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

+ **CS(COMM) 914/2024 & I.A. Nos. 42746/2024, 42747/2024, 42748/2024, 42749/2024, 42750/2024, 42751/2024 & 42752/2024**

PHONEPE PRIVATE LIMITED

.....Plaintiff

Through: Mr. Sidharth Chopra, Mr. Nitin Sharma, Ms. Shilpa Gupta, Ms. Deepika Pokharia, Mr. Naman Tandon, Advocates (M:9811289656)

versus

M/S JAI SHREE BALAJI FOODS & ANR.

.....Defendants

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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21.10.2024

I.A. No. 42750/2024 (Exemption from filing certified clearer/ typed copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiff, seeking exemption from filing original documents/certified copies/ translated copies of annexures/documents/documents with improper margins and seeking permission to file dim documents, along with supporting affidavit.
2. Exemption is granted, subject to all just exceptions.
3. Plaintiff shall file original, clearer, and translated copies of the documents, on which the plaintiff may seek to place reliance, before the next date of hearing.
4. Accordingly, the present application is disposed of.

I.A. No. 42751/2024 (Exemption from advance service to the



defendants)

5. The present is an application under Rule 22 of Delhi High Court Intellectual Property Rights Division Rules, 2022, read with Section 151 CPC, seeking exemption from advance service to the defendants.

6. The plaintiff seeks urgent interim relief, and has also sought appointment of Local Commissioners. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants, is granted.

7. For the reasons stated in the application, the same is allowed and disposed of.

I.A. No. 42749/2024 (Exemption from instituting Pre-Institution Mediation)

8. The present is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of CPC, seeking exemption from undergoing Pre-Institution Mediation.

9. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of *Yamini Manohar Versus T.K.D. Keerthi*, 2023 SCC OnLine SC 1382, and Division Bench of this Court in *Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd.*, 2022 SCC OnLine Del 3529, exemption from attempting Pre-Institution Mediation, is granted.

10. Accordingly, the application stands disposed of.

I.A. No. 42748/2024 (Application seeking leave to file additional documents)

11. This is an application under Order XI Rule 1(4) read with Section 151 CPC, as amended by the Commercial Courts Act, 2015, seeking leave to file



additional documents.

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

13. The application is disposed of, with the aforesaid directions.

I.A. No. 42752/2024 (seeking leave to file videos in a pen drive)

14. The present application has been filed on behalf of the plaintiff under Section 151 of CPC seeking leave to file videos in a pen drive.

15. In terms of Rule 24 of Chapter-XI of the Delhi High Court (Original Side) Rules, 2018, it is made clear that electronic records can be received in CD/DVD/Medium, encrypted with a hash value. The said Rule is extracted as below:

“24. Reception of electronic evidence - A party seeking to tender any electronic record shall do so in a CD/ DVD/ Medium, encrypted with a hash value, the details of which shall be disclosed in a separate memorandum, signed by the party in the form of an affidavit. This will be tendered along with the encrypted CD/ DVD/ Medium in the Registry. The electronic record in the encrypted CD/ DVD/ Medium will be uploaded on the server of the Court by the Computer Section and kept in an electronic folder which shall be labeled with the cause title, case number and the date of document uploaded on the server. Thereafter, the encrypted CD/ DVD/ Medium will be returned to the party on the condition that it shall be produced at the time of admission/denial of the documents and as and when directed by the Court/ Registrar. The memorandum disclosing the hash value shall be separately kept by the Registry on the file. The compliance with this rule will not be construed as dispensing with the compliance with any other law for the time being in force including Section 65B of the Indian Evidence Act, 1872.”

16. Accordingly, Registry may receive electronic record in a pen drive, so long as it is encrypted with a hash value or in any other non-editable format. The pen drive, containing the documents, be placed in the electronic record of the present suit.



