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

+ CS(OS) 750/2014 and IA No. 4767/2014

THE FOUNDRY VISIONMONGERS LTD Plaintiff
Through Mr. Ravin Galgotia, Adv.

versus

SWARNAB NARAYAN ROY & ANR Defendants
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **26.10.2017**

1. This suit is filed for permanent injunction to restrain the defendants, delivery and damages. It is the case of the plaintiff that it was established in the year 1996 and is a leading innovator of VFX visual effects and image processing technologies that boost productivity in motion pictures film, animation, commercials and broadcast post production. It is further stated that the software products developed by the plaintiff are also used by the leading Indian Studios. NUKE is said to be a plaintiff's software programme which delivers unparalleled speed and first class features. The software is said to provide the stable foundation for most forward-thinking directors. It is also claimed that the plaintiff company has spent millions of US Dollars in advertising and promotion of its products all over the worlds. It is also stated that the plaintiff is the owner of the copyright in the software programmes developed and marketed by it. It is further urged that being the

owner of the copyright in the aforesaid literary works (computer programmes), within the meaning of Section 17 of the Copyright Act, the plaintiff is entitled to all the exclusive rights flowing from such ownership.

2. In a month of January 2014, the plaintiff is said to have received information from credible market sources that the defendants are using large volumes of software programs belonging to the plaintiff on their computer systems. Hence, a search was conducted within the data base of the plaintiff and it was revealed that the defendants had not purchased a single license of the plaintiff's software programme. Hence, the present suit is filed.

3. This court on 14.03.2014 appointed a Local Commissioner(LC) to visit the premises of the defendants in Chennai, Tamil Nadu. When the LC visited, 23 computers of the defendants were found to be using software of the plaintiff. The LC has also pointed out that the defendants agreed to settle the matter with the plaintiff and the parties entered into a settlement agreement on the said date, namely, 02.04.2014 which was signed by the parties.

4. I may also note that the defendants have now stopped appearing after service. On 30.11.2016, an application filed by the plaintiff under Order VIII Rule 10 CPC was disposed of considering it to be premature. The plaintiff was asked to serve the defendants again.

5. The plaintiff made an attempt to serve the defendants. It appears from the service report that the defendants have shifted to some other place. Learned counsel for the plaintiff has submitted in court that they do not have any other address of the defendants.

6. Keeping in view the fact that the defendants were served on 31.03.2014 and that they also entered into a settlement with the plaintiff in

the presence of the LC on 02.04.2014, no further attempt is required to serve the defendants. It appears that they were trying to evade service. I may also note that the LC found 23 computers on the site using pirated software programmes. In these facts, no further evidence is required especially keeping in view the fact that the defendant have not bothered to enter appearance or file the written statement.

7. Keeping in view the fact that the despite service, the defendants are not appearing and have not filed their written statement, I deem it a fit case to pass a decree under Order VIII Rule 10 CPC. I accordingly pass a decree in favour of the plaintiff and against the defendants in terms of para 49 (i), (ii) and (iv) of the plaint. The plaintiff shall also be entitled to costs.

8. The suit is disposed of accordingly.

9. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

OCTOBER 26, 2017

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