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

CNR No. DLHC010494832026

+ **CS(COMM) 1119/2026**

MS NECTAR BIOPHARMA PRIVATE LIMITED Plaintiff

Through: **Ms. Shumaila Altaf, Mr. Ajay Pal
Singh and Mr. Sakib Altaf, Advs.**

versus

HERBAX AYURVEDA AND ORS Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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13.10.2026

I.A. 28447/2026 (under Section 151 CPC seeking exemption from filing typed copies of dim annexures)

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

I.A. 28448/2026 (seeking exemption from filing Court fee)

3. Learned counsel appearing on behalf of the plaintiff submits that the court fee has already been affixed.
4. The application has been rendered infructuous and is disposed of.

I.A. 28449/2026 (under Section 151 CPC seeking condonation of delay of 07 days in re-filing the suit)

5. The present application has been filed seeking condonation of delay of 07 days in re-filing the suit.
6. For the reasons mentioned in the application, the delay is condoned.
7. Accordingly, the application is allowed and is disposed of.

I.A. 28446/2026 (by plaintiff under Section 151 CPC seeking exemption from filing original documents)



8. The present is an application filed by the plaintiff under section 151 CPC seeking exemption from filing the original documents.

9. Original documents shall be produced/filed, if sought, strictly as per the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter, '*Commercial Courts Act*') and the Delhi High Court (Original Side) Rules, 2018.

10. Accordingly, the application is allowed and stands disposed of.

I.A. 28444/2026 (by plaintiff under Section 151 CPC seeking exemption from advance service)

11. This is an application filed by the plaintiff seeking exemption from making advance service to the defendants with respect to the suit and the applications.

12. Having regard to the fact that an *ex-parte* urgent relief has been sought in the present matter, the plaintiff is exempted from serving an advance copy of suit paper book to the defendants.

13. The application is disposed of.

I.A. 28443/2026 (under Order XI Rule 1(4) Commercial Courts Act, 2015 seeking leave to file additional documents)

14. The present application has been filed on behalf of the plaintiff seeking leave to place on record additional documents.

15. The plaintiffs are permitted to file additional documents in accordance with the provisions of the Commercial Courts Act, 2015, the Delhi High Court (Original Side) Rules, 2018.

16. The application is disposed of.



I.A. 28445/2026 (by plaintiff under Section 12A of Commercial Courts Act, 2015 read with Section 151 CPC seeking exemption from pre-institution mediation)

17. This is an application filed by the plaintiff seeking exemption from instituting pre-litigation mediation under Section 12A of the Commercial Courts Act, 2015.

18. An urgent relief has been sought by the plaintiff in the present suit. Having examined the plaint and the documents filed along with the plaint, the Court is of the view that the relief sought in application under Order XXXIX Rules 1 and 2 CPC [I.A. 28441/2026] is plausibly urgent and genuinely contemplated, for the reasons recorded in detail while dealing with I.A. 28441/2026.

19. The application is, therefore, allowed and the plaintiff is exempted from pre-litigation mediation.

20. The application stands disposed of.

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21. The plaint be registered as suit.

22. On filing of process fee, summons be issued to the defendants by all permissible modes.

23. The summons shall indicate that written statement must be filed within thirty days from the date of receipt of summons. The defendants shall also file an affidavit of admission/denial of the documents filed by the plaintiff, failing which the written statement shall not be taken on record.

24. The plaintiff is at liberty to file replication thereto within thirty days after filing of the written statement. The replication shall be accompanied by affidavit of admission/denial in respect of the documents filed by the



defendants, failing which the replication shall not be taken on record.

25. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.

26. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.

27. List before the learned Joint Registrar for completion of service, pleadings, admission/denial of documents and marking of exhibits on 04.12.2026.

