

Misc. Appeal No.20 of 2025

Order No. 2 dated 17.05.2025:

The record is put up today on the basis of an application filed by the appellant/petitioner M/s. Hindustan Carrying Corporation (Kol) with a prayer to move an urgent stay application filed on behalf of the appellant/petitioner.

The put up application has been filed annexing a copy of letter address to the Ld. Advocate Mr. Jayanta Paladhy appearing for Syama Prasad Mookerjee Port Trust Kolkata in connection with supply of copy of the appeal, stay application and put up petition along with annexures with information to moved before this Court today or soon thereafter as the business of the Court will permit.

Both the Ld. Counsels appearing for the appellant/petitioner as well as for the respondents/opposite parties are present accordingly.

Ld. Counsel appearing for the appellant/petitioner moves the pending application filed under Section 5 of the Limitation Act for condonation of delay along with ad-interim order of stay of operation of the order dated 17.04.2025 passed by the Ld. Estate Officer Shyama Prasad Mookerjee Port Trust, Kolkata in Proceeding No.1950, 1950/R & 1950/D of 2022.

It is submitted by the Ld. Counsel appearing for the appellant/petitioner that the impugned order was passed by the Estate Officer on 17.04.2025 and the appeal has been filed on 13.05.2025 with a delay of 14 days from the date of passing order and such delay has been sufficiently explained in the application filed under Section 5 of the Limitation Act. It is further contention of the Ld. Counsel for the appellant/petitioner that the materials placed on record would clearly reveal that after passing of the impugned order on 17.04.2025, the copy of order was communicated to the appellant/petitioner on 23.04.2025 and if such date of delivery of the order is taken into consideration for the purpose of counting the delay it would come to only 6 days.

The Ld. Counsel placed his reliance on the decision of the Hon'ble Supreme Court reported in (2023) 18 Supreme Court Cases 764 in order to contend that as there is no inordinate delay and the appellant is litigating with regard to his right over an immovable property such delay should be condoned taking a liberal approach of such delay in line with such decision of the Hon'ble Supreme Court.

It is also the contention of the Ld. Counsel that delay was not intentional or of any negligence but on account of unavoidable and bona fide circumstances as the appellant/petitioner had to compile voluminous record, consult counsels etc which involves serious legal factual issues arising from the impugned order. Ld. Counsel further submitted that the final order has been passed by the Ld. Estate

Officer and unless the ad interim order of stay of operation of the impugned order is passed, the appeal would become infructuous. Ld. Counsel further submits that it is an undisputed position between the parties that the appellant/petitioner has been paying licence fee of **Rs.1,77,000/-** per month and he will continue to do so.

Par Contra, Ld. Counsel appearing for the respondents keenly contested the application for condonation of delay as well as the ad-interim order of stay of operation of the impugned order passed by the Ld. Estate Officer mainly on the following counts:

Firstly, he submitted that the appeal itself is not maintainable. In support of his contention Ld. Counsel placed his reliance on a decision of the Hon'ble Delhi High Court reported in 2005 SCC OnLine Del 1392 and quoted paragraph no(s).7 and 16 of the said judgment and accordingly submitted that the present appeal is not maintainable as the same has been filed in the name of the sole proprietorship firm which is not a legal entity. The appeal, according to him, should have been preferred by sole proprietor himself.

Secondly, the Ld. Counsel submitted that the delay has not been properly explained by the appellant/petitioner in preferring the appeal under Section 9 of the Act and in support of his such contention he quoted the observation of the Hon'ble High Court in para 33.17 of the judgment reported in (2013) 12 SCC 631 wherein the Hon'ble Court was pleased to hold as follows :-

“the liberty of the appellate officer to condone the delay in filing the appeal under Section 9 of the Act should be exercised very reluctantly and it should be an exceptional practice and not a general rule.”

With regard to prayer for ad-interim order of stay of operation of the impugned order of the Ld. Estate Officer, the Ld. Counsel for the respondents/opposite parties submitted that in view of Section 9(3) of Act in case of the enforcement of the order is stayed, it should be conditional and in the present context the appellant may be directed to pay the entire sum of Rs.1,55,76,933.23/- assessed by the Estate Officer on account of damages/compensation to be paid for unauthorized occupation.

