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

+ **CS(OS) 699/2012**

MICROSOFT CORPORATION & ANR Plaintiffs

Through: Ms. Safia Said with Mr. Dhavish
Chitkara, Advs.

versus

VISHWANATH WANJARI & ORS Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.12.2017**

1. In this suit by the two plaintiffs namely (i) Microsoft Corporation and (ii) Microsoft Corporation India Private Limited, against the three defendants namely (i) Vishwanath Wanjari, (ii) Asian Electronics Ltd. and (iii) Asian Electronic Components Limited, on 7th November, 2013, a decree was passed in favour of the plaintiffs and against the defendants in terms of prayer paragraph 27(I) of the plaint verified on 20th March, 2012 and vis-a-vis the other prayers namely of delivery, rendition of accounts and recovery of damages, issues were framed and the suit posted for recording of evidence. No evidence has been led by the plaintiffs till now.

2. The counsel for the plaintiffs states that vide *ex parte* order dated 21st March, 2012 in the suit, two Court Commissioners were also appointed to visit the premises of the defendants and to make an inventory and seize the unlicensed software; however only one of the Court Commissioners so appointed filed his report and the other Court Commissioner never filed his report and upon the same being realised, the suit is being adjourned for the said purpose.

3. The counsel for the plaintiffs on enquiry states that the Court Commissioner who was appointed and whose report is not on record, on being contacted, informed that he had handed over his report to his clerk for filing and does not have any copy thereof.
4. None appears for the defendants though the defendants were appearing earlier in the suit. The counsel for the plaintiffs on enquiry states that the defendants have not been proceeded *ex parte* till now.
5. A perusal of the order sheet shows that the counsel for the defendants on 29th August, 2016, had sought discharge and which was allowed and notice ordered to be issued to the defendants.
6. The said notice has not been served as yet and has been returned back without any report.
7. I am of the view that once the defendants were earlier appearing through Advocate and their Advocate had sought discharge and the defendants had not made any alternate arrangements, there is no need to attempt their fresh service.
8. The defendants are proceeded against *ex parte*.
9. The counsel for the plaintiffs states that nominal damages be awarded to the plaintiffs and the suit be disposed of.
10. The counsel for the plaintiffs, on enquiry states that the Court Commissioner whose report is on record found twenty seven computer systems with unlicensed softwares of the plaintiffs in the premises of the defendants no.2&3 namely Asian Electronics Ltd. and Asian Electronic Components Limited.

11. Considering the aforesaid facts, the suit is disposed of by, in addition to the decree already passed, also passing a decree in favour of the plaintiffs and jointly and severally against the defendants no.2&3 for recovery of Rs.5,00,000/- as damages.

12. The plaintiffs shall also be entitled to costs of the suit; counsel's fee assessed at Rs.1,00,000/-.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

DECEMBER 08, 2017

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