



2026:DHC:2760



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

% Order reserved on: 30.03.2026
Order delivered on: 02.04.2026

+ CS(COMM) 1394/2025, I.A. 32351/2025 & I.A. 2059/2026

BROWN-FORMAN DISTILLERY, INC.Plaintiff

versus

BREWHOLIK PRIVATE LIMITED & ANRDefendants

Advocates who appeared in this case:

For the Plaintiff : Ms. Shwetasree Majumder, Mr. Rohan Krishna Seth and Mr. Ritwik Marwaha, Advocates.

For the Defendants : Mr. J. Sai Deepak Senior Advocate with Mr. Kapil Midha, Ms. Sindhoora Ravindran, Mr. Garv Singh, Ms. Vartika Gautam and Mr. Abhishek, Advocates for D-1.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

TUSHAR RAO GEDELA, J.

I.A. 2059/2026 (By D1 seeking necessary directions)

1. Present application has been filed on behalf of defendant no.1 (hereinafter referred to as "*the defendant*") under Section 151 of Code of Civil Procedure, 1098 ('CPC') seeking necessary directions.

2. Brief background leading to the filing of this application are as under:-

- a. Defendant claims to import whiskey under the brand "OLD FORESTER BLENDED RESERVE WHISKY", which is



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manufactured and bottled by a company namely M/s Yeti Distillery (P.) Ltd., having its registered office at Nepal. It is claimed that M/s Yeti Distillery (P.) Ltd. is the owner of the trademark “OLD FORESTER” in Nepal and holds valid registrations for the same.

b. It is claimed that M/s Yeti Distillery (P.) Ltd. and defendant executed a Sale and Purchase Agreement dated 08.11.2023 for import, sale and distribution of the whiskey under the brand name “OLD FORESTER BLENDED RESERVE WHISKY” and other brands in the territories of India. Pursuant to the said Agreement, defendant claimed to obtain all requisite licenses and approvals for the purpose of import and sale of the whiskey under the brand “OLD FORESTER BLENDED RESERVE WHISKY” in compliance with all the existing and applicable excise, customs, GST and corporate regulatory frameworks.

c. As per the case set out in the suit, it is claimed that the plaintiff is registered proprietor of over 100 registrations for the Mark “OLD FORESTER”, and is engaged in the business of beverage alcohol products which are manufactured, marketed, and sold around the world by the plaintiff’s affiliates and authorized licensees. It is claimed by the plaintiff that sometime in December, 2025, plaintiff became aware of the defendant’s alleged activities in India when its representatives came across the product being “BLENDED RESERVE WHISKEY” bearing the plaintiff’s trademark “OLD FORESTER”, being sold at liquor stores in Delhi. Upon perusing the packaging of the products, the plaintiff’s noticed that the said



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products were manufactured by an entity, M/s Yeti Distillery Private Limited, and are being imported and sold by defendant in India. Being aggrieved thereof, plaintiff filed the suit for permanent injunction restraining infringement of the registered trademarks, passing off, rendition of accounts, damages, delivery up/destruction, etc. by the defendants.

d. This Court by way of an *ex-parte ad-interim* injunction order dated 22.12.2025, restrained the defendant from importing, selling, distributing, marketing or advertising counterfeit products bearing the mark “OLD FORESTER” or any other deceptively similar variant thereof. *Vide* the said order, this Court had also appointed a Local Commissioner to visit the premises of the defendant and seize the products bearing the impugned mark “OLD FORESTER”. It is claimed by the defendant that the Local Commissioner on 30.12.2025, prepared an inventory of the counterfeiting products and released the seized goods on *superdari* to the representative of the defendant.

e. It is stated by the defendant that *qua* the stocks lying at its premises in Delhi, the defendant had already made payments to M/s Yeti distillery (P.) Ltd., and had obtained all the requisite permissions and approvals to sell the said stocks. Furthermore, it had also paid applicable customs duties, GST, and other taxes on the Purchase Order in accordance with the Customs Act and GST regulations.



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f. In view thereof, defendant preferred this instant application seeking permission to sell the existing stock(s) bearing the trademark “OLD FORESTER” and already placed orders.

