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

\+ CS(OS) 951/2014

MICROSOFT CORPORATION& ANR ..... Plaintiffs

Through Ms.Safia Said, Advocate.

versus

ANIL PANDEY & ANR ..... Defendants

Through Mr.Nishant Datta and Mr.Pradeep Bhardwaj, Advocates.

\+ CCP(O) 74/2014

MICROSOFT CORPORATION& ANR ..... Plaintiffs

Through Ms.Safia Said, Advocate.

versus

ANIL PANDEY & ANR ..... Defendants

Through Mr.Nishant Datta and Mr.Pradeep Bhardwaj, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

% **19.04.2017**

The present suit has been filed by the plaintiffs seeking a decree of permanent injunction against the defendants for having reproduced/installed/used the unlicensed software of the plaintiffs thereby infringing upon their copy rights besides damages and rendition of accounts have also been prayed for.

Plaintiff no.1 is a company incorporated under the laws of United States of America. Its popular software products include the widely used operating system software, Microsoft Windows Operating System and its software in its various versions. These window products have been evolved over a period of time. These softwares are today installed and used on millions of computers all over the world including India. The computer programs (software products) of the plaintiff no.1 are always licensed in a 'soft' version of the End-User License Agreement. Plaintiff no.1 is the owner of copyright in its software programmes developed and marketed by it. These computer programmes are "works" of the plaintiff. Due to highly nature of plaintiff no.1's software programmes, software piracy is a matter of huge concern to plaintiff no.1. Plaintiff no.2 is a company incorporated in India and is the wholly owned subsidy of plaintiff no. 1.

Defendant no.1 is the IT Head responsible for the maintenance and configuration of computer systems which are installed in the offices of defendant no.2. Defendant no.2 is a company which was using the licensed software of the plaintiffs in terms of a partnership agreement which has since been terminated. In spite of repeated reminders to defendant no.2 to renew this partnership agreement, the defendant has not responded. The defendants continued to use the unlicensed software of the plaintiff which amounts to an infringement of copyright of the plaintiff.

During the process of inquiry it was learnt that defendant no.2 had made volume purchases of the software licence of the plaintiffs; the window upgrade licence could be legally used by defendant no.2 only after earlier version of a licensed software produced is available with the defendant which is not so. Defendants are violating the intellectual property rights of the plaintiffs for commercial gain. In spite of requests to them to obtain licence they have not acceded.

The suit was accordingly filed.

Defendants had been served. On the first date i.e. on 01.4.2014, a local commissioner, Mr.Harsh Chopra, was appointed to visit at 305, Mayfair Complex, S.P.Road, Hyderabad. Certain other directions are contained in the aforenoted order. The report of the local commissioner has since been filed. The local commissioner had visited the said premises on 04.4.2014. He was prevented from accessing the premises of the defendant. The purpose of the visit of the local commissioner was explained to defendant no.1 but the local commissioner was not allowed to enter the premises of the defendant. In fact the atmosphere prevailing in the security area became agitated and there is also a possibility of a physical danger. The local commissioner thought it prudent to leave the premises. This report clearly shows that there was a hindrance in the execution of the commission by defendant no.1 and as such the necessary evidence as had been sought for by the plaintiff could not be concluded.

CCP(O) 74/2014 was filed by the plaintiff seeking initiation of contempt proceedings against the defendants. At one stage the parties had also almost settled the dispute. This is recorded in the order dated 13.3.2015. Mediation talks thereafter failed. Plaintiff was pressing his contempt petition. Defendant thereafter chose not to appear. Coercive proceedings were ordered against the defendant. It is only when bailable warrants were ordered against him that the defendant now put his appearance. Contemnor no.3 is an employee of the defendant no.1 of defendant no.1 who has left the company. The other two contemnors i.e. contemnor no.2 and 3 are both present today. They have tendered an unconditional apology. This is by way of an affidavit. They are both present in the Court. Learned counsel for the plaintiff submits that the matter can be settled if the defendants are willing to suffer a decree and at the same time they must be relegated to punitive damages. The defendants are ready to comply with this direction.

Thus while noting the unconditional apology tendered by contemnor no.2 and 3 and taking it on record; simultaneously a decree of permanent injunction is passed in favour of the plaintiff and against the defendants, its director, agents, etc from using the pirated unlicensed software of the plaintiffs thereby infringing upon the copyright of the plaintiff in the computer programme/software titles. The plaintiff is also entitled to a decree in the sum of Rs.6 lakhs in his favour and against the defendant (agreed upon the amount by the defendants). This sum has been arrived at on the statement made by the defendant that Rs.2 lakhs is approximately the licence fee which he is paying per annum to the plaintiffs and admittedly has not paid that licence fee for two years. Another sum of Rs.2 lakhs is imposed qua the coercive proceeding which has necessarily ordered against the defendants. Their presence has been procured in the Court. The fact that the defendants have not filed any defence as also not led any evidence also makes out a fit case for the grant of punitive damages in favour of the plaintiff. This Court notes that this decree of Rs.6 lakhs which has been passed in favour of the plaintiff is otherwise a figure which has been arrived at with the consent of the parties. The suit is decreed in terms thereof. This amount shall be positively paid in three weeks, failing which the plaintiffs shall be entitled to execute the decree with interest @ 12 % per annum.

Decree sheet be prepared accordingly.

The Suit as also CCP(O) 74/2014 are disposed of.

INDERMEET KAUR, J

APRIL 19, 2017
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