

THE HIGH COURT OF DELHI AT NEW DELHI

C.S. (OS) No. 554 of 2009

Judgment reserved on: 19.09.2011
% Judgment decided on: 23.09.2011

Microsoft Corporation & Anr. Plaintiffs
Through: Mr. Pravin Anand, Adv.

Versus

Mr. S. Purohit & Anr. Defendants
Through: Defendants are *ex-parte*.

CORAM:-

HON'BLE MR JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J.

1. The defendants are ex-parte. The plaintiffs have filed the present suit for permanent injunction restraining the infringement of copyrights, delivery up, rendition of accounts, damages, etc. against the defendants. The plaintiff No.1, is a company organized and existing under the laws of the State of Washinton, USA., plaintiff No.2, Microsoft Corporation India Private Limited is the wholly owned marketing

subsidiary of the plaintiff No.1, located in New Delhi.

2. It is averred in the plaint that plaintiffs are engaged in the business of developing, manufacturing, licensing and support of a range of software products for various computing devices. The software products of the plaintiffs include operating systems for servers, personal computers, intelligent devices etc. As per the plaint, the software programs developed and marketed by the plaintiffs are “computer program” within the meaning of Section 2 (ff) of the Copyright Act, 1957 and is included in the definition of a literary work as per Section 2 (o) of the said Act. The plaintiff's computer programs are "works" that were first published in the USA and are also registered in the USA. These programs have been created by the employees of the plaintiff No.1, for the plaintiff No.1. Under the US Copyright Law, US Code Title 17, Section 201(b), the copyright in a work created by an employee belongs to the employer under the 'Work made for Hire' doctrine. It is stated by the plaintiffs, that both the computer program, as well as the supplementary User Instructions and Manuals, are 'original literary works' as contemplated under Section 2 (o) and Section 13 (1) (a) of the Copyright Act, 1957. The plaintiff is the owner of the said copyright.

3. Further, it is averred in the plaint, that the rights of authors of

member countries of the Berne and Universal Copyright Conventions are protected under Indian copyright law and India and the USA are signatories to both the Universal Copyright Convention as well as the Berne Convention. Plaintiff's works are created by authors of member countries and originate from and are first published in the said member countries. Thus, in India, the works of plaintiff No.1 are protected in under Section 40 of the Copyright Act, 1957 read with the International Copyright Order, 1999. It is further stated in the plaint that the plaintiff No.1 is the owner of the copyright in the aforesaid literary works within the meaning of Section 17 of the Copyright Act, 1957 and therefore, is entitled to all exclusive rights flowing from such ownership as set out in Section 14 of the Copyright Act. The plaintiffs have been vigilant in protecting their copyrights and from time to time got several infringing parties prosecuted in India.

4. The case of the plaintiffs is that in the month of January 2009, the plaintiffs came to know that the defendants were infringing plaintiff's copyrights and other intellectual property rights by loading the Hard Disk of the plaintiff's software programs on to the braded computers sold by them to their customers without taking any authorization from the plaintiffs to do so. Thus, in order to ascertain facts, the plaintiffs sent Mr. C.S.(OS) No.554/2009

Shubham Jain, an independent investigator to the outlet of the defendants. Accordingly, on 14.01.2009 the said investigator visited the premises of defendant No. 2, DEC Infosystems (p) Limited, Town Hall Road, Brahmapur (Gm), Orissa, where he met Mr. S. Purohit, the defendant No.1 herein who introduced himself as the owner of defendant No.2. Thereafter, the said investigator placed an order for a laptop. On the same day itself, the said investigator was given the delivery of the laptop which was loaded with the unlicensed software of the plaintiff company. A detailed affidavit of the said investigator, Mr. Shubham Jain, is filed along with the plaint.

5. On 11.02.2009, a Technical Expert Mr. Gurjot Singh, inspected the laptop purchased from the defendants and took printouts (screen shots) of the directory of its hard disk, which clearly evidenced the fact that the following software programs of the plaintiff s were present on the computer sold by the defendants:

(a) OPERATING SYSTEM: Windows Vista Business Version 6.0 (Build 6000) Registered to : Compaq vide registration No.89576-OEM-7332141-00216.

