



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY 2025

BEFORE

THE HON'BLE MR. JUSTICE H. T. NARENDRA PRASAD

WP No.32999 OF 2024 (GM -CPC)

BETWEEN

NEWSPACE RESEARCH AND
TECHNOLOGIES PRIVATE LIMITED
A COMPANY REGISTERED UNDER
COMPANIES ACT 2013
HAVING ITS OFFICE AT NO. 2385
1ST FLOOR 60 FEET ROAD
SAHAKARNAGAR, BENGALURU
KARNATAKA 560 092
REP BY ITS DIRECTOR
MR SAMEER JOSHI.

...PETITIONER

(BY SRI. ANGAD KAMATH, ADVOCATE FOR
SMT. RAMYA S., ADVOCATE)

AND

1 . MR ANIRUDH PUTSALA
AGED MAJOR
S/O PRASADA RAO PUTSALA
R/AT 303, SRI LAKSHMI VEKATESHWARA PG
NO. 1723, 1ST MAIN 6TH CROSS
SANJEEVINI NAGAR
KODIGEHALLI MAIN ROAD
BANGALORE 560092.

- 2 . LENVIZ TECHNOLOGIES PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT L-58
SECTOR 11 NOIDA, GAUTAM BUDDHA NAGAR
UTTAR PRADESH 201 301.

ALSO AT.

GNEC-IIT ROORKEE PLOT NO. 20
KNOWLEDGE PARK II, GREATER NOIDA
UTTAR PRADESH 201 310

REP BY ITS DIRECTOR
MR PRABHAT SHARMA.

- 3 . MR PRABHAT SHARMA
AGED MAJOR
S/O MR SHISHU PAL SHARMA
DIRECTOR
LENVIZ TECHNOLOGIES PRIVATE LIMITED
L-58 SECTOR 11 NOIDA
GAUTAM BUDDHA NAGAR
UTTAR PRADESH 201 301
ALSO AT GNEC IIT ROORKEE
PLOT NO. 20, KNOWLEDGE PARK II
GREATER NOIDA, UTTAR PRADESH 201 310
ALSO AT B2/510 TOWER II SILVER CITY
SECTOR 93, NOIDA
UTTAR PRADESH 210 304.

- 4 . MR AKASH PATIL
AGED MAJOR
S/O MADHUKAR PATIL
FLAT NO. A031 VAJRAM ELINA
R K HEGDE NAGAR, THANISANDRA MAIN ROAD
BANGALORE, KARNATAKA-560 064
ALSO AT FLAT NO. 1 ANUJ HEIGHTS
PURNANAGAR, CHINCHWAD, PUNE 411 019

...RESPONDENTS

(BY SRI. ARUN KUMAR K, SENIOR COUNSEL FOR
SRI RAKSHITH PAI & VYBHAVASHREE S., ADVOCATES)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER OF THE XIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-18) AT BENGALURU DATED: 29.11.2024 ANNEXURE-A TO THE EXTENT THAT AD INTERIM EX PARTE RELIEF ON I.A.NOS. 3 OF 2024 WAS REFUSED AND EMERGENT NOTICE WAS ISSUED ETC.

THIS WP HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.01.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT, MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE H.T. NARENDRA PRASAD

CAV ORDER

This writ petition is filed by the plaintiff under Article 227 of the Constitution of India, challenging the order dated 29.11.2024 passed by the XIX Additional City Civil and Sessions Judge, Bengaluru on IA No.3 in O.S.No.8367/2024, refusing to grant ex-parte order for appointment of Commissioner.

2. The petitioner/plaintiff filed a suit for perpetual injunction, restraining the defendants, their agents, contractors, his employers, partners or any other person/entity claiming through or under the defendants from directly or indirectly copying, sharing

or using in any manner the confidential/proprietary information/material belonging to the plaintiff, inter alia, as referred in the forensic investigation report produced as document 20 and a decree of mandatory injunction directing the defendants, their agents, contractors, his employers, partners or any other person/entity claiming through or under the defendants to deliver up to the plaintiff all copies of, and destroy any remaining physical and digital copies of the confidential/proprietary information/material belonging to the plaintiff.

