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

% **Date of decision: 15th October, 2024**

+ CM(M)-IPD 22/2024, CM 105/2024, CM 106/2024 & CM 107/2024
BENTLEY SYSTEMS INC & ANR.Petitioners

Through: Mr. Rahul Beruar, Ms. Nidhi Jain,
Ms. Jyotsana Sinha, Mr. Deepesh
Bhardwaj and Ms. Manini Sidhu,
Advs.
M: 9915044787

versus

PUSHPARAJ KANDASWAMY & ANR.Respondents
Through: Ms. Raman Sharma, Adv. (Through
VC)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J (ORAL)

1. The present petition has been filed challenging the order dated 12th September, 2024, passed by the learned District Judge, (Commercial) (Digital-07), South-East, Saket Courts, Delhi in **CS(COMM) 3586/2024**, titled as ***Bentley Systems Inc. & Anr. Versus Pushparaj Kandaswamy & Anr.***, wherein, the settlement application under Order XXIII Rule 3 of Code of Civil Procedure, 1908 ("CPC"), jointly filed by the petitioners and the respondents herein, was disallowed.
2. It is submitted that the learned District Judge refused to decree the suit, in terms of the settlement.
3. Issue notice. Notice is accepted by learned counsel appearing for the



respondents.

4. Ms. Raman Sharma, Advocate appearing for the respondents submits that she has no objection to the present petition, and prays that the present petition be allowed in terms of the prayer made, therein.

5. Accordingly, with the consent of the parties, the present petition is taken up for final hearing today itself.

6. As per the case canvassed on behalf of the petitioners, in the present petition, the petitioner no.1 is a leading global provider of infrastructure software solutions to engineers, architects, geospatial professionals, constructors and owner-operators for the design, construction and operations of infrastructure. The petitioners carry on business in India, i.e., *inter-alia*, sale and distribution of its MicroStation software programs (including its various versions such as MicroStation Connect).

7. It is the case on behalf of the petitioners that petitioner no.1's software programme including Microstation and its various versions and all user instruction manuals included with it, are "literary works" capable of protection within the meaning of the Copyright, Act, 1957 and the same have also been created/developed and written for plaintiffs by their employees, during the course of their employment with the petitioners.

8. In India, the copyright subsisting in a work created by an employee belongs to the employer under the 'work for hire' doctrine. Thus, the petitioner is stated to be the first owner of the copyright, as defined under the Copyright Act, 1957 in its software programme, including, in MicroStation. Thus, it is submitted that first published and registered in the United States of America, the petitioners' copyright in the MicroStation software are recognized, and protected in India by virtue of the Section 40 of



the Copyright Act, 1957, read with the International Copyright Order, 1999.

9. It is submitted that the petitioner's software products can be availed by the users by procuring valid license from the petitioner and maintaining the said licenses by payment for renewal/maintenance/upgrade fee, etc. Use of petitioners' software are governed by the End-User-License Agreement ("EULA"), which draws the scope of a license in software programme, and the right that has been granted to a user of a software programme.

10. As per the case canvassed by the petitioners, in June, 2024, the petitioners learnt of the unauthorized use of their MicroStation software by the respondents. Thus, the petitioners engaged independent investigators to investigate the matter. During investigation, the petitioners learnt that respondents were using the petitioners' MicroStation software without any valid/legal license, and that a team of at-least 60-80 employees of respondent no. 2, were using the MicroStation Connect software, during their employment with respondent no.2.

11. Thus, the petitioners filed commercial suit, being *CS(COMM) 3586/2024*, against the respondents for infringement of the petitioners' copyright in their software MicroStation and its various version under Copyright Act, 1957. The said suit is pending before the learned District Judge, (Commercial) (Digital-07), South-East, Saket Courts, Delhi, as on date.

12. It is submitted by learned counsel appearing for the petitioners that the petitioners' suit along with the various applications, came up for consideration before the learned District Judge, (Commercial) (Digital-07), South-East, Saket Courts, Delhi on 13th August, 2024, wherein, an *ad-interim ex-parte* injunction was granted in favour of the petitioners and



against the respondents.

13. Further, petitioners' application for appointment of Local Commissioner was also allowed for visiting the respondents' premises.

14. Thus, it is submitted that the Local Commissioner along with the petitioners' representative, i.e. the petitioners' counsel and technical members, visited the respondents' premises on 22nd August, 2024, and executed the Local Commission. During the execution of the Local Commission, the respondents were found to be using unauthorized/illegal/crack versions of the petitioners' MicroStation software on at least fourteen computer systems, which had a total of 21 illegal versions/licenses of the petitioners' said MicroStation software.

15. It is submitted that after the execution of the Local Commission, the respondents offered to amicably resolve the dispute, and entered into a settlement with the petitioners.

