

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

% *Judgment reserved on: 15.05.2017*
Judgment delivered on: 18.05.2017

+ CS (OS) 1100/2009

MICROSOFT CORPORATION & ORS. Plaintiffs

Through Mr. Munish Mehra, Ms Arundhati
Gopal, Advocates.

Versus

MR. MANISH PODDAR & ANR. Defendants

Through None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. The present suit has been filed by the plaintiffs against the defendants for permanent injunction restraining infringement of copyright, delivery up, rendition of accounts of profits as also damages and cost of proceedings.
2. The Plaintiff No.1, Microsoft Corporation is a company organised and existing under the laws of State of Washington, USA and is stated to be the owner of copyright in various software products including Microsoft Windows Operating Systems, Microsoft Office, and Microsoft Windows Server Systems etc. The Plaintiff No.2, Microsoft Corporation India Private Limited is the wholly owned marketing subsidiary of the Plaintiff No.1. The

Plaintiff No.3, Adobe Systems Incorporated, is a company organized and existing under the laws of state of Delaware, USA and is stated to be the owner of copyright in various computer software programmes including Adobe Photoshop, Acrobat, and Illustrator etc. The Plaintiff No. 4, Adobe Systems India Pvt. Ltd. is a marketing subsidiary of the Plaintiff No.3. The Plaintiff No. 5, Parametric Technology Corporation, is a company organized and existing under the laws of the State of Massachusetts, USA and is stated to be the owner of copyright in various computer software applications including the Pro/Engineer family of 3D design software. The Plaintiff No. 6, Parametric Tech (India) Private Ltd. is a marketing subsidiary of the Plaintiff No. 5. The Plaintiff No. 7, Corel Corporation is a company organized under the Canada Business Corporations Act, 1985 and is stated to be the owner of copyright in various software applications including WorldPerfect Office Suit, WinZip and Corel Paint Shop Pro etc. The Plaintiff No.8, Siemens Product Lifecycle Management Software Inc. is a company organized and existing under the laws of the State of Missouri, USA and is stated to be the owner of copyright in various computer software applications including NX Nastran, Solid Edge, Tecnomatix and Teamcenter etc. The Plaintiff No.9, Dassault Systems SolidWorks Corp., is a company

organised and existing under the laws of United States of America and is stated to be the owner of copyright in various software applications including Catia, Delmia, Enovia, 3DIVA etc.

3. The Plaintiff No.1, Plaintiff No.3, Plaintiff No.5, Plaintiff No.7, Plaintiff No.8 and Plaintiff No.9 are the owners of copyright in their respective software programs developed and marketed by them. They are stated to be the members of the Business Software Alliance (BSA), a non-profit association dedicated, inter alia, to combat piracy in various parts of the world. The Plaintiff No.2, Plaintiff No. 4, and Plaintiff No. 6 market the software products of the Plaintiff No.1, Plaintiff No.3 and Plaintiff No.5 in India respectively. The plaintiff claims to have markets globally and is the biggest software publisher for personal and business computing in the world. These software programs are “computer programs” within the meaning of Section 2 (ff) of The Copyright Act 1957 and are included in the definition of a ‘literary work’ as per Section 2 (o) of The Copyright Act 1957.

The plaintiffs being the owners of copyright in the aforesaid ‘literary works’ (computer programs) within the meaning of Section 17 of The Copyright Act 1957, are entitled to all the exclusive rights flowing from such ownership as set out in Section 14 of The Copyright Act 1957.

3. Defendant No. 2, M/s Powersoft Global Solutions Ltd. is a Business Technology Software, GIS and Engineering Solutions provider offering Computer Aided Design (CAD), Computer Aided Manufacturing (CAM) and Computer Aided Engineering Services and training. Defendant No. 1 is the CEO of the Defendant No. 2 Company.

4. The Plaintiffs received information that the Defendants are using pirated/unlicensed copies of the Plaintiff's software products on its computer systems for their business purposes. Plaintiffs became aware that the defendants are stated to be having 60 computer systems installed at its premises and are using plaintiffs companies software products including Microsoft Windows, Microsoft Office, Windows Server, Visual Studio etc for their business purposes. The plaintiffs checked their own respective registered user databases and search revealed that the defendants do not possess even a single license for the use of software programmes of plaintiffs No. 1, 3, 5 and 7. The defendants were also found to have only 1 license for the use of Plaintiff No. 8's software SolidEdge and 1 license for the use of Plaintiffs No. 9's software SolidWorks Professional 2009.

5. On 29.05.2009, an ex-parte interim injunction had been granted in favour of the plaintiffs and against the defendants restraining them from

using pirated/unlicensed software titles of plaintiffs companies and infringing the copyright of the plaintiffs in any manner. The defendants were also restrained from directly or indirectly reproducing and storing them on any storage media in any manner so as to infringe the plaintiffs copyright.

6. A local commissioner was appointed to visit the premises of the defendants without giving prior notice to defendants and to prepare inventories of all unlicensed/ pirated software of plaintiffs in the computer system/hard disk or in the Compact Discs/ DVD's or any other storage media of the defendants at their premises and seize only such storage medias, in the Central Processing Unit or outside the Central Processing Unit, having unlicensed/pirated software of the plaintiffs.

