

\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 208/2016 & IA No.6698/2018 (under Order XIII A Rules
3&6(1)(A) CPC)
MICROSOFT CORPORATION & ANR Plaintiffs
Through: Mr. Ravin Galgotia & Mr. Rohan
Sharma, Advs.
Versus
SUNIL KUMAR TRIVEDI & ORS Defendants
Through: Mr. Akash Nandolia, Adv. for D-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

30.05.2018

1. The two plaintiffs viz. (a) Microsoft Corporation, and, (b) Microsoft Corporation India Pvt. Ltd. have instituted this suit against the seven defendants viz. (i) Sunil Kumar Trivedi, (ii) Neo Corp International Ltd., (iii) Sacos Indigo Pvt. Ltd., (iv) Poly Logic International Pvt. Ltd., (v) Prism Flexible Solutions Pvt. Ltd., (vi) Olympian Investors & Traders Ltd., and, (vii) Vishwakarma Creations Pvt. Ltd., for permanent injunction restraining infringement of copyright of the plaintiffs in Microsoft Office, Microsoft Windows and their various versions and for the ancillary reliefs of delivery and recovery of damages.

2. The suit was entertained and vide *ex parte* ad-interim order dated 21st December, 2012 while issuing summons of the suit, the defendants were restrained from using unlicensed software programmes of the plaintiffs including but not limited to Microsoft Windows, Microsoft Office and Window Server and commissions issued to the premises of the defendants.

3. The order dated 27th January, 2014 records that written statements had been filed by the defendants no.1,2,6 and 7 and defendants no.3, 4 and 5 sought time to file written statement.

4. The order dated 29th August, 2014 records that the delay on the part of defendants no.3,4 and 5 in filing the written statement was condoned.

5. Vide order dated 9th August, 2016, on the pleadings of the parties, the following issues were framed in the suit:

- “1. Whether the Plaintiffs are the owner of copyright in software programs forming part of the present suit? OPP
2. Whether the Defendants have infringed the Plaintiffs’ copyright subsisting within the said software programs? OPP
3. Whether the plaintiffs are entitled to damages as claimed in the plaint? OPP
4. Relief.”

and the parties relegated to lead evidence and without any opposition from the defendants, the *ex parte* order dated 21st December, 2012 was made absolute during the pendency of the suit.

5. Vide order dated 19th October, 2016, the parties were relegated to mediation.

6. The order dated 25th October, 2017 records that the defendants had stopped appearing in the mediation proceedings since February, 2017. None appeared for the defendants before the Joint Registrar also on 25th October, 2017. However, instead of proceeding *ex parte* against the defendants, the Joint Registrar issued court notice to the defendants.

7. None appeared for the defendants on 25th January, 2018 either. The order dated 25th January, 2018 records that except for defendants no.3,4 and 5, the court notice had been served on all the other defendants.
8. Thereafter, on 1st May, 2018 and 15th May, 2018 also none appeared on behalf of the defendants before the Joint Registrar.
9. The plaintiffs have filed IA No.6698/2018 under Order XIII A Rules 3 and 6 of the CPC as applicable to commercial suits.
10. Only Mr. Akash Nandolia, Advocate appears and states that he appears only for defendant no.1 and states that he has been recently engaged and does not know anything about the case and seeks adjournment.
11. The counsel for the plaintiffs has also filed an affidavit of service of all the defendants.
12. None appears for defendants no.2 to 7.
13. The defendants no.2 to 7 are proceeded against *ex parte*.
14. The appearance of the advocate for defendant no.1 also is as good as no appearance and adjournments cannot be granted at mere asking, as appears to be the case. As aforesaid, upon the defendants having stopped appearing in the suit, though should have been proceeded against *ex parte* but the Joint Registrar issued court notice to the defendants. Merely because such court notice was issued does not entitle the defendant no.1 to again start the process of seeking adjournments.
15. The counsel for the plaintiffs on enquiry states that the plaintiffs, subject to a decree for permanent injunction as sought being granted today itself, will not press for other reliefs.

16. The conduct of the defendants of not opposing the application for interim relief and of conceding to the *ex parte* order being made absolute during the pendency of the suit shows that the defendants are participating in the suit from time to time without any intent to defend the same.

17. The plaintiffs, on the averments in the plaint and the documents filed therewith are found entitled to a decree for permanent injunction as claimed and the need to relegate the plaintiffs to *ex parte* evidence therefor is not felt in view of *Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.* 2013 SCC OnLine Del 508 and other judgments following the same.

18. A decree is accordingly passed in favour of the plaintiffs and against the defendants, of permanent injunction in terms of prayer paragraph 54(a) of the plaint verified on 20th December, 2012.

Decree sheet be drawn up.

No costs.

RAJIV SAHAI ENDLAW, J.

MAY 30, 2018

‘gsr’..