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

Date of Decision: 21st April, 2022

+ **CS (COMM) 598/2021 & I.A. 15337/2021**

**HERO ELECTRIC VEHICLES PRIVATE LIMITED
& ANR.**

..... Plaintiffs

Through: Mr. Aayushmaan Gauba and Ms.
Gunjan Chhabra, Advocates.
(M:9717008833)

versus

MR. GUDDU ANSARI & ORS.

..... Defendants

Through: Ms. Shweta Sahu and Mr. Brijesh
Ujjainwal, Advocate for D-3.
(M:7738741586)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Plaintiffs - Hero Electric Vehicles Private Limited and M/s. V.R. Holdings have filed the present suit against four entities: Defendant Nos.1 & 2 being Mr. Guddu Ansari and M/s. Hero Electro. Defendant No.3 is GoDaddy.com (*hereinafter "GoDaddy"*), LLC and Defendant No.4 is Yes Bank Limited (*hereinafter "Yes Bank"*).
3. Summons were issued in this matter vide order dated 25th November, 2021, and the Defendants were served through email as recorded in the previous order dated 7th April, 2022. However, none has appeared in this matter for Defendant Nos.1&2, even today. Accordingly, the Court proceeds further.
4. The case of the Plaintiffs is that they are engaged in the manufacture



and sale of electric vehicles under the trademark '*HERO ELECTRIC*'. Plaintiff No.2 is a partnership firm, part of the Plaintiff group of companies. The Plaintiffs are known by the name "Hero Group". Broadly, the Plaintiffs are companies engaged in the automobile sector, and manufacturing of bicycles and components, financial and other services etc. The Plaintiffs were the first to launch electric cycles and scooters in India under the brand "Hero Electric". The Plaintiffs' case is that the Hero Group is present in more than 50 countries of the world and they have invested large amounts of money in the production of eco-friendly vehicles as also electric vehicles. The name 'HERO', 'HERO ELECTRIC' and various variants of the same are registered in Class 12, registered between 2008 and 2020. The HERO formative marks are also used on the various websites of the Plaintiffs including www.heroelectric.in, which was registered in the name of the Hero Group in December, 2006. The mark '*HERO*' has acquired enormous goodwill and reputation and though being a dictionary word, it is today - in the automobile industry - distinctive of the Plaintiffs and its products/services. The sales figures of the Plaintiffs under the trademark '*HERO ELECTRIC*' are more than 315 crores in the year 2021 and the advertisement figures are to the tune of Rs.24 crores. The Plaintiffs have launched e-bikes, e-scooters and other electric vehicles under the mark '*HERO ELECTRIC*', which have also been accorded with various awards in the mobility industry. The mark '*HERO ELECTRIC*' is thus claimed to be distinctive and well-reputed.

5. The grievance of the Plaintiff in the present suit is that around October, 2021, it came to know that Defendant Nos.1 & 2 have started operating the domain name www.heroelectro.in, in which they were



soliciting dealership enquiries for sale of HERO electric vehicles. The Defendants also claimed to be providing services of getting lease land of third parties in return of an application fee for setting up charging infrastructure. The said domain name of www.heroelectro.in, was registered through GoDaddy and the bank account of Defendant Nos.1 & 2 was opened with Yes Bank. On the portal of Defendant Nos.1 & 2, the content of the Plaintiffs' website was replicated. The present suit has thereafter been filed seeking injunction in view of the fact that Defendant Nos.1 & 2, are duping several innocent persons and offering dealerships with an intention to swindle large sums of money.

6. Mr. Aayushmaan Gauba, Id. Counsel appearing for the Plaintiffs, submits that Defendant Nos.1 & 2 despite service are not appearing in the matter. He submits that a perusal of the bank statement filed by Yes Bank along with the affidavit dated 5th April, 2022, shows that there are more than 60 credit transactions in the Defendants' bank account, totalling to a sum of more than Rs.8-10 lakhs. Defendant Nos.1 & 2 have collected these monies from completely innocent customers, who may have paid the said amounts under the impression that the said Defendants are the Plaintiffs' group entity or website. He further submits that the Defendants' domain name www.heroelectro.in is almost identical to www.heroelectric.in of the Plaintiffs. Since Defendant Nos.1 & 2 are not appearing, he prays for a decree of permanent injunction in view of the provisions of the Commercial Courts Act, 2015, as also for damages.

