

Corel Corporation vs Viren Satra & Anr on 21 March, 2018

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 711/2016

COREL CORPORATION

..... Plaintiff

Through: Mr. Pravin Anand & Mr. Ravin
Galgotia, Advs.

Versus

VIREN SATRA & ANR.

..... Defendants

Through:

Mr. Sitab Ali Chaudhary, Ms. Preeti
Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 21.03.2018 IA No. 3718/2018 (of the defendant No.1 u/O I Rule 10 CPC)

1. The defendant No.1, in this suit for permanent injunction restraining infringement of copyright in software and for ancillary reliefs, seeks deletion, pleading that there is no basis for the reliefs claimed against him.

2. Notice of the said application was accepted by the counsel for the plaintiff.

3. The plaintiff has, however, not filed any reply.

4. The counsel for the plaintiff states that notice served was issued on 16th March, 2018 only and there was not sufficient time.

5. The counsel for the plaintiff ought to have known that the matter was listed before this Bench today and the application had been directed to be listed today. If a reply was required to be filed, it ought to have been filed by today. The same having not been filed, adjournment cannot be granted.

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6. Even otherwise, the application has to be considered on the basis of the averments contained in the plaint of the plaintiff and reply cannot add to the averments in the plaint.

7. I have enquired from the counsel for the plaintiff, the averments if any personally against the defendant No.1 Viren Satra.

8. The counsel for the plaintiff states that the averments against the defendant No.1 are in para 13 and 14 of the plaint.

9. While in para 13, the plaintiff has merely pleaded that "the Defendant No.1 appears to be the Managing Director of Defendant No.2" and in para 14 it is pleaded that "defendant No.1 is verily believed to be the Managing Director of Defendant No. 2. Defendant No.1 in his capacity as the Managing Director of Defendant No.2, is in-charge of and directly responsible for Defendant No.1's business and its development-related affairs, including but not limited to decisions with respect to the use of legal or unlicensed versions of software programs for Defendant No.2's business purposes. Therefore, the present cause of action has arisen out of the same act and/or transaction or series of acts and/or transactions, and if separate suits were brought against these defendants, common questions of law and fact would arise".

10. The aforesaid averments do not disclose any cause of action against the defendant No.1 in his personal individual capacity.

11. The defendant No. 2 Mahabali Innovative Technologies Private Limited being a juristic person has to necessarily act through a natural person and such natural person, while acting in such capacity does not CS(COMM) 711/2016 page 2 of 4 become personally liable for any acts done on behalf of defendant No.2, without the claimant expressly making out a case of personal liability of such person and which the plaintiff has not done in the present case.

12. The application is thus allowed. The defendant No.1 is deleted from the array of defendants.

13. The application is disposed of.

IA No. 4209/2017 (of the plaintiff u/O VI R-15A(1), 15A(2), 15A(4), 15A(5) r/w O VIII R-1 & 10 of CPC) IA No. 12234/2017 (of defendant u/O VIII R-1 for condonation of delay in filing WS) IA No. 12235/2017 (of defendant for condonation of delay in re-filing)

14. The order dated 11th October, 2017 and to which no challenge has been made, records that no written statement had been filed by the defendants (and of which now only defendant No. 2 Mahabali Innovative Technologies Private Limited remains) despite expiry of 120 days. The right of the defendants to file written statement was thus closed.

15. The counsel for the defendants does not controvert that neither the written statement nor application for extension of time was filed within 120 days.

16. In view of the dicta in OKU Tech Private Limited Vs. Sangeet Agarwal MANU/DE/2036/2016 and in Maja Cosmetics Vs. Oasis Commercial Pvt. Ltd. 2018 SCC OnLine Del. 6698 it is not open to allow the applications of the defendants for condonation of delay in filing written statement.

17. IA Nos. 12234/2017 and 12235/2017 are dismissed.

18. IA No. 4209/2017 is also disposed of observing that the orders with respect thereto are to be passed in the suit.

CS(COMM) 711/2016 page 3 of 4 IA No. 7287/2016 (of the plaintiff u/O 39 R-1 & 2 CPC)

19. In view of above, ex parte order dated 2nd June, 2016 is made absolute till the decision of the suit.

20. The application is disposed of.

21. The Court Master to, in today's date under his signatures, make an endorsement on the memo of parties of deletion of defendant No.1.

22. The counsel for the sole defendant Mahabali Innovative Technologies Private Limited draws attention to para 35 of the plaint valuing the suit, insofar as against the defendant No.2, now sole defendant Mahabali Innovative Technologies Private Limited at Rs.50,00,500/-, and contends that the plaint has to be returned to the plaintiff for filing in the court of appropriate pecuniary jurisdiction.

23. Merit is found in the aforesaid contention.

24. On request of the counsel for the plaintiff, the counsel for the plaintiff is permitted to address further tomorrow i.e. 22nd March, 2018, if so desires.

RAJIV SAHAI ENDLAW, J MARCH 21, 2018 SRwt..

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