16. It is submitted that pursuant to the settlement, the parties filed a joint settlement application under Order XXIII Rule 3 CPC, read with Section 151 CPC, wherein, the terms of the settlement agreed between the parties, were detailed.

17. The said settlement application was jointly filed by the parties and was listed before the learned District Judge, (Commercial) (Digital-07), South-East, Saket Courts, Delhi on 12th September, 2024. However, by the impugned order dated 12th September, 2024, the learned District Judge, (Commercial) (Digital-07), South-East, Saket Courts, Delhi, refused to allow the joint settlement application. Thus, the present petition has been filed.

18. Learned counsel appearing for the respondents on advance notice



confirms the fact of the settlement agreement between the parties. She further confirms the fact that the settlement was entered by the respondents of their own volition and that there was no coercion from any quarter on the respondents, in this regard from entering into the settlement with the petitioners herein.

19. Learned counsel appearing for the respondents further confirms the terms of the settlement. She reiterates that the respondents have entered into the settlement with the petitioners willingly, and without any undue influence, force or coercion. She joins in her submission with learned counsel appearing for the petitioners, to submit before this Court, that the present petition be allowed, in view of the fact that the parties have entered into a settlement, in order to end all their disputes.

20. Perusal of the impugned order dated 12th September, 2024 shows that the joint application of the parties under Order XXIII Rule 3 CPC was dismissed, by holding, as follows:

“xxx xxx xxx

The contents of the settlement shows that while in the pleadings plaintiff alleged piracy and breach of rights in its "MicroStation Software" efforts are made for sale of subscription of 'MicroStation' as well as 'MicroStation SELECT' subscription for future months from August to December 2024 against various purchase orders drawn qua which advance cheques are collected. It be observed that plaint does not find mention of breach of 'MicroStation SELECT' software, in which context it is difficult to allow the terms beyond the pleadings to be incorporated in decree as it would be beyond 'is' . Moreover, in view of the essence observed behind the settlement, its acceptance under Order 23 Rule 3 CPC is to be doubted. At the stage of above, Ld. Counsel Sh. Rahul Beruar is enquired about on which he retorts that such settlement are daily offered before other Courts by plaintiff and this Court shall not have any difficulty in accepting the settlement.

However, this Court is constrained to observe the mandate under Order 23 Rule 3 CPC which clearly puts a burden upon the Court while in



exercise of its discretion in accepting the terms of the settlement, and cast a duty for its scrutiny. At this stage, it is beneficial to remind oneself that an agreement essentially is a record of result of negotiation between the parties. It is a result of mutual acceptance of terms based on suitable bargain and suggests equitable and paritable positions. Had this been an agreement devoid of any intervention from Courts, privately reached the position of equity and parity would not have been in question. However, in the present case a different preposition is offered as the equilibrium of position (of parties) from where the negotiation is reached is altered with the order of an ex-parte injunction in favour one (read plaintiff). In such a case, can it be expected that the settlement would have been approached naively ignoring the consequences of being pushed towards wall by such an empowerment. Further, as the language of settlement suggest the instrument of Court is proposed to be used for exerting an awe as a resultant execution in case the opposite party dares commit a default.

xxx xxx xxx”

21. This Court has perused the joint application filed by the parties under Order XXIII Rule 3 CPC filed before the learned District Judge, (Commercial) (Digital-07), South-East, Saket Courts, Delhi, relevant portions of which, are reproduced as under:

“xxx xxx xxx

2. The Plaintiffs and Defendants have amicably settled the present dispute, subject to following terms and conditions:

a) The Defendants acknowledge that the Plaintiff No. 1 is the owner of all intellectual property rights subsisting in their various software, including but not limited to MicroStation and its various versions or any other software programs developed by the Plaintiffs.

b) The Defendants agree and undertake that the Defendants and their agents, franchisees, servants and all others acting on their behalf, shall not directly or indirectly copy, reproduce, store, install and/or use pirated/unlicensed copy of Plaintiff's Software Programs (including but not limited to MicroStation and its various versions or any other software programs), developed by the Plaintiff in any manner that may amount to infringement of the Plaintiff's copyright subsisting in its software programs and software related documentation.



c) The Defendants further agree and undertake to use only the licensed version of the Plaintiff's software and for the purpose have agreed to procure the licenses of Plaintiffs Software Programs as detailed in the list of software enclosed herewith as Document -A.

d) The Defendants have requested, and the Plaintiffs have agreed to allow the Defendants to transfer the payment for the licenses in accordance with the payment and delivery schedule enclosed herewith as Document-B.

e) The Defendants further undertake and acknowledge that in the event Defendants fails to make the payment/procure the license as per Document -A and Document -B, the Plaintiffs shall be entitled to and Defendants shall be liable to pay the remaining value of the purchase order with an interest chargeable at the rate of 18% per annum, starting from the due date of the payment/procurement date.