28. List before Court for framing of issues on the date to be assigned by learned Joint Registrar.

I.A. 28441/2026 (by plaintiff under Order XXXIX Rules 1 and 2 CPC seeking interim injunction)

29. The present application has been filed seeking *ex parte ad-interim* injunctive reliefs.

30. The case set out in the plaint is that the plaintiff is a private limited company incorporated under the Companies Act, 1956. The plaintiff is a leading manufacturer, merchant, dealer, and distributor of pharmaceutical preparations, having a presence in India for several decades.

31. It is stated that the plaintiff is an organization driven by knowledge and constitutes a vital part of the fast-growing Indian pharmaceutical business.

32. It is contended that the plaintiff is engaged in the business of pharmaceutical and medicinal preparations, particularly topical gels, sprays and ointments. It's gel contains Diclofenac Diethylamine, Methyl Salicylate, Linseed Oil, Benzyl Alcohol and Menthol. The product is used to relieve pain from arthritis in certain joints.



33. Ms. Shumaila Altaf, learned counsel appearing on behalf of the plaintiff submits that the plaintiff is the registered proprietor of the trademark 'FASTACTIVE'. The said mark was registered under the Trade Mark application no. 1940347 in Class-5, date of application being 23.03.2010. The registration was granted *vide* certificate no. 1845995 dated 27.04.2018, and remains valid till 23.03.2030.

34. She submits that the trademark was initially applied for by Nectar Lifesciences Ltd., SCO 38-39, Sector 9D, Chandigarh, 160017, on 23.03.2010, in whose favour the trademark certificate was also issued. However, *vide* a deed of trademark assignment dated 01.08.2015, the rights, title, and interest of the mark were assigned in perpetuity in favour of the plaintiff. Consequently, an application in form TM-P was filed on 04.11.2020, which was duly accepted, thereby making the plaintiff the registered proprietor of the trademark for all intents and purposes.

35. She further submits that products under the Trademark 'FASTACTIVE' are now sold by Benatton Pharma as a franchisee agent, the brand being still owned by the plaintiff/Nectar Biopharma Pvt. Ltd.

36. It is stated that information pertaining to the plaintiff's product is also available on various websites, including but not limited to www.wikipedia.com, www.necbio.com, and <http://nectar.bio/>. Also, due to the easy accessibility of information regarding the said product, the reputation and awareness of the product bearing the trademark 'FASTACTIVE' is global.

37. It is further stated that by virtue of the consistent and extensive use of the mark, the consumers and prospective buyers identify the trademark 'FASTACTIVE' exclusively with the plaintiff. Further the immense



popularity and goodwill garnered by the plaintiff's company (M/s Nectar Biopharma Private Limited) over the years can be quantified by the turnover charts, as detailed in paragraph 19 of the plaint, which is set out hereinbelow for ready reference:

S.No.	Financial Year	Total Turnover (Amt. in Lakhs)
1	2016-2017	4424.45
2	2017-2018	7110.27
3	2018-2019	11804.32
4	2019-20	17117.75

38. Furthermore, it is stated that the plaintiff's product bearing the subject trademark 'FASTACTIVE', is now being sold by Benatton Pharma as a franchisee agent of Nectar Biopharma Pvt. Ltd, w.e.f. FY 2020-2021. The turnover for the FY 2020-21 onwards is as under:

Sr. No.	Turnover for the Financial Year	Turnover (In Rs)
1	2024-25	60,42,37,618
2	2023-24	42,23,59,244
3	2022-23	47,74,09,005
4	2021-22	53,70,09,121
5	2020-21	43,77,28,727

39. It is contended that in the course of trade, by virtue of long and continuous user, the plaintiff's mark has acquired a secondary meaning as its consumers and the public exclusively identifies the said mark in relation to the plaintiff's product.



40. It is stated that the plaintiff has recently came across the defendant's product around May 2026, when an official of the plaintiff's company maintaining the MIS of trademarks, came across defendants infringing product, bearing plaintiff's mark 'FASTACTIVE' [hereinafter referred to as 'impugned mark'] being openly sold on various websites and being promoted on social media.

