

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

WRIT PETITION NO. 4988 OF 2021

- 1) Smt. Yamunabai Laxmanrao Sawarkar,
Aged about 72 years,
Occupation – Household,
R/o Sawali (Khurd), Tq. Kalmeshwar,
District – Nagpur.

.... **PETITIONER**

VERSUS

- 1) Shri Nitin s/o Bhimrao Kukde,
Aged about 54 year,
Occupation – Service,
- 2) Shri Pravin s/o Bhimrao Kukde,
Aged about 52 years,
Occupation – Marketing.
- 3) Smt. Shobhabai Bhimrao Kukde,
Aged about 72 years,
Occupation – Household,

All 1 to 3 are residents of Plot No.15,
Shobha Niwas, Ambika Nagar,
Post Ayodhya Nagar, Nagpur,
Tq. and District Nagpur.

.... **RESPONDENTS**

Mr. U.K. Bisen, Counsel for the petitioner,
Mr. Ambarish Joshi, Counsel for the respondents.

CORAM : ROHIT B. DEO, J.
DATED : 10th JANUARY, 2022

ORAL JUDGMENT :

The petition arises out of Regular Civil Suit which was initially registered as Regular Civil Suit 100/2005 and then re-registered as Regular Civil Suit 38/2008 after transfer from the court of Civil Judge (Junior Division), Saoner to the court of Civil Judge (Junior Division), Kalmeshwar.

2. The suit is for removal of encroachment and possession, which came to be decreed *ex parte* on 23-9-2011. The respondents are the plaintiffs/decreed-holders who sought execution of the decree in Regular Darkhast 1/2012. The petitioner, who is the defendant and judgment-debtor, had applied under Order IX Rule 13 of the Civil Procedure Code (CPC) alongwith an application for condonation of delay. The trial Court, vide order dated 28-8-2020 refused to condone the delay.

3. The parties agree that since the trial Court has taken more than seven years to render decision on condonation of delay, in order to avoid further delay, the order impugned be set aside, the delay be condoned and by allowing the application under Order IX Rule 13 of the CPC, the suit be restored to file and the trial be expedited. It is jointly agreed that the parties shall not ask for any unnecessary

adjournment and shall cooperate with the trial Court in early disposal of the suit.

4. The parties agree that the trial may be concluded in six months from the date of appearance of the parties.

5. In view of the agreement between the parties, the following consent order is passed.

- (i) The order impugned is set aside.
- (ii) The delay is condoned.
- (iii) With consent the application under Order IX Rule 13 of the CPC is allowed and Regular Civil Suit 38/2008 is restored to file.
- (iv) The parties shall appear before the Court on 18-1-2022 and shall apprise the learned trial Court of this order.
- (v) The trial Court shall conclude the trial within six months from the date of appearance of the parties.

6. At this stage, it is pointed out that the Court has proceeded without written statement. The plaintiffs fairly have no objection if the defendant is permitted to file written statement within two weeks from the date of appearance of the parties.

7. The defendant shall file her written statement within two weeks from the date of appearance, the issues shall be framed in the next two weeks and the trial shall be conducted in accordance with the schedule already stipulated supra.

8. Petition is disposed of.

JUDGE

adgokar