

Adobe Systems Inc. vs Sachin Naik (2013) - Software Piracy - Delhi High Court

IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(OS) 2604/2008 & I.A. 15413/2008

ADOBE SYSTEMS INC. & ORS. Plaintiffs

versus

MR. SACHIN NAIK & ORS. Defendants

Date of Decision: 12th March, 2013.

JUDGMENT

MANMOHAN, J (Oral):

1. Upon the present suit being filed for permanent injunction restraining infringement of copyright, rendition of accounts, damages and delivery up plaintiffs' unlicensed software, this Court by an ad-interim ex parte order dated 16th December, 2008 restrained the defendants, its employees, agents, servants etc. from using the plaintiffs' unlicensed software till the next date of hearing.

2. By the said order, the Court also appointed a Local Commissioner, who in her report, has stated that thirty-three computer softwares by the defendants were installed with pirated softwares of plaintiffs No. 1 and 3.

3. Since despite service, defendants failed to appear, they were proceeded ex parte vide order dated 11th May, 2009.

4. Subsequently, plaintiffs filed their ex parte evidence by way of an affidavit of Mr. Vishal Ahuja. In the said affidavit, Mr. Vishal Ahuja has deposed as under:-

"19. I say that the Plaintiff No.1 conducted a search within its License Database of registered users of its software titles, with a view to determine the details of software licenses in respect of its software titles, registered by the Defendants herein. I state that the database revealed that the Defendant No.3 possess only 5 licenses for Photoshop CS2 9.0 WIN. I say that the Plaintiff No.3 also conducted a search within its License Database of registered users of its software titles, with a view to determine the details of software licenses in respect of its software titles, registered by the Defendants herein. I state that the database revealed that the Defendant No.3 possess only 6 standalone licenses of Autodesk 3ds Max and 1 license of Maya Complete registered in its name. I state that the License Database of Plaintiff No.3 enables any of its duly authorized officer to conduct a detailed search of its numerous and meticulous records to recover licensing details of any software (registered with the plaintiff No.3) title sold either directly by Plaintiff No.3 or through any of its authorized resellers located in almost all jurisdictions throughout the world. I state that this could be accomplished by merely keying in relevant details like name of the entity found using copies of any software program belonging to Plaintiff No.3 and/or the Serial Number of the software program so found to be used, which would throw up all relevant details of use of any particular copy of the relevant software program by the entity, including the address of the actual licensee, Name of the Owner/Director in case of a corporate entity licensee and most importantly, the number of licenses (if any) for the software that the said entity has acquired.

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22. I say that the Plaintiff No.3, in the month of June 2007, with the consent and in the presence of the Defendant No.3's representatives had conducted a software audit for its computer programs installed in the defendant's computer systems. I say that the audit revealed that about 20 computer systems of the defendant No.3 were loaded with the Plaintiff No.3's pirated software programs. I say that the Plaintiff No.3 and 4, vide its Cease and Desist letter dated 2nd July 2007, addressed its concerns to the Defendants and called upon them to forthwith Cease and Desist from using unlicensed/pirated software of the Plaintiff No.3. I say that the said original letter has been filed with the suit proceeding and may be marked and exhibited as Exhibit P8. I say that the Defendants in their reply dated August 24, 2007, admitted the pirated installations on its computer systems however denied

legalising its unauthorized and pirated usage. I say that said original letter has been filed with the suit proceeding and may be marked and exhibited as Exhibit P9. I say that during the follow-up the defendant No.3 in the month of June 2008, agreed to purchase 12 licenses of Autodesk 3DS Max and 3 licenses of Autodesk Maya. I say that it was agreed that the Defendant No.3 will procure the said Plaintiff No.3's software programs in 3 instalments, starting from July 2008 and ending in September 2008. I say that the correspondence exchanged in between the representatives of the Defendant No.3 and the representatives of the Plaintiff No.3 and 4 indicating the software gap and Defendants reluctance to completely legalise the use of the Plaintiff No.3's software titles have been filed along with the plaint and may be marked and exhibited as Exhibit P10. I say that the Defendants, after the first performance did not honour their commitments and never made any payment for the purchase of Plaintiff No.3's software programs.

23. I say that with the latest information about the unlicensed software usage which was further substantiated by Mr. Anil Nayar, the Plaintiffs were constrained to file the present suit proceedings. I say that the Hon'ble Court vide its order dated December 16, 2008, enjoined the Defendants from using the Plaintiffs' unlicensed software and also appointed Ms. Promil Seth Mago, as a Local Commissioner to visit the premises of Defendants, so as to make an inventory of the software of the Plaintiffs in use at the Defendant entity's premises. I depose that the Learned Local Commissioner along with the Plaintiffs' representatives carried out the execution proceedings on 24 th December, 2008. I affirm, that during the execution proceedings the Learned Local Commissioner found 23 computers were installed with the pirated software titles of the Plaintiff No.1 and 3. I say that the brief detail of the pirated software installations found during the execution proceeding is mentioned here below:

Sr. No. Name of the software program Number of Installations "

5. It is pertinent to mention that plaintiff No.1 is one of the world's leading software development companies and provides a wide range of software program which are benchmark in digital document storage, imaging and transfer. The plaintiff No.1's leading software programmes include Adobe Photoshop, Adobe Creative Suites 3, Adobe Photoshop CS3 etc. Plaintiff No.2 is the wholly owned subsidiary of plaintiff No.1 having its office in New Delhi. Further, the plaintiff No.3 Autodesk Inc. is a company incorporated under the laws of United States of America and the plaintiff No.4, Autodesk India Private Limited is a subsidiary of the plaintiff No.3 with its office located in New Delhi. The plaintiff No.3 is one of the world's leading design software and digital content creation companies, which offers software programmes such as Autodesk 3ds max (also known variously as 3ds Maqx, 3DS Max, 3D Studio and 3D Studio Max), Autodesk Maya (previously known as Maya), AutoCAD (including all its versions, especially the latest one, AutoCAD 2009), AutoCAD LT etc.

6. 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.

7. 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.

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

9. 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/-.

10. Accordingly, present suit is decreed in terms of paragraph Nos. 51(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. With the aforesaid observations, present suit and pending application stand disposed of.