

Microsoft Corporation and Another Vs. Sujan Kumar and Others

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Court : Delhi

Decided On : Dec-23-2015

Judge : Valmiki J. Mehta

Appeal No. : CS(COMM) No. 70 of 2015

Appellant : Microsoft Corporation and Another

Respondent : Sujan Kumar and Others

Judgement :

Oral:

I.A. No.26118/2015 (exemption)

1. Exemption allowed subject to just exceptions.

I.A. stands disposed of.

+ CS(COMM) No.70/2015 and I.A. Nos.26116/2015 (stay) and 26117/2015 (appointment of Local Commissioner)

2. I must begin this judgment with the statement that it is unfortunate that certain plaintiffs, and if I may say so certain lawyers also, in spite of obvious legal positions and also obvious legal propositions, such litigants/plaintiffs as also their lawyers insist on taking chances by filing the suits which are in violation of the mandatory provisions of law stated in the Code of Civil Procedure, 1908 (CPC)

pertaining to joinder of parties and causes of action. The reason for stating this preliminary statement is because plaintiffs in this suit allege violation of copyrights of its softwares by a total of five defendants-companies in the suit but each of the five defendants-companies are independently alleged to be violating copyrights of softwares of the plaintiffs without violation by one defendant-company being related to violation by the other. Putting it in other words, it is not that one main defendant is violating the copyrights of the softwares of the plaintiffs and other defendants are claiming only through that one main defendant. Each defendant which is alleged to be violating the software copyrights of the plaintiffs is a different company and hence a completely different entity than the other defendants-companies-entities. I would also like to bring on record that a similar situation, albeit which deals with the issue of misjoinder of the plaintiffs and not the defendants, arose in a suit filed by the same plaintiffs and through the same lawyers and which was CS(OS) No.3399/2015 titled as Microsoft Corporation and Ors Vs. Sandesh Properties Pvt Ltd and Ors. This suit CS(OS) No.3399/2015 was argued in detail before this Court on 1.12.2015 and finding issues existing of misjoinder of parties-plaintiffs as each plaintiff owned separate softwares, and hence also misjoinder of causes of action qua such plaintiffs, the suit was prayed to be withdrawn. This prayer was allowed for suit to be withdrawn with liberty to file separate suits by each separate plaintiff including for the reason that if there is joinder of causes of action, then in such cases, as per Section 17 of the Court-fees Act 1870, separate Court fee is payable qua each cause of action for each plaintiff and which was not done in the suit which was allowed to be withdrawn.

3. At this stage, let me reproduce the memo of parties in the present suit and which is as under:-

MEMO OF PARTIES

Microsoft Corporation

925 Fourth Avenue,

Suite No.2900, Seattle,

Washington 98104 “ 1158

Unites State of America ..Plaintiff No.1

Microsoft Corporation India Private Limited,

807, New Delhi House,

Barakhamba Road,

New Delhi-110 001 .Plaintiff No.2

Versus

Mr. Sujan Kumar,

Plot No.379, Road No.10,

Jubilee Hills,

Hyderabad-500 033 Defendant No.1

M/s. Krishnapatnam Port Company Limited,

48-9-17, Dwarkanagar,

Visakhapatnam-530 016

Also at

Plot No.379, Road No.10,

Jubilee Hills,

Hyderabad- 500 033

Also at

P.O. Bag No.1, Muthukur,

Dist. Nellore-524 344,

Andhra Pradesh

Also at

M-3, 3rd Floor,

Hauz Khas,

Sri Aurobindo Marg,

New Delhi-110 016 Defendant No.2

M/s. Navayuga Engineering Company Limited

48-9-17, Dwarkanagar,

Visakhapatnam-530 016

Also at

Plot No.379, Road No.10,

Jubilee Hills,

Hyderabad-500 033

Also at

M-3, Haus Khas, 3rd Floor,

Sri Aurobindo Marg,

New Delhi-110 016 .Defendant No.3

M/s. Navayuga Infotech Pvt. Limited

Plot No.1268, B R House,

Above ICICI Bank, Road Number 36,

Jubilee Hills,

Hyderabad-500 033 (Andhra Pradesh) . Defendant No.4

M/s. Navayuga Spatial Technologies Pvt. Ltd.

