

IN THE COURT OF MS. ANURADHA SHUKLA:
DISTT. JUDGE (COMMERCIAL COURT-02)
SOUTH DISTRICT, SAKET COURTS: NEW
DELHI

CS (Comm) 470/2023

Siemens Industry Software Inc.*Plaintiff no. 1*
(formerly known as Siemens Product)
Lifecycle Management Software Inc.)
5800 Granite Parkway,
Suite 600,
Plano, Texas – 75024
United States of America

***Siemens Industry Software
(India) Pvt. Ltd****Plaintiff no. 2*
E-20, 1st & 2nd Floor, Hauz Khas,
New Delhi - 110016

Versus

Mr. Nilesh Dhanukar
Owner and Founder,
Om Sai Moulds And Plastics*Defendant no. 1*
D-111, MIDC Area, Ambad, Nashik
Maharashtra-422010

also at
Plot no. 42 S. No. 157, ½
Guru Gajanan Industrial Estate
Vilholi Shivar, Ambad MIDC
Nashik – 422010, Maharashtra

also at D-56, MIDC Area, Ambad Nashik
Maharashtra – 422010

Mr. Purshottam Ramji Dhanaukar*Defendant no. 2*
Co-Founder
Om Sai Moulds And Plastics

D-111, MIDC Area, Ambad, Nashik
Maharashtra – 422010

also at
Plot no. 42 S. No. 157, ½
Guru Gajanan Industrial Estate
Vilholi Shivar, Ambad MIDC
Nashik – 422010, Maharashtra

also at
D-56, MIDC Area, Ambad,
Nashik Maharashtra – 422010

Om Sai Moulds And Plastics
D-111, MIDC Area, Ambad
Nashik Maharashtra – 422010

.....Defendant no. 3

also at
Plot no. 42 S. No. 157, ½
Guru Gajanan Industrial Estate,
Vilholi Shivar , Ambad MIDC,
Nashik – 422010, Maharashtra

also at
D-56, MIDC Area, Ambad, Nashik,
Maharashtra – 422010

Dhanukar Machine Tools
College road, Vadkun, Dahanu Road West,
District : Plaghar,
Maharashtra - 401602

.....Defendant no. 4

also at
D-111, MIDC Area, Ambad, Nashik
Maharashtra – 422010

also at
Plot no. 42 S. No. 157, ½ ,
Guru Gajanan Industrial Estate
Vilholi Shivar, Ambad MIDC,
Nashik – 422010, Maharashtra

Also at
D-56, MIDC Area, Ambad Nashik
Maharashtra – 422010
Sainath Products
D-111, MIDC Area, Ambad Nashik
Maharashtra – 422010

.....Defendant no. 5

Also at
Plot no. 42 S. No. 157, ½,
Guru Gajanan Industrial Estate
Vilholi Shivar, Ambad MIDC,
Nashik – 422010, Maharashtra

also at
D-56, MIDC Area, Ambad,
Nashik, Maharashtra – 422010

Date of Institution : 07.08.2023
Date of submissions : 08.01.2026
Date of judgment : 19.02.2026

J U D G M E N T

1. Plaintiff has filed suit for permanent injunction to restrain the defendants from infringement of copyrights, rendition of accounts of profits, damages etc.
2. Case of the plaintiffs is that the Plaintiff No. 1, Siemens Industry Software Inc. (formerly known as Siemens Product Lifecycle Management Software Inc.) is the leading global provider of product lifecycle management (PLM) software which allows companies to manage the entire lifecycle of a product efficiently and cost-effectively, from ideation, design and manufacture,

through service and disposal. Computer-aided design (CAD), computer-aided manufacturing (CAM), computer-aided engineering (CAE), product data management (PDM) and digital manufacturing converge through PLM. It is stated that the Plaintiff No. 1 is the owner of copyright in the software programs developed and marketed by it including its various versions and these software programs are “computer programs” within the meaning of Section 2 (ffc) of the Copyright Act, 1957 and are included in the definition of ‘literary work’ as per Section 2 (o) of the Act.

3. It is stated that the Plaintiff No.2 markets the software products of the Plaintiff No.1 in India and is consequently deeply impacted by the infringement of the Plaintiff No.1’s copyright subsisting in the respective computer programs and piracy in respect of the Plaintiff No.1’s software programs causes grave injury to the Plaintiff No. 2’s interests. Plaintiff No. 2 has a substantial interest in the protection and enforcement of the Plaintiff Nos. 1’s copyright. Plaintiff No. 1 has a system of mandatory licensing for all its products and the details pertaining to the number and nature of licenses as also the name of the entity to which the Plaintiff No.1’s software is licensed are stored in an extensive database.
4. Case of the plaintiff further is that Mr. Nilesh Dahanukar (D-1) and Sh. Purshottam Ramji Dahanukar (D-2) are the Founders and Co-owners of the Om Sai Moulds And

Plastics (D-3) entity as per information available on the world wide web. It is stated that defendant No. 3 carries out its business from its design cum manufacturing unit located at D-111, MIDC Area, Ambad, Nashik, Maharashtra - 422010 and Defendant No. 3, as per its website (<http://www.omsaimoulds.com/>) as available wayback has introduced itself as Designers and Manufacturers of Precision Injection-moulds. It is stated that the entity as per its own admission capable of “Designing and manufacturing all types of Moulds” required in different industries like automobile, electrical, consumer electronics, irrigation, piping distribution, packaging, home appliances etc.