17. Accordingly, the present application is allowed and the plaintiff is allowed to place the documents in a pen drive.

18. With the aforesaid directions, the present application is disposed of.

CS(COMM) 914/2024

19. Let the plaint be registered as suit.


20. Upon filing of the process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within thirty days from the date of receipt of summons. Along with the written statement, the defendants shall also file affidavit of admission/denial of the plaintiff's documents, without which, the written statement shall not be taken on record.

21. Liberty is given to the plaintiff to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiff, an affidavit of admission/denial of documents of 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 the documents, the same shall be sought and given within the timelines.

22. List before the Joint Registrar (Judicial) for marking of exhibits, on 13th December, 2024.

23. List before the Court on 05th March, 2025.

I.A. No. 42746/2024 (Under Order XXXIX Rules 1 and 2 CPC)

24. The present suit has been filed for permanent injunction restraining infringement of plaintiff's registered trademarks 'PHONEPE' / 




, copyright infringement, acts of passing off, unfair trade practices,



dilution, damages, rendition of accounts, delivery up, etc.

25. It is submitted that the defendants herein have, in the most fraudulent manner, adopted the plaintiff's prior, registered and well-known marks

"PHONEPE"/  in relation to packaged snacks/chips. It is stated that while the defendant no. 1 is engaged in the manufacturing of the said products using the plaintiff's well-known marks, the defendant no. 2 is engaged in the selling and marketing of the impugned products. The said impugned product is depicted herein below:



26. It is submitted that the plaintiff owns and operates the popular online payment services platform under the marks "PhonePe",

, , , , , , etc. The

PhonePe marks were first coined and adopted by the plaintiff in September 2015 and have since been continuously and extensively been used by the



plaintiff. Over the years, the plaintiff has also coined, adopted and registered several formative "PhonePe" marks such as PHONEPE PULSE, PHONEPE



SWITCH, etc. The plaintiff is, thus, the proprietor of "PhonePe" family of marks. It is stated that plaintiff's PhonePe marks are inherently distinctive and owing to their long, open and ubiquitous use, the members of the trade and public associate the said marks solely and exclusively with the plaintiff. The plaintiff has also obtained copyright registration in relation to its original artistic works



27. It is submitted that it is evident from the above, the defendants have not only prominently adopted the plaintiff's well-known marks "PhonePe",



along with an overall distinctive purple colour packaging in relation to the impugned products, but further attempted to portray association/collaboration with the plaintiff through use of a 'mobile phone' device and offering of purported rewards and gifts. Such unauthorized and illegal use by the defendants not only constitutes infringement of plaintiff's registered trademarks, but also results in dilution of the plaintiff's well-known marks and violation of plaintiff's valuable common law rights. Such use and adoption by the defendants is evidently *mala fide*, illegal and aimed at riding upon the immense goodwill enjoyed by the plaintiff's prior, well-known and registered PhonePe marks. Such



conduct of the defendants also results in copyright infringement of the

artistic works  **PhonePe** and .

28. It is submitted that the plaintiff is a leading fintech company and is engaged in offering financial services through its mobile based application, PhonePe, which helps facilitates financial transactions amongst consumers and merchants through online and offline modes like Unified Payment Interface (UPI), Quick Response (QR) code, Point-of-sale (POS) machines, through debit and credit cards, etc. The plaintiff launched its online payment services (through mobile application) under the mark "PhonePe,

, ,  and  **PhonePe**

Phone4 , V and V on

29th August, 2016. The digital wallet & online payment app offered by the plaintiff allows customers to make instant money transfers with UPI, recharge mobile, television subscription, pay utility bills, and buy and invest in Gold, Mutual Funds, Tax Saving Funds, Equity Funds, Debt Funds, Hybrid Funds, and book air/train/bus/movie tickets, purchase insurance premium & more. In fact, the PhonePe app is one app for all types of consumer-to-consumer and consumer-to-merchant payments. It facilitates payments and services in connection with online transactions for products or services concluded on and through the PhonePe App, or any third-party merchant app, website, physical store or any individual both within and outside the PhonePe network.

