

\$~1.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) No.159/2016
AJAY KHANNA & ANR Plaintiffs
Through: None.

versus

JAI PRAKASH NATH & CO. & ORS Defendants
Through: Mr. Himanshu Gupta, Adv. for D-1
along with Mr. Samarth Gupta.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **14.12.2016**

**Review Petition No.534/2016 & IAs No.15051/2016 (for stay),
15052/2016 (for exemption) & 15053/2016 (for condonation of 58 days
delay in applying for review).**

1. Review, after withdrawal of RFA(OS)(COMM) No.7/2016 preferred thereagainst, is sought of the order dated 5th August, 2016 decreeing the suit.
2. Mr. Himanshu Gupta, Advocate today appearing for the defendant no.1/review applicant at the outset states that though according to the plaint also copyright vested besides in the father of the two plaintiffs also in Professor J.N. Sharma also (since deceased) but the suit has been decreed without impleading the legal heirs of Professor J.N. Sharma. Attention in this regard is invited to para 5 and para 11 of the plaint. It is further contended that the copyright also vested in Dr. Sudhir K. Pundir who has revised the textbook co-authored by the father of the two plaintiffs and Professor J.N. Sharma.
3. I have enquired from the counsel for the defendant no.1/review applicant as to how the same affects the order decreeing the suit and whether

the legal representatives of Professor J.N. Sharma have approached the defendant no.1.

4. Mr. Himanshu Gupta, Advocate then states that the real ground for review is that the partners of defendant no.1 namely Mr. D.N. Gupta and Mr. Samarth Gupta, and of which Mr. Samarth Gupta is present today in the Court, did not understand what transpired in the Court on 5th August, 2016.

5. It is not as if Mr. D.N. Gupta and Mr. Samarth Gupta of the defendant no.1 were without legal assistance on 5th August, 2016. They were then represented by Mr. Pradeep Kumar Arya and Mr. Kamal Kant Chhabra, Advocates.

6. I have enquired from Mr. Himanshu Gupta, Advocate whether he has contacted Mr. Pradeep Kumar Arya and Mr. Kamal Kant Chhabra, Advocates to find out whether Mr. D.N. Gupta and Mr. Samarth Gupta, on whose asking Mr. Himanshu Gupta, Advocate has pleaded so, have informed correctly.

7. Mr. Himanshu Gupta, Advocate states that he has not.

8. In my view, before Mr. Himanshu Gupta, Advocate makes a loose comment about his colleague Advocates, the least courtesy he owes to them was to check whether they had explained the position to Mr. D.N. Gupta and Mr. Samarth Gupta or whether they had made fool of Mr. D. N. Gupta and Mr. Samarth Gupta.

9. I have further enquired from Mr. Himanshu Gupta, Advocate that today also I have been addressing him only and what is there to prevent Mr. Samarth Gupta present in Court to tomorrow state that Mr. Himanshu Gupta, Advocate also did not explain the correct position to him.

10. No answer is forthcoming.

11. On enquiry, it is stated that though Mr. D.N. Gupta and Mr. Samarth Gupta had contacted Mr. Pradeep Kumar Arya and Mr. Kamal Kant Chhabra, Advocates but no action had been taken against Mr. Pradeep Kumar Arya and Mr. Kamal Kant Chhabra, Advocates.

12. The practice, of litigants by engaging another counsel, trying to renege from their previous statements and undertakings by blaming their earlier Advocate has but to be condemned.

13. There is nothing to show that Mr. Pradeep Kumar Arya and Mr. Kamal Kant Chhabra, Advocates earlier appearing for the defendant no.1/review applicant did not represent the defendant no.1/review applicant diligently.

14. I may in this regard notice that the order dated 5th August, 2016 was in culmination of the proceedings on 18th July, 2016, 1st August, 2016 and 2nd August, 2016 and Mr. Himanshu Gupta, Advocate has not urged anything with respect to the proceedings on the earlier dates. The proceedings on 5th August, 2016 were a corollary of the proceedings which had commenced earlier.

15. It is also not as if Mr. D.N. Gupta and Mr. Samarth Gupta are uneducated or do not understand English language. They are publishers of textbooks including in English language and to say the least, well capable of understanding proceeding in Court in their presence.

16. Moreover, the order dated 5th August, 2016 of which review is sought is a consent order and review thereof is not maintainable for this ground as well.

17. Mr. Himanshu Gupta, Advocate also agrees that normally a consent order cannot be reviewed but states that his consent be not recorded.

18. No ground for review is made out.

19. Thus need to go into the question of reason for delay in applying for review is not felt.

20. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

DECEMBER 14, 2016

pp..