

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CIVIL APPLICATION (CAW) NO. 2162 OF 2022

IN

WRIT PETITION NO. 6041 OF 2022

Smt. Salinder Kaur Gurmit Singh Narsingi

Vs.

Smt. Leeladevi w/o Ramnath Pal and Ors.

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, Advocate for petitioner.
Mr. H.N. Bhongde, Advocate for respondent No.1.

CORAM : VINAY JOSHI, J.

DATE : 07.12.2022.

This application is taken out by petitioner seeking to amend the petition along with permission to file certain documents. Yet, notice has not been issued rather, today the matter is coming for first time. In view of that, the application is allowed.

2. Amendment be carried out forthwith.

3. The petitioner undertakes to supply amended copy to other side.

4. The civil application stands disposed of.

Writ Petition No.6041/2022

Heard.

2. The petitioner is defendant No.1 in Regular Civil Suit No.2351/2012, filed by respondent No.1 for possession. The said suit was stated to be decided *exparte* by which possession decree has been passed. The petitioner has applied for setting aside the *exparte* decree in terms of Order 9 Rule 13 of the Code of Civil Procedure, 1908, along with delay condonation application. The said delay application was rejected by the trial Court vide dated 02.12.2016, meaning thereby application under Order 9 Rule 13 was also disposed of.

3. Being aggrieved, the petitioner (defendant No.1) has also resorted another remedy of filing miscellaneous appeal to set aside *exparte* decree, which is still pending.

4. The petitioner has challenged the order of rejection to condone the delay application under Order 9 Rule 13 has been challenged in MCA No.306/2016, which has been dismissed vide order dated 29.07.2022, which is the subject matter of this petition.

5. The petitioner prays for grant of interim relief to protect his possession.

6. Mr. Bhongade, learned counsel appeared on caveat for respondent No.1 and seeks time to file reply.

7. It is brought to the notice that this Court in Writ Petition No.981/2019 vide order dated 12.04.2022, has stayed execution till disposal of MCA No.306/2016, in fact the decision of MCA No.306/2016 is impugned herein.

8. In view of above, there shall be stay to the execution till next date.

9. Issue notice for final disposal, returnable on **21.12.2022**.

JUDGE