5. It is stated that Dahanukar Machine Tolls (D-4) has its Testing and Moulding unit at Plot No. 42 S. No. 157, ½, Guru Gajanan Industrial Estate, Vilholi Shivar, Ambad MIDC, Nashik – 422010, Maharashtra and D-56, MIDC Area, Ambad, Nashik, Maharashtra – 422010, respectively and Defendant No. 4 and 5 are sister concerns of the Defendant No.3, and as such carried out business from the same premise as that of Defendant No.3 and used the same infrastructure.
6. It is further averred that in the month of July 2023, the plaintiffs received information from its market sources that the Defendants were using copies of its NX (Unigraphics) software for its commercial purposes at their design cum manufacturing unit located at D-111,

MIDC Area, Ambad, Nashik, Maharashtra – 422010 and in order to ascertain the license entitlements in name of the Defendants, conducted a license database check in their records and found that the Defendant No.3 entity herein possesses two licenses of NX Mach Advantage - Node Locked, the maintenance and subscription for the same stood expired long time back. It is stated that the Defendants did not possess valid and/ or sufficient licenses for use of the Plaintiffs' software, indicates that the Defendants are indulging in unlicensed use of the Plaintiff No.1's software titles, especially, NX (Unigraphics).

7. It is averred that in order to confirm the usage of the Plaintiffs software programs, by the Defendants, the Plaintiffs deputed M/s. InstaQuest Consulting Private Limited, an independent investigating agency, to make enquiries about the Defendants' business, IT infrastructural set up, especially with regard to the number of computer systems on which the Plaintiffs' software programs, including NX, were being used at the Defendants' office. It is stated that the information was gathered through Internet searches, site visits and telephonic interview with employee of the Defendants and the investigator affirmed that during investigation he gathered information, that NX (Unigraphics) software (specially version 12) is being used on about 8-10 computer systems in the design department at the Defendants' manufacturing & design unit located at D-111, MIDC Area, Ambad, Nashik, Maharashtra -

422010. It is stated that the Defendants do not possess valid and/ or sufficient licenses for NX, including but not limited to version 12 or any other software of the Plaintiffs, clearly indicated that the Defendants were indulging in unlicensed use of the Plaintiff No.1's software titles, especially, NX (Unigraphics), as gathered during the investigation.

8. Summons of suit were issued to defendants. After appearance, WS was filed by D-1 to D-3 alongwith application u/O VIII rule 1 CPC, which application was allowed on 05.04.2024 and WS of D-1 to D-3 was taken on record. Replication was filed by the Plaintiff.
9. Defendants no.1 to 3 filed their Written Statement stating that the Court does not have territorial jurisdiction. The plaintiff is guilty of inaction and thus, on the basis of waiver, acquiescence, delay and latches, plaintiff is disentitled for any relief. The defendants have valid license to use the plaintiff's software. The documents filed by the plaintiff were not sustainable in the eyes of law. The plaintiff is trying to eliminate competition. The defendants have denied the contents of plaint on merit. In reply to para no.16 mentioning about the investigator having obtained the information, the defendants denied the paragraph and went on to mention that they had purchased two softwares from the plaintiff.

10. Plaintiff filed the replication wherein it reiterated the contents of the suit and denied the contents of Written Statement.

11. Defendant no.4 & 5 during the pendency of suit settled the dispute with plaintiff consequent whereto the proceedings against D-4 & D-5 were dropped, hence the WS of these defendants is not relevant.

12. On the pleadings, following issues were framed:

1. Whether this Court does not have territorial jurisdiction to try this suit? OPD

2. Whether the proper court fee had not been paid by the plaintiff? OPD

3. Whether the suit is barred by waiver of acquiescence delay and laches? OPD

4. Whether the plaintiff had provided a valid licence to the defendant to use the software? OPP

5. Whether the suit is barred by misjoinder of D-4 ? OP (D-4)

6. Whether the plaintiff is entitled for permanent injunction against all the defendants as per prayer clause A. ? OPP

7. Whether the plaintiff is entitled for rendition of accounts earned by the defendants by using softwares of plaintiff? OPP

8. Whether the plaintiff is entitled for payment of Rs.20,00,000/- or any other amount?

9. Whether the plaintiff is entitled for costs of the suit?OPP

10. Relief.

13. Thereafter, matter was fixed for PE. PW-1 Sh. Deepak Hejmadi tendered his evidence affidavit. He was cross examined and discharged. DW-1 Sh. Nilesh Dhanukar and DW-2 Sh. Shiv Shankar tendered their evidence affidavits on behalf of D-1 to D-3. They were cross examined and discharged. Matter was fixed for final arguments.

EVIDENCE

14. Plaintiff examined Sh Deepak Hejmadi as PW1 who deposed in terms of plaint and tendered following documents: Copy of Power of Attorney issued by Plaintiff no. 1 is **Ex. PW1/1**; Copy of Power of Attorney issued by Plaintiff no.2 is **Ex. PW1/2 (OSR)**; Copyright Registration Certificates is **Ex. PW1/3 (colly) (OSR)**; Printout of Sample End User Licence Agreement of Plaintiff Companies is **Ex. PW1/4**; Printout from Ministry of Corporate Affairs website and the websites of Defendant companies/third party websites reflecting information about defendants is **Ex. PW1/5 (colly)**; Printout of licence entitlements available in the name of Defendants available in the Plaintiff's record is **Ex. PW1/6** and Report of Local Commissioner alongwith its annexures is **Ex. PW1/7 (colly)**.