f) The Defendants further agree and undertake to strictly abide by the above terms of settlement and understand that in the event of a breach of these undertakings by Defendants, the Plaintiffs reserves the right to seek any remedies as available in law and equity including the right to approach this Hon'ble Court to enforce its rights, including initiating execution proceedings against the Defendants.

g) The Plaintiffs acknowledge that, by virtue of the present settlement all claims and allegations made by the Plaintiffs against the Defendants, as part of the present suit stands settled and no further issues survives between the parties so far as the present suit is concerned.

xxx xxx xxx”

22. Perusal of the aforesaid application shows that the settlement has been signed by the various signatories of the respondents. Further, the joint application for settlement is also supported by a Board Resolution issued in favour of the said persons representing the respondents, which has been attached along with the said application.

23. Perusal of the aforesaid settlement between the parties manifests that the same has been entered by the parties independently, without any coercion or influence from any quarter.



24. This Court also notes the submissions of learned counsel appearing for the petitioners that the respondent no. 2 is a Geographic Information System (“GIS”) consulting company, providing exclusive photogrammetric mapping services, for which they use MicroStation software among others for services. Further, attention of this Court has also been drawn to the Local Commissioner’s report, that evidences that during the execution of the Local Commission at the respondents’ premises on 22nd August, 2024, the respondents were found to be unauthorizedly using various versions of petitioners’ MicroStation software on multiple computer systems, thereby, establishing the fact that the respondents were using, though unauthorizedly, the petitioners’ software for providing services/conducting their business.

25. Learned counsel appearing for the respondents confirms the fact that the respondents need the software of the petitioners in their usual course of business.

26. Thus, it is evident that the respondents have an actual requirement of the petitioners’ MicroStation software for continuing their business activities and to cater to their business requirements. Thus, if the respondents now want to use the authorized versions of the software of the petitioners by taking a license from the petitioners, there is nothing unlawful about the same.

27. This Court also notes that the subject settlement has been entered into by the corporate entities through their authorized representatives, including, respondent no.1, who is a qualified Electrical and Electronics Engineer and Managing Director of respondent no. 2 company. The respondent no.1, being the Managing Director of respondent no. 2, and respondent no. 2, being a company incorporated under the Companies Act, 1956, are long



standing industry members, who would be well aware of their rights and liabilities, under the law.

28. Further, it is to be noted that parties to the settlement are not uneducated/laymen, but duly registered companies and represented by their counsels. Thus, the said parties are capable of entering into lawful agreements, as well as deciding on their requirement of legal software to run their business, and take commercial decisions.

29. It is also to be noted that the settlement application was filed jointly by the petitioners and the respondents. Further, the said application had been duly signed by the respective counsels of the petitioners and respondents, along with their authorized signatories.

30. Additionally, said application for settlement was also supported by duly executed affidavits on behalf of both the petitioners and the respondents.

31. Thus, this Court is of the view that the impugned order is bad in law for rejecting a lawful settlement between the parties, on unsubstantiated grounds.

32. This Court also takes note of the submission of learned counsel appearing for the respondents that in terms of the settlement agreement, cheques towards license have already been paid to the petitioner. Learned counsel appearing for the petitioners, confirms the fact that two cheques have already been encashed, pursuant thereto.

33. Learned counsel appearing for the petitioner further submits that authorized and valid version of the software of the petitioners, has also been given to the respondents.

34. The aforesaid fact is confirmed by learned counsel appearing for the



respondents.

35. Thus, it is apparent that the terms of the settlement entered into by the petitioners and the respondents, are lawful, and do not in any manner whatsoever, include any term/condition, which is prohibited under law.

36. Accordingly, considering the detailed discussion hereinabove, the impugned order dated 12th September, 2024 passed by the learned District Judge, (Commercial) (Digital-07), South-East, Saket Courts, Delhi, in *CS(COMM) 3586/2024*, is hereby set aside.

37. The terms of the settlement, as contained in the joint settlement application under Order XXIII Rule 3 CPC, is taken on record.

38. Accordingly, the suit, i.e., *CS(COMM) 3586/2024*, pending before the learned District Judge, (Commercial) (Digital-07), South-East, Saket Courts, Delhi, is hereby decreed in favour of the petitioners/plaintiffs in the suit, in terms of the settlement agreement, which shall form part of the decree.

39. The parties shall remain bound by the terms and conditions of the settlement.

40. The parties are directed to approach the Registry of the Saket District Court for preparation of decree, accordingly.

41. With the aforesaid directions, the present petition, along with the pending applications, is disposed of.

MINI PUSHKARNA, J

OCTOBER 15, 2024/kr