



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

CIVIL APPLICATION (CAF) NO 2414 OF 2025

IN

FIRST APPEAL NO. 939 OF 2025

(Sharif Sayyad Harun Sayyad and ors Vs. Nazim Khan, Rauf Khan and anr)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Raju Kadu, Advocate for applicants/appellants.

CORAM : ABHAY J. MANTRI, J.

DATED : 18-07-2025

Heard learned counsel for the applicants/appellants.

2. Learned counsel for the applicants has taken me through the judgment dated 20.04.2024, passed by learned Adhoc District Judge-1, Khamgaon in Civil Misc. Application No. 89/2022, whereby the appellant was directed to hand over the custody of applicant No. 3 to the respondents. By filing Civil Misc. Application No. 28/2024, under Order 9, Rule 13 of the Civil Procedure Code, the appellants challenged the said ex parte judgment and order. However, their application was rejected on 04.02.2025. Therefore, they have preferred this appeal.

3. Learned counsel has also drawn my attention to the order dated 05.12.2022 passed in Cri. Application No. 434/2021 filed by the respondents under Section 97 of the Cr.PC. and also pointed out paragraph Nos. 13 to 16 of the said order. He further submits that by virtue of the adoption deed dated 14.01.2013, they have taken the custody of applicant No. 3 from the respondents, and since then, he has been residing with them. Therefore, he submitted that if the impugned judgment and order are not stayed, then the respondents would take the custody of applicant No. 3.

4. Having considered the submissions of the learned counsel for the applicant and the factual position of the case, I deem it appropriate to stay the impugned order as the same is sub judice before this court. If the order is not stayed, in that case, respondents may take custody of applicant No. 3, and in such circumstances, the appeal will become infructuous; therefore, it would be proper to grant a stay to the impugned judgment and order dated 20.04.2024 passed by Adhoc District Judge-1, Khamgaon in Civil Misc. Application No. 89/2022. Accordingly, stay is granted in terms of prayer clause (i) of the application till further orders.

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Heard.

2. Issue notice to the respondents, returnable after four weeks.

(ABHAY J. MANTRI, J.)