Plot No.379, Road No.10,

Jubilee Hills,

Hyderabad-500 033

Also at

M-3, 3rd Floor

Hauz Khas

New Delhi-110016 .Defendant No.5

M/s Digitrans Private Ltd.,

Units: 401, 402 and 302,

Trendset Pylamani Complex,

#8-3-191/18/1A,

VengalRao Nagar,

Hyderabad-500 038 ..Defendant No.6 ?

4. A reading of the aforesaid memo of parties shows that defendant nos.2 to 6 are completely separate companies and thus separate legal entities. In the suit there are averments of violation by the defendants of copyrights of the plaintiffs in various softwares owned by the plaintiffs, but those averments are made without in any manner specifically stating that which defendant company is violating which

software of the plaintiff. In any case, the basic cause of action averred in the plaint is that the defendant nos.2 to 6-companies are violating the copyrights in the softwares owned by the plaintiffs. Joinder of parties-defendants is the subject matter of Order I Rule 3 CPC and joinder of causes of action is the subject matter of Order II Rule 3 CPC. These provisions read as under:-

Order I Rule 3 CPC:

Who may be joined as defendants.-All persons may be joined in one suit as defendants where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.

Order II Rule 3 CPC:

Joinder of causes of action.-(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Courts as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit. ?

5. It is trite that joinder of causes of action is allowed provided that if separate defendants are joined in one suit with their separate causes of action, then qua these defendants which are joined in one suit, common questions of law and fact arise. Merely because defendants-companies are under the same management or are sister concerns or are operating from the same address cannot mean that there are common questions of law and facts because of such grounds. Common

questions of law and facts are relatable to averments of the causes of action qua existence of rights of plaintiffs and their violation by the defendants, and nothing for and on this aspect is looked into except the averments made in the plaint with respect to the causes of action. The cause of action in a suit alleging violation of the copyright in a software necessarily begins with the ownership of copyrighted software by the plaintiff and ends with the factum of its violation by a particular defendant. So far as such defendant which is alleged to be violating the copyright software of the plaintiff is concerned, cause of action qua that defendant is complete at that stage when facts are complete showing rights of plaintiff and violation by defendant, for plaintiff to claim the reliefs whether of damages or for injunction etc etc. Each defendant who violates the copyrighted software of the plaintiff results in the position that violation by such defendant gives an independent cause of action to the plaintiff to sue such defendant and violation of copyright by one defendant of a software owned by the plaintiff gives no common questions of law and fact on account of violation of copyright software of the plaintiff by any other defendant-company.

6. Let me now turn to the ingenious arguments which have been urged on behalf of the plaintiffs to allege existence of common questions of law and facts qua the five defendants viz the defendant nos.2 to 6 in the present suit. Before turning to the arguments of the plaintiffs, I would also like to mention that these arguments raised were raised almost totally de hors any pleading, because, in the suit plaint, the only paragraph which is pointed out to this Court as regards joinder of causes of action and joinder of defendants is para 17 of the plaint and which para 17 reads as under:-

17. The Plaintiffs believes that the Defendants No.1 in his capacity as the Vice President of Defendant No.2 is responsible for maintaining the IT affairs at the offices of the Defendant No.2. The Plaintiffs believe that the unauthorized installation/reproduction of the Plaintiffs software programs may have been carried out at the instance of the Defendant No.1 and the infringing media, from which the unauthorized installation are made may be in his possession or control and can be preserved only upon Local Commissioners appointed by this Hon'ble Court, taking custody of the same. Therefore, while the Defendant No.1 is personally liable for

infringement of the Plaintiff's copyright in view of the unauthorized installation and reproduction of the Plaintiff No.1's software, the Defendants Nos.2 to 6 are liable on account of the unauthorized use of the Plaintiff's software. The cause of action in the present suit arises out of the same act or transaction or series of acts and if separate suits are brought against these Defendants, common questions of law or fact would arise. However, the exact constitution and relationship of the Defendants will be known only after discovery in the present matter. The Defendant Nos.1 to 6 shall be collectively referred to as the Defendants', unless referred to otherwise. ?