29. It is submitted that the plaintiff has ever since its incorporation, been expanding the portfolio of goods and services offered under the mark/brand "PHONEPE". It is stated that the brand "PhonePe" is no longer associated



with mere online payment service as the plaintiff through substantial and concerted efforts has forayed into various industries and sectors including insurance, loans, travel etc. under the said mark/brand. It is stated that the plaintiff has recently in April 2023 launched a local commerce app, "Pincode". The plaintiff in August 2023 also launched a Stock Broking platform "Share(dot)Market". It is stated that "Pincode" is an online shopping app for delivery of groceries, medicines, food, etc. with customers across the country. The said app has had over 10 lakhs downloads since its launch. The said app is also prominently featured on the "PhonePe" App. It is, thus, stated the plaintiff's mark/brand "PhonePe" has come to be associated solely and exclusively with the plaintiff regardless of the nature of goods or services.

30. It is submitted that in addition to the aforesaid common law rights, the plaintiff has also secured registration of several PhonePe marks across various classes. A non-exhaustive list of plaintiff's trademarks registrations for the "PhonePe" marks, is as below:





S. No	Trademark	Application No.	Class	User Claim	Status
1.	Phonepe	3221670	09	30/09/2015	Registered
2.	Phonepe	3221671	35	30/09/2015	Registered
3.	Phonepe	3221672	36	30/09/2015	Registered
4.	Phonepe	3221673	38	30/09/2015	Registered
5.	Phonepe	3221674	42	30/09/2015	Registered
6.	Phoneपे	3221685	09	30/09/2015	Registered



7.	Phoneपे	3221686	35	30/09/2015	Registered
8.	Phoneपे	3221687	36	30/09/2015	Registered
9.	Phoneपे	3221688	38	30/09/2015	Registered
10.	Phoneपे	3221689	42	30/09/2015	Registered
11.	PhonePe	3228503	36	30/09/2015	Registered
12.	PhonePe	3228504	38	30/09/2015	Registered
13.	PhonePe	3228505	42	30/09/2015	Registered
14.	PhonePe	3228506	09	30/09/2015	Registered
15.	PhonePe	3228507	35	30/09/2015	Registered
16.	PhonePe	3228508	36	30/09/2015	Registered
17.	PhonePe	3228509	38	30/09/2015	Registered
18.	Phoneपे	3228511	09	30/09/2015	Registered
19.	Phoneपे	3228512	35	30/09/2015	Registered
20.	Phoneपे	3228513	36	30/09/2015	Registered

21.	Phoneपे	3228514	38	30/09/2015	Registered
22.	Phoneपे	3228515	42	30/09/2015	Registered
23.	Phoneपे	3228516	09	30/09/2015	Registered
24.	Phoneपे	3228517	35	30/09/2015	Registered
25.	Phoneपे	3228518	36	30/09/2015	Registered



26.	Phoneपे	3228519	38	30/09/2015	Registered
27.	Phoneपे	3228520	42	30/09/2015	Registered
28.	PhonePe	3228521	09	30/09/2015	Registered
29.	PhonePe	3228522	35	30/09/2015	Registered
30.		3425319	36	30/09/2015	Registered
31.		3425322	09	30/09/2015	Registered
32.		3425325	38	30/09/2015	Registered
33.		3425326	42	30/09/2015	Registered

31. It is submitted that besides the above, the plaintiff has also secured registration of the phonetically similar variants such as “Phonepay”, “Fonpay”, “Fonepe”, “Foneपे”. The plaintiff has also filed various trademark applications for the PhonePe marks, including, several PhonePe formative marks which are pending registration, and the plaintiff reserves its right to place the same on record.



32. It is submitted that the plaintiff has also acquired over 350 domain names, comprising of the mark "PhonePe", to further protect its business interest and brand.

33. It is submitted that the logos





also constitute "original artistic work" belonging to the plaintiff. The said artistic works were commissioned by the plaintiff and all rights in connection with the same are owned by the plaintiff. The plaintiff has also obtained registrations of the following artistic works:

Artistic works	Registration No.
 PhonePe	A-148708/2023
	A-150044/2023.