15. PW-1 in his cross examination by Ld.Counsel for defendant no.1 to 3 stated that he was Head of Licence Compliance-India and SAARC. He stated that when a customer purchases Siemens Software and if it is Node

Locked, the said software purchased by the customer can be installed on a particular designated computer only. In answer to the question as to how plaintiff gets to know if somebody was using unauthorized/pirated versions of software the witness replied that at Siemens they get to know about the unauthorized/pirated versions of software through multiple channels including but not limited to market sources, investigating agencies and a security mechanism embedded in Siemens Software. The witness stated that the investigation with regard to D-1 to D-3 using pirated versions of Siemens software was conducted probably one to two weeks before obtaining the court order. It was suggested to the witness that defendants no.1 to 3 did not disallow the Ld.LC to carry out the commission. The witness denied that on 25.06.2024, plaintiff had not conducted an internal check and found that defendant no.3 was unauthorizedly using plaintiff's software on 15 system. There was practically no cross-examination of the witness on the aspects of infringement, which is the subject matter of suit. The witness was asked about the purchased licenses, which have not been denied. The types of licenses, the nature of softwares, working of softwares, purpose of softwares etc, which do not help the case of defendant at all. Ld.Counsel for defendant no.1 to 3 asked from the witness if any investigation was carried and when was the investigation carried but did not suggest that no investigation in fact was got carried by the plaintiff.

16. Defendants examined Mr. Nilesh Dahanukar as DW-1, who relied on following documents: Original letter of authorization in favour of D-1 **Ex. DW1/1**; True copy of Firm Registration Certificate of D-3 **Ex. DW1/2**; True copy of partnership deed of D-3 **Ex. DW1/3**; True copy of Retirement Deed of D-3 is **Ex. DW1/4**; Printout of Tax Invoice dated 26.06.2020 is **Ex. DW1/5**; Printout of Quotation dated 14.01.2020 is **Ex. DW1/6**; Printout of Purchase order dated 14.03.2020 is **Ex. DW1/7**; Printout of Licenced Software Designation Agreement is **Ex. DW1/8**. Siemens Recognized Expert Certificate issued in favour of 3D Engineering Automation LLP is **mark A**. Affidavit u/O XI rule 6 (3) of Commercial Courts Act, commercial Division and Commercial Appellate Division of High Court of 2015 is **Ex. DW1/9**; Certificate u/s 65-B of Indian Evidence Act is **Ex. DW1/10**.

17. The witness admitted in his cross examination that he had read the order dated 10.08.2023 appointing Mr. Chittranjan Hati to visit his premises and carry out activities as mentioned in the order. He was not aware about the visit of Mr. Chittranjan Hati on 17.08.2023 as he was not physically present in the premises on that day. He stated that no one from his office had informed him about the visit of Mr. Chittranjan Hati on 17.08.2023. He admitted that he had filed a diary entry against the entire team excluding Mr. Chittranjan Hati on 17.08.2023. he denied the suggestion that he had met the Local Commissioner or any other member of team at the PS before making his

complaint. He admitted that Pankaj Patil was his employee. He stated that Pankaj Patil had told him that there were people who had not introduced themselves and had not followed the security protocol of the company and were trying to enter the premises forcefully. He did not deny the suggestion that his employees were seen removing CPUs and hard discs and putting it outside the premises and stated that it was so written in the report of Local Commissioner. He stated that there were three employees in Design Department working with D-3 around 17-18.08.2023. Mr. Ujjawal Hiranman Chaudhary was working in Design Department with D-3 in the past. Regarding Arun Patil he said that he had left D-3 and had then joined again.

18. On seeing Ex.PW1/5 (page no. 45) and being asked if the printout was from his website, he said that he did not have any website as on date and that he did not recall when D-3 discontinued its website. He avoided the questions by saying that he did not recall if website mentioned in Ex. PW1/5 was the website of D-3 and he did not recall name of website of D-3 when it existed. He said that he had entered into end user license agreement with the plaintiff before installation of softwares. He had taken license for two softwares to run in his premises which were valid as on said date. He stated that he had two computers in his design department. He stated that in the past one video was posted (by him) on Youtube. Witness admitted name of Om Sai Moulds on Ex.PW1/5 and stated that he was not

sure when this video was shot. He was shown page 85 of Ex.PW1/5. He said the picture was similar to his organization and again said picture was of his organization. He said that the picture was partially the design office of the firm. The witness said that he was not pressing part of his statement and also pleadings where the visit of Local commissioner was challenged and was not pressing the police complaint filed by him against the Local Commissioner and the team. **The relevant portion of the evidence was thus treated as having been dropped from the pleadings and evidence.** The local commissioner's report was thus admitted by the defendants. The witness was specifically asked if he could provide any logs of usage of NX software in his premises to which he answered in negative.

19. A Youtube video playing at the office of defendant was played in court. The witness admitted that the video was shot, edited and uploaded by Om Sai Moulds and Plastics. The picture of shot at 19 seconds in the video was admitted by witness. He, however, denied that NX was being operated on 10 systems in his firm. Witness on being shown page 87 of Ex.PW1/5 stated that it the monitor attached to the CPU which carries official version of NX. The witness did not deny specifically that there was no hard drive crash of the computer on which the NX software was installed.

