

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 299/2008

MICROSOFT CORPORATION & ANR Plaintiffs
Through Mr.Pravin Anand and Mr.Nishant
Bora, advocates.

versus

MR. P. HARINATHA REDDY & ANR Defendants

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
10.12.2008

1. The suit is coming up for ex parte judgment. I have heard learned counsel for the plaintiffs.

2. The plaintiffs, Microsoft Corporation, is a Company organized and existing under the laws of State of Washington, USA and Microsoft Corporation India Private Limited, is a Company registered in India have filed the present Suit against M/s. Sahni Comuter World -defendant no.2 and its Proprietor, Mr.P. Harinatha Reddy-defendant no.1, claiming decree of permanent injunction, decree of mandatory injunction for enforcement of an order of delivery up, decree of damages of Rs.20 lacs and rendition of accounts.

2. Plaintiff has filed affidavit of Mr. Achuthan Sreekumar on record and proving authority letter and Power of Attorney executed by the plaintiffs in favour of Mr.Anand Banerjee. Mr.Anand Banerjee has filed, instituted and verified the present plaint on behalf of the plaintiffs.

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3. Plaintiffs have also filed another affidavit of Mr. Achuthan Sreekumar who has stated that the plaintiffs are owners of copyright in the software programme *MICROSOFT WINDOWS, MICROSOFT OFFICE & VISUAL STUDIO* (various versions). It is further stated that the said software programmes are entitled to protection and are literary works for the purpose of Sections 2(o) and 2(ffc) of the Copyright Act, 1957. It is also stated that copyright of the plaintiffs is protected under the Berne Convention and Universal Copyright Convention of which India and USA are signatories and therefore plaintiff no.1's works are protected under Section 40 of the Copyright Act, 1957 r/w. International Copyright Order, 1999. The said provisions support the case of the plaintiffs. Computer programmes fall within the definition of literary work for the purpose of copyright protection under the said Act.

4. Mr. Achuthan Sreekumar has placed on record certificate of registration issued by Registrar of Copyright, USA in respect of copyright of the plaintiff in the software programme "MICROSOFT WINDOWS 2000 Professional", "MICROSOFT OFFICE 2000 Professional" (various versions). The said certificates are marked Exhibits P3-P13.

5. Mr. Achuthan Sreekumar, PW-1 has stated that in January, 2008, the plaintiff had information that the defendants were infringing the plaintiff's copyright and are unauthorizedly loading plaintiff's software on hard disk of the computers sold by them to customers and the unlicensed software so loaded was not accompanied by any original media, certificate of authenticity or end-users licence agreement, etc,. Accordingly, Mr. Pankaj Jain was appointed as an independent investigator. He visited the premises of the defendants at Tirupati on 31st January, 2008 and had made an offer to purchase

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the computer with preinstalled software. He made payment of Rs.27,600/- and invoice dated 31st January, 2008 (Mark Annex. 'B') was issued. Mr.P. Harinatha Reddy, defendant no.1 gave his business card to Mr. Pankaj Jain, which is marked A. Mr.Pankaj Jain in his affidavit dated 13th February, 2008 has stated that he took delivery of a laptop computer system which was preloaded with MICROSOFT WINDOWS XP and MICROSOFT OFFICE and he paid amount of Rs.27,600/- for it. It is further stated that the computer sold by the defendants to Mr.Pankaj Jain was not accompanied with certificate of authenticity, end-users licence agreement, booklet etc.

6. Plaintiffs have filed affidavit of Mr.Gurjot Singh, who is a qualified technical expert/engineer of the plaintiff. In his affidavit Mr.Gurjot Singh has stated that he had examined the computer system and downloaded the relevant data. He has stated that MICROSOFT WINDOWS XP Professional Version 2002 and MICROSOFT OFFICE 2003 software loaded in the said computer were pirated and installed after breaking codes of the original MICROSOFT software. The affidavit indicates the basis and data on which Mr.Gurjot Singh has reached the said conclusion. Print out of the relevant files has been enclosed with the affidavit.

7. Evidence of the above witnesses goes unrebutted and unchallenged. In view of the above evidence of PW nos 2 and 3, plaintiff has been able to establish a case of infringement of copyright by the defendants. The defendants have used, loaded and transferred pirated software thereby violating copyright of the plaintiff. In these circumstances, I am satisfied that plaintiff has been able to establish and prove infringement of copyright by the defendants.

8. At this stage, learned counsel for the plaintiff submits that he gives up his claim for mandatory injunction for delivery up and

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rendition of accounts/damages.

9. In view of evidence led, I feel plaintiff has been able to make out a case for grant of exemplary cost. In this connection, I may refer to the decision of this Court in **CS(OS) 530/2003** decided on 27th July, 2007, titled **Microsoft Corporation Vs. Mr. Rajendra Pawar & Anr** wherein the Court had made following observations:-

"22. Perhaps it has now become a trend of sorts, especially in matters pertaining to passing off, for the defending party to evade court proceedings in a systematic attempt to jettison the relief sought by the plaintiff. Such flagrancy of the defendant's conduct is strictly deprecatory, and those who recklessly indulge in such shenanigans must do so at their peril, for it is now an inherited wisdom that evasion of court proceedings does not de facto tantamount to escape from liability. Judicial Process has its own way of bringing to task such erring parties whilst at the same time ensuring that the aggrieved party who has knocked the doors of the court in anticipation of justice is afforded with adequate relief, both in law and in equity. It is here that the concept of awarding punitive damages comes into perspective.

23. Punitive damages are a manifestation of equitable relief granted to an aggrieved party, which, owing to its inability to prove actual damages, etc., could not be adequately compensated by the Court. Theoretically as well as practically, the practice of awarding of punitive damages may be rationalized as preventing under-compensation of the aggrieved party, allowing redress for undetectable torts and taking some strain away from the criminal justice system. Where the conduct of the erring party is found to be egregiously invidious and calculated to mint profits for his own self, awarding punitive damages prevents the erring party from taking advantage of its own wrong by escaping prosecution or detection.

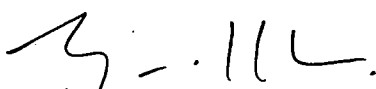
24. The practice of awarding punitive damages in intellectual property law matters, albeit relatively

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new to the Indian legal and judicial system, has been very popular and well-received abroad. While asserting its claim for damages, the plaintiff herein has cited a catena of Indian and foreign case law, where apart from compensatory damages, punitive damages were also awarded in favour of the plaintiff. Before reverting to the facts of the present case, it would be an enriching exercise to give a cursory glance on how punitive damages have been awarded in intellectual property law matters by courts in the United Kingdom, United States of America, Hong Kong, China and India”.

10. Accordingly, decree of permanent injunction is passed in favour of the plaintiff and against the defendants in terms of prayer clause 37(a). Plaintiff is also entitled to costs of Rupees 1 lac from the defendants. The cost includes court fee, advocate fee etc.

Suit is accordingly disposed of. Decree sheet will be prepared.


SANJIV KHANNA, J.

DECEMBER 10, 2008
P/VKR ✓