(b) Application Software: Microsoft Office 2007 (Word, PowerPoint, Out Look, Excel, Access, Infopath, Publisher, OneNote, Groove)

licensed to Compaq having product I.D. No.89388-707-1528066-65463.

6. According to the technical expert, plaintiff's programmes contained in the hard disk of the laptop computer system were unlicensed and/or pirated versions of the plaintiff's software. The said unlicensed software programs were not accompanied by any original Certificate of Authenticity (COA) label, Holographic Software Installation CD/DVD, User Instruction Manual/Booklet and Genuine copy of End User License Agreement (EULA). A detailed affidavit of the technical expert, Mr. Gurjot Singh, is also filed along with the plaint.

7. On comparing the software being sold by the defendants, with the software originating from the plaintiffs, it was found that the software supplied by the defendants were pirated versions of original computer programs of the plaintiffs. The following were the distinguishing features found:

- (i) The software supplied by the defendants were not accompanied by the accompanying Certificate of Authenticity (COA) label,
- (ii) The defendants did not provide any Holographic Software Installation CD/DVDs (whether recovery or backup) along with the software program.

- (iii) The software supplied by the defendants did not have any End User License Agreement (EULA),
- (iv) The software supplied by the defendants did not have any User Instructions Manual/Booklet
- (v) The software supplied by the defendants were free of cost and the cost of the computer was not enough to cover the price of the genuine software.

8. Feeling aggrieved by the infringing activities of the defendants, the plaintiffs have filed the present suit.

9. The suit as well as the interim application for injunction was listed before court on 23.03.2009 when summons were issued to the defendants in the suit and notices were issued in the application and an ex parte ad interim injunction was passed in favour of the plaintiffs and against the defendants restraining them from copying/reproducing, hard-disk loading on computers, selling, offering for sale, distributing, issuing to the public, pirated/counterfeit/ unlicensed versions of Windows Vista, Microsoft Office 2007 and any other software of the plaintiffs, in any manner, so as to infringe the plaintiffs copyright in the said programs and the related manuals.

10. The summons were reported to have been served to the

defendants by way of 'affixture' by Registrar, Civil Court, Brahmapur vide his reports dated 23.04.2009, with remarks 'DEC Infosystems under lock and key'. While the summons issued through registered post were received back with report dated 13.04.2009 with remark 'avoided to take delivery, returned to sender'. Therefore, by order dated 03.09.2009, the defendants were proceeded ex parte.

11. The plaintiffs have filed their *ex parte* evidence by way of affidavit Ex.PW1/A of PW-1, Mr. Achuthan Sreekumar along with the certified copies of various documents. PW-1, Mr. Achuthan Sreekumar has stated in his examination in chief that documents referred by him in his affidavit as Ex. P-1 to P-21 are exhibited as Ex. PW1/1 to Ex. PW1/21.

12. During the course of the arguments, Mr. Praveen Anand, the learned counsel for the plaintiffs made a request that the affidavits of Mr. Shubham Jain and Mr. Gurjot Singh that were filed at the time of filing of this suit may also be considered as evidence in support of the plaintiff's case.

13. The evidence filed by the plaintiffs has gone unrebutted as no cross-examination of the plaintiffs' witness was carried out, therefore, the statement made by the plaintiffs is accepted as correct deposition. Under C.S.(OS) No.554/2009

these facts and circumstances, the plaintiffs are entitled for a decree for permanent injunction in terms of Para 37(a) to (c) of the plaint with costs.

14. As regards the relief claimed in Para 37(d) is concerned, the plaintiffs have prayed damages to the tune of Rs.20 lacs to be paid by the defendants on account of infringement of copyrights of the plaintiffs.

15. Keeping in view the infringement committed by the defendant which has gone unrebutted, I am of the opinion that a sum of Rs.1 lac can be reasonably awarded to the plaintiffs as compensatory damages and a sum of Rs.1 lac as punitive/exemplary damages as well as damages on account of loss of reputation and goodwill of the plaintiff. This prayer made in para 37(d) is granted to the above extent.

16. The decree be drawn accordingly. The suit stands disposed of accordingly.

MANMOHAN SINGH, J.

SEPTEMBER 23, 2011

sa/jk