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

+ Review Petition No.98/2020 in CS(OS) No.1582/2013 & IA No.3779/2020, 3780/2020, 3781/2020, 3782/2020 & 3783/2020.

RITNAND BALVED EDUCATION

FOUNDATION (RBEF) Plaintiff

Through: Mr. Tanmaya Mehta & Mr. Raajan Chawla, Advs.

Versus

OM SAI MANDIR NYAS TRUST

(REGD.) & ORS. ...Defendants

Through: Mr. Akash Nagar & Ms. Ramisha Jain, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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28.04.2020

[VIA VIDEO CONFERENCING]

Review Application No.98/2020 in CS(OS) No.1582/2013

1. Review is sought of the order dated 31st January, 2020 disposing of the suit *inter alia* by passing a decree for mandatory injunction in favour of the plaintiff and against the defendants no.1 and 3, directing the defendants no.1 and 3 to permanently close all existing openings of their property overlooking the adjoining property of the plaintiff. Review is sought of the said part of the order and an outlet for exhaust and to operate the exhaust fan therefrom, above the eye level of the users of the property of the plaintiff, towards the property of the plaintiff is sought.
2. The counsels for non-applicant / plaintiff appear on advance notice and counsels have been heard.

3. The counsels for the non-applicant / plaintiff have opposed the application.
4. The decree aforesaid was in accordance with the agreement arrived at between the parties and is thus incapable of being modified / reviewed without the other party to the agreement consenting thereto and which consent is not forthcoming.
5. The review application is liable to be dismissed on this ground alone.
6. The counsels for the non-applicant / plaintiff have also contended that the opening sought by way of review is contrary to the Building Bye-Laws and which were considered even at the time of passing the decree.
7. No merit is found in the application for review.

Dismissed.

IA No.3779/2020 (for condonation of delay) & IA No.3780/2020 (for enlargement of time).

8. Vide the consent decree aforesaid, the applicants / defendants had undertaken to this Court to, on or before 30th April, 2020 remove all construction on the portion of the property of the plaintiff with respect where to a decree for possession was passed in favour of the plaintiff.
9. In view of the prevalent lockdown on account of Covid-19, extension of time till 31st July, 2020, to comply with the undertaking is sought.
10. I have enquired from the counsel for the applicants / defendants whether the construction has been removed or any steps for removal thereof initiated.
11. The answer is in the negative.
12. The time till 30th April, 2020 for removal of construction having been granted on 31st January, 2020, the conduct of the applicants / defendants

having not taken any steps for removal of construction till 24th March, 2020 when the lockdown came into effect, does not inspire confidence as to *bonafide* of the applicants / defendants.

13. The counsel for the applicants / defendants contends that the applicants / defendants, during the lockdown are unable to carry out the work of demolition and removal of the existing superstructure.

14. The applicants / defendants, at the time of hearing on 31st January, 2020 and in the earlier hearings had expressed apprehensions of public protest with respect to removal of the said superstructure and wanted the liability for removal of superstructure to be of the plaintiff and which was not acceded to. It thus appears that the prevalent lockdown is an ideal time for the applicants/defendants to remove the construction.

15. The counsel for the non-applicant / plaintiff has also pointed out that as per the Notification dated 15th April, 2020 of the Ministry of Home Affairs, permission for construction can be granted by the concerned State Government.

16. Considering that the superstructure which was undertaken to be removed is part of a religious place, it is felt that the work of removal of superstructure should be done immediately, taking advantage of the lockdown. The counsels for the non-applicant / plaintiff have assured complete co-operation, including in terms of resources, to the applicants / defendants, in carrying out the said work.

17. The concerned authority of the Government of NCT of Delhi (GNCTD) is requested to consider the request of the applicants / defendants for permission to remove the superstructure in the said light and unless has any grave reasons, to be communicated in writing within three days of

submission of the application in this respect by the applicants / defendants, to grant such permission and the applicants / defendants to immediately on grant of permission carryout the undertaking given to the Court by removal of the superstructure.

18. A copy of this order be sent to the counsels for the parties and the applicants / defendants to latest by tomorrow i.e. 29th April, 2020 make the application for permission to the concerned authorities of GNCTD along with copy of this order so forwarded to the counsel for the applicants / defendants by e-mail.

19. List the applications for further consideration on 15th May, 2020.

RAJIV SAHAI ENDLAW, J.

APRIL 28, 2020

‘gsr’