3. Mr. J. Sai Deepak, learned Senior Counsel submitted that by way of the present application, the defendant seeks release of the seized goods, 3464 boxes of alleged infringing 180 ml and 750 ml bottles, and further release of 2600 boxes similar products *qua* which importation formalities are yet to be completed so as to enable the defendant to complete its contractual obligations. According to him, non-fulfillment of contractual obligations with the State Government is resulting in high penalties for non-supply and there is a likelihood of the defendant facing show cause notices of blacklisting.

4. Learned senior counsel stated that the plaintiff concealed material facts relating to the legality of the goods imported by the defendant and by misleading this Court, was able to obtain the *ex-parte ad-interim* injunction order dated 22.12.2025, predicated on the seized products being counterfeit products. He invited attention to paras 25 and 26 of the plaint to contend that while in the said paras, the plaintiff has projected as if it has come to know about the Nepalese entity M/s. Yeti Distillery (P.) Ltd. for the first time, however, in reality, the plaintiff had sought cancellation of the M/s. Yeti Distillery (P.) Ltd. registered trademark “OLD FORESTER” in Nepal, wherein the plaintiff did not succeed in establishing its rights over the mark “OLD FORESTER”, and the same was dismissed by the concerned Department/Authority in Nepal. Learned senior counsel also contended that had this Court been truthfully disclosed the status of M/s. Yeti Distillery (P.) Ltd., and the nature of import by the defendant, in all likelihood, at least an *ex-*



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parte ad-interim injunction may not have been passed unless an opportunity to explain the nature of the transaction was explained by the defendant. He forcefully contended that the plaintiff has to necessarily come clean for grant of an interim injunction, which is discretionary.

5. Learned senior counsel contended that he would not like to join issues on the aforesaid aspect, yet would submit that the products lawfully imported by the defendant, *arguendo*, would be only an infringing product/(s), but certainly not counterfeit. He would submit that if that were so, keeping in view the financial burden upon the defendant, coupled with the penalties being imposed by the Delhi Government over non-supply of the imported goods and the likelihood of facing a show cause notice for blacklisting the defendant, it would be in the interests of justice to permit the defendant to deliver and fulfill the contractual obligations. He would submit that the defendant would, on the directions of this Court, deposit a sum of Rs.25 to Rs.30 lakhs, without prejudice, as security in case the defendant is permitted to sell the seized goods and also import remaining goods as adverted to in paras 26 and 27 of its application. He also submitted, on instructions, that the defendant would not, in future, import any such product at all.

6. In order to buttress its contentions and to justify the release of the goods, learned senior counsel relied on the following judgments passed by this Court, which are as follows:

- a. ***Alkem Laboratories Ltd. vs. Laborate Pharmaceuticals India Ltd. & Ors.***, DHC:2356-DB dated 17.06.2022;
- b. ***Mr. Sidharth Sareen & Anr. vs. Ms. Benz Packaging Solutions Pvt. Ltd. & Anr.***, CS(COMM) 556/2022 dated 23.09.2022;



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c. Sun Pharma Laboratories Ltd. vs. Ajanta Pharma Ltd., 2019:DHC:2573 dated 10.05.2019;

d. Swiss Bike Vertrjeb GMBH Subsidiary of ACCELL Group vs. Imperial Cycle Meg. Co. & Ors., 2022:DHC:5248 dated 29.11.2022.

7. *Per contra*, Ms. Majumdar, learned counsel for the plaintiff submitted that there are a number of objections qua this application.

8. She stated that, on law, the permission to sell the seized goods of this nature cannot be granted as there is a clear proscription. In that, she drew attention to Section 29(2)(c), Section 29(3), and Section 29(6)(c) of the Trade Marks Act, 1999 (hereinafter referred to as “the Act”) which clearly stipulates that no infringing goods can be imported into India.

