

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8295 OF 2020

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| 1. | Prashant s/o. Subhash Somani,
Age.39 years, Occ.Medical Practitioner, | .. Petitioners
[original
defendant
Nos.6 & 7) |
| 2. | Sau.Rachana w/o. Prashant Somani,
Age.35 years, Occ.Medical Practitioner, | |

Both R/o. Sarvamangal Hospital,
13/B, Vivekanand Nagar,
Swatantrya Chowk, Jalgaon.

Versus

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| 1. | Sau.Manisha w/d Nitin Kabra,
W/O. Babulal Mantri,
Age.54 years, Occ. Nil,
R/o."Audumbar" bungalow, Ring Road,
Jalgaon, Tq.& Dist. Jalgaon,
[as per address shown in the lower Court]
The correct address is
C/o.Babulal Mantri, Near Ram Mandir,
At/post Badnapur, Tq. Badnapur,
Dist. Jalna 431 202. | .. Respondents
[R-1 – ori.
plaintiff]
[R-2 – ori.
def. No.1]
[R-3A to 3C –
ori.def.No.
2A to 2C]
[R-4 to 6
ori.def.No.
3 to 5] |
| 2. | Dr.Sau. Mamta w/o. Mahendra Kabra,
Age.50 years, Occ. Medical Practitioner,
R/o.10-A, Shivaji Chowk,
Jalgaon, Tq. & Dist. Jalgaon. | |
| 3. | Smt.Vimaltai w/o. Narayandas Kabra,
Age.65 years, Occ. Nil,
Since deceased through her LRs. | |

- 3A. Vinay s/o. Narayan Kabra,
Age.56 years, Occ. Business,
R/o. Kabra Medical, Navi Peth,
Jalgaon, Tq. & Dist. Jalgaon.
- 3B. Smt.Vanita w/o. Rampal Chandak,
Age.58 years, Occ. Household,
R/o. Building No.0, Flat No.202/3,
Near Pink Memories, City Pride,
Kothrud, Pune – 411 038.
- 3C. Dr.Mahendra s/o. Narayan Kabra,
Age.56 years, Occ. Medical Practitioner,
R/o.Court Chowk, Opposite Shivteerth,
Near J.T. Chamber, Jalgaon.
4. Miss Neha d/o. Nitin Kabra,
w/o. Prasad Mandaokar,
Age.29 years, Occ. Housewife,
R/o."Audumbar" bungalow Ring Road,
Jalgaon, Tq. & Dist. Jalgaon,
[as per the address shown in lower Court]
The correct address is
At Post – Pune.
5. Miss Nidhi d/o. Nitin Kabra,
Age.25 years, Occ. CA,
R/o."Audumbar" bungalow Ring Road,
Jalgaon, Tq. & Dist. Jalgaon,
[as per the address shown in lower Court]
The correct address is
C/o.Babulal Mantri, Near Ram Mandir,
At Post Badnapur, Tq. Badnapur,
Dist. Jalna 431 202.
Now major and maternal uncle has expired,
[Since minor under the guardianship
of her maternal uncle
Pradeep s/o. Dwarkadas Mantri,
Age.55 years, Occ. Business,
R/o."Dwarka", Netaji Maidan,
Beed, Tq. & Dist. Beed.]

6. Ajinkya s/o. Nitin Kabra,
Age.18 years, Occ. Student,
The correct address is
C/o. Babulal Mantri, Near Ram Mandir,
At post Badnapur, Tq. Badnapur,
Dist. Jalna 431202.
[Since minor under the guardianship
of his maternal uncle
Pradeep s/o. Dwarkadas Mantri,
Age. 55 years, Occ. Business,
Age.55 years, Occ. Business,
R/o. "Dwarka", Netaji Maidan,
Beed, Tq. & Dist. Beed.]

Mr.V.D. Hon, Sr. Counsel i/b. Mr.A.D. Shinde, Advocate
for the petitioner.

Mr.P.D. Bachate, Advocate for respondent Nos.1 & 4.

Mrs.Rashmi Kulkarni h/f. Mr.Kailas B. Jadhav, Advocate
for respondent No.2.

