

**IN THE COURT OF DR. NEERA BHARIHOKE
DISTRICT JUDGE (COMMERCIAL COURT)-06
SOUTH EAST, SAKET COURTS,
NEW DELHI**

**CS (COMM) 591/25
ANTARA SENIOR LIVING LTD. Vs. SUNCITY HI-TECH
PROJECTS PVT. LTD. AND ORS.**

02.09.2025

ORDER

1. The present matter was listed on 28.08.2025 and this court had raised certain queries to both sides.
2. The Plaintiff was directed to show as to how the suit is maintainable against Defendant No.2 and 3 who are Directors of Defendant No.1.
3. In its additional written submissions filed in response to this query raised by this Court on 28.08.2025, the Plaintiff has submitted that Defendant No.2 and Defendant No.3 are Directors of the Defendant No.1 and are engaged in the day-to-day functioning of Defendant No.1 and that they are necessary and proper parties to the instant proceedings since cease and desist notice had been issued by the Plaintiff to Defendant No.2 and 3. However, they chose not to respond to the same. It has also been submitted by Plaintiff that Defendants continue to willfully infringe the registered trademark of the Plaintiff and it is verily believed and understood that they are deliberately engaged in doing so. The Plaintiff

has also submitted that Plaintiff is *dominus litus* and it is the prerogative of the Plaintiff to implead the parties whom Plaintiff seeks to sue.

4. However, there is no merit in the submissions made by Plaintiff. The law regarding personal liability of Directors has been explained by Hon'ble High Court in ***Sangeeta Jewels(P) Ltd. Vs. Ajay Kumar Jain 2008 SCC OnLine Del 181 and M/s. Faith Mercantile Pvt. Ltd. vs, M/s Simbhaoli Sugars Ltd. & Ors.*** There is no allegation of fraud or giving of personal guarantee by the Directors who have been impleaded as Defendant No.2 and Defendant No.3. Therefore, Defendant No.2 and Defendant no.3 are not necessary parties and are deleted from array of parties.

5. Amended Memo of Parties be filed by the Plaintiff within one day from today. Interim order dated 21.07.2025 is therefore vacated against Defendant No.2 and Defendant no.3.

6. In its additional written submissions filed in response to query raised by this Court on 28.08.2025 in respect of territorial jurisdiction of this court in respect of relief of passing off, the Plaintiff has submitted that jurisdiction for passing off is determined by Section 20 of CPC and in terms of Section 20(a) of CPC, the court within the local limits of which the Defendant carries on business will have the jurisdiction for the purpose of Section 20 CPC. Plaintiff has submitted that as per the RERA Certificate of Defendant No.1 in respect of the project in dispute, the principal place of business of the Defendant No.1 is Essel House, Mandi

Road, Sultanpur, Mehrauli and that this court has territorial jurisdiction over the Essel House, Mandi Road, Sultanpur, Mehrauli and therefore, this court has the jurisdiction in respect of infringement of trademark as well as for passing off.

7. Territorial jurisdiction has to be determined on the basis of averments made in the plaint and the documents relied upon by the Plaintiff and in case the same brings out the ingredients for establishing the jurisdiction of the court, that would be sufficient for the court to assume jurisdiction. It is settled law that a passing off suit does not have the benefit of an entitlement of being filed by the Plaintiff where the Plaintiff resides or works for gain or carries on business, because such suit alleging passing off can only be filed in that civil court as per Section 20 CPC i.e. where either cause of action wholly or in part arises or where the Defendant (not the Plaintiff) resides or voluntarily works for gain or carries on business.

8. There are no pleadings in the plaint in respect of the submissions made by Plaintiff, rightly or wrongly, in respect of territorial jurisdiction of this court as submitted by Plaintiff in its additional written submissions. On perusal of plaint, it is clear that neither cause of action wholly or in part arises nor the Defendant (not the Plaintiff) resides or voluntarily works for gain or carries on business in the territorial jurisdiction of this Court.

9. Therefore, it is held that this court has no territorial jurisdiction in

respect of the relief of passing off and ex parte ad interim injunction granted in favour of Plaintiff and against the Defendants vide order dated 21.07.2025 restraining the Defendants, their officers, assignees, affiliates, associates, representatives, servants, partners and agents from branding and/or selling, offering for sale, distributing, advertising and dealing in the goods/services under the trade name “ANTARA” or any other goods/services amounting to passing off of the Respondent's goods/services as that of the Applicant's goods/services is recalled for having been passed in absence of territorial jurisdiction of this Court.

10. Plaintiff is directed to make submissions if the present suit is maintainable before this Court in view of finding of this Court that this Court lacks territorial jurisdiction in respect of relief of passing off.

11. Copy of the order be given dasti to Ld. Counsel for both sides.

(Dr. Neera Bharihoke)
District Judge (Commercial Court)-06
South East, Saket Courts, New Delhi
02.09.2025