I have heard the submissions of the Ld. Counsels appearing for the appellant/petitioner as well as for the respondents/opposite parties and considered the contention made in the application filed under Section 5 of the Limitation Act as well as the stay application with regard to the prayer for ad-interim order of stay of operation of the impugned order passed by the Ld. Estate Officer, it is an undisputed position that the present appeal has been preferred in terms of the provision contained under Section 9 of the Public Premises (Eviction

of Unauthorized Occupants) Act 1971 along with an application under Section 5 of the Limitation Act with a prayer for condonation of delay of 14 days in preferring such appeal. The materials placed on record clearly suggest that the impugned order was passed under sub-section 1 of Section 5 of the said Act on 17.04.2025 and it was communicated to the appellant/petitioner by registered speed post on 23.04.2025.

The appeal under Section 9(2) of the Act contemplates three situations :-

“i. In case of an appeal from an order under Section 5 it shall be preferred within 12 days from the date of publication of the order under sub-suction (1) of that Section;

ii. In case of an appeal from an order under Section 5-B or under Section 7, within 12 days from the date on which the order is communicated to the appellant;

iii. In case of an appeal from an order under Section 5-C within 12 days from the date of such order.

Apart from such three situations the appellate officer may also entertain the appeal in exceptional cases after the expiry of such period, if he is satisfied for reasons to be recorded in writing that there was compelling reasons which prevented the person from filing the appeal in time.”

The decision of the Hon'ble High Court reported in (2023) 18 Supreme Court Cases 764 with regard to condonation of delay clearly suggest that when there is no inordinate delay and parties are litigating with regard to right over the immovable properties delay should be condoned when substantial right between the parties needs to be decided. In the cited case, delay was of 52 days in filing appeal and parties were litigating with regard to right over the immovable properties as well.

On consideration of the materials on record as well as the submissions of the Ld. Counsels appearing on behalf of the respective parties, I find that the petitioner/appellant is a licensee in respect of the suit premises on payment of licence fee of Rs.1,77,000/- per month in connection with which the impugned order of eviction has been passed by the Estate Officer. There is no dispute that the appeal needs to be decided on merit deciding on the substantial rights involved in the matter.

The judgment of the Hon'ble High Court reported in (2013) 12 SCC 631 as relied upon by the Ld. Counsel appearing for the respondents/opposite parties is clearly distinguishable specially when it is evident that impugned order of the

Estate Officer was delivered to the appellant/petitioner on 23.04.2025, after a delay of 6 days from passing of such impugned order.

I find that the delay has been sufficiently explained in the present factual condition and accordingly delay is condoned.

In the circumstances, the appeal stands admitted.

So far as the prayer for ad-interim order of stay is concerned, in view of the discussions made in the foregoing paragraphs in the light of the submissions made by the respective counsels, I am of the view that the enforcement of the impugned order passed by the Estate Officer is required to be stayed at this stage for a limited period of time pending the hearing of the stay application and the appeal, else the appeal would become infructuous especially when it is an undisputed position that the licensee appellant is willing to pay licence fee of Rs.1,77,000/- per month as usual.

However, further conditions in connection with stay of enforcement of the impugned order as pointed out by the Ld. Counsel for the respondent in terms of Section 9 sub-clause 3 and the issue in relation to maintainability may be taken up at the time of hearing of the original stay application and the appeal.

Hence, it is,

ordered

that the prayer for ad-interim order of stay is considered and allowed. Accordingly, the enforcement of impugned order dated 17.04.2025 passed by the Ld. Estate Officer Shyama Prasad Mookerjee Port Trust, Kolkata in Proceeding No.1950, 1950/R & 1950/D of 2022 shall remain stayed till 02.06.2025.

Appellant/petitioner is directed continue to pay the licence fee as usual.

Let the L.C.R be called for.

Fix 02.06.2025 for awaiting L.C.R and hearing of Appeal along with stay petition. Objection, if any, in the mean time.