Mr.A.D.Sonkawade h/f. Mr.Umakant Wagh, Advocate for
respondent Nos.3A to 3C.

Mr.P.R. Katneshwarkar h/f. Mr.A.D. Khot, Advocate for
respondent Nos.5 & 6.

CORAM : N.J.JAMADAR, J.
RESERVED ON : 23.04.2021
PRONOUNCED ON : 04.05.2021

J U D G M E N T :-

01] Rule. Rule made returnable forthwith and, with
the consent of the learned Counsels for the parties,
heard finally at the stage of admission.

02] This petition assails the legality, propriety and correctness of the judgment and order dated 12th November, 2020, passed by the learned Adhoc District Judge-3, Jalgaon, in Misc. Civil Appeal No.30 of 2020, whereby the appeal preferred by the respondent No.1 herein came to be allowed by modifying common order dated 29th October, 2020, passed by the learned Civil Judge and the petitioners-original defendant Nos.6 and 7 were temporarily restrained from making any change in or construction over the suit property till the disposal of the suit.

03] For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity, in which they were arrayed before the trial Court.

04] Shorn of unnecessary details, the background facts leading to this petition can be stated as under:-

a] Late Advocate Nitin Narayan Kabra was the

husband of Manisha – plaintiff and father of Miss Neha, Miss Nidhi and Master Ajinkya; defendant Nos.3 to 5. Smt. Vimaltai, the deceased defendant No.2, was his mother. Late Nitin was the owner of a house premises bearing City Survey No.8377, admeasuring 515.6 sq.mtr. comprising of a two storey building, situated within the municipal limits of Jalgaon [the suit property]. Late Nitin met an accidental death on 6th November, 2005. The plaintiff and defendant Nos.2 to 5 succeeded to the estate of late Nitin.

b] The plaintiff re-married on 5th October, 2009. The plaintiff instituted RCS No.793 of 2012, seeking a declaration that the gift-deed dated 14th October, 2009 allegedly jointly executed by the plaintiff and defendant Nos.2 to 5 in favour of Dr.Sau.Mamta, her co-sister, is null and void and for a consequential relief of prohibitory injunction against defendant No.1 from causing obstruction to the possession of the plaintiff over the suit property and also from creating third party

interest therein.

c] The substance of the claim of the plaintiff was that after demise of her husband, she was dependant upon defendant No.1 and her husband Mahendra Kabra, the brother of late Nitin. Taking undue advantage of the adverse situation in which the plaintiff and her minor children found themselves, defendant No.1 and her husband coerced the plaintiff to re-marry and give up claim over the suit property, on the assurance that her children would be taken care of. After a couple of days of marriage, when the plaintiff returned to the suit property at Jalgaon, defendant No.1 and Mahendra again endeavoured to impress upon her to convey the suit property. As the plaintiff did not cave into machinations of defendant No.1 and Mahendra, they and her in-laws took the plaintiff to the office of the Sub-Registrar and made her to execute the instrument, which were purportedly for transferring the suit property in the name of defendant No.3 Miss Neha, who had then just attained majority.

Later-on, the defendant No.1 and her husband refused to maintain the plaintiff's children, and asked the plaintiff to vacate the suit property in the month of August, 2012. Having realized the fraud, the plaintiff instituted the suit for declaration and consequential relief as indicated above.

d] During the pendency of the suit, the plaintiff preferred application for interim relief. Vide application [Exh.70], the plaintiff had sought ex-parte injunction against defendant No.1 and her agents and assigns restraining them from changing the nature of the suit property, causing obstruction to the peaceful possession of the plaintiff over the suit property and also from alienation of the suit property.

e] In the meanwhile, the defendant No.1 transferred the suit property to defendant Nos.6 and 7/petitioners herein by a registered sale-deed dated 22nd September, 2020, for a consideration of Rs.1,07,46,000/-. It would

be contextually relevant to note that the defendant No.7 is daughter of defendant No.1 and defendant No.6 is her son-in-law.

