

Ct. No.446 D/L
Sathi 04 21.08.2025

CO/404/2025
With
I.A. No. CAN 1 of 2025

Avik Shaw & Ors.
Versus.
M/s. Infoport Trading (India) Pvt. Ltd. & Anr.

Mr. Bratin Kumar Dey, Adv.
Ms. Anjana Banerjee, Adv.

...For the Petitioners

Mr. Tanmoy Mukherjee, Adv.
Mr. Diptyendu Kr. Pal, Adv.

...For the O.P. No 1

1. This is an application for recalling the order dated 17th July, 2025 passed by this Court in CO No 405 of 2025. It is submitted by the Learned Advocate representing the petitioner of this application and the O.P. No 2 in the civil revision case that the matter was taken up for hearing on 17th of July, 2025 under the heading 'Motion' but unfortunately at the time of hearing the Learned Advocate representing the O.P. could not appear as a result the revisional application is disposed of and allowed without hearing the Opposite Party.

2. It is further submitted that on multiple occasion in the daily cause list the matter appeared under the heading motion and on all such earlier dates prior to 17th July, 2025 the learned advocate representing the petitioner duly appeared and the matter stood adjourned either at the behest of this

petitioner/Opposite Party or at the instance of the petitioner. However on the said date the said revisional application was inadvertently taken up for hearing in absence of petitioner's advocate.

3. It is further submitted that on the next day that is on 18th of July, 2025 the matter was not published in the daily list and later on was surprised to learn that the matter had been allowed on 17th of July in absence of the Opposite Party. Accordingly this application has been filed for re-calling of such order as in otherwise the Learned Advocate is ready and willing to appear at the time of hearing and could not do so because of his pre-occupation or engagement in another Court. Accordingly prays for re-calling of the order passed by this Court whereby the revisional application were disposed of.

4. The Learned Advocate appearing on behalf of the petitioner/ Opposite Party in this application raised vehement objection and submits that the revisional application is finally disposed of and the ground stated in the application to recall the order is not reasonable enough for which this Court will have to re-call such order of disposal.

5. Heard both the Learned Advocates. This case was specially assigned by the Hon'ble Chief Justice before this Court on 15.5.2025 and the matter was first taken up for consideration on 16th of May, 2025 when after hearing the petitioner direction was given to the

petitioner to serve the copy of the application upon the O.P. by registered post with acknowledgement Due card and to file affidavit on their next date of hearing. An order of interim stay was also granted which was valid till 31st July, 2025. On 12th of June, 2025 considering the submission on behalf of the petitioner about the reason for non-service as the address could not be located. The Learned Advocate was further directed to serve the copy of the application upon the Learned Advocate who is representing the O.P. before the Trial Court.

6. On 25th June, 2025 when the matter appeared in the list then also none appeared on behalf of the Opposite Party and the Learned Advocate representing the petitioner filed the affidavit of service showing service upon the O.P in compliance with the direction of this Court. After that on 11th of July, the matter appeared and at the request of the Advocate representing the petitioner the matter was again directed to appear on 15th July, 2025 or any day thereafter as and when this Court will say. On that day no one appeared on behalf of the petitioner. Lastly on 17th of July the matter was taken up for hearing when none appeared to represent the O.P. and the matter was heard in absence of the opposite party and dispose of the case. It was taken on record that despite service of notice upon the Learned Advocate representing the O.P. before the Learned Trial Court

after failure to serve the notice through registered post chooses not to appear on behalf Opposite Parties.

7. This CAN application has been filed on 28th of July 2019 when in the petition it is mentioned that on the very next day that is 18th of July, 2025 the petitioner/O.P. had the knowledge about the final disposal order of this revisional application which further shows the reluctant attitude of the opposite party.

8. The contention of the Learned Advocate representing the petitioner/O.P. that the revisional application was inadvertently taken up for hearing in absence of petitioner's Learned Advocate " is highly deprecated since the matter was taken up for hearing after several opportunities was given to the Opposite Parties to appear before this Court. More so, no one appeared to pray for accommodation on behalf of the O.P on the date when the matter was taken up for hearing even though the opposite party had the knowledge about the matter running in the list.

9. In a decision reported in (1999)4 SCC 396 the Supreme court held that the courts had inherent power to recall and set aside an order which has been obtained by fraud practiced upon the court ,when the court is misled by a party and when the court itself commits a mistake ,which prejudices a party .There is no specific provision under which an order can be recalled where after hearing the petitioner the final order has been passed and the revisional application

has been disposed of unless any of the above ground is taken.

10. Therefore this court finds no merit in the stand taken by the opposite party and the petitioner of this CAN application and hence stands rejected.

11. The CAN 1 of 2025 is hereby rejected.

12. Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

[Chaitali Chatterjee (Das), J.]