IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

&

HON'BLE SHRI JUSTICE JAI KUMAR PILLAI

ON THE 24th OF SEPTEMBER, 2026

MISC. PETITION No. 4795 of 2026

PUSHPA MASALA (JAIN KA PUSHPA MASALA) THROUGH ITS PROPRIETOR SHRI PUSHPENDRA KUMAR JAIN

Versus

PUSHP BRAND INDIA LIMITED THROUGH ITS AUTHORISED SIGNATORY MR. SARAN SINGH

Appearance:

Shri Siddharth Shukla, learned counsel through VC alongwith Shri Sagar Chaubey, learned counsel for the petitioner.

Ms.Mamta Dembla, learned counsel for the respondent.

ORDER

Per. Justice Subodh Abhyankar

This Miscellaneous Petition has been filed by the petitioner/defendant Pushpa Masala *(Jain Ka Pushpa Masala*) against the ex-parte interim injunction order dated 22.06.2026, passed in Commercial Suit Case No.COMMS/75/2026 passed by the Commercial Court (District Judge Level) Indore, whereby, in a suit filed by the respondent/plaintiff for permanent injunction for alleged infringement of their registered trade mark *Pushpa Masala* and *Pushpa Powder,* in an application under Order 39 Rule 3 of CPC, an ex-parte interim injunction has been passed granting various interim reliefs, including seizure of the goods of the defendants and appointment of a local commissioner.

2. In brief, the facts of the case are that the plaintiff filed a civil suit for permanent injunction against the defendant, seeking the following reliefs:-

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63.1. That, the Defendants by themselves, through their agents, servants, stockists, dealers and /or distributors, exporters, assignees of any other person claiming through the Defendants be restrained by order and decree of permanent injunction of this Hon'ble Court from infringing the Plaintiff's registered Trade Marks titled as "PUSHP BRAND CHILLI POWDER (Patna Quality) (LABEL)" and "PUSHP BRAND CORIANDER POWDER (LABEL)" bearing Trademark nos. 838365 (P-3), 4628787 (B-5) and 4630537 (P-6) registered in Class 30 as annexed in Annexure P-3, P-5 and P-6, by using the impugned label/artwork, same and similar artwork or trade mark in any manner whatsoever.

63.2 That, the Defendants by themselves, through their agents, servants, stockists, dealers and /or distributors, exporters, assignees or any other person claiming through the Defendants be restrained by order and decree of permanent injunction of this Hon'ble Court from infringing the Plaintiff's registered Copyright in artistic works titled as "PUSHP BRAND CHILLI POWDER (Patna Quality) (LABEL)" and "PUSHP BRAND CORIANDER POWDER (LABEL)" protected under Search Certificate Nos. TMR-CC.No. 103259 and 103312, Copyright Registration Nos. A-140042/2021 and A-140050/2021 as annexed in Annexure P-9, P-10, P-11 and P-12 by using the impugned artwork as annexed in Annexure P-29 and P-30 respectively to the List of Documents, same and similar artwork, so as to infringe the copyright of the Plaintiff in any manner whatsoever.

63.3 That, the Defendants by themselves, through their agents, Servants, stockists, dealers and /or distributors, exporters, assignees or any other person claiming through the Defendants be restrained by order and decree of permanent injunction of this Hon'ble Court from using the label as shown in Annexure P-29 and P-30 respectively to the List of Documents and /or any other deceptively similar labeV/art work comprising of all essential and memorable features of Plaintiff's other art work and/or label mark, 80 as to pass off or enable others to pass off the Defendants goods/product as and for that of the Plaintiff.

63.4 That, the defendants be ordered anddecreed to pay to the plaintiff a sum of Rs.5,00,00,000/- or such other sum as this Hon'ble Court may deem fit and proper as and by way of damages for the acts of infringement of Trade Mark, infringement of Copyright and Passing Off or in the alternative the Defendants be ordered and decreed to render true and faithful account of the profits made by him by using the impugned word mark, artwork and/or impugned label and/or impugned packaging and be further ordered and decreed to pay to the Plaintiff such amount as may be found due on such account being taken.

