

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9691 OF 2014

- |    |                                |                         |
|----|--------------------------------|-------------------------|
| 1] | Shamshad Shamshuddin Attar     | ]                       |
|    | Age : 56 years, Occ : Business | ]                       |
|    |                                | ]                       |
| 2] | Javed Shamshuddin Attar        | ]                       |
|    | Age : 33 years, Occ : Business | ]                       |
|    |                                | ]                       |
| 3] | Shakil Shamshuddin Attar       | ]                       |
|    | Age : 31 years, Occ : Business | ]                       |
|    |                                | ]                       |
|    |                                | ]..... Petitioners      |
| 2] | Gafar Ismail Attar             | ] (Original Applicants/ |
|    | Age : 58 years, Occ : Business | ] Defendants)           |

versus

- |     |                                         |                          |
|-----|-----------------------------------------|--------------------------|
|     | Ismail Issak Shaikh                     | ]                        |
|     | since deceased through Lrs              | ]                        |
|     |                                         | ]                        |
| 1/1 | Umar Ismail Shaikh                      | ]                        |
|     | Age : 40 years, Occupation Business     | ]                        |
|     | Residing at 366 Ganj Peth               | ]                        |
|     | Chand tara Chowk, Pune-411 042          | ]                        |
|     |                                         | ]                        |
| 1/2 | Gulzar Ismil Shaikh                     | ]                        |
|     | Age : 35 years, Occupation : Driver     | ]                        |
|     |                                         | ]                        |
| 1/3 | Talat Ismile Shaikh                     | ]                        |
|     | Age : 32 years, occupation Well to do   | ]                        |
|     |                                         | ]                        |
| 1/4 | Nasima alias Shanaz Ismil Shaikh        | ]                        |
|     | Respondents No.1/2 to 1/4 Residing      | ]                        |
|     | at Galli No.15, S.No.55, near Pitashree | ]                        |
|     | Ashram Bhayodaya Nagar,                 | ]                        |
|     | Kondhwa (Khurd), Pune 411048            | ]                        |
|     |                                         | ]                        |
| 2]  | Yusuf Issak Shaikh                      | ]                        |
|     | Age : 43 years, Occ : Business          | ]..... Respondents       |
|     | residing at 366, Ganj Peth,             | ] (Original Respondents/ |
|     | (Mahatma Phule Peth), Pune-411042       | ] Plaintiffs.)           |

**ALONG WITH  
WRIT PETITION NO.9692 OF 2014**

|                                     |                              |
|-------------------------------------|------------------------------|
| <b>Mehmud Ratanmiya Attar</b>       | <b>]</b>                     |
| <b>Age 61 years, Occ : Business</b> | <b>]..... Petitioner</b>     |
| <b>Residing at 366, Ganj Peth</b>   | <b>](Original Applicant/</b> |
| <b>(Mahatma Phule Peth)</b>         | <b>] Defendant)</b>          |
| <b>Pune – 411 042</b>               | <b>]</b>                     |

**versus**

|            |                                                |                                |
|------------|------------------------------------------------|--------------------------------|
|            | <b>Ismail Issak Shaikh</b>                     | <b>]</b>                       |
|            | <b>since deceased through LR's</b>             | <b>]</b>                       |
|            |                                                | <b>]</b>                       |
| <b>1/1</b> | <b>Umar Ismail Shaikh</b>                      | <b>]</b>                       |
|            | <b>Age : 40 years, Occupation Business</b>     | <b>]</b>                       |
|            | <b>Residing at 366 Ganj Peth</b>               | <b>]</b>                       |
|            | <b>Chand tara Chowk, Pune-411 042</b>          | <b>]</b>                       |
|            |                                                | <b>]</b>                       |
| <b>1/2</b> | <b>Gulzar Ismil Shaikh</b>                     | <b>]</b>                       |
|            | <b>Age : 35 years, Occupation : Driver</b>     | <b>]</b>                       |
|            |                                                | <b>]</b>                       |
| <b>1/3</b> | <b>Talat Ismile Shaikh</b>                     | <b>]</b>                       |
|            | <b>Age : 32 years, occupation Well to do</b>   | <b>]</b>                       |
|            |                                                | <b>]</b>                       |
| <b>1/4</b> | <b>Nasima alias Shanaz Ismil Shaikh</b>        | <b>]</b>                       |
|            | <b>Respondents No.1/2 to 1/4 Residing</b>      | <b>]</b>                       |
|            | <b>at Galli No.15, S.No.55, near Pitashree</b> | <b>]</b>                       |
|            | <b>Ashram Bhayodaya Nagar,</b>                 | <b>]</b>                       |
|            | <b>Kondhwa (Khurd), Pune 411048</b>            | <b>]</b>                       |
|            |                                                | <b>]</b>                       |
| <b>2]</b>  | <b>Yusuf Issak Shaikh</b>                      | <b>]</b>                       |
|            | <b>Age : 43 years, Occ : Business</b>          | <b>]..... Respondents</b>      |
|            | <b>residing at 366, Ganj Peth,</b>             | <b>](Original Respondents/</b> |
|            | <b>(Mahatma Phule Peth), Pune-411042</b>       | <b>] Plaintiffs.)</b>          |

