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

+ CS(COMM) 568/2016
M/S SUNAIR HOTELS LTD.

..... Plaintiff

Through: Mr. Hemant Gupta, Adv. (mobile no.
9891265248)

versus

M/S METROPOLITAN HOTEL

..... Defendant

Through: Mr. Anshu Mahajan and Mr. Vikas
Aggarwal, Advs. (mobile no.
9811164848)

CORAM:

**MS. TWINKLE WADHWA (DHJS), JOINT REGISTRAR
(JUDICIAL)**

ORDER

% **14.01.2020**

**IA no. 5170/2019 (application u/s 151 CPC on behalf of
defendant)**

It is submitted by Ld. Counsel for the plaintiff that he has no objection to the present application being filed by defendant qua prayer clause (a) & (c).

As far as eight weeks time sought by the defendant for obtaining certified copy of the amended plaint is concerned, it is submitted by Ld. Counsel for the plaintiff that same was already supplied to the opposite party. It is admitted by counsel for defendant that he has received the copy.

In view of no objection and averment made in the application,



the prayer clause (a) & (c) of present application is allowed. As copies have already been supplied, the prayer clause (b) has become infructuous.

IA stands disposed of accordingly.

IA no. 9152/2019 (application u/O 1 R 10 r/w section 151 CPC on behalf of defendant)

Arguments heard on the present application u/O 1 R 10 r/w section 151 of CPC.

It is the argument of counsel for defendant/applicant that defendant no. 2 was impleaded as defendant no. 2 was running defendant no. 1 hotel on lease basis. However, the said lease expired in April 2018 and now a new lessee is running defendant no. 1 hotel. Hence it is submitted that defendant no. 2 be deleted from the array of parties.

However, at the time of institution of the suit in 2009, it is the own case of the defendant no. 1 that defendant no.2 was running this hotel. Hence, on that particular date when suit was instituted, there was a cause of action in favour of plaintiff. Only because defendant no. 2 is not running the said hotel anymore and is not infringing and passing off the alleged trademark rights of the plaintiff anymore, it cannot be said that the cause of action which accrued in favour of plaintiff has ceased to exist. Hence, request for deletion of defendant no. 2 is hereby declined.

It is further submitted by counsel for applicant/defendant that pursuant to the amended plaint/suit taken on record, defendant no. 1



was supposed to file amended written statement but the defendant no. 2 was to file a separate written statement pursuant to service of defendant no.2. It is further submitted that defendant no. 2 was never served with the summons of the suit. It is further submitted that it was the counsel for defendant no. 1 who gave statement in the Court on 02.11.2018 and hence defendant no. 2 may be permitted to file written statement.

By way of present application, defendant is also seeking permission to file written statement after his right was closed.

In the circumstances, put up for consideration of this prayer before the Hon'ble Court on 03.02.2020 for further directions.

TWINKLE WADHWA (DHJS)
JOINT REGISTRAR (JUDICIAL)

JANUARY 14, 2020/NR