3. Along with the plaint, plaintiff has filed IA No.2 under Order XXXIX Rules 1 and 2 r/w. Section 151 of CPC with a prayer to grant an ad-interim order of ex-parte temporary injunction. IA No.3 is filed under Order XXVI Rules 1 and 9 r/w. Section 151 of CPC with a prayer to grant an ex-parte interim order to appoint a Commissioner. On consideration of IA Nos.2

and 3, the trial court issued an ad-interim ex-parte temporary injunction order against the defendants, restraining them, their agents, contractors, employers, partners or any other person/entity claiming through or under the defendants from directly or indirectly copying, sharing or using in any manner the confidential/proprietary information/material belonging to the plaintiff, in the interest of justice and equity, till the next date of hearing. Regarding IA No.3, for appointment of Commissioner is concerned, refused to pass an ex-parte order, but only issued an emergent notice. Being aggrieved by the order dated 29.11.2024, the plaintiff is before this Court.

4. This Court, on 06.12.2024, passed an ex-parte order appointing the Court Commissioner to carry out search and seizure of the operation of the data storage media, files, folders, documents etc. in the

premises of the respondents/defendants and directed the Commissioner to execute the warrant for seven days from 20.12.2024 to 28.12.2024 and report the same to this Court on 06.01.2025. On 06.01.2025, the Court Commissioner has submitted a report in a sealed cover and the same is taken on record.

5. The learned counsel for the respondents/defendants has appeared on 06.01.2025 and raised a preliminary objection regarding the maintainability of the writ petition and ex-parte interim order granted by this Court. On that issue, the matter was heard on 15.01.2025.

6. The learned Senior Counsel appearing for the respondents/defendants raised the following contentions:

(i) Firstly, the petitioner/plaintiff has sought to invoke the extraordinary jurisdiction of this Court

under Article 227 of the Constitution of India. However, the petitioner has failed to make out any case for availing and invoking the extraordinary jurisdiction of this Court.

(ii) Secondly, the petitioner/plaintiff has filed an application for appointment of a Commissioner under Order XXVI Rule 9 of CPC. Since the trial court has no power to order the appointment of ex-parte Court Commissioner under Order XXVI Rule 9 of CPC, the trial court has rightly issued summons to the defendants. There is no error or illegality in the order passed by the trial court.

(iii) Thirdly, the ex-parte interim order passed by this Court, appointing the Court Commissioner under Order XXVI Rule 9 of CPC is without jurisdiction. The Court Commissioner can be appointed only after the service of notice to the respondents/defendants.

Therefore, the report submitted by the Court Commissioner pursuant to the order passed by this Court on 06.12.2024, cannot be accepted.

(iv) Fourthly, the Court Commissioner can be appointed under Order XXVI Rule 9 of CPC to make a local investigation for the purpose of elucidating any matter in dispute, or of ascertaining the market value of the property, or the amount of any mesne profits or damages or annual net profits. The Court Commissioner cannot be appointed for search and seizure of the software, computer and laptops from the premises of the parties, that too, without giving any notice and therefore, the writ petition filed by the petitioner/plaintiff itself is not maintainable. The ex-parte order passed by this Court appointing the Court Commissioner on 06.12.2024 is without jurisdiction. In support of his contentions, he relied on the judgment of the Apex Court in the case of **PADAM**

SEN AND ANOTHER vs. STATE OF UTTAR PRADESH reported in **AIR 1961 SC 218** and contended that before appointing a Commissioner the Court has to call upon the parties to produce documents, when the parties fail to produce the relevant documents which is in their possession, especially after it has been summoned from it, then only appoint a Court Commissioner. The court has no power to get hold of the documents forcibly from the possession of the parties.

(v) Fifthly, the ex-parte interim order passed by this Court is contrary to the judgment of the Apex Court in the cases of **PADAM SEN (supra)** and **MANOHAR LAL CHOPRA vs. RAI BAHADUR RAO RAJA SETH HIRELAL** reported in **AIR 1962 SC 527**. Hence, he sought to dismiss the writ petition.