20. DW-2 Sh. Shiv Shankar Yadav deposed that he had sold two licenses of Nx Mach Advantage-Node Locked to defendant. He said that the licenses sold were perpetual licenses which came with 12 months of maintenance, enhancement and support. After 12 months if the customer did not renew it, the license still worked but does not get updates and support from 3D Engineering or Siemens Industry. The perpetual license works for lifetime, however, it works only on the hardware on which it is installed and if the hardware crashes or is damaged in any manner, the software would not work. He said that after he gave two licenses to M/s.Om Sai Moulds & Plastic, no query was received from them. They never got the maintenance renewed after the purchase of the licenses. M/s.Om Sai Moulds & Plastic had purchased two licenses and they could be used on two machines only. The machines were identified at the time of installation of software, the details of which were also taken down. He had never told the party that it could buy only two licenses and use them on any number of machines.

ISSUE WISE-FINDINGS

21. Issue No.1:- *Whether this Court does not have territorial jurisdiction to try this suit?*

22. Onus to prove this issue was on the defendant. It is the case of the defendant that the defendant is based in

Maharastra. The act of infringement if any, has taken place in Maharashtra. No part of cause of action arose within the territorial jurisdiction of this court hence the court has no jurisdiction to try the suit. Ld. Counsel for the plaintiff on the other hand argued that the suit is maintainable before this court by virtue of Section 62(2) of Copyright Act of 1957. It was argued that plaintiff no.2 carries on its business activities within the jurisdiction of this court through its registered office located at E-20, 1st and 2nd floor, Hauz Khas, New Delhi. The plaintiff no. 2 is registered in Delhi and as such resides within territorial jurisdiction of this court. It was argued that plaintiff no.2 is engaged in regular and continuous business activities from its aforesaid registered office, which activities are not merely incidental but form the core of plaintiff no.2's commercial undertakings. Section 62(2) of Copy Right Act says, “ *For the purpose of sub-section (1), a "district court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain*”.

23. The provision of law therefore, says that if there are more than one plaintiffs and one plaintiff works for gain within

the jurisdiction of the court, the court will have jurisdiction to try a matter under Copy Right Act. Ld. Counsel for defendants had raised the objection regarding the power of attorney executed by Plaintiff no.1 in favour of plaintiff no.2 to argue that the relationship having not been established jurisdiction of this court would not be made out. Hon'ble Delhi High Court in **Microsoft Corporation & Ors versus Satveer Gaur & Anr. In CS (Comm) 1324/2016 dated 26 May 2020 on the similar issue** raised by defendant of the said case held that the dispute was not between defendant no.3 and the parent company of plaintiff no.2. The unauthorized usage of the the software of plaintiff was in India and plaintiff no.2 (of the said case) was based within the jurisdiction of the court.

24. There is no challenge to the fact that the registered office of plaintiff no. 2 is situated within the territorial of this court. It is also not the case of the defendant that plaintiff no. 2 has any other office situated within the jurisdiction where the infringement activities have taken place. In view of above and the statutory provision, this court has territorial jurisdiction to try the suit. **The issue is decided in favour of plaintiffs and against defendants.**

25. **Issue No.2:- *Whether the proper court fee had not been paid by the plaintiff?***

26. Onus to prove this issue on the defendant. The defendant has pleaded that it is plaintiffs' own estimation that their software is worth lakhs/crores/US dollars and hence the valuation done by the plaintiffs is not proper and the plaintiffs have avoided payment of actual court fees. The case of the plaintiffs on the other hand is that the plaintiffs have paid court fees of Rs.22,000/- and has undertaken to pay additional court fees if directed by the court.

There cannot ever be an amount specified for damages that a party can specifically claim to have suffered in cases like present case of infringement. The plaintiff's have claimed damages of Rs.20,00,000/- and have paid court fee of Rs.22,000/- for all the reliefs. The defendant has not been able to satisfy as to how this assessment of plaintiff can be termed as faulty. **The issue is decided in favour of plaintiffs and against defendants.**

27. ***Issue No.3:- Whether the suit is barred by waiver of acquiescence delay and latches?***

28. Onus to prove this issue was on the defendant. It is the case of defendants that the plaintiffs allowed the defendants to use the softwares for a long time and it was only after substantial time had expired did the plaintiffs decide to file this suit at their whim. It was argued by Ld. Counsel for the defendants that PW-1 admitted in his cross-examination that plaintiffs' licence data base is updated daily and they have access to multiple monitoring mechanism. The plaintiffs, therefore, would have found

undoubtedly that the defendants' licences had expired long ago, the same having been purchased in June 2020. It was argued that the plaintiffs did not communicate with defendants in this regard either by e-mail, hard copy or even telephonically regarding the renewal of subscriptions. He argued that this omission is highly questionable as organizations of such stature are generally known for maintaining high standards of follow up, sales and market tactics particularly with existing customers. It was argued that the plaintiffs' selective discovery after three years of ongoing business dealings raises serious doubt about the plaintiffs' claim. It was argued that the defendants being plaintiffs' customer since 2020, the plaintiffs' version of having received the information of alleged infringement in 2023 defies logic and indicates malafide intent and bad faith on part of plaintiffs. The plaintiffs, therefore, having allowed the defendants to use the Copy Righted software for a long time are guilty of waiver by acquiescence, delay and laches.

