

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

% **Date of decision: 20th November, 2018**

+ **CS(COMM) 1675/2016 & IA No.16124/2016 (u/O XXXIX R-1&2 CPC).**

MSC. SOFTWARE CORPORATION & ANR Plaintiffs

Through: Mr. Shantanu Sahay and Mr. Aasish,
Advs.

versus

S. RAMANATHAN & ANR Defendants

Through: Mr. K.V. Balakrishnan, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiffs namely MSC. Software Corporation and MSC Software Corporation India Pvt. Ltd. have sued for permanent injunction restraining the two defendants namely S. Ramanathan and Automotive Test Systems of which Mr. S. Ramanathan is the proprietor, from infringing the ADAMS 2014 software and the various versions of the said software of the two plaintiffs and for ancillary reliefs.

2. The suit came up first before this Court on 23rd December, 2016 when summons thereof and notice of the application for interim relief were issued to the defendants but no *ex parte* relief granted.

3. The two defendants have filed the written statement *inter alia* stating that they have never used the ADAMS software for carrying out any of their business activities at any point of time and do not permit anyone in their office to use or download pirated/unlicenced software and the suit is liable to be dismissed. It is further pleaded (i) that the defendant no.2 Automotive Test Systems is not the sole proprietary of defendant no.1 Mr. S.

Ramanathan but is a partnership firm; (ii) that the defendants were surprised to receive a notice on behalf of the plaintiffs preceding the suit about unauthorised use of software of the plaintiffs in the year 2016 and on investigation found that the alleged ADAMS software was never used in their office to carry on any business activity; unauthorised use of the said software of the plaintiffs was however found by one employee of the defendants and which employee was directed to immediately delete the software from the computer and the said software was deleted; (ii) such unauthorised use of the software was found to be on the computer system normally used by the trainees in the office of the defendants and which was used without any knowledge or consent of the defendants; (iii) that it initially appeared that some trainee students in the office of the defendants unauthorisedly downloaded the software; and, (iv) that the defendant received a letter dated 12th October, 2016 from one of it's employees who in the said letter stated that he had downloaded the ADAMS software to help one trainee student with his college project and clarified that he never used the said software to carry out any office assignment.

4. The plaintiffs have filed a replication to the aforesaid written statement. Admission/denial of documents has been completed and the suit is ripe for framing of issues and for consideration of the application for interim relief.

5. In view of the stand aforesaid of the defendants in their written statement, I have enquired from the counsel for the defendants, whether the defendants intend to use the software of the plaintiffs and/or whether the

defendants are willing to suffer a decree for injunction as sought by the plaintiffs.

6. The counsel for the defendants states that the defendants, in the course of their business, have no need for the software of the plaintiffs and without admitting any of the claims of the plaintiffs are willing to suffer a decree for permanent injunction as sought in prayer paragraph 51(i) of the plaint dated 21st December, 2016.

7. On further enquiry it is informed that besides the defendant no.1 Mr. S. Ramanathan, Mr. Sandeep Sharma is the other partner of the defendant no.2.

8. I have next enquired from the counsel for the plaintiffs that once the defendants are so ready, what other relief remains.

9. The counsel for the plaintiffs states that the plaintiffs are entitled to recover damages from the defendants. Attention is invited to page 33 of the Part-III file, being the e-mail dated 1st September, 2016 from the plaintiffs to the defendants, where the plaintiffs had given two options to the defendants i.e. either to take a licence from the plaintiffs on payment of licence fee of Rs.92,37,600/- to the plaintiffs for one licence or to pay Rs.76,98,000/- to the plaintiffs for past unauthorised use of the software.

10. The plaintiffs, without proving that the defendants have earned from infringement, can neither force the defendants to take a licence nor can claim any damages from the defendants. I have thus asked the counsel for the plaintiffs, what is the plea and/or proof that the defendants have commercially benefited from the infringement.

11. The counsel for the plaintiffs states that the very fact that there is an infringement entitles the plaintiffs to damages. The counsel has in Court, handed over an extract of details regarding defendants' use of plaintiffs' software between 25th March, 2016 to 1st July, 2016 under an Index of Documents dated 20th November, 2018 and which is taken on record only for the present purpose (as otherwise the stage for filing documents is long past gone) and contends that the same records the duration of unauthorised use of the software of the plaintiffs by the defendants.

12. I have however again asked the counsel for the plaintiffs, what is there for the plaintiffs to prove that the defendants have put such use, even if any, to commercial benefit, to entitle the plaintiffs to recovery of any damages.

13. The counsel for the plaintiffs states that an adjournment be granted to enable him to take instructions from the clients.

14. Considering the fact that the defendants are agreeable to suffer a decree for injunction and further considering the fact that the plaintiffs till date are not clear as what they will prove even if their suit were to be kept pending and were to be put to trial on the ancillary reliefs claimed by the plaintiffs, I am of the view that no purpose will be served in putting this suit to trial. Trial has to be in proof of pleadings and documents and when there are no pleadings and/or documents to suggest commercial benefit to the defendants, this Court cannot permit a wild goose chase. Interest of justice will be served by compensating the plaintiffs with costs of the suit. I am of the view that the plaintiffs are entitled to costs of the suit since there is admitted infringement, even though without admitting the rights of the plaintiffs, in the office of the defendants though the defendants have offered

explanation therefor. It is also felt that if issues are to be framed qua the claim for damages, then issues as to entitlement of the plaintiffs to right in the software will also have to be framed and which would lead to a full-fledged trial.

15. Accordingly, it is deemed expedient to dispose of this suit by passing a decree in favour of the plaintiffs and against the defendants, including against the defendant no.2 as a partnership firm, of permanent injunction in terms of prayer paragraph 51(i) of the plaint dated 21st December, 2016, with costs equal to value of the court fees paid on the plaint and professional fee/expenses in the sum of Rs.1,50,000/-.

Decree sheet be drawn up.

NOVEMBER 20, 2018
'pp'

RAJIV SAHAI ENDLAW, J.