**ALONG WITH  
WRIT PETITION NO.9693 OF 2014**

|           |                                       |          |
|-----------|---------------------------------------|----------|
| <b>1]</b> | <b>Anwar Khawajamiya Shaikh</b>       | <b>]</b> |
|           | <b>Age : 43 years, Occ : Business</b> | <b>]</b> |
|           |                                       | <b>]</b> |

|     |                                         |                          |
|-----|-----------------------------------------|--------------------------|
| 2]  | Rafiq Khwajamiya Shaikh                 | ]                        |
|     | Age : 41 years, Occ : Business          | ]                        |
|     |                                         | ]                        |
|     | Both residing at 366, Ganj Peth         | ]..... Petitioners       |
|     | (Mahatma Phule Peth)                    | ] (Original Applicants/  |
|     | Pune – 411 042                          | ] Defendants.)           |
|     |                                         |                          |
|     | versus                                  |                          |
|     |                                         |                          |
|     | Ismail Issak Shaikh                     | ]                        |
|     | since deceased through LRs              | ]                        |
|     |                                         | ]                        |
| 1/1 | Umar Ismail Shaikh                      | ]                        |
|     | Age : 40 years, Occupation Business     | ]                        |
|     | Residing at 366 Ganj Peth               | ]                        |
|     | Chand tara Chowk, Pune-411 042          | ]                        |
|     |                                         | ]                        |
| 1/2 | Gulzar Ismil Shaikh                     | ]                        |
|     | Age : 35 years, Occupation : Driver     | ]                        |
|     |                                         | ]                        |
| 1/3 | Talat Ismile Shaikh                     | ]                        |
|     | Age : 32 years, occupation Well to do   | ]                        |
|     |                                         | ]                        |
| 1/4 | Nasima alias Shanaz Ismil Shaikh        | ]                        |
|     | Respondents No.1/2 to 1/4 Residing      | ]                        |
|     | at Galli No.15, S.No.55, near Pitashree | ]                        |
|     | Ashram Bhayodaya Nagar,                 | ]                        |
|     | Kondhwa (Khurd), Pune 411048            | ]                        |
|     |                                         | ]                        |
| 2]  | Yusuf Issak Shaikh                      | ]                        |
|     | Age : 43 years, Occ : Business          | ]..... Respondents       |
|     | residing at 366, Ganj Peth,             | ] (Original Respondents/ |
|     | (Mahatma Phule Peth), Pune-411042       | ] Plaintiffs.)           |

ALONG WITH  
WRIT PETITION NO.9694 OF 2014

|    |                                |   |
|----|--------------------------------|---|
| 1] | Rashid Peer Mohammed Shaikh    | ] |
|    | Age : 31 years, Occ : Business | ] |
|    |                                | ] |
| 2] | Nazmin Ahmed Shaikh            | ] |
|    | Age : 27 years, Occ : Business | ] |
|    |                                | ] |

Both residing at 366, Ganj Peth  
(Mahatma Phule Peth)  
Pune – 411 042

]..... Petitioners  
] (Original Applicants/  
] Defendants.)

