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

+ **CS(COMM) 1090/2024**

BENTLEY SYSTEMS INC & ANR.Plaintiffs

Through: Mr. Pravin Anand, Mr. Shantanu
Sahay, Ms. Shreya Shukla and
Ms. Vareesha Irfan, Advocates

versus

MR OM PRAKASH DAS & ORS.Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **06.12.2024**

I.A. 47438/2024 (exemption from filing original documents)

1. Allowed, subject to the plaintiffs filing legible/translated/original/certified copies of the documents within four (4) weeks from today.
2. The application stands disposed of.

I.A. 47439/2024 (seeking exemption from advance service to defendants)

3. The plaintiffs seek urgent interim relief against pirated software and for this purpose, an *ex-parte* appointment of Local Commissioner is also sought to confiscate the goods. It is submitted that there is a probability that the defendants may delete the pirated software programmes if the defendants are given advance service of the plaint paper book.
4. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants is granted.



5. The application is disposed of.

I.A. 47437/2024 (O-XI R-1(4) of the Commercial Courts Act)

6. The present application has been filed on behalf of the plaintiffs seeking leave to file additional documents under the Commercial Courts Act, 2015.

7. The plaintiffs are permitted to file additional documents in accordance with the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

8. Accordingly, the application is disposed of.

I.A. 47440/2024 (u/s 12A of Commercial Courts Act, 2015)

9. As the present suit contemplates urgent interim relief, in light of the judgment of the Supreme Court in *Yamini Manohar v. T.K.D. Krithi*, 2023 SCC Online SC 1382, exemption from the requirement of pre-institution mediation is granted.

10. The application stands disposed of.

CS(COMM) 1090/2024

11. Let the plaint be registered as a suit.

12. Issue summons.

13. Summons be issued to the defendants through all modes. The summons shall state that the written statement(s) shall be filed by the defendants within thirty days from the date of the receipt of summons. Along with the written statement(s), the defendants shall also file affidavit of admission/denial of the documents of the plaintiffs, without which the written statement(s) shall not be taken on record.

14. Liberty is given to the plaintiffs to file replication(s), if any, within thirty days from the receipt of the written statement(s). Along with the



replication(s) filed by the plaintiffs, affidavit of admission/denial of the documents of the defendants be filed by the plaintiffs.

15. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document, which is not in their power and possession, its detail and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.

16. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

17. List before the Joint Registrar on 11th February, 2025, for completion of service and pleadings.

18. List before the Court on 3rd April, 2025.

I.A. 47435/2024 (u/O-XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908)

19. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing of copyright of the plaintiffs along with other ancillary reliefs.

CASE SET UP IN THE PLAINT

20. It has been averred in the plaint that the plaintiff no. 1 is the owner of the copyright in its software programmes titled 'Microstation' and 'OpenRoads Designer'. The software programmes and all user instruction manuals in respect thereof are "literary works" capable of protection under the Copyright Act, 1957 (hereinafter, 'Copyright Act'). The same have been created/developed and written for the plaintiffs by their employees, during the course of their employment with the plaintiffs. The plaintiff no.1 is the "first owner" of the copyright as defined under the Copyright Act in respect



of the aforesaid software programmes. Detailed description of the aforesaid software programmes and their uses have been provided in paragraph 8 of the plaint. The plaintiff no. 2 is the wholly owned subsidiary of the plaintiff no. 1.

21. It has further been averred in the plaint that the plaintiff no. 1's software programmes are licensed through internet delivery, during which process the customer agrees to the terms of an End-User License Agreement prior to software installation for the requisite number of computers on which the software programme has been loaded/installed for concurrent use at its premises. The plaintiffs maintain an extensive and frequently updated database of all its licensees. The defendants do not have any of such licenses of the plaintiff no. 1's software programmes as per the database of the plaintiffs.

22. The defendants are engaged in providing drone solutions for surveying, mapping, and inspection in India, including business of manufacturing and supply of Drones, who are conducting their businesses through their website, namely, <https://igdrones.com/>, and also through various third-party social media and e-commerce platforms.