29. The plaintiffs' case is that they had received the information about the infringement activities being carried by the defendants somewhere in the month of July 2023. The plaintiffs acted with due diligence and promptly undertook necessary enquiry. After due verification and having found the veracity and extent of the infringement, the plaintiffs filed the suit in August 2023 without any delay.

30. The defendants appeared to be confused about extension of licenses and discovery of infringement. The plaintiffs having not approached the defendants for extension of AMC for license does not mean that they on finding non-extension of AMC would have discovered that the defendants have started using the software on multiple systems unauthorizedly.
31. The defendants have not been able to bring anything on record to suggest that the plaintiffs were aware about the infringement activities prior to July 2023. The defendants are placing reliance upon their user from the date of license to claim that the plaintiffs were aware of use of software by the defendants. It shall be dealt in detailed later herein as to how the plaintiffs' case is not based on the licensed software but in respect of the software which the defendants started to use without proper license in more systems than for which the licenses had been granted.
32. It is the clear case of plaintiffs that the discovery regarding user by plaintiffs on more than two systems, for which the licenses had been taken by the defendants, was discovered in July, 2023 whereafter the plaintiffs acted swiftly and filed suit in August 2023 after due verification. The defence of the defendant regarding suit being barred by waiver/acquiescence/latches, therefore is not proved. **The issue is decided in favour of plaintiffs and against the defendant.**

33. Issue no. 5:- *Whether the suit is barred by misjoinder of D-4 ?*

34. The defendant nos. 4 and 5 settled the dispute with the plaintiffs during the pendency of the suit. The plaintiff withdrew the suit against these defendants on the statement given by the counsel for these defendants. The proceedings against the defendants were dropped. **This issue therefore does not call for a decision.**

35. Issue no.4:- *Whether the plaintiff had provided a valid license to the defendant to use the software?*

And

36. Issue no.6:- *Whether the plaintiff is entitled for permanent injunction against all the defendants as per prayer clause A.?*

37. Ld. Counsel for the plaintiffs during the course of proceedings explained that the softwares are purchased by parties which are installed on identified systems and the party purchasing such software is entitled to use the software legally and validly on such systems. For instance, micro soft word files are purchased softwares and are either pre-installed on the systems at the time of purchase or are purchased by the parties separately by paying for the same. At times these are installed on the systems for perpetual use and at times for a limited term use and the parties using the same on systems have to get the software updated or purchased after the expiry of such term. The

plaintiffs' NX software is a similar software which is installed on the systems after purchase.

38. Ld. Counsel for the plaintiffs explained that the softwares are installed by duly authorized dealers of the plaintiffs, who installed the software after purchase by a person on the identified systems. PW-1 and DW-2 have given a very specific evidence in this regard stating that the softwares were purchased for and were installed on identified systems. Such use of NX software for such system, if the software was purchased for perpetual use, can be made for indefinite period without any hindrance or objection from the plaintiffs. It was argued that what the defendants, however, did was after purchasing the licences for two systems, downloaded the software on multiple systems and started to use the software on more than two machines. Ld. Counsel for the plaintiffs has shown the data of unauthorized user as on 20.05.2025 which shows the product NX being used on more than one system and there were thousands of events of users on such systems. The table is reproduced for ready reference hereunder:

ID	Line	Product	Last Event	Event Date	Event Description	Primary MAC	Primary IP Address	IP Count	Country
549	N	701	27-19-	19-05-25	2,50msa imoulds.com	9C:7B:EF:28:26:7B	103.181.12.37	1	India
351	N	143	08-19-	19-05-25	5,0msa imoulds.com	E0:4F:43:29:7F:70	103.181.12.37	1	India

23		c-1 25	lds.c			
		9	om			
537	N	01- 19-	2,1-	FC:4D:D	103.181.1	India
896	X	FebMay-33		4:36:EE:3	12.37	
39		-18 25		B		
537	N	03- 19-	99	omsa 6C:0B:84:	103.181.1	India
944	X	Ap May-6		imou 3E:69:35	12.37	
39		r-1 25	lds.c			
		9	om			
456	N	01- 14-	4,6	omsa 6C:4B:90:	103.181.1	India
654	X	FebMay-91		imou 49:60:21	12.37	
06		-19 25	lds.c			
			om			
437	N	03- 13-	1,5	omsa 44:39:C4:	103.181.1	India
168	X	Ap May-93		imou 38:F7:74	12.37	(1590
52		r-1 25	lds.c),
		9	om			Unkn
						own
						(3)
563	N	30- 06-	1,8	omsa 00:4E:01:	114.79.14	India
594	X	JunMar- 82		imou AF:C4:FE5.	236	
23		-21 25	lds.c			
			om			
537	N	08- 30-	47	omsa 00:01:6C:	114.79.14	India
944	X	Ap Jul-2 0		imou 59:CB:4E	5.236	
40		r-1 4	lds.c			
		9	om			

39. The defence of the defendants is that they had purchased the software from the plaintiffs and were using the same legally and validly. It was argued by Ld. Counsel for the defendants that defendants have purchased two permanent licenses from the authorized dealer of the plaintiffs, namely, 3D Engineering Automation LLP (Platinum Cell Partner of the plaintiffs). This person has also been examined as DW-2 to prove the purchases. It was argued by Ld. Counsel that it is plaintiffs' own case that plaintiffs offer a variety of software licenses such as node locked,

concurrent simultaneous user also known as floating and named user. It was argued that installation and use of node locked software is restricted to a customer specified work station. It is however defendants' own case that defendants have purchased two perpetual licenses of LX Mach Advantage-Node Locked wherein user type was Node Locked and license type was extended license. So is the evidence of DW-1 also. There is no explanation thus given by defendants as to how the Node locked licences purchased by them which was for a restricted use on a customer specified work station, could be used on more than one work station. Ld.Counsel argued that since the two purchases were of perpetual licensees, therefore the defendants were entitled to continue using them.

