

\$~19

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS (COMM) 212/2018, CCP(O) 14/2015 & I.A. 25057/2014 & I.A. ____/2016 (u/s 151 CPC by Defendants)**

MICROSOFT CORPORATION & ANR. Plaintiffs
Through: Mr. Ravin Galgotia, Advocate.
(M:9953600801)
versus

RAMCHANDRA AGARWAL & ORS. Defendants
Through: Mr. Vishwendra Verma, Advocate.
(M:9871704611)

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **10.07.2018**

1. The Plaintiffs have filed the present suit seeking injunction restraining infringement of copyrights, delivery-up, rendition of accounts, damages, etc. Reliefs are sought in the suit on the basis that the Defendants are using pirated/unlicensed software programmes of the Plaintiffs including Microsoft Office and its various versions; Microsoft Windows and its various versions, and other software programmes of the Plaintiffs.
2. The suit was listed on 12th December, 2014 on which date this Court had granted an ad-interim ex-parte injunction restraining the Defendants in the following terms.

“
I have heard learned counsel for the Plaintiffs and also perused the plaint, application and the documents filed along with the plaint, I am satisfied that it is a fit case for grant of ex parte ad interim injunction. Accordingly, till the next date of hearing, Defendants, their principal

officers, Directors, agents, franchisees, servants, and all others acting for and on their behalf, are restrained from directly or indirectly using any kind of computer related activities or otherwise in any other manner, any pirated/counterfeit/unlicensed software of the Plaintiffs, or reproducing and distributing any pirated/counterfeit/unlicensed software of the Plaintiffs in contravention of the terms of the End-User License Agreement(s), or infringing in any other manner or causing or enabling or assisting others to infringe the copyrights of the Plaintiffs in their respective computer programmes and related manuals.

.....”

3. A Local Commissioner was also appointed by the said order. Thereafter, it appears that the parties negotiated for amicable resolution of the dispute.

4. Mr. Vishwendra Verma, learned counsel for the Defendants points out that vide e-mail dated 28th April, 2015 it was agreed between the parties that the Defendants would procure licenses for various software products of the Plaintiffs for a settlement amount of Rs.51,29,387.58 from the Plaintiffs' partner RICOH India Limited ('RICOH'), including Rs.2 Lakh as legal fees. Accordingly, RICOH raised an invoice on V2 Retail Limited i.e. Defendant No.2. The payment was made by Defendant no.2, by way of account payee cheque dated 28th April, 2015 drawn on ICICI Bank, Malaviya Nagar branch bearing no.098002 for a sum of Rs. 45,09,364/- (excl. of VAT and Service Tax) in favour of 'Ricoh India Limited'. Learned counsel for the Defendants submits that the said cheque has already been encashed by the Plaintiffs' reseller.

5. Mr. Galgotia, learned counsel for the Plaintiffs submits that the Defendants are refusing to give undertakings in respect of infringement, hence application under Order XXIII Rule 3 CPC could not be filed, as there was a stalemate.

6. Mr. Verma submits that the entire amount minus TDS and VAT has been remitted to RICOH India Ltd. Since there was a settlement between the parties, the Plaintiffs' claim also stands satisfied by payment of license fees. He further undertakes on behalf of his clients that they will not use unlicensed software. He has handed over a copy of the application which he claims to have filed under Section 151 with the prayer that the Plaintiffs ought to be directed to withdraw the suit as they had received the entire amount from the defendants. Along with the said application the Defendants have annexed copies of the email, invoice, copy of the cheque etc., Copy of the said application along with the documents shall be retained on record.

7. Accordingly, it is directed that the Defendants shall not install or use unlicensed software/programmes of the Plaintiffs. The Defendants having procured licenses as per the settlement amount and having given an undertaking not to use unlicensed software of the Plaintiffs and the Plaintiffs having accepted the payment, the claim of the Plaintiffs stands satisfied. The suit is decreed in terms thereof. Decree sheet be drawn. All the pending I.A.s are also disposed of.

PRATHIBA M. SINGH, J.

JULY 10, 2018/dk