7. The Local Commissioner in his report has revealed that 43 computer systems were identified to be containing unlicensed software of plaintiffs out of total 51 computers system which were installed in the premises of the defendants. Also the storage media in the side of the CPU's were taken out from the CPU's and were seized as per the order of this court and the same were handed over on superdari to the defendants. Defendants were able to produce 1 license for SolidEdge (Plaintiff No. 8's software) and 1 license of SolidWorks (Plaintiff No.9's software).

8. Defendants in their written statement stated that they were unaware that the plaintiffs were the absolute owner of their respective software. Defendants also stated that the plaintiffs would not suffer any harm due to the actions of the defendants.

9. Present suit has accordingly been filed praying for permanent injunction restraining infringement of copyright, delivery up, rendition of accounts of profits as also damages and cost of proceedings. The Court on 11.01.2017, further allowed the Plaintiff No. 7 to withdraw all its claims from the present suit and to give up prayer clauses (b), (c) and (d) under paragraph 54 of the plaint.

10. In the course of proceedings of the suit, on 29.05.2009 an ex-parte interim injunction was granted in favour of the plaintiff and against the defendants restraining them from using pirated/unlicensed software titles of plaintiffs companies and infringing the copyright of the plaintiffs in any manner. The defendants were also restrained from directly or indirectly reproducing and storing them on any storage media in any manner so as to infringe the plaintiffs copyright. Ex-parte injunction dated 29.05.2009 was made absolute on 09.12.2010.

11. Ex-parte evidence by way of affidavit of PW1 (Constituted Attorney

of plaintiff No. 1, 2, 3, 4, 5, 6 and plaintiff No. 9) has been filed. PW-1 has reiterated all the averments made in the plaint and has proved various documents delineated as Ex.PW1/1 to Ex.PW-1/22. Ex.PW- 1/21 being a photocopy is deexhibited and is read as Mark A.

Ex-parte evidence by way of affidavit of PW2 (Constituted Attorney of plaintiff No. 8) has been filed. PW-2 has reiterated all the averments made in the plaint and has proved various documents delineated as Ex.PW2/1 to Ex.PW-2/4.

Ex-parte evidence by way of affidavit of PW3/A (Anil Nayer) has been filed.

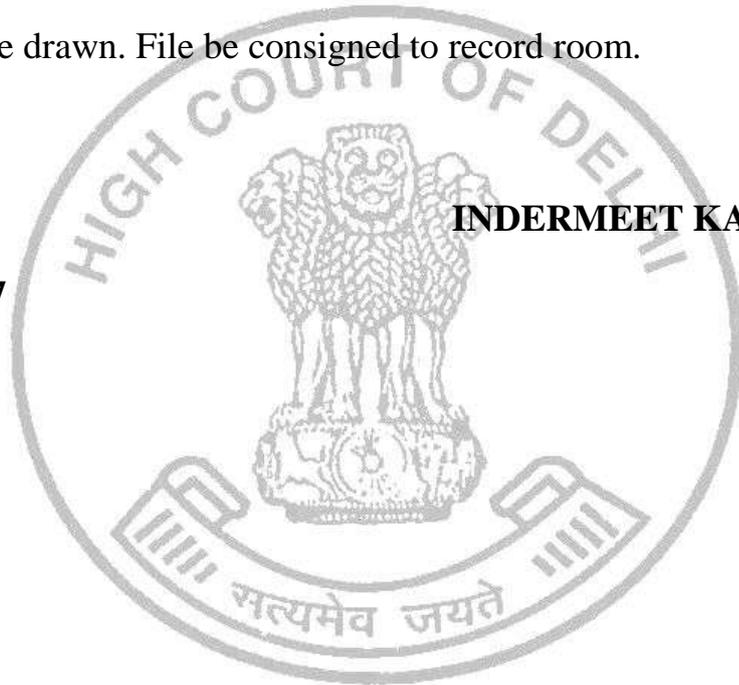
12. The plaintiff has established and proved his case. In view of the testimony of the witness of the plaintiffs i.e. PW-1, PW-2, PW-3 as also documentary evidence adduced and proved in the court, the plaintiffs are entitled to a decree of permanent injunction. It is clear that the defendant's are using pirated/unlicensed software titles of plaintiffs companies and infringing the copyright of the plaintiffs. This adoption of the copyright of the plaintiff is fraudulent and has caused loss and damage to its name, business goodwill and reputation.

13. Accordingly, the suit of the plaintiffs is decreed and by way of permanent injunction, the Defendants, their principal officers, directors,

agents, franchisees, servants and all other acting for and on their behalf, from directly or indirectly reproducing/storing/installing and/or using pirated/unlicensed softwares of the plaintiffs Companies thereby infringing Copyright in the plaintiffs' computer programs/software titles. Prayers No. 'b', 'c' and 'd' had been deleted vide order dated 11.01.2017.

14. Cost of the suit also be granted in favour of the plaintiffs companies. Decree sheet be drawn. File be consigned to record room.

MAY 18, 2017



INDERMEET KAUR, J