63.5 That, pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to appoint any Advocate/s and or any other person/s as a Court Receiver under Order XL, Rule 1 and/or Court Commissioner under XXVI, Rule 9 with all powers under Order XXXIX, Rule 7 of Code of Civil Procedure, 1908 to take control and possession of entire stock of the impugned goods and packaging bearing impugned artistic work / label mark as shown in Annexure P-29 and P-30 to the List of Documents lying with Defendants or any other persons having possession or control of the impugned goods bearing impugned artistic works as shown in Annexure P-29 and P-30 to the List of Documents and/or any other packaging material or goods bearing deceptively similar artistic work or trade mark to the Plaintiffs registered artistic work or trade mark as shown in Annexure P-5 and P-6 and Annexure P-11 and P-12 respectively to the List of Documents.

63.6. That, pending the hearing and final disposal of the suit the Defendants by themselves, through their agents, servants, stockists, dealers and /or distributors, exporters, assignees or any other person claiming through the Defendants be restrained by order of temporary injunction of this Hon'ble Court from using the label as shown in Annexure P-29 and P-30 to the List of Documents and /or any other deceptively similar label / art work comprising of all essential and memorable features of Plaintiff's registered art work and/or label mark as shown in Annexure P-5 & P-6 and Annexure P-11 & P-12 respectively to the List of Documents so as to pass off or enable others to pass off the Defendants goods/product as and for that of the Plaintiff.

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63.7. That, the Defendants be ordered and directed to deliver up to the Plaintiff for destruction of the Defendants' goods, articles, dies, moulds, plates, bags, sachets, labels, cartons, tubes, strips, advertising material, packing material, blocks, stickers, other literature and things bearing the impugned word mark, artwork and/or impugned packaging as shown in Annexure P-29 and P-30 respectively to the List of Documents or any other deceptively similar trade mark or label or packaging or artwork.

63.8, for ad-interim reliefs in terms of prayers 63(1) to 63(10) above.

63.9. for costs of the suit.

63.10. for such further and other reliefs as the nature and circumstances of the case may require.

3. Apparently, the dispute relates to intellectual property rights of the petitioner/defendant, being the sole proprietorship concern having its trade mark in the name and style of ***Jain Ka Pushpa Masala***, whereas, the plaintiff is engaged in the same business of spices under the trademark ***Pushp Brand,*** thus, the plaintiff has filed the suit seeking aforesaid reliefs, in which an application under Order 39 Rule 3 of CPC was also filed, which has been allowed by the Commercial Court vide the impugned order dated 22.06.2026, directing inter alia that a local commissioner be appointed and all the products of the defendants shall be seized and no selling and marketing of the products would be allowed.

4. Learned counsel for the petitioner has submitted that the learned Judge of the Commercial Court has erred in passing the ex-parte orders without even assigning the reasons for issuance of such drastic ex-parte order. It is also submitted that the entire material of the petitioner has been seized without affording any opportunity of hearing. It is also submitted that even as per the mandate of Rule 3A, which provides that where an application for temporary ex-parte injunction has been allowed, in that case also the application could not have been disposed of, as it was to be disposed of within 30 days from the date on which the injunction was granted, and it is also provided that where the court is not able to decide the application within 30 days, it shall record its reasoning for the same.

5. Learned counsel for the petitioner has drawn the attention of this Court to the impugned order wherein the application itself has been disposed of on 22.06.2026, whereas, the next date given is 18.08.2026 i.e., after 57 days. Thus, it is submitted that there is a serious error in following the mandate of CPC, which has caused serious prejudice to the petitioner.

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6. Learned counsel for the petitioner has further relied upon the decision rendered by this court in the case of **M/s Nyra Chocolates Pvt. Ltd Vs. M/s Suncrest Food Makres and Ors passed in MA No.5097/2026** decided on 13.07.2026. Thus, it is prayed that the petition deserves to be allowed.

7. On the other hand, learned counsel for the respondent has opposed the prayer and submitted that the petition itself is not maintainable as only an appeal lies against an order passed under Or.39 rule 3 of C.P.C, as has been held by the Supreme Court in the case of ***A. Venkatasubbiah Naidu Vs. S.Chellappan and Ors*** reported as **(2000) 7 SCC 695**. Learned counsel for the respondent has also submitted that no case for interference is made out, as the learned Judge of the Commercial Court has rightly passed the order relying upon the decision rendered by the Delhi High Court in the case of **Shaw Wallace and Co.Ltd and Anor. Vs. Superior Industries Ltd., reported in 2003 (27) PTC 63 (Del)** as also in the case of **Munish Kumar Singla Trading Vs. Jolibee Foods Corporation, passed in FAO No.458/2017**.