9. In order to support the above, she also referred to Section 2(16) of the Delhi Excise Act, 2009. She would submit that as per the definition of “*counterfeit liquor*”, counterfeit liquor would be those, which are found to be infringing the provisions of the Act, or the Copyrights Act, 1957 as also in respect of which an offence under Section 481, 483 or 486 of the Indian Penal code, 1860 (now Section 345, 347 or 349 of the Bhartiya Nyaya Sanhita, 2023) has been committed. She would forcefully contend that when Section 29(2)(c), 29(3), and 29(6)(c) of the Act and Section 2(16) of the Delhi Excise Act, 2009 are read conjunctively and harmonized, it leaves no doubt that neither can any infringing goods be imported into India nor can they be termed as anything other than “counterfeit”. This, coupled with the *prima facie* finding recorded in the *ex-parte ad-interim* injunction order dated 22.12.2025, that the goods of the defendant are counterfeit, no such



permission can at all be granted. She placed reliance on the judgment of this Court in *Kapil Wadhwa & Ors. vs. Samsung Electronics Co. Ltd. & Anr., 2012 SCC OnLine Del 5172*, relevant paras of which are reproduced hereunder:

“10(i). The import of goods into India without the permission of the registered proprietor of the Trade Mark is governed by Section 29 of the Trade Marks Act 1999 and this flows from a conjoint reading of Section 29(1) and Section 29(6) which require it to be held that when a person uses a Trade Mark in the course of import or export of goods, the same would be under the registered Trade Mark and thus the act of import is in clear and explicit terms of the two provisions, and would be infringement when import is made without the consent of the registered proprietor of the Trade Mark. (Refer paragraphs 19, 22 and 23 of the impugned decision).

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22. The learned Single Judge has correctly held, and this flows from a bare reading of the various sub Sections of Section 29, that (refer sub Section 1) a registered trade mark is infringed by a person who is not a registered proprietor or a permitted user when he uses, in the course of trade, the said mark or (refer sub Section 2) uses a mark which is likely to cause confusion or which is likely to have an association with the registered trade mark or (refer sub Section 3) uses a mark which is identical or similar to the registered trade mark or (refer sub Section 5) uses a registered trade mark as his trade name or part of his trade name or name of his business concern while dealing in goods or services in respect of which the trade mark is registered, or (refer sub Section 6) affixes the mark to goods or packaging thereof or exposes the goods for sale by putting them on the market or imports or exports goods under the mark. In the context of the question which we have to answer, we agree with the reasoning of the learned Single Judge that in view of sub-clause (c) of sub Section 6 of Section 29 where reference is to import as well as export of goods, in the context of Section 29 of the Trade Marks Act, 1999 even import of genuine goods under a trade mark which is registered in India and proprietorship whereof vests in some third party in relation to the description of the goods would constitute an act of infringement.”



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[emphasis supplied]

10. That apart, on facts, Ms. Majumdar submitted that the defendant has baselessly raised the bogey of having spent Rs.25 lakhs only on license fee or that it is liable to pay penalties. She would contend that the defendant has failed to place on record even a single document to evidence any such payment. In fact, according to her, the document placed by the defendant only reflects a payment of Rs.22,500/- on account of license fee towards the counterfeit products in question. Thus on this issue, she contended that the defendant has raised a false bogey of financial distress etc.

11. Moreover, she would also contend that in commercial jurisdiction, if parties indulge in infringement of registered trademarks etc, they must also be ready to suffer damages and penalties, since they are violating the law. It cannot be countenanced that an entity can indulge in trademark infringement and procurement of counterfeit goods, and yet, have the entitlement to put such goods to sale and earn profits. This would be a premium to illegal acts. According to her, this is impermissible, both in law and on facts.

12. So far as the knowledge of the plaintiff with respect to the Nepalese entity, i.e., M/s. Yeti Distillery (P.) Ltd., is concerned, she submitted that the disclosure has clearly been made. However, what transpired between the plaintiff and M/s. Yeti Distillery (P.) Ltd., in Nepal regarding the opposition to the mark “OLD FORRESTER”, has really no relation or bearing in the present suit. She would have the Court believe that irrespective of the fact that the plaintiff may have lost out a lawsuit against M/s Yeti Distillery (P.) Ltd. in Nepal, yet the insurmountable issue looming large is the undeniable fact that



(3) *In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.*

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(6) *For the purposes of this section, a person uses a registered mark, if, in particular, he—*

(a) xx

xx

xx

(b) xx

xx

xx

(c) *imports or exports goods under the mark; or*

(d) xx

xx

xx”

On a plain reading of the said section, it appears that the proscription against export or import of goods into India, which are found to be infringing registered trademarks, is clearly set out. It makes complete sense too for the reason that a clever importer may import goods under the trademark which is registered in India, and while continuing to be in violation thereof, would be entitled to sell the same and earn profits thereon. This cannot be countenanced. It appears that in order to precisely avoid this mischief, clause (c) of sub-section (6) of Section 29 of the Act has been engrafted.

