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

+ CS(COMM) 1664/2016 & IA No.16007/2016 (u/O XXXIX R-1&2
CPC)

SAP SE

..... Plaintiff

Through: Ms. Astha Joshi, Adv.

Versus

SARASWATI TECHNOLOGIES & ORS

..... Defendants

Through: Counsel for D-1 (appearance not
given).

Mr. R. Sasiprabhu, Mr. Biju P.
Raman, Mr. Vishnu Sharma, Mr.
Himanshu Suman and Mr. Raghu R.
Chandra, Advs. for R-17.

Mr. Shailesh K. Kapoor, Mr. Ajay
Kumar and Ms. Suruchi Thapar,
Advs. for D-19.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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19.01.2017

1. This order is in continuation of the earlier orders dated 22nd
December, 2016 and 6th January, 2017.

2. The plaintiff is reported to have filed the requisite court fees.

3. Though the process fee filed by the plaintiff for service of the
defendants was returned under objection but the plaintiff has filed an
affidavit of service and the counsel for the plaintiff, on enquiry, states that
the said affidavit is with respect to the service of all the defendants. The
counsel for the plaintiff further states that the defendants No.12 to 21 have
complied with the *ex-parte* order dated 22nd December, 2016, again proving
service thereof.

4. Only the counsels for defendants No.1, 17 & 19 appear and none appears for the other defendants.
5. There is no reason to disbelieve the affidavit of service of the plaintiff; even otherwise, the impleadment of defendants No.12 to 21 is only for compliance of the orders sought against defendants No.1 to 10 (defendant No.11 is in the nature of John Doe / Ashok Kumar).
6. The non-appearing defendants No.12 to 16, 18 & 20 to 21 are accordingly proceeded against *ex-parte*.
7. The defendants No.2 to 10 are websites and none appears for them also despite service.
8. The defendants No.2 to 10 are also proceeded against *ex-parte*.
9. The counsel for the defendant No.1 states that the defendant No.1 is willing to suffer a decree for permanent injunction in terms of prayer paragraph (a), (b) & (c) of the plaint. It is further stated that the defendant No.1 has offered to pay damages in the sum of Rs.4 lakhs to the plaintiff but the plaintiff is demanding lump-sum damages of Rs.10 lakhs.
10. The counsel for the plaintiff and the counsel for the defendant No.1 seek time to resolve the aforesaid difference.
11. In my view, there is no need to adjourn the suit for the said purpose. The grant of damages in such a situation is in the discretion of the Court.
12. I have suggested that the defendant No.1 pays damages in the sum of Rs.7.5 lakhs to the plaintiff and the counsel for the defendant No.1 is agreeable thereto.

13. Considering the nature of the claim and in accordance with the dicta in *Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.* 2013 SCC OnLine Del 508 need to relegate the plaintiff to file *ex-parte* evidence against the defendants who have not appeared despite service is not felt.

14. The plaintiff, on the basis of the pleadings and the documents filed, has made out a case for grant of *ex-parte* reliefs claimed against the *ex-parte* defendants also.

15. Accordingly, a decree is passed in favour of the plaintiff and (i) against the defendants No.1 to 10 in terms of prayer paragraph (a), (b) & (c) of the plaint; (ii) against the defendant No.1 for recovery of lump-sum damages in the sum of Rs.7.5 lakhs; the said amount be paid within four weeks failing which the same shall incur interest @ 12% per annum from the expiry of four weeks here-from till the date of payment / recovery; (iii) against the defendants No.12 to 21 in terms of prayer paragraph (g) of the plaint, save that the services to be blocked would be of the defendants No.1 to 10 instead of defendants No.1 to 11 websites.

16. The parties are left to bear their own costs.

Decree sheet be drawn up.

Copy of this order be given *dasti* under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

JANUARY 19, 2017

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