23. The case set up by the plaintiffs is that sometime in May 2024 the plaintiffs received information about the defendants rampantly using pirated/unauthorized versions of the various software programmes of the plaintiff no.1, including 'Microstation', on their computer systems for business purposes.

24. Pursuant thereto, the plaintiffs availed the services of an independent investigator, namely Mr. Chandra Bhan Singh, who conducted telephonic investigation of one of the employees of the defendants on 6 May 2024, who



informed the plaintiffs' Investigator that 15-20 people are using the plaintiffs' 'Microstation' software program at the defendant companies.

25. Thereafter, the Investigator conducted extensive research about the defendant companies, including their business activities, operative locations, relation between all the defendant entities and their web presence.

26. In the month of November, 2024, the Investigator conducted another telephonic investigation of another employee of the defendants on 18 November 2024, who informed the plaintiffs' Investigator that 20-30 employees are using the plaintiffs' 'Microstation' software program at the defendant companies.

27. The plaintiffs' Investigator, through its local operative in Bhubaneswar also conducted a physical investigation of the premises which resulted in the confirmation that the defendants no. 2 to 4 are all operating from the registered office of the defendant no. 2 located at "*Plot No. S-5/517, Khata, No. 619, CSPUR, Sailashree Vihar, Khorda, Bhubaneswar, Orissa, India, 751021.*"

28. Furthermore, the plaintiffs' enquiry through the phone-home technology revealed that the defendants had been using unauthorised version of the plaintiffs' 'OpendRoads Designer' software program on at least one (1) computer system against which two (2) infringement hits have been generated. The phone home tool has specifically captured the email domain of the user as "igdrones.com", which is the domain name belonging to the defendant companies.

29. Based on the investigation conducted by the independent investigator and the findings of the phone-home technology, the defendants are knowingly using pirated/unauthorised versions of the software programmes



of the plaintiff no. 1, 'Microstation' on around 15-30 computer systems and that of 'OpenRoads Designer' on at least 1 computer system. Hence, a *prima facie* case of infringement has been made out on behalf of the plaintiffs.

30. Balance of convenience is also in favour of the plaintiffs and against the defendants. Irreparable harm would be caused not only to the plaintiffs but also to the public if an *ex parte ad interim* injunction as prayed for is not granted in favour of the plaintiffs.

31. Consequently, till the next date of hearing, the defendants, its agents, franchisees, servants and all others acting for and on their behalf are restrained from directly or indirectly copying, reproducing, storing, installing and/or using and/or pirated/unlicensed/unauthorised versions of software program(s) of the plaintiff no. 1 and/or committing unauthorised usage of, including but not limited to, 'MicroStation' and 'OpenRoads Designer' and its various versions or any other software programs developed by the plaintiffs in any manner that may amount to infringement of the plaintiffs' copyright subsisting in its software programs and software related documentation.

32. Further, the defendants, their principal officers, directors, agents, franchisees, servants and all others acting for and on their behalf at the defendants' premises are restrained from directly or indirectly formatting the computer systems and/or erasing any data, log files, installations, etc. pertaining to assisting others to infringe the copyrights of the plaintiffs subsisting in their software programs and software related documentation including 'MicroStation' and 'OpenRoads Designer', software programs and their various versions or any other software programs developed by the plaintiffs.



33. Issue Notice.
34. Notice be issued to the defendants *via* all permissible modes, including e-mail.
35. Reply(ies) be filed within four (4) weeks.
36. Rejoinder(s) thereto, if any, be filed within two (2) weeks thereafter.
37. In view of the fact that the plaintiffs have sought appointment of a Local Commissioner to seize the infringing devices, the very purpose of grant of *ex-parte ad* interim injunction would be defeated if the defendants are given notices contemplated in Order XXXIX Rule 3 of Code of Civil Procedure, 1908 (hereinafter “CPC”) prior to the execution of the commission. Hence, it is directed that the plaintiffs shall serve notices under Order XXXIX Rule 3 of CPC at the time of execution of the commission which shall not be later than two (2) weeks from today.
38. List before the Joint Registrar on 11th February, 2025, for completion of service and pleadings.
39. List before the Court on 3rd April, 2025.