16. That apart, Section 2(16) of the Delhi Excise Act, 2009 clearly defines “counterfeit liquor”. It states:

“(16) “counterfeit liquor” means a liquor in respect of which—

(a) *there is any violation of any right under the Trade Marks Act, 1999 (47 of 1999) or the Copyright Act, 1957 (14 of 1957) or any other similar Act in force, or*

(b) *in respect of which an offence under section 481 or section 483 or section 486 of the Indian Penal Code, 1860 (XIV of 1860) has been committed;”*

Broadly, sub-section (16) of Section 2 of the Excise Act, 2009 includes within its ambit any liquor which is found to be in violation of “any right”



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under the Trade Marks Act, 1999, etc. Manifestly, there are no qualifications to the nature of the liquor and unambiguously, it would include all and any liquor found in violation of the rights, which are conferred under the Act. Thus, whether the goods procured are validly imported or not may not really be the primordial question to be addressed. If the goods, i.e., particularly, liquor, are imported and do infringe any right conferred upon any person or entity under the Act, they would be “*counterfeit liquor*”.

17. Read together, the undisputed view in law that emerges is that goods which infringe the registered trademark under the Act can neither be exported nor imported and; in case such goods are “liquor”, the same would be deemed to be “*counterfeit liquor*”. If this is so, then the question that the subject infringing goods having been imported, whether before the injunction order was passed or later, would really not matter. In fact, sub-section (16) of Section 2 of the Excise Act, 2009 does not even “deem” such goods to be counterfeit, rather, goods of such nature are termed as “*counterfeit liquor*”.

18. Given the above analysis and background, this Court would now examine the prayers sought by the defendant. The defendant has sought the following prayers in the instant application:

“a. Permit the Defendant No.1 to sell the stocks bearing the Trademark ‘OLD FORESTER’ as mentioned in paragraph 26 and 27 of the present application.

b. Pass any such order(s)/direction(s) as this Hon’ble Court may deem fit and proper in the interest of justice in favour of the Defendant No.1.”

The defendant has prayed that in terms of paragraphs 26 and 27 of the application, he may be permitted to (i) discharge the contractual obligations by supplying the imported goods to the Delhi Government after this Court



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permits release of the goods which were seized by the Local Commissioner during execution of the Commission and; (ii) permit the defendant no.1 to further supply the yet to be imported goods in Delhi for discharging its contractual obligations.

19. At the asking of this Court, learned senior counsel, under instructions had also stated that the defendant would be willing to deposit a sum, anywhere between Rs.25 lakhs to Rs.30 lakhs purely as security to allay the apprehension of the plaintiff.

20. Ms. Majumdar had hotly contested that unless the defendant seeks variation of the interim order by filing an application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (“CPC”), this Court would not grant any such relief on an application under Section 151 of the CPC. While placing reliance on the judgment of the Supreme Court in *State of Uttar Pradesh and Ors vs. Roshan Singh (dead) by LRs and Ors., 2008 SCC OnLine SC 124*, she submitted that the inherent power under Section 151 of CPC can only be invoked when alternative remedies do not exist and cannot be used to override express procedural safeguards. Relevant paras of the same reads as under:

7. The principles which regulate the exercise of inherent powers by a court have been highlighted in many cases. In matters with which the Code of Civil Procedure does not deal with, the court will exercise its inherent power to do justice between the parties which is warranted under the circumstances and which the necessities of the case require. If there are specific provisions of the Code of Civil Procedure dealing with the particular topic and they expressly or by necessary implication exhaust the scope of the powers of the court or the jurisdiction that may be exercised in relation to a matter, the inherent powers of the court cannot be invoked in order to cut across the powers conferred by the Code of Civil Procedure. The inherent



powers of the court are not to be used for the benefit of a litigant who has a remedy under the Code of Civil Procedure. Similar is the position vis-à-vis other statutes.