40. There is no denial that the defendants were entitled to use the two perpetual licenses purchased by them even without extension of AMC, however, as stated by defendants themselves very specifically in written arguments installation and use of Node locked software was restricted to customer specified work station. Ld. Counsel for the defendant tried to rely upon the cross-examination of PW-1, wherein he stated that a customer having purchased perpetual licenses which comes with 12 months of maintenance, enhanced and support, after 12 months if he did not renew the same the license would still work but would not get updates and support from 3 D Engineering or Siemens Industries. **The witness stated very categorically that the perpetual licence works for life time,**

however, it works only on the hardware on which it is installed and if the hardware crashes or its damage in any manner, the software would not work. It is further stated by PW-1 in his cross-examination very clearly that when a customer purchases siemens software and it is not locked, the said software purchased by the customer can be installed on a particular designated computer. DW-2 has also stated very categorically in his evidence that M/s. OM Sai Moulds and Plastic had purchased two licences and they could be used on two machines only. This is defendants' witness and he further stated in his testimony that he never told the defendants' that they could buy only two license and use them on any number of machines.

41. There is no denial from the side of plaintiffs that the defendants were entitled to continue using the two licences on the identified hardware, however, the same could not be used on multiple hardwares/systems. The defendants are trying to make a failing effort to argue that by purchase of two perpetual licenses they got a right to use the licenses of plaintiffs for a life time for any number of hardwares/systems. The whole defence of defendants is based on above misconception that it got a right to use plaintiffs' software on N number of systems after having purchased it for two hardwares.

42. Ld. Counsel for the defendants tried to argue that plaintiffs were using the non extension of annual maintenance contract to claim the injunction. It is admitted case of the

plaintiffs having been specifically stated in the plaint and by PW-1 in cross-examination that extension of annual maintenance does not hamper the use of licensed software at all. However, in such case the maintenance services including those of updation of software would not be provided either by the dealer or the plaintiffs. Similar is the testimony of DW-2. Ld. Counsels for the defendants, however, failed to specify as to how the non extension of maintenance settlement can be linked with unauthorized user of software by the defendants on more than two identified machines. The cross-examination that the team responsible for maintenance renewal at Siemens did not contact the plaintiffs for renewal of subscription on the expiry of license, relied by Ld. Counsel for the defendants in written arguments, therefore, does not seem to be helping the case of defendant in any manner.

43. It is plaintiffs' legal case that a valid license was provided by plaintiffs to defendant no.3, Om Sai Moulds and Plastics. The case of plaintiffs further is that the defendants after procuring two licenses downloaded and used the softwares on multiple machines. The plaintiffs' case in the suit itself is that the defendants were granted license for use of two identified systems had the defendants being uses the licenses on the two identified systems, there would not have been any problem. The defendants, however, have downloaded the software of the plaintiffs and had started to use the same on multiple machines which was not permissible. The issues

therefore, are to be looked into from the angle as to how many licenses have been provided and how many softwares were being used by the defendants.

44. Ld. Counsel for the defendants argued that the plaintiffs have not furnished any cogent evidence that proves any of the claims made by the plaintiffs in their plaint. It was argued that there is no cogent evidence to support the assertion that NX software was being used on approximately 8 to 10 computer systems at the defendants' design and manufacturing unit. It was argued that the baseless claim appears to be part of a well orchestrated conspiracy by the plaintiffs to fabricate allegations without proper evidence.

45. Per contra, Ld. Counsel for plaintiffs vehemently argued that the plaintiffs have produced unauthorised user data alongwith plaint thereafter on 20.05.2025 and also on the date of arguments showing the unauthorised user by the defendants. It was argued that the use of software on a system can either be proved by such data which the plaintiffs have relied and further by catching such user through a local commissioner, who visits the place unannounced. It was argued that the plaintiffs could by no other means have got a direct evidence of unauthorized user by the defendants. It was argued that the local commissioner appointed by the court was prevented from entering the premises of defendants. The defendants tried to create pressure on the local commissioner by filing a

false complaint against the team in the police station concerned. The report of local commissioner in this regard is clear and speaking. It was argued that no explanation has been given by the defendants as to why the local commissioner appointed by the court was prevented and threatened from entering the premises, if the defendants had nothing to hide. The plaintiffs, therefore, having taken all legally possible steps for obtaining the information regarding infringement being caused by the defendants and the defendants' conduct in this regard needs to be read in favour of the plaintiffs and against the defendants.