f] As the said fact was brought to the notice of the Court and it was claimed that the defendant No.1 has parted with the possession of the suit property under the said sale-deed, the plaintiff preferred application [Exh.95] praying that the ex-parte injunction, which was granted against defendant No.1, be made to operate against defendant Nos.6 and 7 as well. By application [Exh.112] the plaintiff sought continuation of the ex-parte order of temporary injunction passed against defendant Nos.1,6 and 7 till the disposal of the suit and that the defendant Nos.1,6 and 7 be restrained from changing the nature of the suit property, alienation thereof and encumbering the same in any manner whatsoever.

g] Defendant Nos.1,6 and 7 resisted the

applications. The substance of the resistance putforth by defendant No.1 was that the plaintiff had executed the gift-deed on her own volition. The suit property was gifted by the legal heirs of late Nitin out of their natural love and affection towards defendant No.1. The suit property was delivered to defendant No.1 pursuant to the gift-deed and since then neither plaintiff nor her children are in possession of the suit property. The plaintiff is an advocate by profession. At the time of execution of gift-deed, she was also performing the function of Notary. The claim of the plaintiff that the defendant No.1 and her husband took undue advantage of her position and she was made to execute the gift-deed on the representation that the suit property was to be transferred in favour of defendant No.3-Miss Neha was thus stated to be false and concocted.

h] The defendant Nos.6 and 7 claimed to have acquired the suit property for a valuable consideration. They are bonafide purchaser for value without notice.

After the defendant Nos.6 and 7 were put in possession of the suit property, they have commenced its development and have obtained a loan to the tune of Rs.2,15,00,000/- from the ICICI Bank, Jalgaon by mortgaging the suit property.

i] The learned Civil Judge, after appraisal of the rival contentions, documents tendered in support of the rival claims and submissions advanced, was persuaded to partly allow the aforesaid applications. The learned Civil Judge found that the plaintiff is not in possession of the suit property. The learned Civil Judge was, thus, not persuaded to injunct the defendant Nos.1,6 and 7 from causing obstruction to the possession of the plaintiff. It was held that the question as to whether the gift-deed was executed on account of undue influence, coercion or fraud was a matter for trial. However, since during the pendency of the suit, defendant No.1 had transferred the suit property in favour of defendant Nos.6 and 7, the learned Civil Judge was of the view that in order to

avoid further alienation and the consequent multiplicity of the proceedings, it was necessary to restrain defendant Nos.6 and 7 from alienating the suit property till the disposal of the suit.

j] Being aggrieved, the plaintiff preferred Misc. Civil Appeal No.30 of 2020. In the Misc. Appeal, the plaintiff/appellant preferred an application for temporary injunction against the defendant Nos.6 and 7 not to create any third party interest in any manner and not to commence any activity over the suit property and maintain status-quo qua the suit property.

k] By the impugned judgment and order, the learned District Judge was persuaded to allow the appeal. The learned District Judge was of the view that the plaintiff/appellant had made out a *prima facie* case for grant of interim relief restraining the defendant Nos.6 and 7 from making any change in or construction over the suit property. In the event, such injunction was not

granted, the plaintiff would suffer irreparable injury. In the process, the learned District Judge recorded that the transfer of the suit property in favour of defendant Nos.6 and 7 by defendant No.1 and the consequent development thereon did not appear to be bona fide. The defendant Nos.6 and 7/petitioners were thus temporarily restrained from making any change in or carrying out construction over, the suit property till the disposal of the suit. Being aggrieved by this part of the order, the petitioners have invoked the writ jurisdiction of this Court.

05] I have heard Mr.V.D. Hon, learned Sr. Counsel for the petitioners, Mr.Bachate, learned Counsel for respondent Nos.1 and 4, Mrs.Rashmi Kulkarni, learned Counsel for respondent No.2, Mr.Sonkawade, learned Counsel for respondent Nos.3a to 3c and Mr.Katneshwarkar, learned Counsel for respondent Nos.5 and 6. With the assistance of learned Counsels for the parties, I have also perused the material on record.