8. The object of Section 151 CPC is to supplement and not to replace the remedies provided for in the Code of Civil Procedure. Section 151 CPC will not be available when there is alternative remedy and the same is accepted to be a well-settled ratio of law. The operative field of power being thus restricted, the same cannot be risen to inherent power. The inherent powers of the court are in addition to the powers specifically conferred on it. If there are express provisions covering a particular topic, such power cannot be exercised in that regard. The section confers on the court power of making such orders as may be necessary for the ends of justice of the court. Section 151 CPC cannot be invoked when there is express provision even under which the relief can be claimed by the aggrieved party. The power can only be invoked to supplement the provisions of the Code and not to override or evade other express provisions. The position is not different so far as the other statutes are concerned. Undisputedly, an aggrieved person is not remediless under the Act.

Though in the final analysis, this question may not be relevant, however, since it has been raised, it would be appropriate to deal with it.

21. It is clear from the ratio laid down by the Supreme Court in ***State of Uttar Pradesh and Ors vs. Roshan Singh (dead) by LRs and Ors.***, that if a clear provision under the CPC is provided, Courts would largely not place reliance on the inherent power conferred by Section 151 CPC. Yet, in order to do complete justice under the doctrines “*ubi jus ibi remedium*” and “*ex dilito justitiae*”, there is no complete embargo or absolute lack of such inherent jurisdiction available with the Court to pass necessary directions, as the need and case may be. Thus, to advocate that the Civil Court is denuded of all powers vested and conferred under Section 151 of the CPC, where other provisions are available, in all circumstances, without having regard the facts



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and situations that may arise in a particular case, would lead to incongruity and in many cases, injustice. This Court is of the considered opinion that the inherent powers can and ought to be exercised, wherever it is deemed appropriate, of course on a strictly case to case basis. In the present case the defendant is seeking permission to dispose of the seized goods without disturbing the *ex-parte ad-interim* injunction order, on the anvil of facts as adumbrated hereinabove. The defendant also canvassed that certain stocks of seized goods may be kept under the custody of the Local Commissioner for the purposes of evidence during trial. Thus, this may not be a case as propounded by the Supreme Court in the aforementioned judgement.

22. Learned senior counsel strongly urged the aforesaid submissions while relying upon the judgment of the learned Division Bench in *Alkem Laboratories Ltd. (supra)*. This court has examined the judgment referred to and finds that in that case two primary reasons had impelled the learned Division Bench to permit sale of the stocks of the appellant/defendant therein, namely (i) that the product was a pain reliever and a 'Schedule -H' drug and there was no dispute on the quality of the appellant's products, and (ii) the public interest would be subserved if the product of the appellant/defendant was allowed to be sold. Whereas, in the present case, as noted above the seized goods would be covered under Section 29(6)(c) of the Act and Section 2(16) of the Delhi Excise Act, 2009. Moreover, the subject products are not pharmaceutical preparations or medicines, the release and sale of which can be said to be in 'public interest'. Lastly, unlike *Alkem Laboratories Ltd. (supra)* where the respondent/plaintiff had not questioned the quality of the products involved therein, in the present case the plaintiff has vehemently and seriously



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disputed the quality and rather alleges the said seized goods to be counterfeit. Thus, the reliance on *Alkem Laboratories Ltd. (supra)* is misplaced.

23. That said, on an overall consideration of the arguments of the defendant and the documents placed on record, though at the initial stage, this Court was inclined to pass certain directions, however, since the law appears to be clearly not in favour of the defendant, is refraining to do so. It cannot be countenanced in law that while sub-section (16) of Section 2 of the Excise Act, 2009 stands, read with the proscription in Section 29(6)(c) of the Act, this Court possibly could permit the defendant from selling the seized goods and placing them in the market. Any such direction may be violative of the provisions of the aforesaid Acts when read together and harmoniously.

24. Thus, in view of the above, this Court is unable to accede to the arguments of the defendant and the application is dismissed.

25. List on the date already fixed.

26. It is pertinent to note that all the above observations and findings have been rendered solely in respect of, and are limited to, the prayers sought in the present application, and shall not tantamount to any expression on the merits of the suit. This is for the reason that the aforesaid observations are predicated on issues and documents that are yet to be tested at trial, except for the legal analysis undertaken herein, lest it would cause prejudice to the parties.

**TUSHAR RAO GEDELA
(JUDGE)**

APRIL 02, 2026/rl