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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: January 28, 2008

Date of Order: February, 11 2009

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11.02.2009

SAP Aktiengesellschaft & Anr.

...Plaintiffs

Through: Mr. Kunal Verma , Advocates

Versus

M/s Parginsys & Anr.

...Defendants

Through: Nemo

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. This suit has been filed by the plaintiff, a German Company/firm having an Indian subsidiary company with registered office at Bangalore, in respect of infringement of copyright and for damages and delivery and rendition of accounts against the defendants who are stated to have their office in Nagpur, Maharashtra and committed infringement in Maharashtra.

2. It is the case of the plaintiff that plaintiff learnt about the defendants' organization and came to know about the defendants offering to provide training services in the plaintiffs' software programme. The plaintiff made discreet inquiries and planted a decoy student to get the training who obtained a receipt of payment of fees at defendants' office in Nagpur and found out that the training was being imparted on a pirated software and the defendant was infringing copyright of plaintiff at Nagpur. The Plaintiff's agent got an FIR registered, being No.303 on 19th November 2008 registered against the defendants under the provisions of Copyright Act and under Section 420 of Indian Penal Code at Nagpur.

3. The plaintiff has invoked jurisdiction of this Court on the ground that the plaintiff No.2 was carrying on its business within the jurisdiction of this Court through its branch office situate at 2nd Floor, Gesco Centre, 70, Nehru Place, New Delhi-110019 and the training services of the plaintiff were being offered by the authorized partners in New Delhi.

4. I have perused all documents filed by the plaintiff but could not find a single document showing existence of a branch office in New Delhi. No lease deed showing that the plaintiff has taken on rent an office in New Delhi has been filed. There is no doubt that the plaintiff has a right to file a suit for infringement of its copyright at the place where it works for gain but the perusal of entire plaint and the documents annexed therewith would show that the plaintiff works for gain either in Germany or in Bangalore. The plaintiff No.1 while has given its address of Germany, plaintiff No.2 has given its address of Bangalore and below this address it is written also at a Delhi address. The expression 'carrying on its business' or personally works for gain, does not mean having business interest at a particular place. Plaintiff through its partners may be imparting training to students in Delhi. The documents filed show that the students were being imparting training of its software throughout India at different locations in different cities by different companies with whom plaintiff entered into a kind of agreement. The plaintiff is the supplier of the software and the training is being imparted by the partners. The plaintiff has placed on record a sample of Partners Cooperation Agreement being entered into. A perusal of this agreement would show that the training location and training apparatus and all paraphernalia was to be provided by the partners and the software was to be supplied by the plaintiff. Thus, it is in fact an arrangement of user of the plaintiff's software under a license. If somebody is using the plaintiff's software under license of the plaintiff or the plaintiff is providing software support that would not mean that the plaintiff was having place of business where the training was being imparted to the students by the partners.

5. In the present case, all the reliefs which have been sought by the plaintiffs were based only on personal obedience of the defendants. There is no relief which can be obtained without personal obedience of the defendants. The defendants do not have any presence or work in Delhi or at any other place except Nagpur, neither the plaintiff has mentioned an address of Delhi where the defendant was running training institute using plaintiff's pirated software. Despite the fact that the defendant was allegedly infringing the copyright in Nagpur, Maharashtra and the plaintiff was having its subscribers company registered at Bangalore, the suit seems to have been filed in Delhi as a device to force the defendants to come to Delhi to engage a counsel and spent exorbitant sums on litigation and contest litigation in Delhi to see that this litigation becomes a costly affairs for the defendants. Plaintiff is having its registered office in Bangalore and could have easily filed this suit at Nagpur where the plaintiff got an FIR registered against the defendant, but chose to file this suit in Delhi on basis of vague allegations that the plaintiff was having its branch office at New Delhi by giving an address of Delhi with no supporting document that this office was actually existing. If the plaintiff really had a branch office in Delhi, nobody stopped the plaintiff from placing on record the documents pertaining to his branch office at Delhi like lease deed of the office hired by the plaintiff in Delhi. This Court has no sympathy with those who infringe the copyright and trademark but simultaneously the Court has to see that the court is not used as a tool of harassment for the litigants like the one as in this case. The defendant is a person and not a big company who is indulging into the infringement of copyright and so he must be dealt at the place where he has committed infringement, unless the suit is squarely covered under Section 62(2) of Copyright Act. The criminal prosecution has been launched by the plaintiff against the defendants at the place of defendants' shop/business, which only shows that the jurisdiction of this Court has been invoked in order to see that the defendants are not able to defend their case, if they had any defence. Even in civil matter, a person has a right to fair trial and this right cannot be made illusory by entertaining a suit against him at a Court, thousand miles away, where no part of cause of action took place, on the basis of unfounded assertion of

having a branch office by plaintiff.

6. In view of above position, I consider that this plaint is liable to be returned to the plaintiff for filing the same to the Court of appropriate jurisdiction i.e. at Nagpur. Accordingly, let the plaint be returned to the plaintiff for filing the same at Nagpur.

February 11, 2009
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SHIV NARAYAN DHINGRA J.