7. Heard. A perusal of the impugned website and screenshots shows that the domain name, logo used, pictures, descriptive matter, slogan, colour combination, etc. are all identical to the Plaintiff's website. The screenshots



on record also show that the Defendant Nos.1 & 2 clearly claim association/affiliation with the Plaintiffs. The comparative table is set out herein below:

<i>Comparative Analysis</i>	<i>Plaintiff</i>	<i>Defendant No.1 and 2</i>
<i>Trademark</i>	<i>Hero Electric</i>	<i>Hero Electro</i>
<i>Website / Domain</i>	<i>www.heroelectric.in</i>	<i>www.heroelectro.in</i>
<i>Infringement of Copyright</i>		

8. A perusal of record shows that an interim injunction was granted on 25th November, 2021, restraining the Defendants. The operative portion of the said order reads as under:

“26. In view of the above, the Plaintiffs have established a prima facie case in their favour. The balance of convenience also lies in favour of the Plaintiffs and irreparable loss would be caused to the Plaintiffs, in case an ex-parte ad interim injunction is not granted. Accordingly, till the next date of hearing:
(i) Defendants No. 1 and 2, their management, directors, partners, agents, staff, representatives, servants, assigns, and/or all other persons acting on their behalf are restrained from providing services, offering for sale, advertising, importing, exporting and exhibiting or dealing in any manner with service of



soliciting business transactions, dealership enquiries, brokerage of land and leasing deals for an in relation to

electric vehicles or related EV infrastructure or other goods or services which may be cognate or allied to such goods and services under the

trademark / trade name "Hero Electro"/ or

any other trademark/ name which may be identical/ confusingly/deceptively similar/ incorporates the registered trade mark/ name "Hero Electric"/ "Hero Electric Logo" / of the Plaintiffs thereby amounting to infringement of Plaintiffs' registered trademarks and/ or may lead to passing-off and dilution;

(ii) Defendants No.1 and 2, their management, directors, partners, agents, staff, representatives, servants, assigns, and/or all other persons acting on their behalf from reproducing, publishing and displaying the information/ literary content/ artistic works and logo(s) proprietary to the Plaintiffs on its impugned website - www.heroelectro.in thereby infringing the copyrights of the Plaintiffs in its said artistic and literary works and in its website - www.heroelectric.in;

(iii) Defendants No.1 and 2 its management, directors, partners, staff, agents, representatives, servants, assigns, and/or all other persons acting on their behalf are restrained from using the impugned domain <https://heroelectro.in/> or any other domain name identical and/ or deceptively similar or any other trademark/ name which may be identical/ confusingly/deceptively similar or incorporates the trade mark / name "Hero Electric" of the Plaintiffs;

(iv) Defendant No.3 is directed to disclose details of the registrant/ owner of the impugned domain name - <https://heroelectro.in/> to the Plaintiff No.1 and to suspend the access and operation to the said impugned website/ domain name - <https://heroelectro.in/>;



(v) Defendants No. 1, 2 and 3, its management, directors, partners, staff, agents, representatives, servants, assigns, and/or all other persons are restrained from acting on their behalf from transferring the impugned domain name - <https://heroelectro.in/> to any other person; and
(vi) Defendant No.4 is directed to disclose details of the account holder/owner of the bank account bearing No. 075791900014631 and/ or any other bank account operated by the name and style of M/s Hero Electro within its bank and to freeze/ suspend the operations of the said bank account(s). ”

9. After the passing of the said order, Yes Bank has placed on record the bank account statement vide affidavit dated 5th April, 2022. However, unfortunately, the freezing of the bank account was delayed and the said account was only frozen after some delay. As is clear from the account statement, various amounts have been debited by the holders of the bank account, between the passing of the interim order and the date on which the account was finally frozen. Thus, as on date, a few hundred rupees is stated to be in the bank account of Defendant Nos.1 & 2.

10. Insofar as GoDaddy is concerned, the submission of Id. Counsel appearing for GoDaddy, is that the company has complied with the order dated 25th November, 2021 and if any further orders are passed, they would comply with the same.

11. A perusal of the website printouts on record leaves no manner of doubt whatsoever that Defendant Nos.1 & 2 have set up the impugned website www.heroelectro.in with an intention to dupe the general public as also gullible consumers, who may believe that they can get the dealership of the Plaintiffs by paying certain amounts through the website of Defendant



Nos.1 & 2. Large amounts of money have also been collected by the said Defendant. The domain name www.heroelectro.in and the contents of the website in the said domain name are almost identical and the differences are hardly perceptible. It is very easy for the members of the public to presume that Defendant Nos.1 & 2's website is connected with the Plaintiffs.

12. Considering the statutory and common law rights and the long usage of the mark 'HERO', as also its formative mark/logo 'HERO ELECTRIC', etc. the Plaintiffs' rights would be severally impinged if Defendant Nos.1 & 2 are permitted to use the impugned domain name and website. Since no defence has been placed on record by Defendant Nos.1 & 2, despite service through email and their website being blocked, which is well within their knowledge, this Court is of the opinion that no evidence would be required to be adduced in the matter. Under the provisions of the Commercial Courts Act, 2015 read with Rules 14 and 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022 (*hereinafter "IPD Rules"*) and Rule 1 in Chapter VII, of the Delhi High Court (Original Side) Rules, 2018 (*hereinafter "Original Side Rules"*), the Court may proceed to pass orders in the absence of the Defendant or its defence, once summons has been proved to have been served, and the Plaintiffs have made out a case. Rule 27 of the IPD Rules read as under:

"27. Summary Adjudication

In cases before the IPD, the Court may pass summary judgment, without the requirement of filing a specific application seeking summary judgment on principles akin to those contained in Order XIII A, Code of Civil Procedure, 1908 as applicable to commercial suits under the Commercial Courts Act, 2015."



