

\$~1

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

+ CS(COMM) 545/2016, OA No.20/2020, IAs No.1479/2020 (for condonation of 40 days), 1480/2020 (for condonation of 68 days delay in filing and re-filing the OA), 14778/2019 (u/O VI R-17 CPC) & 15013/2019 (u/O XXXIX R-1&2 CPC)

SAP AKTIENGESELLSCHAFT & ANR Plaintiffs
Through: Mr. Ranjan Narula, Adv.

Versus

M/S VAREHOUSE INFOTECH & ORS. Defendants
Through: Ms. Jyoti Taneja, Adv. for D-1.
Mr. Nikhilesh Kumar, Adv. for D-2 & 4.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
17.02.2020

- %
1. The two plaintiffs, namely (i) SAP Aktiengesellschaft and (ii) SAP India Pvt. Ltd., instituted the suit against the then sole defendant M/s Varehouse Infotech, for permanent injunction to restrain the defendant from infringing the copyright of the plaintiffs in the programmes ERP ABAP/4, ERP SD, ERP HRM, ERP PP, ERP MM, ERP FICO, ERP CRM and in their various versions and for ancillary reliefs.
 2. The suit came up before this Court first on 1st April, 2009, when while issuing summons/notice thereof, vide *ex-parte ad-interim* injunction the defendant was restrained from directly or indirectly reproducing, installing and/or using pirated/unlicensed software programmes of the plaintiffs, thereby infringing the copyright of the plaintiff No.1.

3. The counsel for the plaintiffs, on inquiry states that the said order continues.

4. Vide order dated 17th August, 2010, the following issues were framed:

“1. Whether the plaintiff is the owner of copyright in the computer programs:- SAP R/3, SAP FICO/SAP PP, SAP HR, SAP MM, SAP SD, SAP ABAP and their various versions/modules, including the use of all training manuals published by the plaintiffs or copies thereof? OPP

2. If the answer to the above is in affirmative, whether the defendant has infringed the plaintiff's copy right in the above computer programme and its training manuals? OPP

3. Whether the defendant is liable to render accounts to the plaintiff as prayed for? OPP

4. Whether the plaintiff is entitled to damages due to infringing activities of the defendant, if yes, amount to which the plaintiff is entitled to? OPP

5. Whether the present suit is not property instituted? OPD

6. Whether this Court does not have the territorial jurisdiction to try this suit? OPD

7. Whether the defendant has not infringed the plaintiff's copy right by imparting training services in SAP services to its students? OPD

8. Relief.”

and the parties relegated to evidence.

5. The counsel for the plaintiffs, on enquiry states that one of the witnesses of the plaintiffs was partly examined.

6. The plaintiffs thereafter applied for impleadment of (a) Mr. Pakkirisamy Balaji, Director, (b) Talent IT, and (c) Vega Intellisoft Private Limited, as defendants No.2 to 4 to this suit and for amendment of the plaint. The Joint Registrar, vide order dated 27th August, 2019 allowed the application for impleadment and the application for amendment of the plaint is stated to be still pending consideration.

7. The defendants No.2 to 4 preferred a Chamber Appeal, being OA 20/2020, against the order dated 27th August, 2019 allowing their impleadment in the present suit and which came up before this Court on 3rd February, 2020, when *inter alia* the following order was passed:

“1. Chamber Appeal preferred by defendants no.2 and 4 against the order dated 27th August, 2019 of the Joint Registrar allowing application of plaintiffs for impleadment of defendants no. 2 to 4, is for consideration.

2. The counsel for defendants no.2 and 4 has stated, that (i) the defendant no.2 Pakkirisamy Balaji was earlier a Director in defendant no.1 M/s Varehouse Infotech Pvt. Ltd; (ii) however the plaintiff has impleaded Varehouse Infotech only as a party; (iii) the defendant no.2 has now ceased to be a Director of Varehouse Infotech Pvt. Ltd. and is now a Director in defendant no.4 Vega Intellisoft Pvt. Ltd.; (iv) the defendant no.4 otherwise has no relationship with the defendant no.1; (v) the defendant no.4 independently had a contract with the plaintiffs till the end of the year 2017 and is not indulging in any actions as alleged by the plaintiff and the defendants no.2 and 4 are willing

to suffer a decree as sought by the plaintiff, without admitting any of the averments in the plaint; (vi) there is no entity by the name of defendant no.3 Talent IT at the address of the defendant no.4 and the defendants no.2 and 4 do not know any entity as the defendant no.3; and, (v) the name of defendant no.1 Varehouse Infotech Pvt Ltd. has since been struck off from the records of the Registrar of Companies.

3. The presence of the counsel for defendant no.1 was sought and who on enquiry, whether the defendant no.1 is willing to suffer a decree for injunction, states that the plaintiffs are also prosecuting one of the directors of the defendant no.1 at Chennai and she will have to take instructions.

4. The counsel for the plaintiffs states that on the statement of defendants no.2 and 4 that there is no entity by the name of defendant no.3, the plaintiff will not press for the reliefs against defendant no.3.

5. List on date already fixed i.e. 17th February, 2020.”

8. Counsel for the defendant No.1 today states that she could not make contact with the defendant No.1 and seeks another opportunity to attempt to make contact with the defendant No.1 and states that else, she will seek discharge from appearance in the suit.

9. The counsel for the plaintiffs draws attention to the affidavit dated 15th October, 2009 of Part I(A) File, of S. Ramkumar as director of defendant No.1 M/s. Varehouse Infotech and wherein it was stated as under:

“6. In view of the above the Defendant herein without going into the controversy of the matter and without admitting any claim of the plaintiff either in Civil suit or the criminal proceedings and in order to resolve the dispute amicably undertakes the following:

i. The Defendant undertakes that in future they shall not reproduce/install and/or use pirated/unlicensed software programs such as ERP, ABAP/4, ERP SD, ERP HRM, ERP PP, ERP MM, ERP FICO, ERP CRM and their various versions/modules, for the purpose of either business or in any other manner amounting to infringement of Plaintiff No.1 copyrights;”

10. The counsel for the defendant No.1 states that undertaking as aforesaid was given for the reasons stated in para 5 of the affidavit.

11. The counsel for the plaintiffs states that though the counsel for the defendant No.1 has not received instructions, but in view of the aforesaid statement in the affidavit, aforesaid, decree for injunction as sought can be passed and the plaintiffs are not pressing for any other relief.

12. The counsel for the plaintiffs also states that it appears that the defendant M/s. Varehouse Infotech, earlier a partnership firm, within three months prior to the institution of the suit was converted into M/s. Varehouse Infotech Pvt. Ltd. and of which the plaintiffs did not know and for which reason the suit was filed against M/s. Varehouse Infotech.

13. On enquiry, whether the defendant M/s. Varehouse Infotech, in its written statement took any such plea, the counsel for the defendant No.1 M/s. Varehouse Infotech states that though it is not expressly pleaded so but the affidavit filed along with written statement is sworn by Mr. S. Ramkumar

as director of the defendant No.1.

14. It is recorded in the order dated 3rd February, 2020, that now the name of M/s. Varehouse Infotech Pvt. Ltd. has also been struck off from the records of Registrar of Companies.

15. In view of the aforesaid, the suit is unnecessarily burdening the roster of this Court and it is appropriate to bury the same by, without the defendants admitting any of the claims of the plaintiffs, passing a decree, in favour of the plaintiffs and against the defendants, including defendants No.2 to 4, in terms of prayer paragraph 28(a) of the plaint dated 21st January, 2009.

16. All pending applications and chamber appeal are disposed of.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

FEBRUARY 17, 2020

jitender..