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

+ CS(OS) 1340/2015 & IA No.10022/2015 (u/O 39 R-1&2 CPC)

THE FOUNDRY VISIONMONGERS LTD Plaintiff

Through: Mr. Rahul Ajatshatru and Mr. Aasish
Somasi, Advs.

Versus

PETER PAUL V. & ANR Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

01.08.2016

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1. The plaintiff has sued to restrain the two defendants namely Peter Paul V and WE FX Imagineer Pvt. Ltd. from copying, reproducing, storing, installing and / or using pirated / unlicensed software of the plaintiff including 'NUKE/NUKES' and its various versions, thereby infringing the copyright of the plaintiff therein and for ancillary reliefs.

2. The suit was entertained and vide *ex-parte* ad-interim order dated 12th May, 2015, the defendants so restrained and a Court Commissioner appointed.

3. The Court Commissioner has reported 13 computer systems at the premises of the defendant No.2 having unlicensed software of the plaintiff.

4. No written statement has been filed by the defendants. The defendants vide order dated 16th February, 2016 were proceeded against *ex-parte*.

5. The counsel for the plaintiff states that though the defendants had approached the plaintiff for settlement / compromise and also signed a settlement agreement with the plaintiff but have thereafter neither paid any amount under the settlement agreement nor contacted the plaintiff.

6. The counsel for the plaintiff has today in Court handed over an application under Order VIII Rule 10 of Code of Civil Procedure, 1908 (CPC) along with a copy of the settlement agreement signed between the parties. The same is taken on record and be got numbered.

7. For the reasons stated by me in ***Indian Performing Rights Society Vs. Gauhati Town Club*** MANU/DE/0582/2013 need to relegate the plaintiff to lead *ex-parte* evidence is not felt.

8. The plaintiff, on the basis of the pleadings and the documents filed has made out the case for grant of the relief of permanent injunction and delivery for infringing goods.

9. A decree is passed in favour of the plaintiff and against the defendants in terms of prayer paragraphs 48(a) & (b) of the plaint and by directing the defendant No.1 to, upon the representative of the plaintiff contacting him along with a copy of this order, deliver all the infringing goods as were seized by the Court Commissioner and handed over to the defendant No.1 on *superdari*. In the facts, it is deemed appropriate to also award exemplary damages in the sum of Rs.5 lakhs to the plaintiff against the defendants jointly and severally. The plaintiff shall also be entitled to costs of the suit.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

AUGUST 01, 2016/bs..
CS(OS) 1340/2015

Page 2 of 2