13. Rule 1 of the Original Side Rules reads as under:

“1. In default of appearance by defendant suit to be posted for hearing.—If on the day fixed for his appearance in the writ of summons, the defendant does not appear, and it is proved that summons was duly served, the suit shall proceed for hearing.”

14. The various registrations and long usage of the Plaintiffs, as also the goodwill vesting in the mark ‘HERO ELECTRIC’ entitles the Plaintiff to a permanent injunction. Accordingly, a decree of permanent injunction is granted in favour of the Plaintiffs against Defendant Nos.1 & 2, in terms of paragraphs 60(i) to 60(iv) of the plaint.

15. Moreover, considering the illegal usage of the domain name www.heroelectro.in and the blatant copying of the Plaintiff’s website by the Defendants, as also the amounts which have been collected by the Defendant Nos.1 & 2, this Court is of the opinion that the present is a fit case for passing exemplary and punitive damages. In *Koninklijke Philips N.V. & Anr. v. Amazestore & Ors. [CS(COMM) 737/2016 , decision dated 22nd April, 2019]*, a ld. Single Judge of this Court has laid down the principles to be borne in mind and the standards for grant of punitive and exemplary damages. The relevant extract of the said judgment reads as under:

“39. Consequently, though in assessing the aggravated damages which the Defendants should pay, the total figure awarded should be in substitution for and not in addition to the smaller figure, yet the rounded total sum shall have to be calculated by adding an additional amount to the compensatory damages.

40. Keeping in view the aforesaid, this Court is of the view that the rule of thumb that should be followed



while granting damages can be summarised in a chart as under:-

#	Degree of mala fide conduct	Proportionate award
(i)	First-time innocent infringer	Injunction
(ii)	First-time knowing infringer	Injunction + Partial Costs
(iii)	Repeated knowing infringer which causes minor impact to the Plaintiff	Injunction + Costs + Partial damages
(iv)	Repeated knowing infringer which causes major impact to the Plaintiff	Injunction + Costs + Compensatory damages.
(v)	Infringement which was deliberate and calculated (Gangster/scam/mafia) + wilful contempt of court.	Injunction + Costs + Aggravated damages (Compensatory + additional damages)

”

16. In this matter, it is clear from a perusal of the bank account of the Defendants that the Defendants have amassed amount upto Rs.8-10 lakhs by duping customers and misrepresenting their affiliation with the Plaintiff, which is clearly a renowned brand. The said amounts have also been withdrawn surreptitiously by the Defendants just before freezing of the bank account. The clear intention of the Defendants to defraud and dupe gullible members of the public, is thus evident from the transactions, as also from a perusal of their website. This case clearly falls in category (v) as held in ***Koninklijke Philips (supra)***. Accordingly, the suit is decreed for a sum of Rs.50 lakhs in favour of the Plaintiff and against Defendant Nos.1 & 2. In



addition, litigation costs of Rs.3 lakhs are also awarded, to be paid by the Defendant Nos.1&2 to the Plaintiff.

17. Additionally, Defendant No.3 is directed to transfer the domain name www.heroelectro.in to the Plaintiffs, upon the details of person on whom the transfer is to be effected, being communicated within a period of one week, by the Id. Counsel for the Plaintiff to the Id. Counsel for GoDaddy. Upon receiving the information, within one week thereafter, GoDaddy shall transfer the said domain name to the Plaintiffs. If any charges are to be paid for the said transfer, the Plaintiffs shall pay the same.

18. The suit is decreed in the above terms. Decree sheet be drawn up accordingly.

19. Insofar Yes Bank is concerned, there was no reason whatsoever for the bank to have delayed the freezing of the bank account of the Defendant Nos.1 & 2, once the order was communicated to the bank. In matters of this nature, immediate freezing or suspension of the operations of the account is of utmost importance and the bank ought not to drag the time for its compliance in respect of the same. A perusal of the statement of account shows that Defendant Nos.1 & 2 have collected huge sums of money totalling a sum of Rs. Rs.8-10 lakhs, by using the impugned domain name and website and have, in effect, cheated and duped a large number of members of the public. The delay by Yes Bank in freezing the said account has led to large amounts being withdrawn during the intervening period.

20. Copy of the present order be served to the General Manager, Yes Bank, Ground Floor and Basement, S C O 84 Sector 22 Gurgaon, Haryana 122015, so as to ensure that whenever the Court orders are received for suspension or freezing of bank accounts, steps are taken immediately by the



official concerned and the order is not rendered infructuous by allowing the holders of such bank accounts to withdraw the amount in the said bank.

21. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 21, 2022/dk/ms

