

Microsoft Corporation and anr. Vs. Mr. S.K. Das and anr.

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Court : Delhi

Decided On : Jan-24-2013

Judge : Manmohan

Appellant : Microsoft Corporation and anr.

Respondent : Mr. S.K. Das and anr.

Judgement :

#F-9 \$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) 611/2009 & I.A. 4322/2009 MICROSOFT CORPORATION AND ANR. Plaintiffs Through Ms. Jaya Negi, Advocate versus MR. S.K. DAS AND ANR. Through Defendants None Date of Decision:

24. h January, 2013. % CORAM: HON'BLE MR. JUSTICE MANMOHAN JUDGMENT MANMOHAN, J : (Oral) 1. Present suit has been filed for permanent injunction restraining infringement of copyright, delivery of profits, rendition of accounts, damages etc.

2. In the plaint it has been stated that the plaintiff no. 1, Microsoft Corporation is a company organized and existing under the laws of State of Washington, USA. Plaintiff no. 1 is the largest software publisher in the word and its computer software including various operating systems such as Microsoft Windows XP Professional and Microsoft Office Professional Edition 2003. Plaintiffs software are popular, famous and renowned throughout the world.

3. Plaintiff no. 2 is stated to be a wholly owned marketing subsidiary of plaintiff no. 1 which has been incorporated and registered under Indian Companies Act, 1956. Plaintiff no. 2 has been set up in 1989 to promote anti-piracy awareness campaigns and to support plaintiff no. 1 or its affiliates. The products of plaintiff no. 1 are distributed in India through various authorised distributors.

4. The relevant facts of the present case are that the plaintiffs, in January 2009 upon receiving information of the defendants infringing activities regarding their intellectual property rights by carrying on the business of unauthorised Hard Disk Loading of the plaintiffs software on to the branded computers sold by them to the customers, immediately initiated an investigation.

5. For the aforesaid purpose, an independent investigator, Mr. Shubham Jain was engaged. The investigator visited the premises of the defendant No.2, DGT Systems Private Limited, on 12th January, 2009 as a potential customer of computer system. During the course of the investigators conversation with Mr. Deepak (the sales representative of the Defendant No. 2), the latter agreed to install/load operating software such as MICROSOFT WINDOWS XP, MICROSOFT OFFICE etc. totally free of cost, in case the investigator purchased the computer system from DGT Systems Private Limited. On 13th January, 2009 a laptop computer was purchased by the independent investigator. For investigators satisfaction, the defendant gave a short demonstration of the computer to show that the computer worked properly during which Mr. Shubham Jain noticed that the system was preloaded with software programme such as MICROSOFT WINDOWS XP and MICROSOFT OFFICE etc.

6. On examination of the delivered computer by the technical expert of the plaintiffs, Mr. Gurjot Singh, on 10th February, 2009 who took printouts (screen shots) of the directory of the computers hard disk it was revealed that the computer system was loaded with pirated/ unlicensed versions of the plaintiffs software programmes and was not accompanied by any Original Media such as Original Certificates of Authenticity (COA) label, Holographic Software Installation CDs, User Manuals/Booklets and genuine copy of the End User License Agreement (EULA).

7. On 30th March, 2009, when the present suit was listed for hearing, this Court by an ex-parte order restrained the defendants from copying, producing, hard disc loading on computers, selling or offering for sale, distributing, issuing to public pirated, counterfeit, unlicensed version of Microsoft Software, Windows XP Professional, 2002, Microsoft Office, 2003 and any other software of the plaintiffs in any manner constituting infringement of plaintiffs copyrights in the said software.

8. Since none appeared for defendant nos. 1 and 2 despite service, they were proceeded ex-parte vide order dated 11th August, 2009.

9. Subsequently, plaintiffs led their evidence by filing an affidavit of Mr. Achuthan Sreekumar, the constituted Attorney of the plaintiffs. Plaintiffs in their ex-parte evidence examined Mr. Achuthan Sreekumar who filed his evidence by way of affidavit as Ex. PW1/A and proved the notarized copy of Letter of Authority and a Power of Attorney in his favour by the plaintiffs as well as courts certified copies of the original copyright certificate for the software programmes such as Microsoft Windows XP Professional and Microsoft Office Professional Edition 2003.

10. Having heard learned counsel for the plaintiffs and perused the ex- parte evidence as well as documents placed on record, this Court is of the opinion that plaintiffs have, in fact, proved the facts stated in the plaint and have also exhibited the relevant documents in support of their case. Since the plaintiffs evidence has gone unrebutted, said evidence is accepted as true and correct.

11. Moreover, the software programmes as developed and marketed by the plaintiffs are a computer programme within the meaning of Section 2 (ffc) of the Copyright Act, 1957 and also included in the definition of a literary work as per Section 2(o) of the Copyright Act, 1957. The plaintiffs work are also protected in India under Section 40 of the Copyright Act, 1957 read with the International Copyright Order, 1999 as the rights of authors of member countries of the Berne and Universal Copyright Conventions are protected under Indian copyright law. India and the USA are signatories to both the Universal Copyright Convention as well as the Berne Convention.

12. Consequently, this Court is of the view that plaintiffs are entitled to a decree of permanent injunction.

13. As far as the relief of damages and rendition of accounts is concerned, this Court is of the view that in accordance with the orders passed by this Court in Microsoft Corporation & Anr. Vs. M/s. G-Net Technologies & Ors., CS(OS) 805/2008 decided on 31st October, 2011, Microsoft Corporation & Anr. Vs. Prem Tiwari & Anr., CS(OS) 203/2008 decided on 31st October, 2011 and Microsoft Corporation Vs. David Raju Polamuri & Anr., CS(OS) 1142/2006 decided on 18th November, 2011, plaintiffs are entitled to damages to the tune of Rs. 2,00,000/-.

14. Accordingly, present suit is decreed in terms of paragraph nos. 37 (a) and (b) of the plaint along with damages to the tune of Rs. 2,00,000/-. Plaintiffs are also entitled to the cost of the suit. Registry is directed to prepare a decree sheet accordingly. MANMOHAN, J JANUARY 24 2013 rn

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