

\$~22

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA(OS)(COMM) 7/2016, CM Nos.36233-36236/2016**

JAI PRAKASH NATH & CO Appellant
Through: Mr.Himanshu Gupta, Adv.

versus

AJAY KHANNA & ORS Respondents
Through:

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **30.09.2016**
CM 36234/2016

Exemption allowed, subject to all just exceptions.

Application is disposed of.

CM 36236/2016(for enlargement of time for paying court fees)

The deficit court fees shall definitely be put in within one week from date.

Application is disposed of.

RFA(OS)(COMM) 7/2016, CMs 36233/2016 (stay), 36235/2016
(for summoning of files of suit)

1. This appeal is against an order dated 5th August, 2016 passed by the

learned Single Bench decreeing the suit in favour of the plaintiffs being the respondents before us against the respondent no.1 being the appellant no.1 before us by accepting the undertaking of Mr.D.N.Gupta and Mr.Samarth Gupta, partners of the defendant no.1 to pay a sum of Rs.7,65,032/- towards royalty for the period upto 31st March, 2016.

2. The defendant no.1 has also been directed to pay to the plaintiffs royalty for the period from 1st April, 2016 till the date of the impugned order by cheques of equal amount by accepting the undertaking of the said partners of the defendant no.1, to forthwith withdraw the stocks of the infringing books from the market and not to use any of the infringing books for any purpose whatsoever. The defendant no.1 being the appellant no.1 before us has been granted liberty to sue the plaintiffs for damages for breach of oral contract of giving notice of termination of five years. Learned counsel appearing on behalf of the appellants submits that the partners of the defendant no.1 never gave any undertaking.

3. The impugned order reflects that the said partners had duly been cautioned of the consequences of breach of undertaking given to Court. It is

now submitted by the learned counsel appearing on behalf of the appellant that the said partners did not clearly understand the implications of the undertaking given in Court.

4. An undertaking having clearly been recorded in the order impugned, it is not for the Appeal Court to go into the contentions now raised by the parties.

5. It appears to us that the appeal is not maintainable. Learned counsel prays for leave to withdraw the appeal with liberty to apply before the learned Single Bench for appropriate relief.

6. The appeal and all pending applications are accordingly dismissed as not pressed. The dismissal of the appeal will not prevent the appellant for applying for review of the order. Liberty to the appellant to move to the learned Single Bench.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

SEPTEMBER 30, 2016
RN