8. Learned counsel for the respondent has also relied on the decisions in the cases of **M/s Garment Craft Vs. Prakash Chand Goel passed in SLP No.13941/2021, Wander Ltd. Vs. Antox India reported in 1990 Supp (1) SCC 727, ITC Ltd Vs. Pravin Kumar and Ors passed in COM No.12/2025, Laxmikan V. Patel Vs. Chetanbhai Shah and Arn reported in (2002) 3 SCC 65, Shaw Wallace and Co Ltd Vs. Superior Industries Ltd reported in (2003) 27 PTC 63 (Del), Cadila Healthcare Ltd Vs. Cadila Pharmaceuticals Ltd reported in (2001) 5 SCC 73, Midas Hygiene Industries Vs. Sudhir Bhatia and Ors reported in (2004) 3 SCC 90 and Yamini Manohar Vs. TKD Keerthi passed in SLP Diary No.32275/2023**.

9. Heard, learned counsel for the parties and perused the record. So far as the maintainability of the petition is concerned, in the case of **A.Venkatasubbiah Naidu** (supra) it has been held as under:-

> **18.** Nonetheless, we have to consider the consequence, if any, on account of the court failing to pass the final orders within thirty days as enjoined by Rule 3-A.
>
> **19.** The aforesaid Rule casts a three-pronged protection to the party against whom the ex parte injunction order was passed. First is the legal obligation that the court shall make an endeavour to finally dispose of the application of injunction within the period of thirty

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days. Second is, the legal obligation that if for any valid reasons the court could not finally dispose of the application within the aforesaid time the court has to record the reasons thereof in writing.

20. What would happen if a court does not do either of the courses? We have to bear in mind that in such a case the court would have bypassed the three protective humps which the legislature has provided for the safety of the person against whom the order was passed without affording him an opportunity to have a say in the matter. First is that the court is obliged to give him notice before passing the order. It is only by way of a very exceptional contingency that the court is empowered to bypass the said protective measure. Second is the statutory obligation cast on the court to pass final orders on the application within the period of thirty days. Here also it is only in very exceptional cases that the court can bypass such a rule in which cases the legislature mandates on the court to have adequate reasons for such bypassing and to record those reasons in writing. If that hump is also bypassed by the court it is difficult to hold that the party affected by the order should necessarily be the sole sufferer.

21. It is the acknowledged position of law that no party can be forced to suffer for the inaction of the court or its omissions to act according to the procedure established by law. Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2-A, 4 or 10 of Order 39 of the Code in terms of Order 43 Rule 1 of the Code. He cannot approach the appellate or revisional court during the pendency of the application for grant or vacation of temporary injunction.In such circumstances the party which does not get justice due to the inaction of the court in following the mandate of law must have a remedy. *So we are of the view that in a case where the mandate of Order 39 Rule 3-A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force.*In such appeal, if preferred, the appellate court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate court in complying with the provisions of Rule 3-A. **In appropriate cases the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule**.

22. Now what remains is the question whether the High Court should have entertained the petition under Article 227 of the Constitution when the party had two other alternative remedies. Though no hurdle can be put against the exercise of the constitutional powers of the High Court it is a well-recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy. Learned Single Judge need not have entertained the revision petition at all and the party affected by the interim ex parte order should have been directed to resort to one of the other remedies. Be that as it may, now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition.

23. In the light of the direction issued by the High Court that the trial court should pass final orders on the interlocutory application filed by the plaintiff on merits and in accordance with law, we may further add that till such orders are passed by the trial court, status quo as it prevailed immediately preceding the institution of the suit would be maintained by the parties.

