



2025:DHC:11178



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

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Date of Decision: 27.11.2025+ **C.O. (COMM.IPD-TM) 184/2025 & I.A. 19219/2025**

CSJ INFRASTRUCTURE PVT LTDPetitioner

Through: Mr. Sagar Chandra, Ms. Shubhie
Wahi, Ms. Sanya Kapoor & Ms.
Mansha Bhatia, Advocates.

Versus

MR. AKASH KOHLI & ANR.Respondents

Through: None.

AND

+ **C.O. (COMM.IPD-TM) 185/2025 & I.A. 19224/2025**

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Versus

MR AKASH KOHLI & ANR.Respondents

Through: None.

AND

+ **C.O. (COMM.IPD-TM) 186/2025 & I.A. 19228/2025**

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Versus

MR. AKASH KOHLI & ANR.Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE TEJAS KARIA**



TEJAS KARIA, J. (ORAL)

FACTUAL BACKGROUND:

1. The present Rectification Petitions are filed under Sections 47 and 57 of the Trade Marks Act, 1999 (“**Act**”) seeking rectification of the Register of Trade Marks (“**Register**”) by cancellation / removal of the Marks ‘Elante



Residences’, ‘Elante Group’ and ‘Elante Residences’ / ‘**Impugned Marks**’) registered in Class 37 bearing Registrations Nos. 4288558, 4394146 and 4558370 respectively.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

2. The learned Counsel for the Plaintiff made the following submissions:

- 2.1. The Petitioner is, *inter alia*, engaged in the business of real estate affairs, management and operations, shopping malls, office complexes bearing the Mark ‘ELANTE’ / ‘**ELANTE**’, (“**Petitioner’s Mark**”). The Petitioner has developed a commercial complex which has a multi-purpose use, housing a shopping mall named ‘ELANTE’, an office building named ‘ELANTE OFFICE SUITES’ and a hotel on the same plot. The entire commercial complex of the Petitioner is operational under the Mark ‘ELANTE’. The Petitioner has also allowed its group companies to use the Petitioner’s ‘ELANTE’ Formative Marks along with their respective Trade Names such as ‘NEXUS ELANTE’. The



Petitioner's Mark has become distinctive of the Petitioner's services and is exclusively associated by the relevant trade and public with the Petitioner.

- 2.2. The Petitioner is the registered proprietor of the Petitioner's Mark bearing No. 2000006 dated 28.07.2010 in Class 35 for services being advertising, business management, business administration, office functions as well as in Class 36 bearing No. 2000008 for the services being Insurance, financial affairs, monetary affairs, real estate affairs, both filed on a proposed to be used basis.
- 2.3. The Petitioner adopted the Petitioner's Mark in the year 2010 and has been using the same continuously and uninterruptedly since the year 2011 till date. By virtue of quality, sales, promotion of the Petitioner's Mark, and long, continuous, and uninterrupted use since the year 2011, the Petitioner has acquired the goodwill and reputation as well as the common law rights arising thereto.
- 2.4. In and around August 2024, the Petitioner came across the Impugned Marks being used by one Elante Residences Ltd. ("ERL") where Respondent No. 1 is one of the Directors, for services being real estate development services as that of the Petitioner. The Impugned Marks are identical to the Petitioner's Mark wherein the prominent and essential feature is 'ELANTE'. Upon a preliminary desktop investigation, the Petitioner also came across the use of the Impugned Marks on social media accounts such as Instagram, Facebook, LinkedIn and YouTube.
- 2.5. In pursuance to the above, the Petitioner's Real Estate Investment



Trust Manager, Nexus Select Mall Management Pvt. Ltd. issued a Legal Notice dated 09.08.2024 (“**Legal Notice**”) to ERL questioning ERL to cease and desist from the use of the Impugned Marks and requisitioning Respondent No. 1 to cancel the Trade Mark Registrations of the Impugned Marks. Thereafter, ERL through Respondent No. 1, *vide* reply dated 18.09.2024 (“**Reply**”), refused to comply with the requisitions mentioned in the Legal Notice and further refused to cease use of the Impugned Marks. It has also been stated in the Reply that the Petitioner is using the Petitioner’s Mark within the retail business and that ERL is using the Impugned Marks in the business of real estate development.

