



**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE G. S. AHLUWALIA**

**ON THE 6<sup>th</sup> OF NOVEMBER, 2024**

**MISC. PETITION No. 6029 of 2024**

***ABDUL MOEED FAROOQI***

*Versus*

***KHURSHID ALI KHAN***

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**Appearance:**

***Shri Deepak Bundele - Advocate for petitioner.***

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**ORDER**

This petition under Article 227 of Constitution of India has been filed seeking the following reliefs:

“अ – माननीय न्यायालय से निवेदन है कि याचिकाकर्ता द्वारा अधीनस्थ न्यायालय के समक्ष प्रस्तुत आवेदन अंतर्गत आदेश 9 नियम 13 सीपीसी के निराकरण किए जाने तक यथा स्थिति बनाएं रखने के आदेश पारित करने की कृपा हो, जो न्यायहित में उचित होगा। आदेश दिनांक:- 18-09-2024, Annex.-P/2.”

2. It appears that respondent filed a suit for eviction. The suit was filed in the year 2016. Petitioner was proceeded *ex parte* and ultimately on 21.01.2022 an eviction decree was passed. It appears that petitioner filed an application under Order 9 Rule 13 C.P.C. alleging that on 16.12.2022 he came to know about the eviction decree and therefore, the application was filed. An application under Section 151 C.P.C. was also filed praying for stay of execution of decree during the pendency of



application filed under Order 9 Rule 13 C.P.C. By the impugned order, the said application has been rejected.

3. It is submitted by counsel for petitioner that petitioner is in possession of shop in dispute in the capacity of a tenant for the last 30 years and his livelihood is based on the earning from the said shop. If execution of eviction decree is not stayed, then he would suffer irreparable loss.

4. Heard learned counsel for petitioner.

5. The suit for eviction was filed in the year 2016 whereas the decree was passed on 21.01.2022. The suit remained pending for 6 long years.

6. It is submitted by counsel for petitioner that since petitioner and his family had gone to attend some funeral, therefore, it appears that postman might have found the house locked and therefore, petitioner was not served.

7. However, the aforesaid submission made by counsel for petitioner is not mentioned in the application filed under Order 9 Rule 13 C.P.C.

8. Be that whatever it may be.

9. Since application under Order 9 Rule 13 C.P.C. is pending, therefore, this Court would not like to comment upon any of the ground raised by petitioner but the fact that civil suit remained pending for six years and thereafter, execution is pending for the next one and half year, this Court does not find balance of convenience in favour of petitioner to stay the execution of decree till application under Order 9 Rule 13 C.P.C. is decided. Whenever the suit is filed it has to be diligently contested by the parties and they cannot be allowed to adopt any mischievous method to delay the proceedings by hook and crook.



10. Accordingly, this Court is of considered opinion that no case is made out warranting interference.

11. The petition fails and is hereby **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

vc