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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ EX.P. 54/2010 & EA (OS) No.117/2010 (u/S 151 CPC)
AUTODESK INC & ANR Decree Holders
Through: Ms. Shruti Baid & Ms. Aarshia Behl,
Advs.

Versus

B SREEDHAR & ANR Judgement Debtor
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **07.12.2017**

1. The two plaintiffs viz. Autodesk, Inc and Autodesk India Pvt. Ltd. filed this Execution Petition seeking execution of a Compromise Decree dated 20th May, 2009 against the two defendants / judgment-debtors viz. B. Sreedhar and Ambrosia Designs.
2. Though the Execution Petition is pending for seven years but not finding any decree sheet on record, I have enquired so from the counsel for the plaintiffs / decree-holders.
3. The counsel for the plaintiffs / decree-holders states that the decree sheet remained to be filed, though is ready.
4. The counsel for the plaintiffs / decree-holders further states that this Execution Petition is pending for the last seven years owing to the defendants having evaded service of the notice of the execution ordered to be issued.
5. Under the compromise decree aforesaid, the defendants / judgment-debtors had *inter alia* agreed to pay total sum of Rs.18.85 lacs to the plaintiffs / decree-holders and had also issued posted dated cheques in

favour of the plaintiffs / decree-holders.

6. The counsel for the plaintiffs / decree-holders states that the said cheques have been returned dishonoured.

7. Though a decree is found to have been ordered to be passed by this Court in terms of the Settlement / Compromise contained in IA No.6495/2009 filed by the plaintiffs / decree-holders against the defendants / judgment-debtors aforesaid, but a perusal of the compromise application shows the parties to have therein agreed *inter alia* as under:

“i. In the event of breach of any of the payment terms or any other terms of the present settlement, the Plaintiffs would be entitled to forthwith and without any notice, terminate the present settlement and pursue appropriate legal remedies available to it.

1. The parties agree that all their disputes have been resolved by virtue of this Compromise Application and the Plaintiffs would not institute or press any further remedies available to them, for Infringement of Copyright in the software programs of the Plaintiffs prior to the date of execution of the present Settlement, unless there is a breach of the terms of the present Settlement, including those that relate to the legal costs and purchase of software.”

8. The counsel for the plaintiffs / decree-holders states that the plaintiffs / decree-holders have filed an application seeking disposal of this execution by transfer of the decree to Andheri District Court, Mumbai but the same has not been listed. It is stated that the same has also been recorded by the learned Joint Registrar on 21st November, 2017 but the application has still not been listed.

9. A direction is sought to the Registry to list the application.

10. The application must have not been listed for the last over one month for the reason of the counsel for the plaintiffs / decree-holders having not removed the defects/objections pointed out therein. It is for the counsel for the plaintiffs / decree-holders to remove the defects and have the application listed and no direction in that regard can be sought.

11. Otherwise also, I do not find in the Compromise, in terms whereof this suit was decreed, any money decree to have been passed in favour of the plaintiffs / decree-holders and against the defendants / judgment-debtors. Though Clause (d) as under:

“d. The Defendants are therefore required to pay the Plaintiff No.1 a total sum of Rs.18,85,000/-. (Rupees Eighteen Lakhs Eighty Five Thousand Only), towards full and final settlement under the present Compromise Application.”

could have been used to construe a money decree in favour of the plaintiffs but the parties in Clauses (i) and (l) reproduced above having agreed that the plaintiffs / decree-holders in the event of breach by the defendants / judgment-debtors would terminate the settlement and pursue the legal remedies available to them, have negated the same also.

12. Thus, in accordance with the compromise, the plaintiffs / decree-holders can only terminate the settlement and initiate action against the defendants / judgment-debtors for infringement of copyright and revive the claim which was made in the suit.

13. Thus, even if the oral prayer of the plaintiffs / decree-holders were to be accepted, there being no money decree to be executed at Mumbai, no need for transfer of the decree for execution to Mumbai arises.

13. This Execution Petition is misconceived and is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

DECEMBER 07, 2017

‘gsr’..

EX.P. 54/2010

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