

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 981 OF 2019

Salinder Kaur w/o Gurmeet Singh

-Vs.-

Leeladevi w/o Ramanath Pal and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.J.J.Chandurkar, counsel for the petitioner.
Mr.H.N.Bhondge, counsel for respondent No.1.

CORAM : MANISH PITALE, J.

DATE : 12.04.2022

By this writ petition, the petitioner i.e. original defendant No.1 has challenged order dated 22/01/2019, passed by the Court of District Judge, Nagpur, whereby application for grant of stay of decree and consequential execution proceedings (Exhibit-5) during the pendency of the miscellaneous appeal, has been rejected.

2. In the present case, the Court of Joint Civil Judge, Junior Division, Nagpur i.e. the Trial Court passed an *ex parte* judgment and decree dated 23/04/2013, against the petitioner, whereby the original plaintiff was declared as owner of the suit property and the petitioner was directed to hand over vacant possession of the suit property by removing all unlawful construction made thereon within two months from the date of the order.

3. The petitioner filed an application under Order IX Rule 13 of the Code of Civil Procedure (CPC) for setting aside the *ex parte* decree, accompanied by an application for condonation of delay in moving such application.

4. The Trial Court passed an order dated 02/12/2016, rejecting the application for condonation of delay filed on behalf of the petitioner as a consequence of which the application under Order IX Rule 13 of the CPC for setting aside *ex parte* decree could not be considered at all. Aggrieved by the aforesaid order rejecting the application for condonation of delay, the petitioner filed miscellaneous appeal under Order XLIII Rule 1(d) read with section 151 of the CPC bearing Miscellaneous Civil Appeal No.306 of 2016 before the Court of District Judge, Nagpur. In the said appeal, the petitioner moved an application at Exhibit-5 seeking stay of operation of the *ex parte* decree, which was put to execution by the decree holder.

5. By the impugned order dated 22/01/2019, the Court of the District Judge rejected the application at Exhibit-5, *inter alia*, observing the manner in which the petitioner had taken steps in respect of *ex parte* decree passed against her.

6. This Court issued notice in the present writ petition, challenging the aforesaid order. By order dated 06/02/2019, this Court issued notice and granted stay of the execution proceedings. The aforesaid interim

order has continued in favour of the petitioner during pendency of the writ petition.

7. Mr.J.J.Chandurkar, learned counsel appearing for the petitioner, submits that the petitioner will suffer grave prejudice if the execution proceeding is permitted to continue and the decree stands executed, in the absence of consideration of the miscellaneous civil appeal filed by the petitioner challenging rejection of her application for condonation of delay by the Trial Court in preferring the application for setting aside the *ex parte* decree. It is submitted that the Court of the District Judge ought not to have adverted to and commented upon the findings given by the Trial Court while passing the *ex parte* decree against the petitioner. It is submitted that since this Court has granted interim stay on 06/02/2019, which has continued till date, it would be in the interest of justice that the interim order is continued and the miscellaneous civil appeal itself is directed to be decided expeditiously.

8. Mr.Bhondge, learned counsel appearing for the contesting respondent No.1, submits that perusal of the impugned order would show that the petitioner has instituted multiple proceedings, wherein several applications have been filed only in order to stall the execution proceeding. The petitioner herself is to blame for the present situation and in these circumstances, no interference is warranted in the impugned order passed by the Court of the District Judge, Nagpur.

9. This Court has perused the material on record and heard the learned counsel for the rival parties. It is an admitted position that Miscellaneous Civil Appeal No.306 of 2016 filed by the petitioner challenging the rejection of her application for condonation of delay by the Trial Court, is pending before the Court of the District Judge, Nagpur for consideration on merits. If the impugned order is confirmed, the execution proceedings will be taken up and if the decree stands executed, it would prejudice the petitioner to the extent that the aforesaid miscellaneous civil appeal would still remain pending consideration before the Court of the District Judge, Nagpur.

10. A significant aspect of the matter is that by order dated 06/02/2019, this Court granted *ad interim* stay of the execution proceedings, which has continued to operate till date. In these circumstances, it would be in the interest of justice that appropriate directions are given for disposal of the miscellaneous civil appeal filed by the petitioner and in the meanwhile, the execution proceedings are stayed, so that the appeal itself is considered and disposed of on merits, at the earliest.

11. In view of the above, the writ petition is allowed. The impugned order is quashed and set aside. The application at Exhibit-5 filed by the petitioner is allowed in terms of the prayer made therein. Accordingly, the execution proceedings initiated by respondent No.1 before the Executing Court shall remain stayed during the pendency of the Miscellaneous

Civil Appeal No.306 of 2016, filed by the petitioner before the Court of the District Judge, Nagpur.

12. Considering the fact that the aforesaid appeal concerns only the question as to whether the application for condonation of delay in filing the application for setting aside *ex parte* decree was correctly rejected by the Trial Court or not, the said appeal can certainly be decided in an expeditious manner. Accordingly, the Court of the District Judge is directed to take up Miscellaneous Civil Appeal No.306 of 2016 immediately for consideration and to dispose of the same expeditiously. The said appeal shall in any case be disposed by 31/07/2022.

13. The writ petition stands disposed of accordingly. No costs.

JUDGE