41. It is contended that that even a cursory look at the impugned mark would reveal that the defendants' impugned mark 'FASTACTIVE' is deceptively and/or confusingly similar to the plaintiff's trade mark 'FASTACTIVE'. A comparison between the two marks, as laid out in paragraph 27 of the plaint, is extracted hereinbelow:

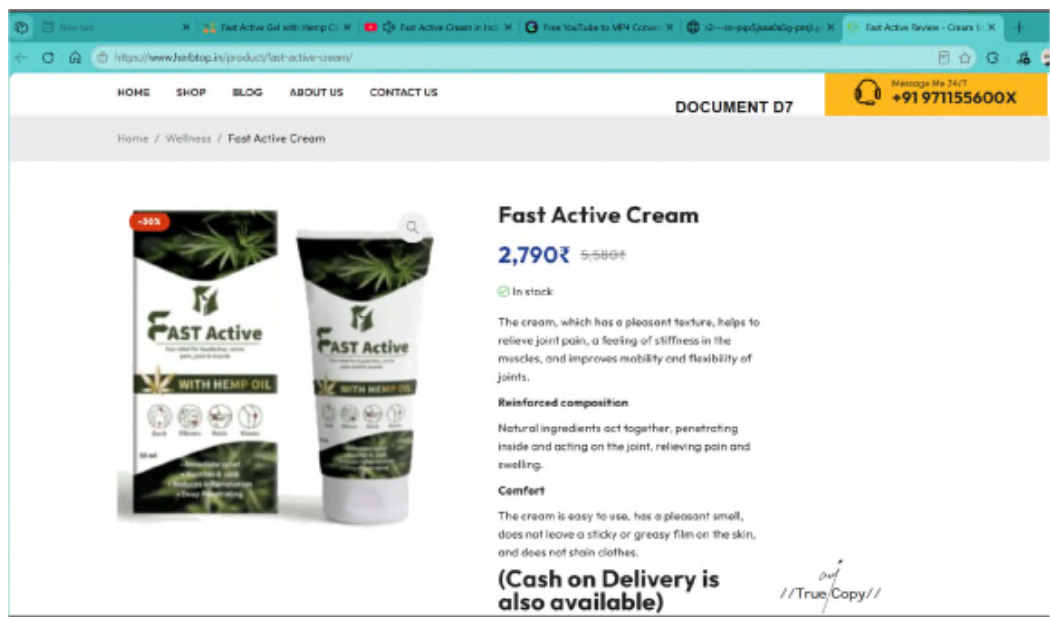
<u>PLAINTIFF'S PRODUCT</u>	<u>DEFENDANT'S PRODUCT</u>
TABLE OF COMPARISON	
	
	