- 2.6. Thereafter, in an attempt to amicably resolve the dispute, the Petitioner instituted a Pre-litigation Mediation in accordance with Section 12A of the Commercial Courts Act, 2015 before the Delhi High Court Legal Services Committee in February 2025. On 29.05.2025, when the Pre-litigation Mediation was listed, the Petitioner submitted that ERL wherein Respondent No. 1 is one of the Directors was using the Impugned Mark ‘ELANTE’ which is identical to the Petitioner’s Mark for services similar to the services provided by the Petitioner under the Petitioner’s Mark, and that since the Petitioner is the prior user and registrant of the Petitioner’s Mark, ERL is infringing the Petitioner’s rights in the Petitioner’s Mark. However, ERL submitted that ERL was not agreeable to cease use of the Impugned Marks and in view of the same, the Pre-litigation Mediation was closed on the said date.



- 2.7. Accordingly, the Petitioner filed the present Petitions against the Impugned Marks.
- 2.8. Since both the Petitioner's Mark and the Impugned Marks are used in relation to real estate projects and malls / offices that involve developing and managing immovable properties, consumers are likely to see a connection between the Petitioner's Mark and the Impugned Marks. The Impugned Marks 'Elante Residencies' and 'Elante Group' have been registered for services being building construction, repair, installation services and the Impugned Mark



'Elante Residencies' / 'Elante Group' is registered for services being construction services, installation and repair services, mining extraction, oil and gas drilling. Further, as per ERL's documents, it is engaged in services such as retail, hospitality, building construction / real estate affairs and development under the Impugned Marks, which is similar to the services being provided by the Petitioner i.e., building construction / real estate affairs, management of shopping malls and office complexes under the Petitioner's Mark. Thus, the consumers are likely to see a false connection / association between the Petitioner's Mark and the Impugned Marks. Therefore, the Impugned Marks should not have proceeded for registration on account of Section 11(1)(a) of the Act



and are in fact contrary to Section 11(1)(a) of the Act.

- 2.9. The use of the Impugned Marks by ELR in the course of trade also leads to passing off of the Petitioner's Mark and ELANTE Formative Marks. Therefore, the Impugned Marks are hit by Section 11(1)(a) and Section 11(3)(a) of the Act and ought to be removed from the Trade Marks Register.
- 2.10. The Petitioner adopted the Petitioner's Mark in 2010 and has been using the same at least since 2011 i.e., for almost over 15 years. Owing to widespread, long and continuous use, the Petitioner's Mark has become exclusively associated with the Petitioner. The Petitioner applied for the registration of the Petitioner's Mark on 28.07.2010 whereas Respondent No. 1 applied for the registration of the Impugned Marks in the years 2019 and 2020. ERL through Respondent No. 1 has also admitted in the Reply that ERL allegedly adopted the Impugned Marks only in 2019. Thus, the Petitioner is the prior adopter, prior user and prior registrant of the Petitioner's Mark and Respondent No. 1 has subsequently acquired the registration of the Impugned Marks. Therefore, the Impugned Marks are liable to be removed from the Register as per Section 57 of the Act on account of a *mala fide* / subsequent adoption making the Impugned Marks, wrongly remaining on the Register.
- 2.11. It has also been averred in the Reply that the Impugned Mark 'Elante Residencies' is being used by ERL. However, as per the records available on the Trade Marks Registry's website, ERL is neither the registered proprietor nor a registered user. Such use by ERL does



not amount to use by the registered proprietor and thus there has been no *bona fide* use of the Impugned Mark 'Elante Residencies' for a continuous period of 5 years from the date on which the Impugned Mark 'Elante Residencies' entered the Register i.e., 15.02.2020. Therefore, the Impugned Marks are wrongly remaining on the Register and ought to be removed also in view of Section 57(2) of the Act and for non-compliance of Section 46 of the Act by Respondent No. 1 in terms of Section 47(1)(a) of the Act. Since Respondent No. 1 is not using the Impugned Marks himself and has failed to comply with Section 46(4) of the Act, it is clear that Respondent No. 1 never had the '*bona fide* intention' to actually use the Impugned Marks and therefore the Impugned Marks ought to be rectified under Section 47(1)(a) of the Act.

