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

% *Date of Decision: 09th May, 2022*

+ **CM(M)-IPD 12/2022**

LUMAX INDUSTRIES LIMITED & ORS. Petitioners
Through: Mr. Jayant Mehta, Senior Advocate
with Mr. Tejveer Singh Bhatia and Mr. Rohan
Swarup, Advocates.
versus
HINDUSTAN AUTO INDUSTRIES Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

JYOTI SINGH, J. (ORAL)



CM APPL. 49/2022 & 50/2022(exemptions)

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

CM(M)-IPD 12/2022 & CM APPL. 46-48/2022

3. Petitioners herein were Plaintiffs before the learned Trial Court and Respondent herein was the Defendant. Parties are hereinafter being referred to as per their litigating status before this Court.

4. Petitioners filed suit bearing CS(COMM) 311/2021, seeking to restrain the Respondent from infringing and passing off Petitioners'

trademark "LUMAX" and device marks  and  and the same is pending adjudication before the learned Trial Court.

5. It is averred in the petition that the suit was listed on various dates

before the learned Trial Court where, for one reason or the other, while summons were issued, applications filed under Order 39 Rules 1 and 2 CPC for *ex parte ad interim* injunction and under Order 26 Rule 9 read with Order 39 Rule 7 CPC for appointment of Local Commissioner were not being heard.

6. On 15.11.2021, which is one of the orders impugned before this Court, learned Trial Court issued summons and the matter was thereafter listed on 18.12.2021. Petitioners moved an application under Section 151 CPC on 11.12.2021 before the learned Trial Court seeking appropriate directions in terms of the liberty granted to them *vide* order dated 15.11.2021 and prayed for deciding the applications under Order 39 Rules 1 and 2 CPC and for appointment of Local Commissioner, prior to issuance of notices on the applications and summons being issued to the Respondent, on the ground that in case the summons are served, the purpose of filing the applications for appointment of Local Commissioner as well as for *ex parte ad interim* injunction will be defeated.

7. It is the case of the Petitioners that on the next date of hearing, i.e. 18.12.2021, the matter was adjourned to 22.12.2021 for further arguments. Petitioners apprised the Court of the application filed for appropriate directions, however, due to paucity of time, detailed arguments were not heard and the matter was adjourned. On 23.12.2021, the next date before the Court, the matter was again adjourned to 12.01.2022 for arguments on the application under Section 151 CPC.

8. It is further averred that when the matter was listed on 12.01.2022, previous order sheet dated 15.11.2021 was not available on the Court file and the Registry was directed to place the same on record. Matter was

adjourned to 28.01.2022, for further arguments on the application under Section 151 CPC.

9. It is further averred that detailed arguments were subsequently heard on the application under Section 151 CPC on 28.01.2022 and the matter was thereafter adjourned to 19.02.2022 for further arguments, on which date the application was heard at length, though the matter was simply adjourned to 22.02.2022 for conclusion of arguments on the said application.

10. It is further averred that on 22.02.2022, Petitioners submitted before the learned Trial Court that the two pending applications, i.e. under Order 39 Rules 1 and 2 CPC and for appointment of Local Commissioner, be decided, and also filed a compilation of judgments, as directed by the learned Trial Court. However, the matter was heard in part and thereafter adjourned to 28.02.2022, for conclusion of the arguments.

11. It is averred that thereafter, the matter was listed 'for orders' on the pending applications but the same was not passed on subsequent dates and on 23.04.2022, by way of the impugned order, learned Trial Court again issued summons and notice in the applications.

12. Be it noted that the matter was listed before this Court on 06.05.2022, when the Court directed the Petitioners to place on record the order dated 30.04.2022, whereby fresh summons and notice in the applications were issued and the matter was listed before the learned Trial Court for today, i.e. on 09.05.2022.

13. Order dated 30.04.2022 has been placed on record and reflects that by the said order, learned Trial Court had issued fresh summons in the suit and notice in the applications under Order 39 Rules 1 and 2 CPC and for

appointment of Local Commissioner, returnable on 09.05.2022. Petitioners were directed to take steps within a period of two days.

14. The affidavit filed by Petitioners indicates that the Respondent is unserved till date, which is apparently for the reason that despite the order of learned Trial Court dated 30.04.2022, Petitioners have not taken any steps as directed. While this Court deprecates the non-compliance of the Court order by the Petitioners in not taking steps to serve the Respondent, however, considering the fact that several dates have passed and till date, for one reason or the other, Respondent is unserved, this Court deems it fit to request the learned Trial Court to hear the two applications before the summons in the suit and notice in the applications are served on the Respondent.

15. Accordingly, the learned Trial Court is requested to take up the application under Order 39 Rules 1 and 2 CPC for *ex parte ad interim* injunction as well as application for appointment of Local Commissioner tomorrow, i.e. on 10.05.2022.

16. In view of the above, petition is allowed and disposed of. Pending applications also stand disposed of.

17. It is made clear that this Court has not expressed any opinion on the merits of the case and the learned Trial Court shall decide the applications independent of any observations or narrative of facts given in the present order, which are limited to the disposal of the present petition.

18. *Dasti*, to the learned counsel appearing on behalf of the Petitioners.

JYOTI SINGH, J

MAY 09, 2022/st