46. I have perused the local commissioner's report which is Ex.PW-1/7. *It is written in the report that the local commissioner along with six other persons namely Aarshail Behl, Ms. Shruti Baid, Deepak Hezmadi, Bhanuj Gulati, Saket Bihari and Shreeraj Sheikh had reached the premises of defendants at 11.25 a.m. for execution of commission. He has written that at the gate of premises he showed the order of court to the employees and disclosed his identity telling them that they have come from Delhi to execute the commission. He says that after that some more employees gathered at the gate and asked him to show the identity card. Thereafter, he alongwith counsels for the plaintiffs and their representatives entered the premises. The local commissioner asked for the owner of the property and was informed that owner was not there. The local commissioner was sent from one person to another and from one room to another to serve the order upon the*

owner and finally reached Mr. Pankaj Patil, who refused to give acknowledgment. Mr. Pankaj Patil on being asked for owner/director, said that no body will come. The report further says that at that time about 50 to 60 employees of the defendants gathered at the spot and surrounded the local commissioner and others and started creating nuisance, shouting and told them to go out of the factory. The report names Rajesh Marathi, Pankaj Patil, Prashant Chauhan, Santosh Sindhey, Sachin Patil, Sanjay Patil, Vishal Chaudhary, Kiran Rao and stated that these people started pushing and pulling and manhandling with the team. The local commissioner tried to explain that he had come as per the order of the court to execute commission, however, because of tensed situation they had to go to the police station for police assistance. Ms.Arshia Behl left the police station while others waited at the spot. At this stage, while some employees were arguing, shouting, pulling and pushing the team, the other employees of defendants company started removing CPU, computer systems, etc. from the office premises. Ms.Shruti Baid at this stage, videographed and took photographs of the incident. Around 22 computers were counted by the plaintiffs' counsel and employees, however, exact counting could not be done. The systems were transferred to the next plot through the wall. Ld. Local Commissioner went to the adjoining wall and took photographs of 8 CPU and 3 hard disks. Along with the report, the Ld. Local commissioner had filed the photographs showing some persons carrying the computer systems from the premises of defendants.

47. Ld counsel for the plaintiffs argued that the defendants by the act of interfering in the process of commission have in fact committed contempt of court. She in support of her contention has relied upon the judgment of Hon'ble Delhi High Court in **Autodesk INC and Ors Vs Arup Das & Ors..** The Hon'ble Court in the cited judgment held:

“A Local Commissioner appointed by the court is an extended arm and agent of the Court. The local Commissioner is appointed by the Court because a Judge, normally, can not personally step out of the precincts of his Court to see for himself the situation prevailing at the relevant site. Therefore, a local Commissioner is appointed to act as the eyes and ears of the Courts so that local investigation could be carried out for the purposes of elucidating the matters in dispute. In matters involving allegations of infringement of intellectual property rights, the execution of Local Commission and the report furnished by local commissioner assumes great significance, as the breach of copyright in softwares- which resides in electronic form, may go undetected unless computer systems of the defendant are examined and investigated before the defendant gets a chance to destroy the evidence of use of such software by deleting the software from the computer system.”

48. The defendants have not given any reasonable explanation for their behaviour in having prevented the execution of local commission. In civil proceedings the rule of evidence is preponderance of probability as against the

rule of *strict liability in the criminal court*. Hon'ble Supreme Court in **Narayan Ganesh Dastane vs Sucheta Narayan Dastane**, 1975 AIR 1534, 1975 SCR (3) 967 *held that* “*The normal rule which governs civil proceedings is that a fact is said to be established if it is proved by preponderance of probabilities. Under s. 3 of the Evidence Act an act is said to be proved when the court either believes it to exist or it considers its existence so probable that a prudent man ought, in the circumstances, to act upon the supposition that it exists. The first step in this process is to fix the probabilities. The second to weigh them. The impossible is weeded out in the first stage, the improbable in the second. Within the wide range, of probabilities the Court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies.*”

49. Coming to the facts of the present case the probability that the defendants prevented Ld.Local Commissioner from executing commission could be: (i) they had something to hide, (ii) they were apprehensive about the security of their premises. Weighing the probabilities, Ld. Local Commissioner having shown the order of the court and his I-Card, there was lesser probability of defendants' having any apprehension of threat to their premises. It needs to be noted that Ld.Local Commissioner and his team were initially permitted to enter the premises which also weakens the probability of apprehension of threat to security. This probability also gets weakened by the fact

that employees of defendants tried to remove the computer systems from their premises. The conduct of the defendants in having prevented Ld. Local Commissioner from executing the commission, therefore, points out towards a probability that infringing material was there in their premises and it was with an intent to stop the same from being discovered that the defendants stopped Ld.Local Commissioner.

50. The conduct of the defendants will have to be read against them. If there was no violation of software of plaintiffs in as much as they were being used in two identified systems/ hardwares only, there was no reason for the defendants to have stopped the Ld.Local Commissioner from inspecting the systems. As has been reported by Ld.Local commissioner the defendants even tried to remove the hardwares from the premises. Why would the defendants do it if there was no violation of copyright/illegal activity being done.

51. The plaintiffs thus by the conduct of defendants as also the other documents showing the illegal user of the software on more than one system have proved the act of infringement by defendants no.1 to 3. The plaintiffs have filed affidavit of its investigator Mr. Vincent Jose S/o Mr. C.A. Jose who has given his report stating that he had conducted a detailed Internet search in respect of Om Sai Moulds and Plastics, Maharashtra on the asking of Siemens Industry Software India Pvt. Ltd. He says further

in his report that on 28.07.2023, he had placed a call to one Ujjwal Hiranman Chaudhary, who introduced himself a Tool Room Designer and Engineer. He informed the deponent that there were ten designers working at the office and all were primarily working on various versions/modules of NX (Unigraphics Software). He stated that he had again called Mr. Arun Patil on 28.07.2023, he informed that the office of Om Sai Moulds and Plastics had its designers using Unigraphics. DW1 admitted in his cross-examination that these person were working in his office. There was no way for the investigator to have found the names of these persons working in the office of defendants.

