate filed at pages 8 to 12 of its documents, to conceal that the registration is colour-specific, depicting pink, green and yellow colours, and that the plaintiff has suppressed the existence of prior published designs. On this basis, it is urged that the plaintiff has approached the Court with unclean hands. It is also contended that the defendant's product is plain and utilitarian, unlike the plaintiff's ornamented product, that the floral artwork is generic, and that no case of passing off is made out.

6. The submissions are opposed by learned counsel appearing for the plaintiff. He contends that his application under Order XXXIX Rules 1 and 2 of CPC is pending for adjudication and he has no difficulty in arguing the same. He, however, contends that the interim order passed by the Court records adequate reasons and the submission made by the defendant that the design in question is not significantly distinguishable is the subject matter of the trial. He denies the allegation of tampering and submits that the registration claims novelty in "shape and configuration", the representations are in greyscale, and the original certificate is being produced.

7. It is further submitted that the material relied upon by the defendant is

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either undated, unrelated to the suit design or, as in the case of the registrations of M/s Rishabh Plastic Products LLP dated 08.10.2020, subsequent to the suit design. He, therefore, contends that at least at this stage, the injunction may not be required to be vacated as the same is bound to cause grave prejudice to the plaintiff.

8. Having heard learned counsel appearing for the parties, it is first necessary to notice the scope of an application under Order XXXIX Rule 4 of CPC. The provision reads as under:

> *"4. Order for injunction may be discharged, varied or set aside.— Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:*
>
> *Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:*
>
> *Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party."*

9. Since the order dated 11.12.2025 was passed *ex parte*, the second proviso does not come in the way of the defendant. A party aggrieved by an *ex parte* order has a choice of remedies. In ***A. Venkatasubbiah Naidu v. S. Chellappan***,[1] the Supreme Court held as under:

> *"13. … The choice is for the party affected by the order either to move the appellate Court or to approach the same Court which passed the ex parte order for any relief."*

[1](2000) 7 SCC 695.

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10. In an intellectual property suit, the Court, while considering an application under Order XXXIX Rule 4 of CPC, has to examine both the aspect of infringement and whether the defendant has raised a credible challenge to the validity of the registration. A Division Bench of this Court in ***Mold Tek Packaging Limited v. Pronton Plast Pack Pvt. Ltd***.[2] observed thus:

> *"57. As such, the learned Commercial Court has not examined either of the two aspects which were required to be kept in mind while considering the respondent's application under Order XXXIX Rule 4 of the CPC.*
>
> *58. Mr. Mehta is correct in his contention that, without considering either of these aspects, the learned Commercial Court could not have vacated the existing ad interim injunction dated 20 December 2023."*

11. The well-settled test for interim relief also governs the question whether an *ad interim* order should continue. In ***Dalpat Kumar v. Prahlad Singh***,[3] the Supreme Court held as under:

> *"5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. … Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief … The third condition also is that "the balance of convenience" must be in favour of granting injunction. …"*

12. Thus, an *ex parte ad interim* injunction may be vacated under Order XXXIX Rule 4 of CPC where the requirements of Order XXXIX Rule 3 of CPC have not been complied with, where the order has been obtained by a

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[2]FAO (COMM) 114/2024, decided on 11.07.2025 (DB).
[3](1992) 1 SCC 719.

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knowingly false or misleading statement or by suppression of material facts, or where, on the material placed by the defendant, the plaintiff's *prima facie* case, balance of convenience and irreparable injury no longer support the order.

13. The defendant, in the present case, does not allege non-compliance with Order XXXIX Rule 3 of CPC. The other two grounds may now be examined, keeping in mind that the plaintiff's application under Order XXXIX Rules 1 and 2 of CPC is yet to be heard, and any finding at this stage is necessarily tentative.

14. It is settled that a litigant who approaches the Court must come with clean hands. In ***S.P. Chengalvaraya Naidu v. Jagannath***,[4] the Supreme Court held as under:

> *"5. … The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. … We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."*

15. The first proviso to Rule 4, however, requires the Court to be satisfied that the party has *knowingly* made a false or misleading statement in relation to a *material particular*. The allegation of tampering is denied by the plaintiff, which has stated that the registration claims novelty in shape and configuration and has offered to produce the original certificate. The defendant has relied only on the copy filed by the plaintiff, and has not placed on record any certified copy of the registration or the record of the Design Office to show that the registration is colour-specific.

16. On rival affidavits, this Court is unable, at this stage, to hold that the

[4](1994) 1 SCC 1.

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first proviso is attracted. The exact scope of the registration is, nonetheless, relevant to infringement, and is left open to be examined at the hearing of the application under Order XXXIX Rules 1 and 2 of CPC.

17. As regards the alleged suppression of prior published designs, the material relied upon was, as stated in the application itself, found by the defendant during its own due diligence. It has not been shown that this material was within the knowledge of the plaintiff when the suit was instituted. Whether it shows a lack of novelty is a question going to the challenge under Sections 4 and 19 of the Act, and its non-disclosure, by itself, cannot be treated as suppression of a material fact.

18. Additionally, section 4 of the Act prohibits the registration of a design which is not new or original, which has been disclosed to the public prior to the filing date, or which is not significantly distinguishable from known designs or combination of known designs. Section 19 permits cancellation of a registration on these and other grounds. Section 22(3) of the Act makes these grounds available to the defendant as a defence. It reads as under:

> *"(3) In any suit or any other proceeding for relief under sub-section (2), every ground on which the registration of a design may be cancelled under section 19 shall be available as a ground of defence."*

19. At the interim stage, the Court does not decide whether the registration is liable to be cancelled, but only whether the defendant has raised a credible challenge to it. Where such a challenge is made out, an *ex parte* injunction may be vacated under Order XXXIX Rule 4 of CPC. This was done by this Court in ***Novamax Industries LLP v. Prem Appliances***,[5] where the following observations were made:

> *"25. In that view of the matter, it is not necessary for me to enter into other*

[5]CS(COMM) 177/2021, order dated 16.01.2023.

