



2025:CHC-AS:1767

Ct. No.446 D/L
Saikat 46 16.05.2025

CO/430/2025

**BOARD OF TRUSTEES FOR THE PORT OF SYAMA
PRASAD MOOKERJEE PORT KOLKATA
VS.
CITY VARIETY STORES**

Mr. Subhankar Nag, Adv.
Mr. Snehasish Sen, Adv.
Mr. Sitikantha Mitra, Adv.

...For the petitioner

1. This revisional application under Article 227 of the Constitution of India has been filed challenging the Order No.8 dated 11th September, 2024, whereby the application filed by the petitioner for recalling the order dated 9th April, 2024 for condonation of delay and admission of appeal, was dismissed.
2. The first submission made by the learned advocate appearing for the petitioner is despite appearing before the Certificate Officer, the plea was taken by the opposite party before the learned Appellate Court that the copy of the order was downloaded from the website of Port Trust only on or before 15th February, 2024 and thereafter filed the Misc. Appeal and there was a delay of only 12 days of filing the appeal. It is further submitted that the annexures in this revisional application at page-17 shows that the opposite party was very much present since October, 2022 and they had the knowledge of this execution proceeding and



despite the same, appeal was not filed. Vide order dated 9th April, 2024, Section 5 application filed by the opposite party was allowed by the learned First Appellate Court but the application for recalling of such order was not entertained by the learned court below.

3. Learned advocate appearing for the petitioner refers two judgments. First of which is reported in **(2010) 8 SCC 685, Balwant Singh (Dead) vs. Jagdish Singh & Ors.**, wherein it has been held that sufficient cause has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. Liberal construction cannot be equated with doing injustice to the other party.
4. The other point on behalf of the petitioner is that the Misc. Appeal is not maintainable as it was in the name of sole proprietorship which has legal entity through its sole proprietor and accordingly cited a decision reported in **(2005) SCC Online Del 1392, Swapn Constructions vs. IDPL Employees Co-operative Group Housing Society Ltd. & Ors.**
5. In view of the above facts and circumstances, it is necessary to hear out the matter. Accordingly, the learned advocate appearing on behalf of the petitioner is directed to serve the revisional application along with this order to the opposite parties through Registered Post with A.D.



6. Let the matter appear in the Monthly Combined List for June, 2025, under the caption 'Motion'.
7. Let the Misc. Appeal being Misc. Appeal No.4 of 2024 pending before the trial court be stayed till 30th June, 2025.

[Chaitali Chatterjee (Das), J.]