7. On the other hand, the learned counsel appearing for the petitioner/plaintiff raised the following contentions:

(i) Firstly, this Court, by order dated 06.12.2024 passed an ex-parte order, appointing the local Commissioner to search and seize the documents and some materials and a warrant has been issued to execute the same from 20.12.2024 to 28.12.2024. Pursuant to that, the warrant is executed and report has been submitted. If the respondents/defendants are aggrieved by that order, they have to challenge the same before the Apex Court. Since that order has attained finality, now the report has to be transferred to the trial court. The trial court may be directed to decide the legality and validity of the Court Commissioner's report, after giving opportunity to both the parties. In support of his contentions, he relied on the judgment of the Apex Court in **Special**

**Leave to Appeal (Civil) Nos. 12950-12951/2022
disposed of on 17.11.2022.**

(ii) Secondly, in the suit for infringement of copy right, the court has the power to pass an ex-parte order appointing the Commissioner under Order XXVI Rule 9 of CPC for seizing and collecting all the materials. The appointment of a court commissioner in the intellectual property rights cases ex-parte is desirable to ensure that the surprise elements remain intact. In the absence whereof the respondents would easily be in a position to remove the infringing products when the Court Commissioner visits the premises of the respondents.

(iii) Thirdly, the Delhi High Court in the case of **AUTODESK INC. AND ANOTHER vs. A.V.T.SHANKARDASS AND ANOTHER** reported in **AIR 2008 Delhi 167** has issued a guideline for

appointment of the local commissioner in software infringement and piracy matter. The trial court, without appreciating the guidelines issued by the Delhi High Court, has erred in refusing to grant ex-parte order. In support of his contention, he has relied on the judgment of the Bombay High Court in the case of **FOUNDRY VISIONMONGERS LTD. Vs. ANKUR SUDHIR SACHDEV AND OTHERS** reported in **AIR 2016 SCC online Bombay 932.**

(iv) Fourthly, this Court has rightly exercised the power under Order XXVI Rule 9 of CPC and passed an order on 06.12.2024.

(v) Fifthly, in the judgment relied upon by the learned Senior Counsel for the respondents/defendants in the case of **PADAM SEN (supra)**, the question for determination is with respect to whether the court has right in exercising its inherent power

under Section 151 of CPC. The Apex Court has not decided the power of the Court under Order XXVI Rule 9 of CPC. In that view of the matter, the judgment relied upon by the learned Senior Counsel for the respondents/defendants is not applicable to the facts of this case. Hence, he sought to allow the writ petition.

8. Heard the learned counsel for the parties and perused the writ papers.

9. The point for consideration in this petition is,

"Whether the court can pass an ex-parte order appointing a Court Commissioner in an intellectual property rights case?"

10. The intellectual property, though intangible, is probably the most important form of property today. The definition of intellectual property has widened with growth of international trade and

globalization of economy, giving the whole business a paradigm. Intellectual property having developed into a powerful commercial asset with the ever-evolving digital technology. Intellectual property rights are basically negative right, which allow the right-holder to (i) utilize, (ii) dispose of his rights and (iii) initiate legal action against those who infringe them. Anybody who misappropriates the property is faced with civil and/or criminal consequences. While the traditional remedies include injunction, cost, damages, etc. what has assumed more popularity in these days is the non traditional forms of remedies like, Anton Piller order, interlocutory injunction, etc.