34. It is submitted that the artistic work comprises in the logo



bears a distinctive purple color and is used extensively in its mobile app, website, advertisement, promotion, printed material, business papers etc. While the rights of the plaintiff are not limited to purple color, the manner of representation is intrinsically linked to the plaintiff.

35. It is submitted that the PhonePe marks signifies and connotes the plaintiff and no one else. Pertinently, a simple search on the internet for the term "PhonePe" directs solely to business/ services of the plaintiff. The reputation, recognition, fame and goodwill of the plaintiff, is quite expansive, and the public indubitably identifies and associates such trade mark exclusively with the plaintiff. The vast reach of its mobile application has further helped in increasing/maintaining its popularity and goodwill. It is




submitted that by virtue of high standards of quality, long standing use, vast promotion along with substantial turnover, the plaintiff's PhonePe marks have come to be exclusively identified with plaintiff and its business alone.

36. It is submitted that the plaintiff and its PhonePe marks are now known not only in fintech space but have also acquired reputation across all sectors on account of their use and reach to masses. It is stated that PhonePe marks have thus, acquired the status of a "well-known mark" within the meaning of Section 2(1)(zg) of the Trade Marks Act, 1999. As such, any use of plaintiff's trademark by any party, regardless of the nature of goods or services, shall invariably result in a likelihood of confusion and/or association with the plaintiff.

37. It is submitted that the PhonePe marks are one of the most valuable assets of the plaintiff and in order to safeguard and protect its rights, the plaintiff has vigorously enforced its rights in the mark PHONEPE against potential infringements, attempts of passing off and dilution through various action including legal notices, civil actions, trademark oppositions and rectifications. The plaintiff is extremely diligent in protecting its rights against and has maintained distinctiveness of its PhonePe marks.

38. It is submitted that recently, the Hon'ble High Court of Calcutta, in a suit titled ***"Phonepe Pvt Ltd vs Aniket Foods And Ors."***, ***CS-COM/654/2024***, passed an order dated 10th April, 2024, granting an ex-parte injunction restraining the defendants therein from selling or manufacturing packaged snacks, namely chips and fryums using plaintiff's trademarks



"PhonePe"/ . It is stated that the said suit was disposed of vide an Order dated 10th May, 2024, in accordance with the terms of settlement



entered between the parties therein.

39. It is submitted that the defendant no. 1, M/s Jai Shree Balaji Foods, is a partnership firm, owned and managed by one, Mr. Sagar Garg. The defendant no. 1 claims to have been engaged in manufacturing and supplying of various types of snacks and fryums since past 2 years. It is stated that the defendant no. 1 is manufacturing and selling packaged snacks using the plaintiff's well-known marks,



. It is submitted that upon a preliminary internet search for defendant no. 1, the plaintiff discovered certain online listings (over third party websites) pertaining to defendant no.1 which mention the GST Registration No. 07AASFJ3366L1ZP.

40. It is submitted that the defendant no. 2, on the other hand, is a proprietorship concern of one, Mr. Rajendran Nair and claims to have been engaged in dealing of various confectionery products manufactured by third-party brands for past 8 years. It is stated that defendant no. 2 is selling impugned products manufactured by the defendant no. 1.

41. It is submitted that in and around the last week of September 2024, the plaintiff learnt that the defendant no. 2 herein is selling packaged snacks using the PhonePe marks. Accordingly, the plaintiff undertook an investigation into the activities of the defendant no. 2 through a private investigator. Upon investigation, it was discovered that the impugned products are being manufactured by the defendant no. 1.

42. It is submitted that the investigator first visited the defendant no.2's premises in New Delhi, where he met the proprietor of the defendant no. 2, Mr. Rajendran Nair and was informed that the said defendant had started

The Order is downloaded from the DHC Server on 27/12/2024 at 03:39:59



44. It is submitted that it is evident from the above that the defendant no. 1 has fraudulently adopted identical marks as that of the plaintiff being well-aware of the goodwill and reputation of the plaintiff's PhonePe marks. In addition to the above, the defendant no. 1 has also adopted an overall distinctive purple color packaging in relation to the impugned products and attempted to portray association/collaboration with the plaintiff through use of a 'mobile phone' device and offering of purported rewards and gifts.