versus

|     |                                         |                         |
|-----|-----------------------------------------|-------------------------|
|     | Ismail Issak Shaikh                     | ]                       |
|     | since deceased through LRs              | ]                       |
|     |                                         | ]                       |
| 1/1 | Umar Ismail Shaikh                      | ]                       |
|     | Age : 40 years, Occupation Business     | ]                       |
|     | Residing at 366 Ganj Peth               | ]                       |
|     | Chand tara Chowk, Pune-411 042          | ]                       |
|     |                                         | ]                       |
| 1/2 | Gulzar Ismil Shaikh                     | ]                       |
|     | Age : 35 years, Occupation : Driver     | ]                       |
|     |                                         | ]                       |
| 1/3 | Talat Ismile Shaikh                     | ]                       |
|     | Age : 32 years, occupation Well to do   | ]                       |
|     |                                         | ]                       |
| 1/4 | Nasima alias Shanaz Ismil Shaikh        | ]                       |
|     | Respondents No.1/2 to 1/4 Residing      | ]                       |
|     | at Galli No.15, S.No.55, near Pitashree | ]                       |
|     | Ashram Bhayodaya Nagar,                 | ]                       |
|     | Kondhwa (Khurd), Pune 411048            | ]                       |
|     |                                         | ]                       |
| 2]  | Yusuf Issak Shaikh                      | ]                       |
|     | Age 43 years, Occ : Business            | ]                       |
|     |                                         | ]                       |
|     |                                         | ]..... Respondents/     |
| 3]  | Noora Mustajab Khan                     | ] (Respondents Nos.1    |
|     | Age 32 years, Occ : Business            | ] and 2 = original      |
|     |                                         | ] Respondent Nos.1      |
| 4]  | Nasir Kamal Shaikh                      | ] and 2/Plaintiffs and  |
|     | Age 37 years, Occ : Business            | ] Respondent Nos.3      |
|     |                                         | ] and 4 = original      |
|     | Residing at 366, Ganj Peth,             | ] Respondents Nos.3 &4/ |
|     | (Mahatma Phule Peth), Pune-411042       | ] Defendants Nos.3 & 4. |

Mr. R S Datar for the Petitioners in all the Petitions.

Mr. B G Lingade for the Respondents in all the Petitions.

CORAM : R. M. SAVANT, J.

DATE : 04<sup>th</sup> MAY 2017

## **ORAL JUDGMENT**

1           Rule in all the above Petitions, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2           The above Petitions take exception to the orders all dated 28/08/2014 passed by the learned District Judge – 3 Pune. By the said orders the applications filed by the Petitioners for condonation of delay in filing the Appeals against the ex-parte decree came to be rejected. The delay was of 183 days (subject matter of Writ Petition No.9691 of 2014), 80 days (subject matter of Writ Petition No.9692 of 2014), 183 days (subject matter of Writ Petition No.9693 of 2014) and 80 days (subject matter of Writ Petition No.9694 of 2014). It is required to be noted that the said applications were opposed to on behalf of the Decree Holder by filing a Reply dated 21/12/2013. It was stated in the said reply that if the applications are allowed, then costs of Rs.5000/- may be awarded to the Opponent i.e. the predecessor of the Respondents herein who are his heirs.

3           The Lower Appellate Court however did not deem it fit to exercise its discretion in favour of the Petitioners on the ground that there was no justifiable reason mentioned for the delay which has occasioned in filing of the Appeals and accordingly rejected the applications by the impugned order dated 28/08/2014.

4            During the course of hearing of the above Writ Petitions, the learned counsel appearing on behalf of the Respondents herein Shri B G Ligade fairly stated that the Respondents have no objection if the delay is condoned, however, the same would be subject to payment of costs by the Petitioners in each of the above Petitions. He however requested that if the delay is condoned, the Appeals be directed to be disposed of within a particular time frame, since they have been originally filed in the year 2012.

5            In view of the fair stand taken by the learned counsel for the Respondents herein in my view, the above Petitions can be conveniently disposed of by issuing following directions :-

A]        The impugned orders all dated 28/08/2014 would stand quashed and set aside. The Applications for condonation of delay would stand allowed. Resultantly, the delay in filing the Appeals would stand condoned. Each set of Petitioners to pay costs of Rs.5,000/- to the Respondents i.e. total amount of Rs.20,000/- in all the four Petitions.

B]        The Registry of the Lower Appellate Court is directed to register the Appeals in view of the fact that the delay is now condoned by

the instant order.

- C] The Appeals since they arise out of an ex-parte decree and since they have been filed in the year 2012 are directed to be disposed of latest by 31/12/2017.
- D] Needless to state that the contentions of the parties on merits are kept open for being urged before the Lower Appellate Court. Further needless to state that the Appeals would be tried on their own merits and in accordance with law.
- E] The execution of the decree is stayed for a period of six weeks from date. The Petitioners thereafter would be entitled to file an application before the Lower Appellate Court for continuance of the stay which application would also be tried on its own merits and in accordance with law.
- F] The above Writ Petitions are allowed to the aforesaid extent. Rule in all the Petitions is accordingly made absolute with parties to bear their respective costs.

**[R.M.SAVANT, J]**