7. In law, it needs to be stated, that uttering of mantras of existence of common questions of law and facts, by only reproducing the legal language of Order I Rule 3 and Order II Rule 3 CPC, cannot and does not mean that requirements of law stands complied with. Requirements of law are complete only when such factual and legal averments are made in the pleading which will show existence of common questions of law and fact which are said to arise. No cause of action qua joinder of causes of action and defendants is complete unless it is stated as to which would be the common questions of facts and law qua each of the defendants who are joined in the suit. Surely averments made in para 17 of the plaint which have been reproduced above by no standards can be said to be such that they can be said to be complying with the legal requirements of stating how and what common questions of facts and law arise qua defendant nos.2 to 6, because all that is stated in the plaint are averments with respect to defendant nos.2 to 6-companies violating softwares at the instance of the individual-defendant no.1 who is common to the management of defendant nos.2 to 6-companies. There are also same averments made of a local commissioner being appointed by this Court who is to take custody of computer hardwares, but as discussed below, surely appointment of local commissioners cannot create common questions of law and facts qua causes of action and defendants with respect to the pleading/plaint filed because such aspect alleged is only qua the alleged difficulties of leading evidence.

8. On behalf of the plaintiffs, the following arguments are urged to allege that common questions of law and facts arise qua defendant nos.2 to 6:-

(i) Defendant nos.2 to 6-companies are sister companies and under common management.

(ii) Defendant nos.2, 3 and 5 operate from the same address being Plot No.379, Road No.10, Jubilee Hills, Hyderabad-500 033 as also M-3, 3rd Floor, Hauz Khas, Sri Aurobindo Marg, New Delhi-110016. (So far as defendant nos.4 and 6 are concerned, however the said companies do not have even a common address with defendant nos.2, 3 and 5/companies and which is clear from the memo of parties to the suit which is reproduced above.)

(iii) A local commissioner would be appointed by this Court, and since this local commissioner will take the custody of hardware containing various softwares of the plaintiffs which are illegally used by the defendants, if separate suits are filed against different defendants, then during the course of trial of separate suits, confusion and difficulty will be caused with respect to these seized hardware for the separate suits unless and until the defendants are joined together in one suit.

9. Each of the arguments which are urged on behalf of the plaintiffs for joinder of causes of action qua the joinder of defendant nos.2 to 6 are utterly frivolous to say the least. Common questions of law and facts, as stated above are qua the factual and legal aspects of causes of action of violation of the copyrights of the softwares of the plaintiffs and not on account of the common addresses of the defendants or defendants-companies being under same management. Also, as stated above, defendant nos. 4 and 6 do not have any common address with defendant nos.2, 3 and 5. Further I have not understood as to from where the plaintiffs/Multinational Corporations are presuming that this Court is going to direct seizure of the hardwares of the defendants, and with respect to which there is no infringement of any legal right whatsoever of the plaintiffs. Legal right of the plaintiffs is violated on account of defendants-companies using softwares of the plaintiffs without licences and not the hardwares owned by the defendants on which the softwares of the plaintiffs are being used. There could be a practice in some suits by some courts for sealing of the hardware, but sealing of hardware is not a sine qua non, and in fact an alternative better practice which is more suitable and is being adopted by this Court is that an identical copy of the hard disk and similar drives of the

defendants which contain the unlicensed softwares are prepared on hard drives to be supplied by the plaintiffs, and such hard drives which will hence contain the copies of the stated unlicensed softwares being used by the defendants, and such hard drives containing copies of unlicensed softwares are then directed to be sealed and not the original hardware which is owned by the defendants-companies and to which plaintiffs have no legal rights. Clearly therefore no argument urged on behalf of the plaintiffs, whether as averred in para 17 of the plaint or otherwise, shows that common questions of law and facts arise qua separate defendants-companies who are separate legal entities and violation of the softwares by each defendant-company is an independent cause of action qua the rights of the plaintiffs without at all any joinder required of other defendants. Arguments and averments of plaintiffs do not bring the present suit within the purview of Order I Rule 3 CPC and Order II Rule 3 CPC.

