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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA(OS)(COMM) 25/2017, C.M. APPL.45287/2017, 2414/2018 & 2450/2018

M/S SUNAIR HOTELS LTD Appellant
Through : Sh. Rajshekhar Rao and Ms. Kruttika
Vijay, Advocates.

versus

M/S METROPOLITAN HOTEL Respondent
Through : Sh. Jayant Tripathi and Sh. Dinesh
Dahiya, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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17.07.2018

1. The appellant/plaintiff's grievance is that its suit was rejected. It had claimed decree for permanent injunction from using the phrase "METROPOLITAN HOTEL", "THE METROPOLITAN" or any other mark, label or logo that was deceptively similar to its trademark "THE METROPOLITAN HOTEL" and the logo "M" or from doing any other act, amounting to passing-off.
2. Summons were issued to the defendant which filed its written statement. The written statement disclosed that the hotel which displayed the offending mark belonged to M/s. V Wills Hotels Pvt. Ltd. and that it was carrying on the activity under the mark "HOTEL METROPOLITAN" and that it was in existence prior to May 1999.

3. After filing the written statement, the defendant was set down *ex-parte*. By the impugned judgment, learned Single Judge dismissed the suit, holding that since the plaintiff did not take appropriate steps despite being informed that there was no entity called “The Metropolitan Hotel”, to cure the defect.

4. We have heard learned counsel for the parties. It is apparent that the defendant had disclosed the true ownership with respect to the mark which the plaintiff complained was an infringement and also passing off. No doubt, the plaintiff was then under a duty to cure the defect and amend the records by filing separate Memo of Parties and also seeking permission to amend the suit. However, that *per se* should not have resulted in the dismissal of the suit.

5. During the course of the present appeal, the plaintiff had filed an application for amendment (C.M. Appl. 2450/2018). This Court is of the opinion that the amendment sought is only consequential to what the defendant said during the course of written statement. In the circumstances, the same is allowed, subject to just exceptions.

6. The amended suit is taken on the record.

7. Since the suit has not been decided on the merits, we are of the opinion that the defect which had been noticed by the learned Single Judge and has now been cured, consequently, it needs to be remitted for fresh consideration on its merits. The impugned judgment is hereby set aside. The parties are directed to be present before the learned Single Judge for further proceedings on 30.07.2018. Resultantly, the defendant would be at liberty to place on records its

written statement to the amended suit and would also be permitted to lead evidence. The appeal is allowed in the above terms along with the pending applications.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 17, 2018/ajk