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

+ CS(OS) 1688/2009

MICROSOFT CORPORATION AND ANR. Plaintiffs
Through: Ms. Safia Said, Advocate.

versus

MR. S. SARKAR AND ORS. Defendants
Through: None

% Date of Decision: 7th February, 2013.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J. : (Oral)

1. Present suit has been filed for permanent injunction restraining infringement of copyrights, delivery of profits, rendition of accounts, damages and delivery of all plaintiffs' unlicensed pirated software. The prayer clause of the present suit is reproduced hereinbelow:-

"I. A Decree of Permanent Injunction restraining the Defendants, their principal officers, directors, agents, franchisees, servants and all others acting for and on their behalf, from directly or indirectly reproducing/storing/installing and/or using pirated/unlicensed software's of the Plaintiffs, thereby Infringing Copyright in the Plaintiffs' computer programs/software titles;

II. A Decree of Delivery up of all the impugned products being unlicensed/pirated software contained in hard disks, compact disks, floppy disks or other storage media and including any CD Writers/Burners, or any other material infringing or aiding in the infringement of the Copyright of the Plaintiffs, such as infringing copies of user Instruction Manuals of the abovementioned software titles, lying in the possession of the Defendants and their principal officers, directors, agents, franchisees, servants etc;

III. A Decree for payment Rs.20,00,200 towards Rendition of Accounts of profits illegally earned by the Defendants by reason of infringement of the Plaintiff No.1's Copyright as aforesaid;

IV. A Decree of damages be passed in favour of the Plaintiffs and against the Defendants as determined by the Hon'ble Court having regard to the extent of use of the Plaintiff's software, pursuant to the present proceedings;

V. A Decree of costs in the present proceedings be passed in favour of the Plaintiff Companies and against the Defendants; and

Any other and further orders, as this Hon'ble Court deems fit, proper and just in the facts and circumstances of the present case, may be passed in favour of the Plaintiff Companies and against the Defendants."

2. In the plaint, it has been stated that the plaintiff no. 1, Microsoft Corporation is a company organized and existing under the laws of State of Washington, USA. Plaintiff no. 1 is the largest software publisher in the world and its computer software including various operating systems such as Microsoft Windows XP Professional, Win Server 2003 Ent., Win Server

2000, Microsoft Professional 2003, MS Office XP Professional 2002, Office XP Professional with front page, Office XP Small Business, Office Enterprise 2007, Office 2000 Premiere Enterprise 2007, Office 2000 Premiere, Office 2000 Professional etc. Plaintiffs' software programmes are popular, famous and renowned throughout the world.

3. Plaintiff no. 2 is stated to be a wholly owned marketing subsidiary of plaintiff no. 1 which has been incorporated and registered under Indian Companies Act, 1956. Plaintiff no. 2 has been set up in 1989 to promote anti-piracy awareness campaigns and to support plaintiff no. 1 or its affiliates. The products of plaintiff no. 1 are distributed in India through various authorised distributors.

4. The relevant facts of the present case are that the plaintiffs in August 2009, upon receiving information of the defendants' infringing activities regarding unlicensed use of the plaintiffs' software programme, immediately initiated an investigation. The plaintiffs also conducted a search within its database called 'Microsoft Sales' and found that the defendants have registered in their names only the following licenses:-

- a. 20 licenses of Windows Upgrade.
- b. 20 Client Access License (CAL)

5. For the aforesaid purpose, an independent investigator, Mr. Jatin Batra was engaged. The investigator on 7th August, 2009 through telephonic conversation gathered information regarding the plaintiffs' software usage at the defendants' premises as a marketing executive of Anti-virus software solution. During the course of the conversation, the investigator was informed that there were about 180 computer systems housed by the

defendants at their three main offices all located in Kolkata. Mr. Batra was further informed that most of the computer systems housed by the company have installed on them plaintiffs' software programmes, which includes, Microsoft Windows and its various versions, Microsoft Office and their various versions etc.

