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

Date of Decision: 18.02.2015

\+ CS(OS) 732/2010, I.A. 4983/2010

MICROSOFT CORPORATION & ANR ..... Plaintiff

Through: Ms. Jaya Negi, Advocate.

versus

AMRITBIR SINGH ..... Defendant

Through: None.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This is a suit for a) permanent injunction, restraining the defendants from infringing the various copyrighted software programs of the plaintiff, b) delivery of all the counterfeit software programs, c) rendition of accounts of profit, d) damages etc. The plaintiffs' case is against the infringement of computer software programs, by the defendant, which are included in the definition of 'literary work' under Section 2(o) of the Copyright Act, 1957. The plaintiffs claim to have copyright in the said literary work by way of certificates of registration of copyright in them. The certificates are attached with the suit and they are exhibited as Ex. P-5 to P-26.

2. Two Local Commissioners were appointed by this Court on 20.04.2010. They seized 94 computers at location No. 1, viz. L-44, Verna Industrial Estate, Goa and 51 at location No. 2, viz. NE

Technologies India Pvt. Ltd., Uma Enclave, 2nd Floor, Block-1, Road No.9, Banjara Hills, Hyderabad-500034, both belonging to defendant No. 2. Mr. Mashal Adpaikar, the representative of the defendant was present at the time of the "spot proceedings". The Hyderabad premises of the defendant was visited by the Local Commissioner, Mr. Ashish Dholakia and the Goa premises by the Local Commissioner, Mr. Amit Bansal. The Goa premises were inspected on 29th April, 2000 when 94 computers were examined and seized. The Hyderabad premises were inspected on the same date when 51 computers (47 computers and 4 servers) were seized. These 145 computers were later released on superdari to the defendants. The defendants were directed to show licenses/invoices, if any, which they had in their possession regarding the software programs which were installed on the said computers, but they could not do so; instead they stated that it would take a week to locate the invoices. It was evidenced that the programs installed on the said computers belonged to the plaintiffs. The defendants have not brought on record any certificate, document or invoice to show that they were bought from the plaintiffs. It has been so recorded in the evidence of the plaintiff, which has been led through their constituted attorney viz. Mr. J.K. Sharma. The plaintiffs claim to have developed, inter alia, the following computer programmes which are used by various business establishments and home users:

(a) Microsoft Windows 2000 Professional;

(b) Microsoft Office 2000 Professional;

(c) Microsoft Word 2000;

(d) Microsoft Windows 98;

(e) Microsoft Office 97 (Professional Edition);

(f) Microsoft Visual Studio 6.0, Enterprise Edition;

(g) Microsoft Visual Basic, Version 6.0 (Enterprise Edition);

(h) Microsoft Visual C++ 6.0 Enterprise Edition;

(i) Microsoft Office XP Professional;

(j) Microsoft Windows XP Professional;

(k) Microsoft Office Professional Edition 2003;

(l) Microsoft Office Access 2007;

(m) Microsoft Office Excel 2007;

(n) Microsoft Office Groove 2007;

(o) Microsoft Office OneNote 2007;

(p) Microsoft Office Outlook 2007;

(q) Microsoft Office PowerPoint 2007;

(r) Microsoft Office Project Professional 2007;

(s) Microsoft Office SharePoint Designer 2007;

(t) Microsoft Office Visio Professional 2007

(u) Microsoft Office Word 2007

(v) Windows Vista Ultimate

3. The plaintiffs submit that the infringement has been carried-out by reproducing the plaintiffs' software by loading them onthe Hard Disc Drives (HDDs) of the computer without the license and with the help of pirated CDs or in excess of the software licensed purchased for a designated number of computers.

4. The plaintiffs submit that the defendants had only one license

for Microsoft Office 2000 and 17 licenses for Microsoft Windows CAL 2000 Device. In other words, the moment Microsoft Office 2000 was installed on one computer and Microsoft Windows CAL 2000 Device was installed on 17 computers, the said licenses stood exhausted and these programs reproduced/installed on additional computers thereafter, would amount to infringing the copyright of the plaintiffs by way of end-user piracy.

5. It is the case of the plaintiffs that they received information that the defendants were using large volumes of the software programs belonging to the plaintiffs for commercial purposes at their various offices. Subsequently, the plaintiffs contacted the defendants over the telephone for conducting a Software Asset Management Review in their organisation. As per the information received from commercial reliable sources, the plaintiffs claim to have become aware that defendant No.2 had 80 to 90 computers on which Microsoft Office program was uploaded; that their copyright was being infringed by end user piracy and the plaintiffs' own initial investigations indicated that at the premises of the defendant at Hyderabad as well as at Goa, a number of computers had pirated softwares installed in them were beyond the licensed number of programs. Subsequently, the Local Commissioners' report proved and corroborated their suspicion and their information to the extent that the Local Commissioners found 47 computers and four servers which were using the plaintiffs' software programs. The plaintiffs state that they have suffered monetary loss to the extent of Rs.20.00 lacs because of piracy of their programs. In addition to the monetary loss suffered by them, they also claim to

have suffered loss to their reputation. The total loss of revenue is quantified by the plaintiffs at Rs.37,05,675/-. The cost incurred by the plaintiffs towards fees of the Local Commissioners including the cost incurred by them for discharge of the said Commissions at Goa and Hyderabad as well as prosecuting the suit have also been added to the total loss of revenue.

6. The aforesaid contentions of the plaintiffs which have been corroborated through evidence have not been questioned by the defendant. None appears for the defendant even today. There is no reason why the plaintiffs' contention and their deposition should be doubted. The defendants had failed to show any license which permitted them to install the plaintiffs' software programs on their computers which were seized by the Local Commissioners. The computation of damages also is not challenged. It is stated that the damages have been calculated on the basis of the retail price of a licensed software program. Each computer were inspected and examined by the Local Commissioners. Technical experts of the plaintiffs assisted the Local Commissioners. The inventory of the installed softwares was prepared in the form of Audit Sheets which have been filed on record along with the report of the Local Commissioners. The said computers after being seized and examined have been released on superdari.

7. In the circumstances, the suit of the plaintiffs is liable to decreed in terms of prayer clause (a). The learned counsel for the plaintiffs does not press for prayers (b) and (c), i.e., for delivery of all the counterfeit/unlicensed copies of the plaintiffs' software, and/or

articles/ software etc. to the plaintiffs and rendition of accounts of profit etc. However, they press for damages in terms of the affidavit supporting their case for damages for Rs.27,05,675/-.

8. This Court finds that insofar as damages are stated to be based upon the retail price of the licensed programs with the corresponding pirated software of the same, the plaintiffs would be entitled for a decree of the amount computed at Rs.27,05,675/-. In addition, towards refund of the fees of two Local Commissioners, i.e., Rs.75,000/- each along with costs of Rs.1,00,000/- for other expenses and Rs.1,00,000/- towards punitive damages is also awarded in favour of the plaintiffs. The suit is decreed in the above terms. A decree sheet be drawn up accordingly.

NAJMI WAZIRI, J

FEBRUARY 18, 2015/acm