11. Anton Piller orders are legal mechanisms that allows an applicant to search a defendant's premises and seize evidence without prior notice or warning. They are often referred to as search orders or civil search warrants. The main purpose of Anton

Piller order is to stop the defendant tampering with any evidence that may be relevant to a court case in intellectual property rights matters. Anton Piller order originated in United Kingdom from the case **ANTON PILLER K.G. vs. MANUFACTURING PROCESS & OTHERS** reported in **(1976) 1 All ER 779**. However, this did not address the issue of unknown infringers. This led to adoption of John Doe Orders (whose origin can be traced in United States of America). When such orders were used to refer to unidentifiable defendants, **UNITED STATES OF AMERICA vs. JOHN DOE (18 U.S.C. 1956 (b)(4))**. This order was granted in U.S., Canadian and Australian Courts. Now the Indian Courts are using this concept of issuing ex-parte order in intellectual property rights cases to punish class of unknown infringers. The Delhi High Court passed John Doe order in the year 2002 in **TAJ TELEVISION LTD. & OTHERS vs. RAJAN MANDAL AND OTHERS,**

ESPN SOFTWARE INDIA PRIVATE LIMITED vs. TUDO ENTERPRISE. The Delhi High Court also issued Anton Pillar order (ex-parte order for appointment of Court Commissioner) and also issued guidelines in the case of **AUTODESK INC (supra).**

The relevant portion is extracted below:

"14. Coming now to the question of guidelines to be set, we have heard both the counsel for the parties. We are conscious of the fact that it is neither feasible nor practical to lay down guidelines, which would cater to numerous and all the situations that may arise. However, some of the following relevant factors and guidelines are being enumerated which the Court may take into consideration on the question of appointment of a Local Commissioner in software infringement and piracy matters:-

(i) The object of appointment of a Local Commissioner in software piracy matters is not, as much to collect evidence but to preserve and protect the infringing evidence.

The pirated software or. incriminating evidence can only be obtained from the premises of the opposite party alone and in the absence of an ex parte appointment of a Local Commissioner there is likelihood that such evidence may be lost, removed or destroyed;

(ii) Request for ex parte appointment of a Local Commissioner in such matters is usual and in fact is intended to sub serve the ends of justice as it is imperative to have an element of surprise so that the actual position is not altered;

(iii) The test of reasonable and credible information regarding the existence of pirated software or incriminating evidence should not be subjected to strict proof or the requirement to demonstrate or produce part of the pirated software/incriminating evidence at the initial stage itself. It has to be tested on the touchstone of pragmatism and the natural and normal course of conduct and practice in trade.

(iv) It may not always be possible for a plaintiff to obtain any admission by employing decoy

customers and gaining access to the defendant's premises. Any such attempt also inheres in it the possibility of dis-appearance of the pirated software/incriminating evidence in case the decoy customers is exposed. Accordingly, visit by decoy customer or investigator is not to be insisted upon as pre condition. A report of private Investigator need not be dis-regarded or rejected simply because of his engagement by the plaintiff. The information provided by the private Investigator should receive objective evaluation.

(v) In cases where certain and definite information with regard to the existence of pirated software or incriminating evidence is not available or where the Court may nurture some element of doubt, it may consider asking the plaintiff to deposit cost in Court so that in case pirated software or incriminating evidence is not found then the defendant can be suitably compensated for the obtrusion in his work or privacy”.

12. In view of the above, it is very clear that in the intellectual property rights cases, the ex-parte order of appointment of the Court Commissioner is to ensure that a surprise element remains intact, in the absence whereof the respondents would easily be in a position to remove the infringing products when the court commissioner visits the premises of the respondent. If the ex-parte order is not passed, the respondents/defendants may likely to uninstall or remove the infringed version of the software from their machines, thereby the person tampering with the evidence of the actual usage of the software. It is not as much collecting the evidence but to preserve and protect the infringing evidence. Therefore, an ex-parte order appointing the Court Commisisoner for search and seizure of the business premises of the respondents/defendants is necessary. The Court can pass the ex-parte order only in following situations:

(a) Where the plaintiff has an extremely strong prima facie case,

(b) Where the actual or potential damage to the plaintiff is very serious,

(c) Where it was clear that the defendant possessed vital evidence, and

(d) There was a real possibility that the defendant might destroy or dispose of such material so as to defeat the ends of justice,

(e) The purpose of Anton Piller order is the preservation of evidences.

(f) The Court also has to pass an order safeguarding the interest of the defendant while granting ex-parte order, like undertaking by the plaintiff to compensate the defendant for the losses he wrongly suffered have to be provided while granting Anton Piller order.