6. The plaintiffs in the past had continuously written to the defendants requesting them to conduct a SAM Review Programme at their office, with a view to determine the extent of software programmes used by the defendants and the number of licenses held by it with respect to the plaintiff No.1's software programmes. However, despite repeated follow ups made by the plaintiffs, the defendants made no efforts towards conducting the SAM Review or towards legalization and instead chose to ignore the said requests made by the plaintiffs.

7. On 09th September, 2009, this Court by an ex parte order restrained the defendants, its employees, agents, servants etc. from using the plaintiffs' unlicensed software till the next date of hearing. On the said date of hearing, three Local Commissioners were also appointed to visit three different premises of the defendants in Kolkata.

8. On 18th September, 2009, when the Local Commissioners visited the respective offices of the defendants, they found a total number of 76 computer systems installed with around 100 unlicensed/pirated software titles of the plaintiffs.

9. Despite the defendants having been represented by their counsel on 12th April, 2010, no written statement has been filed till date. Since none appeared on their behalf on the next date of hearing, this Court vide order

dated 15th July, 2010 set down the defendants ex parte.

10. Subsequently, plaintiffs led their evidence by filing an affidavit of Mr. Vishal Ahuja, the constituted Attorney of the plaintiffs. Plaintiffs in their ex parte evidence examined Mr. Vishal Ahuja, who filed his evidence by way of affidavit as Ex.PW1/A and proved the notarized copy of the Power of Attorney in his favour by the plaintiffs as well as Court's certified copies of the original copyright certificate for the software programmes such as Microsoft Windows XP Professional and Microsoft Office Professional Edition 2003. The detail of the unlicensed software installations found in all the three locations during the execution proceedings as mentioned in the evidence of Mr. Vishal Ahuja is reproduced hereinbelow:-

Sr. No.	Name of the Software program	Number of Installations
1.	Win XP Professional	66
2.	Win Server 2003 Ent.	9
3.	Win Server 2000	1
4.	MS Office Professional 2003	19
5.	MS Office XP Professional 2002	4
6.	Office XP Professional with front page	7
7.	Office XP Small Business	1
8.	Office Enterprise 2007	2
9.	Office 2000 Premiere	1
10.	Office 2000 Professional	2
11.	Visual Studio 6.0 Ent	2
12.	MS Visual C++ 2005 Redistribution	4
13.	MS Active Sync	1
14.	MS Office Excel Viewer 2003	1

11. Having heard learned counsel for the plaintiffs and perused the ex parte evidence as well as document placed on record, this Court is of the opinion that plaintiffs have in fact proved the facts stated in the plaint and have also exhibited the relevant documents in support of their case. Since the plaintiffs' evidence has gone unrebutted, said evidence is accepted as true and correct.

12. Moreover, the software programmes as developed and marketed by the plaintiffs are a 'computer programme' within the meaning of Section 2(ffc) of the Copyright Act, 1957 and also included in the definition of a literary work as per Section 2(o) of the Copyright Act, 1957. The plaintiffs' work are also protected in India under Section 40 of the Copyright Act, 1957 read with the International Copyright Order 1999 as the rights of authors of member countries of the Berne and Universal Copyright Conventions are protected under Indian Copyright law. India and the USA are signatories to both the Universal Copyright Convention as well as the Berne Convention.

13. Consequently, this Court is of the view that plaintiffs are entitled to a decree of permanent injunction.

14. As far as relief of damages and rendition of accounts is concerned, this Court is of the view that as no evidence on the turnover of the defendants has been led, it is impossible to arrive at a precise figure. However, this Court in ***Microsoft Corporation Vs. Akram Khan & Anr., CS (OS) 117/2003*** decided on ***31st August, 2006*** has held '*Software piracy is a menace and needs to be put down with a heavy hand. I award compensatory damages in sum of rupees of Rs. 5,00,000/- (Rupees Five Lacs Only) in favour of plaintiff and against the defendants. Defendants shall be*

jointly and severally liable.'

15. Accordingly, present suit is decreed in terms of paragraph no.35(I) of the plaint along with damages to the tune of Rs. 5,00,000/-. Plaintiffs are also entitled to the costs of the suit. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

FEBRUARY 07, 2013

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