45. It is submitted that such unauthorized and illegal use of the PhonePe marks shall not only result in a likelihood of confusion but also dilution of the plaintiff's well-known mark. Further considering that the impugned products are food products, any adverse consequences or untoward experience of a consumer resulting from the consumption of the impugned products is liable to tarnish the goodwill/reputation enjoyed by PhonePe marks.

46. It is submitted that such actual confusion as well as dilution of the plaintiff's PhonePe marks, is evident from several videos/shorts uploaded by customers on the popular video platform, YouTube, unboxing and reviewing the impugned product, copies of which have been filed along with the plaint.

47. It is submitted that defendant No. 1 appears to be habitual infringer and has been promoting its confectionary products using other third-party marks such as "iPhone" etc. and offering purported rewards/gifts. Screenshots from a video on defendant No. 1's Facebook page <https://www.facebook.com/funtwistfoods> are as below:





<Screenshots from

<https://www.facebook.com/watch/?v=929604938898219>>

48. It is, thus, submitted that the adoption and use of the PhonePe marks by the defendants is evidently *mala fide*, illegal and dishonest. By purporting to use the said marks in relation to the impugned products, the defendants have acted fraudulently and wrongfully, and are in blatant violation of the plaintiff's proprietary rights.

49. It is submitted that the aforesaid activities of the defendants are without any authority and/or license from the plaintiff. Thus, in light of the defendants' above flagrant, dishonest and unlawful acts resulting in violation of plaintiff's valuable intellectual property rights, the plaintiff has been constrained to file the present suit.

50. It is submitted that the plaintiff is the registered proprietor of the



marks "PhonePe" across several classes. The plaintiff's PhonePe marks enjoy enormous reputation



and goodwill and are entitled to the highest degree of statutory protection. It is stated that defendants have evidently adopted the marks "PhonePe",



solely with the

intention to ride upon the impeccable reputation and goodwill enjoyed by the Plaintiff and to give an impression to consumers and the public at large that the defendants have some association or collaboration with the plaintiff. It is further stated that such use of the PhonePe Marks by the defendants is without due cause and amounts to taking unfair advantage of the plaintiff's well-known PhonePe Marks. It is further stated that such use is also detrimental to the distinctive character and repute of the PhonePe Marks. Thus, the defendants are guilty of infringement under the provisions of Section 29(4) of the Trade Marks Act, 1999.

51. It is submitted that the defendants' unauthorized use of the plaintiff's PhonePe Marks further results in erosion of the distinctiveness of the plaintiff's brand besides the misappropriation of plaintiff's goodwill and reputation. The defendants cannot be permitted to take any undue advantage of the plaintiff's goodwill and reputation in PhonePe Marks which the plaintiff has so painstakingly built. Due to defendants' illegal adoption of identical marks, the members of trade and public will be induced to believe that defendants have some connection with the plaintiff, in terms of a direct nexus or affiliation.

52. It is submitted that the defendants' conduct of using the plaintiff's well-known marks leaves no doubt about its *malafide* intention to ride upon the plaintiff's goodwill in order to derive illicit commercial gains.



Admittedly, the defendants have earned substantial revenue through misuse of the plaintiff's well-known marks.

53. It further submitted that damages to the trade and reputation of the plaintiff shall be inevitable unless the defendant is restrained immediately by an order of injunction from violating the plaintiff's vested, statutory and common law rights in the exclusive use of the well-known PhonePe Marks in any manner whatsoever.

54. In view of the above circumstances, the plaintiff has demonstrated a *prima facie* case for grant of injunction and in case no ex-parte ad-interim injunction is granted, the plaintiff will suffer an irreparable loss. Further, the balance of convenience also lies in favour of the plaintiff and against the defendants.