52. The plaintiffs have placed reliance upon a photograph taken from the website of defendant. One of the pictures showing the designs section. The designs section can be seen having several computers. PW-1 had given a declaration on affidavit that he had accessed website links of electronic record and downloaded the same on computer which included the printouts relating to defendants' firm shared by Mr. Vincent Jose. He had also deposed about the screen shots/ stills from the You Tube video from defendant no.3. the video was played in the court also. One of the stills showed several computers working in the design department. DW-1 in his cross-examination stated that there were only only two computers in his design department.

53. In a case like present where the act of infringement takes place stealthily in the four corners of defendants' premises, it is impossible for plaintiff to obtain direct evidence of the infringement. One identifies way of finding out such infringement is through appointment of Local Commissioner which also failed in the present matter because of the conduct of the defendants. As stated herein above, this conduct of the defendants will have to be read against the defendants. The only other possible method for finding the infringement was through investigators. The plaintiffs have filed the report of investigator concerned which was submitted to the plaintiff. The plaintiffs played the video of defendant no.3 showing the use of NX software. The plaintiffs have shown the screenshots from the website of the defendants. DW-1 admitted in his cross-examination that this picture was of the design department of his office. It can be seen in the picture that more than two computers were being used there. There is no explanation for why DW-1 would lie that design department was using only two computers when the picture shows more than two computers being operated in the said department.

54. The Hon'ble Delhi High Court in **Microsoft Corporation & Ors. (supra)** referred to on the investigators' telephonic interview of the employees of defendant company posing as consultant from HR Placement Agency and the conversation between them to arrive at the

conclusion that the infringement in fact was taking place at that premises of defendant of the said case.

55. In **Dassault System Solid Works Corporation & Anr. Vs. Spartan Engineering Industries Pvt. Ltd. & Anr. CS (COMM) 34/2021**, the software infringement was mentioned as a serious issue. In the instant matter Ld. Counsel for the plaintiffs says that although the court had granted interim injunction at the initially stage itself, the defendants have violated the injunction even after the said order and in this regard she at the time of final arguments filed the illegal activity taking place in the premises of defendants showing various number of incident of infringements on various systems. The contempt petition of the plaintiffs filed in this regard shall be dealt with separately.

56. In view of the above, plaintiffs have been able to prove their case that defendants have committed infringement of copyright of the plaintiffs in respect of the NX software as detailed in the plaint. **The prayer of injunction of the plaintiffs is therefore, granted in terms of prayer clause.** Defendants and their principal officers, directors, agents, franchisees, servants and all others acting for and on behalf of the defendants **are restrained permanently** from directly or indirectly reproducing/storing/installing and/or using pirated/unlicenced softwares of the plaintiffs, including NX (Unigraphics) amongst others, thereby Infringing Copyright in the plaintiffs' computer

programs/software titles except for the two licensed softwares that they own.

57. Issue no.7:- *Whether the plaintiff is entitled for rendition of accounts earned by the defendants by using softwares of plaintiff?*

And

58. Issue no.8:- *Whether the plaintiff is entitled for payment of Rs.20,00,000/- or any other amount?*

59. The plaintiffs have been able to prove that the defendants were using the software of plaintiff unauthorizedly on more than two machines for which he had purchased license. The plaintiffs have sought damages of Rs.20 Lacs for the perpetual infringement which continued before filing the suit and even after filing the suit regarding which Ld. Counsel for plaintiffs has placed latest piracy data on record. Ld. Counsel for plaintiffs in support of claim of damages has relied upon the following judgments: **Microsoft Corporation (Supra); Foundary Vision Mongers Ltd. & Anr. Vs. Rajshekhar & Anr. CS(COMM) 415/2018; Foundary Vision Mongers Ltd. & Anr. Vs. Yuva Animation Studio Pvt. Ltd. & Anr. CS(COMM) 601/2021.**

60. In view of defendants having not been able to show the authority to use the software on more than two machines, are directed to pay damages of Rs.20 Lacs to the plaintiffs as claimed in the suit.

61. **Issue no.9:-** *Whether the plaintiff is entitled for costs of the suit?*

62. The defendants in this matter have not only used the software of plaintiffs unauthorizedly but also prevented the process of law by interfering in the execution of commission appointed by the Court. During the process, the defendants tried to delay the disposal of suit by adopting delaying tactics under such circumstances, **the actual costs of plaint are awarded in favour of the plaintiffs and against the defendants.** Ld. Counsel for plaintiff shall file the computation of cost during the course of the day for the mentioning of actual costs in the decree sheet.

63. **Issue No.10:-Relief:-** In view of the aforementioned findings, the suit of the plaintiffs is decreed. A decree of permanent injunction and of damages of Rs.20,00,000/- in favour of plaintiffs against the defendants is hereby passed. The costs are also awarded in favour of plaintiff. Decree sheet be prepared accordingly. File be consigned to record room.

*(Dictated and announced on
19.02.2026)*

*(digitally signed and
uploaded on 21.02.2026)*

**(ANURADHA SHUKLA)
District Judge
(Commercial Court-02)
South Distt., Saket, New Delhi**