I.A. 47436/2024 (O-XXVI R-4 & 9 of CPC)

40. The present application has been filed under Order XXVI Rule 4 and 9 of the CPC seeking appointment of a Local Commissioner to, *inter alia*, visit the premises of the defendants and inspect the electronics found to contain the infringing material.
41. In view of what is stated above, the plaintiffs have made out a case for appointment of a Local Commissioner.
42. Accordingly, Mr. Avi Bansal, Advocate (Mobile No. +91-9953011022) is appointed as Local Commissioner to visit the premises of the defendants situated in:



“Plot No. S-5/517, Khata, No. 619, CSPUR, Sailashree Vihar, Khorda, Bhubaneswar, Orissa, India, 751021”

43. The following directions are passed in this regard:

- a. The Local Commissioner, along with a representative of the plaintiffs, its counsel as well as two technical experts as identified by the plaintiffs, shall be permitted to enter upon the premises of the defendants mentioned above or any other location/premises that may be identified during the course of commission, in order to conduct the search and seizure.
- b. The Local Commissioner shall inspect the Hard Disks of the computers, compact discs and/or other storage/replicating media, with the help of Technical Experts of the plaintiffs and determine if the aforesaid storage/replicating media contain pirated/counterfeit/unlicensed versions of the plaintiffs’ software programmes.
- c. The evidence of any of the plaintiffs’ programmes which may be available on the defendants’ systems shall be copied on a hard drive and the computers shall be released back to the defendants, provided they give an undertaking to pay the license fee to the plaintiffs, as may be determined by this Court, upon entering appearance in the matter. The Local Commissioner shall get the said undertaking executed by the defendants.
- d. The Local Commissioner with the help of the Technical Experts of the plaintiffs shall prepare audit reports/license summaries/inventories of the aforesaid storage/replicating media.



e. If the computers and/or other storage/replicating media of the defendants are password protected, the defendants shall make accessible the said password(s), so as to enable the Local Commissioner to execute the commission.

f. To seize the computer CPUs, compact discs, and/ or other storage/replicating media as found to contain unlicensed/ pirated/ counterfeit versions of any of the plaintiffs' software programs and return the said seized goods on *superdari* to the defendants with a direction to produce the same before the Court as and when directed by this Court. Defendants shall be free to use the said seized goods without tampering with them in any manner.

g. The defendants and their representatives be directed to provide full assistance to the Local Commissioner for executing the present commission including, granting of access to the server room and providing screenshots of the deployments of plaintiffs' software programs in digital as well as printed form.

h. The Local Commissioner be permitted to take photographs and videography of the proceedings of the commission, if it is deemed appropriate.

i. In case the aforesaid premises of the defendants or any part thereof are found locked, the Local Commissioner be permitted to break open the locks and doors for execution of the commission.

j. The concerned Station House Officer of the Police Station having jurisdiction over the aforesaid premises and the DCP concerned are directed to render the necessary protection and assistance to the Local Commissioners, if and when sought.



- k. After the execution of the commission, the defendants are free to approach the Court within a period of two weeks, if they intend to obtain the license of the plaintiffs' software. The defendants are also free to negotiate with the plaintiffs and its representatives for the purpose of obtaining the licenses.
44. The Local Commissioner shall file its Reports within two (2) weeks of executing the commission, along with photographs taken and photocopies of the books of account and electronics procured pursuant thereto.
45. The fees of the Local Commissioner, to be borne by the plaintiffs, is fixed at Rs.1,50,000/-. The plaintiffs shall also bear expenses for travel and lodging of the Local Commissioner and other miscellaneous out-of-pocket expenses for the execution of the commission.
46. The application stands disposed of in the above terms.
47. The order passed today shall not be uploaded for a period of two (2) weeks from today.
48. *Dasti.*

AMIT BANSAL, J

DECEMBER 06, 2024
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