

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 03rd DAY OF JULY 2017

THE HON'BLE DR. JUSTICE ANITA SUMANTH

A. No.3149 of 2017
in
C.S. No.452 of 2017

1. Microsoft Corporation,
company organized and existing
under the laws of the State of Washington,
USA, having its registered office at
925, Fourth Avenue, Suite No.2900,
Seattle, Washington 98104-1158, USA,
herein rep. by the Power of Attorney
Holder, Mr.Vishal Ahuja
2. Microsoft Corporation India Private Limited,
A company incorporated under the provisions
of the Companies Act, 1956 and having its
registered office at 807, New Delhi House,
Barakhamba Road, New Delhi-110 001,
represented herein by its Power of Attorney
Holder, Mr.Vishal Ahuja
also at #471, 2nd Floor,
Prestige Polygon, Anna Salai,
Rathna Nagar, Teynampet,
Chennai-600 018. ... Applicants/Plaintiffs

-Versus-

1. Mr.Ramaswamy Gnanasundaram,
IT Head at M/s.Anjana Software
Solutions Private Limited,
2. M/s.Anjana Software Solutions
Private Limited,
A company incorporated under
the provisions of the Companies Act, 1956
1 & 2 having office at
Module No.306, NSIC Software
Technology Park, B-24,
Guindy Industrial Estate,
Ekkaduthangal, Chennai-600 032
Tamil Nadu. ... Respondents/Defendants

Application praying that this Hon'ble Court be pleased to appoint the Advocate Commissioner to visit the premises of the respondents/defendants and direct the Advocate Commissioner to carry out the tasks listed as in the supporting affidavit pending disposal of the suit.

This application coming on this day before this court for hearing the court made the following order:-

The Civil Suit has been filed seeking a judgment and decree of permanent injunction restraining the respondents or others acting for and on their behalf, from directly or indirectly reproducing/storing/installing and/or using pirated/unlicenced software of the applicants, including but not limited to Microsoft Windows (various versions), Microsoft Office (various versions), amongst others thereby infringing copyright in the applicants' computer programs/software titles.

2.This application has been filed seeking an order appointing an Advocate Commissioner to inspect the premises of the respondents and direct him to carry out the tasks listed in the supporting affidavit pending disposal of the suit.

3.Heard the learned counsel for the applicants.

4.The first applicant is a Company organised under the laws of the State of Washington, U.S.A. and the second applicant is its exclusive Marketing Agent in India. The

second respondent is an Indian Company i.e. M/s.Anjana Software Solutions Private Limited and the first respondent is the IT head therein. The respondents are said to have acquired licenses to use the Software Products of the applicants such as:

- i.2 licenses of Microsoft Access 2007;
- ii.3 licenses of Windows Server Standard and 398 CALs of Windows Server;
- iii.licenses of Microsoft Office Standard 2007;
- iv.3 licenses of Microsoft Office XP;
- v.1 license of Visio Standard 2003;
- vi.7 licenses of Windows XP Professional;
- vii.50 licenses of Windows Vista Business Upgrade;

5.The applicants would state that the respondents have been violating the license agreement, using the software in excess of the Licenses granted. In order to determine the extent of un-authorized usage, the applicants deputed one Ms.Pooja Vasant, to make discreet enquiries. The Investigator appears to have confirmed the position that there are about 300 computer systems in use by the respondents in which un-authorized versions of the software have been installed.

6.Notice was issued upon which Mr.A.V.Arun, learned counsel appears on behalf of the respondents.

7. On behalf of the respondents, the very existence of the existence of the license agreement between the parties is disputed. Consequently, according to learned counsel for the respondents, the request made for onsite verification of the systems has no basis. However, the counter admits in several paras that licences have been obtained in respect of the Software Programmes, in which the applicants claim copyright. It is thus obvious that licences, in some form, have been obtained. When a copy of the same in whatever form, was sought, learned counsel would have no answer nor could he produce any document, in the absence of which, I proceed on the basis that the licences filed by the applicants are, in fact, those, under which the software programmes procured from the applicants are in use currently.

8. The licenses have a clause dealing with Verifying Compliances reading thus:

10. Verifying compliance.

Customer must keep all usual and proper records relating to the Products Customer runs. Microsoft may request that Customer conduct an internal audit of all Microsoft Products in use throughout Customer's organisation, comparing the number of Products in use to the number of effective Licenses issued in customer's name. Following any audit, Customer agrees to deliver to Microsoft a

written statement signed by its authorised representative, certifying that either (1) customer has sufficient licenses to permit all usage disclosed by the audit, or (2) customer has ordered sufficient licenses to permit all usage disclosed by the audit. By requesting an audit, Microsoft does not waive its rights to enforce this agreement or to protect Microsoft's intellectual property by any other means permitted by law, including conducting an onsite audit.

9.This Clause makes it incumbent upon the respondent to maintain records of the Software under licence. It also provides for internal audit of the software products upon request of Microsoft and preserves their right to conduct an onsite audit to ensure protection of their intellectual property.

10.The evidences produced by the applicants are prima facie to the effect that the respondents are using the Software far in excess of permitted use under licence. The affidavit filed by the Private Investigator supports this allegation.

11.The respondents also do not dispute the position that there have been several requests from the applicants for conduct of the audit as per Article 10 of the licence

and the only defence put forth is that they felt no reason to submit to the audit in view of their belief that the licences are being utilised by them in accordance with the licence terms. This is no defence. Insofar as the agreement between the parties clearly provides for an audit to be conducted solely to ensure proper and authorised use of the licences, the respondents either ought to have provided a report themselves or permitted the applicants to conduct an audit as requested.

12. The studied silence on the part of the respondents as well as the attempt, albeit feeble, before me, to deny in toto the licences under which the software is being used, lend support to the allegations levelled against the respondents by the applicants. I am thus of the considered view that an Advocate Commissioner is liable to be appointed.

13. I appoint Mr. Arun Kurian Joseph, Advocate (9840212344) having his office at 2/177, Karl Marx Street, Uthandi, Chennai-119, as Advocate Commissioner to audit the use of Software under licence from the applicants, make an inventory thereto as contained in the Computer Systems/Laptops/ Hard Disk/CD/DVD or any other Media in the provision of the respondents as well as take photographs of licences, if any. He may take the

assistance of two representatives of the applicants, both technically qualified, for the purposes of identification of the un-licensed Software. The officials of the respondents company who are incharge of their computer systems shall disclose the passwords, if necessary, in order to enable the Commissioner and his team to conduct a proper investigation and file a report before this Court on 03.08.2017. He shall be paid an initial remuneration of Rs.50,000/- (Rupees fifty thousand only). The expenses toward his travel and stay shall be defrayed by the applicants. The Commissioner shall take the assistance of the police, if necessary.

14. Issue notice returnable by 03.08.2017. Private notice is also permitted.

15. Time for execution of warrant is on or before 03.08.2017 List on 03.08.2017.

Sd/.DR.A.S.M.J
03.07.2017

//Certified to be a true copy//

Dated this the day of 2018.

JJ 13.03.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.