10. It is apparent from the aforesaid decision that under the normal circumstances, the aggrieved party can prefer an appeal only against the order under Rule 1, 2, 2-A, 4 and 10 of Order 39 of CPC in terms of Order 43 Rule 1 of CPC. However, it has also been held that even in the cases in which the mandate

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of Order 39 Rule 3A of CPC has been flouted, the aggrieved party shall be entitled to the right of appeal even if, in the case of pendency of application for grant or vacation of temporary injunction against the order remaining in force. Thus, there is no doubt that the petitioner ought to have filed an appeal against the impugned order. However, we also find that there is no point in relegating the petitioner to file an appeal when the appeal itself is required to be heard by this Division Bench only as provided under section 5 r/w.13 (1)(A) of the Commercial Courts Act 2015 and as per the Roster assignment, which provide for hearing of the appeal against the order passed by the Commercial Court by the Division Bench of this Court only. Otherwise also, we are at pains to observe that this is not the first such case coming before us in which such an ex-parte injunction order has been passed; we find that the learned judge of the Commercial Court is repeatedly passing such *copy-paste* orders in a literally mechanical manner without even properly appreciating facts on record; hence, we are required to consider this matter while exercising our supervisory jurisdiction as well. In this regard, we may refer to the order passed by this Court in the case of ***Ms.Nyra*** (supra), in whichan almost identical order was passed by the same learned Judge of the Commercial Court, and this Court had these observations to make :-

> "5] After hearing Shri Munshi at length, we are of the considered opinion that the appellant was required to file a response to the application in the Trial Court itself, which is also specifically provided under Rule 3 and 3A of Order 39, which reads as under ;-
>
> ORDER XXXIX
>
> TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS
>
> Temporary Injunctions
>
> 3. Before granting injunction, Court to direct notice to opposite party.—The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:
>
> [Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant—
>
> (a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with—
>
> (i) a copy of the affidavit filed in support of the application;
>
> (ii) a copy of the plaint; and

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(iii) copies of documents on which the applicant, relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.]"

[3A. Court to dispose of application for injunction within thirty days.—Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.]

(Emphasis Supplied in original)

6] In the light of the aforesaid provision when we see the impugned order, it is found that there is no observation made by the learned Judge as to why it would be necessary to grant injunction without giving notice to the opposite party, and the application has also been disposed of, despite the fact that it should not have been so disposed of without allowing the other party to file its objection, as the order passed under Rule 3 is purely ad-interim in nature.

7] A perusal of the aforesaid Rule 3A would also reveal that the Trial Court is required to hear the other party within thirty days from the date of the order of ex-parte interim injunction and pass the order on the application for temporary injunction, and if the order could not be passed within the aforesaid period of time, then reasons have also to be assigned for the same. Thus, it was also incumbent upon the appellants to submit their reply to the application for interim injunction in the Civil Court itself, however, instead of filing their reply in the Civil Court, they have directly approached this Court assailing the interim order, which, in the considered opinion of this Court is not the correct approach.

8] We are also rather surprised to see that after passing the impugned order on 02.06.2026, the trial Court has fixed 13.07.2026 as the next date of hearing in the trial court, i.e., after more than one month from the date of interim order, which is also not in accordance with Rule 3A, and cannot be countenanced."

(Emphasis Supplied)

11. It is also found that admittedly the order was passed on 22.06.2026, by *disposing of the application*, and the next date of hearing was 18.08.2026, i.e. after 57 Days, which is also contrary to Rule 3A, which prescribes that the application is to be decided within thirty days from the date on which the injunction was granted.

12. Although the Supreme Court in the case of **A.Venkatasubbiah Naidu** (supra) has also advised the appellate courts to take strict action against the erring officer of the trial court. However, for the present we are refraining from passing any order for reflecting of the same in the ACR of the officer, as this aspect of the matter can be dealt with on the administrative side.

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13. Be that as it may, we are of the considered opinion that such an approach is totally impermissible and unacceptable for a judicial officer while passing an *ex-parte* order of injunction.

14. Accordingly, tested on the anvil of the mandate of Order 29 Rule 3 and 3A, as also the aforesaid decision of the Supreme Court in the case of **A.Venkatasubbiah Naidu** (supra), the impugned *ex-parte* order of injunction dated 22.06.2026 is liable to be and is hereby set aside. The present petition stands allowed.

(SUBODH ABHYANKAR)
JUDGE

(JAI KUMAR PILLAI)
JUDGE

Sourabh

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