13. In the judgment relied upon by the learned Senior Counsel for the respondents/defendants in the case of **PADAM SEN (supra)**, the issue for determination in that case is that whether the court,

in exercise of its inherent power under Section 151 of CPC can appoint a commissioner for seizing of the books of accounts of the parties. In the said case, the Apex Court has not decided the power of the court to issue an ex-parte order under Order XXVI Rule 9 of CPC. The judgment relied upon by the learned Senior Counsel for the respondents/defendants is not applicable to the facts of this case.

14. Pursuant to the order passed by this Court on 06.12.2024, the Commissioner has submitted a report on 06.01.2025. In similar circumstances, the Gujarat High Court in Special Civil Application No. 2588/2020 and connected matters, disposed of on 29.04.2022, wherein the trial court has refused to grant an ex-parte order for appointment of the Commissioner, the plaintiff has approached the High Court under Article 227 of the Constitution of India. The High Court has passed an ex-parte order

appointing a local commissioner in a software infringement and piracy matter. The Court Commissioner has submitted a report. The High Court set aside the Court Commissioner's report on the ground that the Court Commissioner has not given any notice to the respondent as per Order XXVI Rule 18 of CPC and discarded the Court Commissioner's report and directed the trial court to appoint a fresh Commissioner. That order has been questioned before the Apex Court in Special Leave to Appeal (C) Nos.12950-12951/2022. The Apex Court, by order dated 17.11.2022 allowed the appeal. The relevant paragraphs are extracted below:

"Having heard learned Senior Advocates appearing for the respective parties, we are of the opinion that, while passing the impugned judgment and order, the High Court was not justified in considering the legality and validity of the Court Commissioner's Report. It should have been left to the concerned trial Court to

take a call on the Court Commissioner's Report and, of course, after giving an opportunity to the respondents on the court Commissioner's Report.

In view of the above, without expressing anything on the legality and validity of the Court Commissioner's Report, we set aside the impugned common judgment and order passed by the High Court.

We direct the learned trial Court to give an opportunity to the parties, including the respondents-herein, to make submissions on the legality and validity of the Court Commissioner's Report, before taking into consideration the Court Commissioner's Report. Now, the Court Commissioner's Report be sent to the concerned Commercial Court by the High Court within a period of two weeks from the date of receipt of the present order. Thereafter, it will be open for the respondents-herein/original defendants to raise the objections in writing on the Court Commissioner's Report. It will also be open for the petitioners to also make submissions on

the Court Commissioner's Report. That thereafter, the learned Commercial Court to take an appropriate decision on the objections to be raised by the respondents on the Court Commissioner's Report in accordance with law and on its own merits and also after giving an opportunity to the petitioners herein, before finally taking into consideration the Court Commissioner's Report any further.

It is abundantly made clear that we have not expressed anything on merits on the Court Commissioner's Report and it is ultimately for the concerned Commercial Court to take an appropriate decision in accordance with law and on its own merits and considering the earlier directions issued by the High Court while directing to appoint the Court Commissioner.

It also goes without saying that if the plaintiffs propose to rely upon the Court Commissioner's Report, in that case, the injunction application shall be decided only after an appropriate decision is taken by the Commercial Court on

the Court Commissioner's Report, as observed hereinabove."

15. In view of the above, the point is answered in the affirmative and the following order is passed:

- (i) The writ petition is disposed of
- (ii) Registry is directed to transfer the Court Commissioner's report to the trial court.
- (iii) The trial court is directed to pass appropriate orders, in accordance with law, deciding the legality and validity of the Court Commissioner's report, after giving an opportunity to both parties.
- (iv) It is made clear that this Court has not expressed any opinion on the merits of the Commissioner's report. It is for the trial court to take appropriate decision in accordance with law, on its own merit.

- (v) The trial court is also directed to dispose of IA No.IV, in accordance with law, as expeditiously as possible.

**Sd/-
(H. T. NARENDRA PRASAD)
JUDGE**

Cm/-