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> *aspects of the controversy. At the very least, Defendant 1 has been able to make out a credible challenge to the vulnerability of the suit design to cancellation within the meaning of Section 19(1)(b) of the Designs Act. The said ground is, therefore, validly available as a ground of defence to Defendant 1 by way of Section 22(3) of the Designs Act and, prima facie, has merit.*
>
> *26. The plaintiff cannot, therefore, be said, on the face of the material on record, to have a prima facie case in its favour, as would justify continuance of the ad interim order dated 16th April 2021 any further."*

20. The standard of a credible challenge has been explained by this Court in ***FMC Corporation v. Best Crop Science LLP***,[6] in the context of the Patents Act, 1970, in the following words:

> *"19. Thus, the challenge, posed by the defendant to the validity of the plaintiffs patent need not be such as to demonstrate, conclusively, the invalidity thereof. It is sufficient if the defendant is able to make out a case of the suit patent being vulnerable to revocation under the Patents Act. This vulnerability has, however, to be demonstrated by way of a credible challenge. The onus would be on the defendant, therefore, to establish the credibility of the challenge raised by it. The challenge cannot be incredible, fanciful, or moonshine. …"*

21. In the context of designs, the Supreme Court in ***Bharat Glass Tube Limited v. Gopal Glass Works Limited,***[7] has held that the burden to show lack of novelty lies on the party alleging it, and that the comparison must be of the design as applied to the article. The relevant observations read as under:

> *". … In this connection, the burden was on the complainant to show that the design was not original or new. … The expression, "new or original" appearing in Section 4 means that the design which has been registered has not been published anywhere or it has been made known to the public. … Therefore, both the things are required to go together, i.e. the design and the design which is to be applied to an article.*
>
> *41. … One has to be very cautious unless two articles are simultaneously produced the Court then alone the Court will be able to appreciate. …"*

[6](2021) 87 PTC 217.
[7](2008) 10 SCC 657.

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22. Tested on these principles, the images of 18th and 19th century porcelain tureens only show the general form of a covered vessel with a lid, knob and handles. The plaintiff does not claim a monopoly over that idea, but over a particular shape and configuration of a casserole. Whether that particular shape and configuration is disclosed in these historical articles cannot be decided from reproductions of museum images without a feature-by-feature comparison. The listing on www.etsy.com is described in the application itself as a soup or cereal bowl, and the date of 16.11.2009 is the date of the reviews on the seller's page and not, by itself, of that listing. The listings on www.amazon.in are undated, and the registrations of M/s Rishabh Plastic Products LLP, filed on 08.10.2020, are subsequent to the suit design.

23. That leaves the eight design registrations of third parties filed between 26.05.2003 and 22.07.2019, which, on their face, precede the suit design. The defendant has itself described them as designs "with minor and inconsequential changes in features or shape or configuration or aesthetics", while the plaintiff contends that none of their features is common to the suit design. Whether any of them anticipates the suit design, or renders it not significantly distinguishable from known designs within the meaning of Section 4(c) of the Act, requires a comparison of the registered representations, which is a matter for consideration at the hearing of the application under Order XXXIX Rules 1 and 2 of CPC. Similarly, the plea that the features of the suit design are dictated by function cannot be accepted merely on the assertion made in the application.

24. The present case is, therefore, distinguishable from ***Novamax*** (supra), where prior publication was established from the plaintiff's own website and

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invoices, and was not disputed. Here, the material relied upon is that of third parties, its authenticity and dates are disputed, and its effect on the novelty of the suit design depends upon a detailed comparison.

25. The design for which the plaintiff is registered and the one which is being used by the defendant, though, has almost similar configuration. The defendant has itself stated in paragraph 42 of its application that "the functional skeleton of both products may be similar". Its case that its product is plain, while the plaintiff's product derives its identity from ornamentation, is disputed by the plaintiff on the basis of the comparative images on record. The claims of the plaintiff for infringement of copyright in the floral artwork and for passing off are, in any case, independent causes of action, which are not affected by the challenge under Sections 4 and 19 of the Act.

26. On balance of convenience, the Supreme Court in ***Wander Ltd. v. Antox India P. Ltd.***[8] held as under:

> *"9. … The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience lies". …"*

27. Apart from a bare statement in paragraph 70 of the application that the order is causing serious prejudice to it, the defendant has not placed any material, such as the extent of its sales of the impugned product, to show the nature of that prejudice. The *ex parte* order has been in operation since 11.12.2025, and the plaintiff's application under Order XXXIX Rules 1 and 2 of CPC is to be taken up shortly. Vacating the order at this stage on a tentative view would not be in the interest of justice.

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[8] 1990 Supp SCC 727.

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28. In view of the above, the Court finds that the matter requires further consideration. Whether the plaintiff is protected and is entitled to take the benefit of registration on the anvil of the provisions of Sections 4 and 19 of the Act is concerned, all those issues will have to be gone into at the stage of deciding the application under Order XXXIX Rules 1 and 2 of CPC.

29. The Court, at this stage, does not find it appropriate to vacate the interim protection and instead directs listing of the application under Order XXXIX Rules 1 and 2 of CPC. The observations made hereinabove are *prima facie* and shall not affect the adjudication of the said application. All contentions of the parties are left open.

30. Accordingly, I.A. 12420/2026 stands disposed of.

31. I.A. 12421/2026 is posted for consideration on 23.11.2026

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 29, 2026/P/NK

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