- 2.12. As Respondent No. 1 has subsequently acquired a registration of the Impugned Marks, which are identical to the Petitioner's Mark and being used for similar services, the registrations *qua* the Impugned Marks have been acquired *mala fide* and the entries in relation thereto are wrongly remaining on the Register in view of Section 47 and 57 of the Act. Therefore, the Petitioner is a person aggrieved within the meaning of the Act, and thus the Impugned Marks are liable to be removed from the Register.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

3. *Vide* Order dated 08.08.2025, the Notice was issued to Respondent No. 1 and a time of four weeks was granted to Respondent No. 1 to file a Reply to the present Petitions. However, as no Reply to the present Petitions was filed



by Respondent No. 1 and no one appeared for Respondent No. 1 despite service of Notice, *vide* order dated 17.11.2025 Respondent No. 1 was proceeded *ex-parte*.

4. Respondent No. 2 is a formal party. The learned CGSC appearing for Respondent No. 2 submitted that Respondent No. 2 does not wish to file Reply to these Petitions.

ANALYSIS AND FINDINGS:

5. In the absence of any appearance and Reply to the present Petitions by Respondent No. 1, the averments made in the present Rectification Petitions have remained uncontroverted and they are deemed to have been admitted.

6. The material placed on record demonstrates that the Petitioner is the prior adopter, prior user as well as the registered proprietor of the Petitioner's Mark adopted in 2010 and used continuously and uninterruptedly since 2011 in relation to real estate affairs, development, management of shopping malls, office complexes and related services. The reputation associated with the Petitioner's Mark, establishes that the Petitioner has built considerable goodwill in the Petitioner's Mark, and that the Petitioner's Mark has come to denote the Petitioner exclusively.

7. The Impugned Marks have been registered by Respondent No. 1 on a proposed to be used basis in 2019 and 2020. ERL's incorporation in 2013 and the admission of ERL through Respondent No. 1 in the Reply that ERL adopted the Impugned Marks only in 2019, supports the Petitioner's position as the prior adopter and prior user.

8. The Impugned Marks are being used for services identical and similar to those of the Petitioner offered under the Petitioner's Mark. The dominant



and essential feature of both the Petitioner's Mark and the Impugned Marks is 'ELANTE' leaving no scope for differentiation between the Petitioner's Mark and the Impugned Marks.

9. It is trite law that a prior user's rights will override the rights of a subsequent user even though the latter's mark may be a registered Trade Mark as held in *Neon Laboratories Ltd. v. Medical Technologies Ltd.*, (2016) 2 SCC 672. The Petitioner has categorically pleaded use of the Petitioner's Mark from 2011 and claimed that the Petitioner's Mark is prior to that of Respondent No. 1, who has chosen not to appear.

10. Therefore, prior use of the Petitioner's Mark, registrations and the continuous and uninterrupted use of the Petitioner's Mark in course of trade in respect of the services being advertising, business management, business administration, office functions, Insurance, financial affairs, monetary affairs and real estate affairs, demonstrate that the Petitioner's Mark has become associated with the Petitioner.

11. Respondent No. 1 has subsequently adopted the Impugned Marks, which are identical to the Petitioner's Mark for identical services. Such conduct suggests *mala fide* intent for dishonest adoption. It is evident that the entries relating to the Impugned Marks are wrongly remaining on the Register, warranting rectification under Section 57 of the Act.

12. In view of the Petitioner's prior rights, the identity of the competing marks, the similarity of services, the likelihood of confusion, and the lack of *bona fide* adoption or use by Respondent No. 1, the Impugned Marks are liable to be removed from the Register.



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13. Accordingly, the present Petitions are allowed and Respondent No. 2, the Registrar of Trade Marks, Delhi is directed to remove / cancel / rectify / expunge the Impugned Marks 'Elante Residencies, 'Elante Group' and



'Elante Residencies' / ' bearing Registrations Nos. 4288558, 4394146 and 4558370 respectively registered in Class 37 from the Register of Trade Marks.

14. The Registry is directed to send a copy of the present Order to the Trade Mark Registry at e-mail - llc-ipo@gov.in for compliance.

TEJAS KARIA, J

NOVEMBER 27, 2025

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