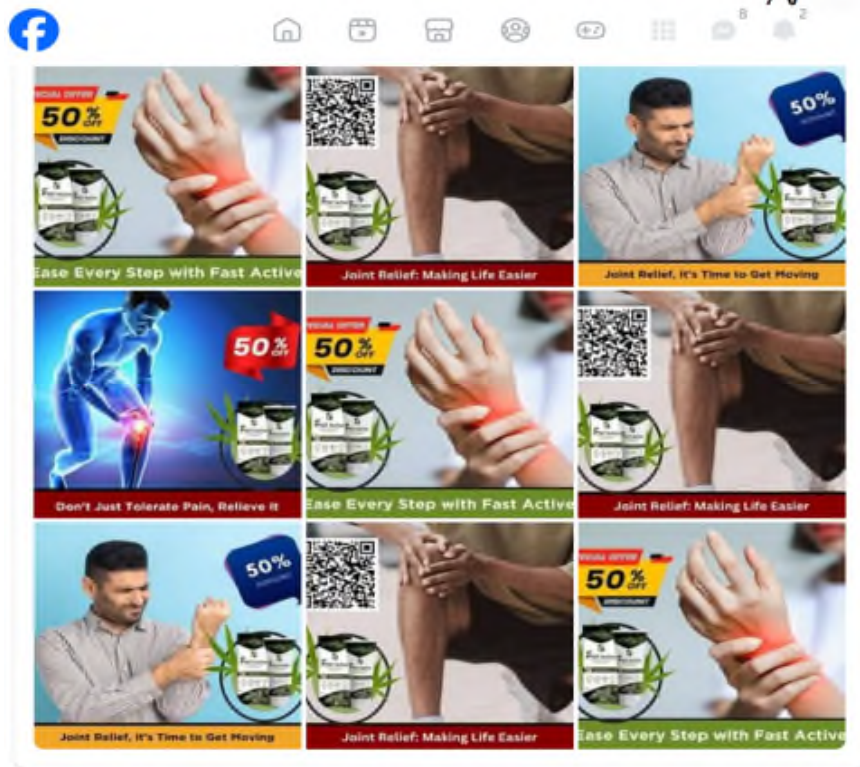


42. It is stated that defendant no. 1 is selling its products through defendant no. 2 (Herb Top), defendant no. 3 (Nutrazen) and defendant no.4 (M/s Herbio Private Limited) all of which are based in Delhi. Further, that defendant nos. 2 to 4 are playing instrumental and a pivotal role on behalf of defendant no.1 to cause sale of the products bearing the impugned mark.

43. Additionally, defendant no. 4 has also filed a trademark application for registration of the device mark 'Fast Active Arthro Cream' which is pending as on 17.08.2026.

44. It is contended that various documents annexed to this plaint, contains screenshots of the defendant's product bearing the impugned mark, being sold on different websites and social media platforms. For ready reference, below reproduced are some screenshots from document no.7 to 9, bearing the impugned mark:







Home (<https://herbax.in/>) > Osteoarthritis (<https://herbax.in/product-category/osteoarthritis/>)

45. It is contended that the adoption of the plaintiff's mark 'FASTACTIVE' by the defendant is a calculated decision taken to ride upon the goodwill garnered by the plaintiff. Since the defendant's mark is visually, structurally, and phonetically identical to the plaintiff's, and the use of the two products is same i.e. to relieve joint pain, and further the trade channel also being the same, it is likely to cause confusion in the minds of the prospective customer's of plaintiff's product, thereby tarnishing plaintiff's product's hard-earned reputation in the market.

46. Having regard to the averments made in the plaint and the submissions of Ms. Altaf, this Court is of the opinion that a *prima facie* case of infringement and passing off is made out in favour of the plaintiff and balance of convenience is also in its favour. Further, irreparable harm or injury would be caused to the plaintiff if an interim injunction order is not passed.

47. Accordingly, till the next date of hearing, the defendants its proprietor, partners, directors, servants, agents, dealers, stockists, distributors, and all persons claiming under or through them are restrained from manufacturing,



packing, marketing, selling, offering for sale, advertising, promoting or dealing in any manner whatsoever in pharmaceutical preparations, topical gels, sprays, ointments or any allied/cognate goods under the mark “FASTACTIVE” or any other mark identical with or deceptively similar to the plaintiff’s registered trademark “FASTACTIVE”.

48. Issue notice. Notice be served upon the defendants by all permissible modes including speed post, courier, e-mail, etc. upon filing of process fee.

49. The defendants may file a reply to the application within a period of four weeks. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.

50. Provisions of Order XXXIX Rule 3 CPC be complied with *qua* the defendants within a period of two weeks from today and affidavit of compliance be filed within a period of three days thereafter.

51. List before the learned Joint Registrar for completion of service and pleadings on 04.12.2026.

52. List before Court on 04.02.2027.

I.A. 28442/2026 (under Order XXVI Rule 9, Order XXXIX Rule 7 read with Section 151 CPC for appointment of Local Commissioner)

53. This is an application filed under Order XXVI Rule 9 for appointment of Local Commissioner.

54. Ms. Shumaila Altaf, learned counsel appearing on behalf of plaintiff submits that she is not pressing the present application for the time being.

55. The application is dismissed as withdrawn.

VIKAS MAHAJAN, J

OCTOBER 13, 2026/nsa/AA