10. There is also an incidental aspect which this Court would like to mention in the present judgment. This incidental aspect is because of Section 17 of the Court-fees Act, 1870. Section 17 of the Court-fees Act states that when various subject matters are joined in one suit, and subject matters essentially are causes of action as per the interpretation of this expression as per the judgments of various courts, it is necessary that qua each cause of action, a separate specific court fee amount is paid and total amount of court fee thereafter has to be determined by adding court fee paid independently qua each separate cause of action qua each defendant joined in the suit. In cases such as the present there is loss of revenue to the State because with respect to one court fee paid for one cause of action, various defendants and causes of action are joined, whereas separate court fee is payable with respect to each cause of action qua each defendant i.e qua each violation of a copyrighted software by a particular defendant since the same is a separate cause of action, a separate court fee is assessable and payable; whether with respect to damages or with respect to injunction or any other related reliefs which are claimed by the plaintiffs in the suit alleging violation of copyright. These observations which are made by this Court with respect to the payment of court fee in terms of Section 17 of the Court-fees Act will apply not only with respect to joinder of causes of action and defendants qua a copyright issue, but equally with respect to independent violations of trade marks by separate defendants as also

violation of patent rights and any other IPR rights. These observations for payment of court fee under Section 17 of the Court-fees Act will also apply if there are separate plaintiffs having separate causes of action qua their IPR rights joined in one suit.

11. In view of the above, it is clear that there is misjoinder of parties and causes of action in the present suit plaint. There are no common questions of law and facts with respect to violation of copyrights of softwares owned by plaintiffs which are separately and individually used by each defendant nos.2 to 6-companies. Defendant no.1 is in fact not even a necessary and proper party in the suit because once a company is a separate legal entity, there is no requirement of law for making any director or employee etc of such a company as defendant in the suit because there is no violation of copyright by such an individual. When a fresh suit will be filed with respect to each cause of action qua each separate defendant, then separate court fee will have to be paid by the plaintiffs qua each separate suit containing independent cause of action.

12. In view of the above, plaint is rejected as the same shows misjoinder of parties/defendants and causes of action, as also the fact that no court fee has been assessed and paid separately qua each cause of action and each defendant. Plaintiff, of course in accordance with law, is given liberty to file proper suits as the present judgment will not be res judicata for filing fresh suit vide Sheodan Singh Vs. Smt. Daryao Kunwar AIR 1966 SC 1332. Similar legal position also emerges from Order VII Rule 13 CPC.

13. A copy of this judgment be sent to the Registry of this Court as also the filing counter so that the Registry and filing counter will ensure that whenever a suit is filed in which more than one defendant is impleaded, and each of the defendants does not claim through one main defendant, but it is averred in the plaint that the plaintiff(s) has/have independent rights because there are allegations of independent violation of Intellectual Property Rights by the separate defendants such as in copyright or trade mark or patent etc etc, then, the Registry will ensure that the requirement of Section 17 of the Court-fees Act is complied with and qua each separate defendant and separate causes of action which are joined in one

suit by appropriate/complete court fee being paid by the plaintiff before the suit is registered and sent to the court for admission. Of course, Registry cannot decide the issue of misjoinder of parties and causes of action, and if plaintiff pays separate court fee under Section 17 of the Court-fees Act, issue with respect to misjoinder of parties and/or causes of action, will be decided by the concerned court before which the suit is listed. Suit plaint is accordingly rejected and suit disposed of.

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