

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

% *Order delivered on: July 28, 2014*

+ **I.A. Nos.7936/2014 in CS(OS) No.922/2014**

TPF TECHNOLOGIES PVT LTD & ANR Plaintiffs
Through Mr.C.M.Lall, Adv. with Ms.Nancy
Roy, Mr.Vinod Rai, Mr.Subhash
Bhutoria & Mr.Anuj Nair, Advs.

versus

VANDANA GOYAL & ORS Defendants
Through Ms.Pratibha M. Singh, Sr.Adv. with
Mr.Sahil Sethi & Ms.Suhasini Raina,
Advs.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiffs, TPF Technologies Pvt. Ltd. and Moong Labs Technologies Pvt. Ltd. have filed the present suit for damages and permanent injunction, against the three defendants, namely, Ms.Vandana Goyal, Mr.Mohit Garg and Lolz Studio. The suit as well as the interim application was listed before Court on 31st March, 2014 when the interim order was passed in the presence of the learned counsel for the defendants. Relevant paras 4 & 9 of the said order read as under:-

“4. It is the case of the plaintiffs that defendant no.1 was in the employment of the plaintiffs for eight years and by such employment was privy to the said source code and had signed a confidentiality agreement and has in breach thereof copied

the said source code and has after leaving the employment of the plaintiffs in December, 2013, alongwith her husband defendant no.2 started infringing the copyright of the plaintiffs in the said source code in the name and style of defendant no.3.

9. Till the next date of hearing, the defendants are restrained from infringing the plaintiffs copyright in the software in mobile games and computer programmes including its source code.”

2. Thereafter, the defendants No.2 & 3 filed an application under Order XXXIX Rule 4 CPC, being I.A. No.6537/2014, for vacation of the interim order. The case of the defendants on merits is that the subject source code is available in an open source platform on the link <http://code.google.com/p/bloglinesgo/source/browse/trunk/src/Configuration.java>. A mere comparison of the source code available on this link reveals that both the plaintiffs’ source code and the source code of the defendants are derived therefrom. The source code was uploaded on the open source platform on 7th March, 2007, on a date much prior to the plaintiffs’ entry into the mobile gaming market.

3. The said application was disposed of by order dated 4th April, 2014, without prejudice to the respective rights of the parties on the basis of statement made by the learned counsel for the plaintiffs who stated that the plaintiffs are not claiming copyright in whatsoever is in open source and the injunction be not read as qua the same and rather it could not have been read with respect to the same. It was also stated that the plaintiffs are claiming copyright only in the additions made by the plaintiffs to what is in open source.

4. It appears from the pleadings that after passing the said order, on 26th April, 2014 by the defendants filed an application under Order XXXIX Rule 1 read with Section 151 CPC, being I.A. No.7936/2014 (the present application), with a prayer for restraining the plaintiffs and all other persons on their behalf acting through them, for themselves or through third parties, from making frivolous complaints/defamatory statements to game publishers, advertisers, clients, employees, associated entities, police etc. against the defendants. The defendants' contention in this fresh application is that the plaintiffs in a deceitful manner have misused the order dated 31st March, 2014 by not mentioning the subsequent order passed on 4th April, 2014 wherein the plaintiffs themselves have made the admission that they are not claiming copyright in whatsoever is in open source. In a way, in case the defendants are carrying on business by using of the open source, the plaintiffs have no objection.

5. Learned Senior counsel appearing on behalf of the defendants has pointed out the letter dated 5th April, 2014 issued on behalf of the plaintiffs to various parties. Learned Senior counsel has also pointed out that the plaintiffs have also filed a police complaint at Police Station Bharat Nagar, Delhi against the defendants. The appearance of defendant No.2 was sought by the police on 1st May, 2014. Under these circumstances, the defendants have no other option but to approach this Court for seeking the interim order.

6. Mr.C.M.Lall, learned counsel appearing on behalf of the plaintiffs has maintained the stand of the plaintiffs that they are not claiming copyright in whatsoever is in open source. However, he reiterated that the plaintiffs are claiming copyright in the additions made by the plaintiff to the games in

question which the respondents are not entitled to copy. Counsel states that despite of the orders passed by the Court on 31st March, 2014 which was also clarified by order dated 4th April, 2014, the defendants are still infringing the copyright in the addition portion of the work in question which is created by the plaintiffs who are claiming copyright therein. He further states that the defendants have also issued letter dated 8th April, 2014 to the various parties. The contents of the said letter are also contrary to the orders passed by this Court. The contents referred by him in the letter dated 8th April, 2014 issued by the defendants read as under:-

“Hello Opera Team,

This is inform you that recently we have observed that our games our disabled in your store. One of the companies are challenging and defaming us by spreading copyright infringement news and getting our apps disabled trying to hurt our business since we are competing with them.

Honorable Indian high court has challenged the copy right infringement issue raised in favour of us on 4-April-2014. We have removed all the conflicting items from our codes and have uploaded new apps recently as well just to be more cautious.

Just hearing one side of the story and disabling our apps is too harsh a decision from your side. We request you to enable our apps and we will post you the latest order by Honorable Indian High court.

Please send us the email sent by complaining party as a proof of the action taken by you. Please understand it is a huge loss to us since Opera has been one of pioneers stores for us.

And no action should be taken in haste without listening to our side of the story.”

7. If the correspondence exchanged between the parties as well as which were written by the parties to the game source and publishers are read in meaningful manner, it appears to the Court that both the parties are not giving the correct information of the orders passed by the Court on 31st March, 2014 which was clarified by order dated 4th April, 2014. In view of the above said facts and circumstances, the present application is disposed of with the following directions:-

- (i) The defendants are restrained from infringing the copyright of the plaintiffs. However, the defendants are entitled to use the software which is an open source code available on the open source platform on the link, as admitted by the plaintiffs. In case the additions made by the plaintiffs in which the plaintiffs are claiming copyright are used with the open source, then under those circumstances (if the plaintiffs are able to prove the ownership of the said additions), the defendants are not entitled to infringe the same. In case the defendants would be able to prove before Court that the said additions are available prior to the plaintiffs' entry into the mobile gaming market and the plaintiffs are not the owners of the copyright in the said additions, then the defendants may be entitled to use the same. The said aspect would be considered when the plaintiffs' application under Order XXXIX Rules 1 & 2 CPC being I.A. No.5926/2014 would be considered by the Court on merits. Both parties are granted four weeks' time to produce the evidence in this regard.
- (ii) Till the order is finally passed, the interim orders dated 31st March, 2014 and 4th April, 2014 shall remain operative. In the

meanwhile, both the parties shall not miscommunicate the said orders to the game source/publishers. They are at liberty to issue the communications about the correct orders passed by the Court.

- (iii) As far as the police complaint filed by the plaintiffs is concerned, the same be adjourned till the decision of the pending application of the plaintiffs under Order XXXIX Rules 1 & 2 CPC.

I.A. No.5926/2014 (u/o XXXIX R.1 & 2 CPC),

I.A. No.9555/2014 (for exclusion of counter-claim filed by counter-claimants Mohit Garg & Another), I.A. No.9556/2014 (for exclusion of counter-claim filed by counter-claimant Vandana Goyal),

I.A. No.9557/2014 (for refund of excess Court fee paid) and

I.A. No.8623/2014 (u/o XXXIX R.3 CPC), by plaintiffs

List on 13th November, 2014 for consideration.

**(MANMOHAN SINGH)
JUDGE**

JULY 28, 2014