55. Accordingly, till the next date of hearing, defendants, its owners, partners, directors, business associates, officers, servants, employees, and anyone acting for and on their behalf, are restrained from selling, offer to sell, manufacturing, advertising, promoting or in any other manner using the plaintiff's registered trademarks "PHONEPE"/



or any other identical/deceptively similar mark in relation to any goods or services whatsoever, resulting in infringement/ passing off and acts of unfair competition and dilution of plaintiff's PhonePe marks and copyright in its marks.

56. Issue notice to the defendants by all permissible modes, upon filing of process fees, returnable on the next date of hearing.

57. Reply be filed within a period of four weeks, from the date of service.



58. Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.

59. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of period two weeks.

60. List before the Court on 05th March, 2025.

I.A. No. 42747/2024 (Application for appointment of Local Commissioners)

61. The present application has been filed on behalf of the plaintiff under Order XXVI Rules 9 and Order XXXIX Rule 7 read with Section 151 CPC, seeking appointment of Local Commissioners.

62. It is submitted that in order to preserve evidence of infringement, it is necessary that Local Commissioners be appointed to visit the premises of the defendants.

63. Accordingly, the following directions are issued:

63.1 Mr. Kabir Singh, Advocate (Mob. No.9810336682), is appointed as a Local Commissioner, with a direction to visit the following premises of the defendant:-

***M/S JAI SHREE BALAJI FOODS
Through its Partner Mr. Sagar Garg
Khasra No. 47/11/2, Ground Floor,
Landmark Opposite BG 567
Sanjay Gandhi Transport,
Samaipur, Delhi
Email: info@funtwist.in
Mob. No: +91-9911342682 +91-9212215248***

63.2 Ms. Apurva Sachdev, Advocate (Mob. No. 9811779767), is appointed as a Local Commissioner, with a direction to visit the following premises of the defendant:-



JAI SHRI BALAJI FOODS
Plot No. 84, BLK-S,
Badli Industrial Area, Delhi, 110042

63.3 Mr. Yogendra Kumar Verma, Advocate (Mob. No. 9015236915), is appointed as a Local Commissioner, with a direction to visit the following premises of the defendant:-

M/S LAXMI STATIONERY
Through its Proprietor Mr. Rajendran Nair
Opposite Oyo Hotel, Near MCD Boys School,
Ghitorni, New Delhi- 110030

63.4 After seizing the infringing material, the same shall be inventorized, sealed, and signed by the learned Local Commissioners, in the presence of the parties, and released on *superdari* to the defendants, on its undertaking to produce the same, as and when further directions are issued, in this regard.

63.5 The learned Local Commissioners shall also be permitted to make copies of the books of accounts, including ledgers, cash books, stock registers, invoices, books, etc., in so far as they pertain to the infringing products.

63.6 Further, the learned Local Commissioners shall be permitted to undertake/arrange for photography/videography of the execution of the commission.

63.7 Both the parties shall provide assistance to the learned Local Commissioners, for carrying out the aforesaid directions.

63.8 In case, any of the premises are found locked, the learned Local Commissioners shall be permitted to break open the lock(s). To ensure an unhindered and effective execution of this order, the Station House Officer



(“SHO”) of the respective local Police Stations, are directed to render all assistance and protection to the Local Commissioners, as and when, sought.

63.9 The fee of the learned Local Commissioners, to be borne out by the plaintiff, is fixed at ₹ 1,00,000/- (Rupees One Lakh) each. The plaintiff shall also bear all the expenses for travel of the Local Commissioners, and other miscellaneous out-of-pocket expenses, for the execution of the commission. The fee of the Local Commissioners shall be paid in advance by the plaintiff.

63.10 The local commissions shall be executed within a period of two weeks from today. The local commissioners shall file the report within a period of two weeks from the date, on which the commissions are executed.

64. The order passed today, shall not be uploaded for a period of two weeks.

65. The present application is accordingly disposed of in the aforesaid terms.

66. *Dasti* under signatures of the Court Master.

MINI PUSHKARNA, J

OCTOBER 21, 2024/au