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

+ **CS(COMM) 568/2016**

**M/S SUNAIR HOTELS LTD.** ..... Plaintiff

Represented by: **Mr. Hemant Gupta,**  
**Advocate.**

**versus**

**M/S METROPOLITAN HOTEL E+** ..... Defendant

Represented by: **None.**

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER**

**04.09.2017**

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1. Plaintiff has prayed for the following reliefs in the present suit:

*“a) For a decree of permanent injunction restraining the Defendant by themselves as also through their individual partners/proprietors, agents, representatives, distributors, assigns, stockiest, etc. and all others acting for and on behalf of the Defendant from providing hotel and restaurants services in the name of METROPOLITAN HOTEL, THE METROPOLITAN or any other trade mark/label (s)/logo identical with or deceptively similar to the Plaintiff’s said trademark THE METROPOLITAN HOTEL Label and logo “M” or from doing any other acts or deeds amounting to:*

*i) Passing of Defendant’ impugned services as that of Plaintiff’s.*

*b) For an order for delivery up of all the impugned finished and unfinished material of the Defendant bearing the impugned trade mark/labels/logo or*



*any other trade mark identical with or deceptively similar to the Plaintiff's said trade marks/label (THE METROPOLITAN HOTEL and THE METROPOLITAN & logo "M") including blocks and labels, display boards, sign boards, banners, trade literature, advertisement material, stationery etc. to the Plaintiff for purposes of destruction/erasure;*

- c) for rendition of accounts of the Defendant for ascertainment of the profits illegally earned by the Defendant by its impugned activities and for a money decree for such profits being so ascertained;*
- d) in alternative to the rendition of accounts, for a decree of ₹21,01,000/- (Rupees Twenty One Lacs and One Thousand Only) on account of damages sustained by the Plaintiff due to the impugned acts of the Defendant;*
- e) for an order for costs of the proceedings;*

2. Summons in the suit were served to defendant and written statement was filed. In the written statement filed by Shri Sanjeev Singhal, authorized representative and Director of V Wills Hotel Pvt. Ltd. it was stated that V Wills Hotels Pvt. Ltd. owns and runs the business establishment known as Hotel Metropolitan. It was further claimed that the suit was barred by limitation and the name of the defendant has been in existence since prior to May, 1999.

3. Having known that hotel Metropolitan was not a legal entity/a juristic person and the juristic person which was required to be impleaded as defendant was M/s V. Vills Hotels Pvt. Ltd., being the



company incorporated under the Companies Act on 4<sup>th</sup> November, 2009, till date no effort has been made by the plaintiff to amend the suit and the memo of parties impleading the right defendant. Even in terms of order dated 20<sup>th</sup> February, 2017 learned counsel for the plaintiff has placed on record an affidavit relying on certain documents. The said documents do not clarify the legal/juristic status of the defendant as impleaded.

4. Supreme Court in the decision reported as AIR 2003 SC 1805 Chief Conservator of Forests, Govt. of A.P. vs. Collector & Ors. held:

*“11. It needs to be noted here that a legal entity — a natural person or an artificial person — can sue or be sued in his/its own name in a court of law or a tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerable significance. That is why there are special provisions in the Constitution and the Code of Civil Procedure as to how the Central Government or the Government of a State may sue or be sued. So also there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be useful to remember the distinction between misdescription or misnomer of a party and misjoinder or non-joinder of a party suing or being sued. In the case of misdescription of a party, the court may at any stage of the suit/proceedings permit correction of the cause-title so that the party before the court is correctly described; however, a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 of Order 1 CPC mandates that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to non-joinder of a necessary party. Therefore, care must be taken to ensure that the*



*necessary party is before the court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 of Order 1 CPC provides remedy when a suit is filed in the name of the wrong plaintiff and empowers the court to strike out any party improperly joined or to implead a necessary party at any stage of the proceedings.”*

5. No doubt defendant has been proceeded ex-parte but the plaintiff in order to prove its case even where the defendant is ex-parte has to lead evidence to establish its case. No material has been placed on record by the plaintiff to show that M/s Metropolitan Hotel, the defendant in the suit is a legal entity against whom a decree can be passed.

6. Consequently, the suit is dismissed.

**MUKTA GUPTA, J.**

**SEPTEMBER 04, 2017**  
**‘vn’**

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