06] Mr.Hon, learned Sr. Counsel for the petitioners strenuously urged that the appellate Court committed a grave error in granting a relief which was not prayed for by the plaintiff in the applications for temporary injunction before the trial Court. Secondly, the Appellate Court also lost sight of the fact that in a Misc. Appeal, the remit of the jurisdiction of the appellate Court is to correct the exercise of judicial discretion by the trial Court and it is not open for the appellate Court to vary the order of the trial Court by taking a different view of the matter on facts. Thirdly, the appellate Court erred in not properly appreciating the nature of the suit. The plaintiff had specifically averred that she was made to execute the gift-deed believing the representation that the suit property was to be conveyed in favour of her daughter Miss Neha-defendant No.3. The fact that the plaintiff was a practicing Notary did not enter into the judicial verdict. The claim of the plaintiff that the instrument

of gift was got fraudulently executed from her was *ex-facie* untenable. Conversely, the appellate Court clearly lost sight of the fact that the petitioners being bonafide purchasers have made huge investment for development of the suit property and obtained loan of Rs.2,15,00,000/-. The injunction order passed by the appellate Court causes irreparable loss to the petitioners, urged Mr. Hon.

07] Alternatively, Mr.Hon would urge that the petitioners are ready to make a deposit of about Rs.50 lakhs so as to protect interest of the parties, especially defendant Nos.4 and 5-minors. Thus, the impugned order be modified so as to facilitate the construction of hospital over the suit property, for the purpose of which the petitioners have acquired the same for a valuable consideration.

08] Mrs.Rashmi Kulkarni, learned Counsel for respondent No.2-original defendant No.1 supported the

submissions of Mr. Hon. Mrs. Kulkarni laid emphasis on the improper exercise of appellate jurisdiction by the learned District Judge in a Misc. Appeal. Placing reliance on the judgment of the Supreme Court in the case of Skyline Education Institute (Pvt) Ltd. Vs. S.L. Vaswani and Ors., AIR 2010 SC 3221 and the judgment of a learned Single Judge of this Court in the case of Abidbhai Ibrahimbhai and Anr. Vs. Mohammed Ejaz Mohd. Bashir & Anr., 2019(1)Bom.C.R.146, Mrs. Kulkarni urged that it is well recognized that in the matter of grant or refusal of temporary injunction, the appellate Court should be slow to interfere with the order passed by the trial Court.

09] In contrast to this Mr.Bachate, learned Counsel for respondent Nos.1 and 4 and Mr.P.R. Katneshwarkar, learned Counsel for respondent Nos.5 and 6 stoutly supported the impugned order.

10] Mr.Katneshwarkar, who advanced lead submissions

on behalf of contesting respondents, urged that there are multiple circumstances which throw a cloud of doubt over the claim of defendant No.1 that the plaintiff voluntarily executed the instrument of gift on 14th October, 2009. A lady, who lost her husband and had three children to support, would not give away the only valuable property to a co-sister, out of love and affection. The very premise of gift does not stand to reason, urged Mr. Katneshwarkar. Taking the Court through the recitals of the gift-deed dated 14th October, 2009 and comparing and contrasting the same with the recitals in the sale-deed dated 22nd September, 2020 executed by defendant No.1 in favour of defendant Nos.6 and 7, Mr.Katneshwarkar would urge that the findings recorded by the learned District Judge that the sale in favour of defendant Nos.6 and 7 was not bonafide, is fully justified.

11] Mr.Katneshwarkar further urged that in any event, the gift-deed dated 14th October, 2009 would not

bind the interest of defendant No.3 Miss Nidhi and defendant No.4 Master Ajinkya, who were then shown to be 15 and 7 years of age respectively. Thus, at this juncture there is a serious cloud over the title of defendant Nos.6 and 7. If defendant Nos.6 and 7 are allowed to develop the property, plaintiff and defendant Nos.3 to 5 would suffer irreparable loss and would be presented with *fait accompli*, submitted Mr. Katneshwarkar.

12] I have given anxious consideration to the submissions advanced across the bar. The controversy revolves around the justifiability of the order passed by the appellate Court restraining the petitioners from changing the nature of the suit property and carrying on construction thereon.

13] There is not much controversy over the broad facts. Late Nitin was the owner of the suit property. After his demise, the plaintiff and defendant Nos.3 to 5,

being the wife and children, and defendant No.2, being the mother, succeeded to the estate of the deceased Nitin. There is no qualm over the fact that the plaintiff re-married on 5th October, 2009. The gift-deed is purported to have been executed by the plaintiff, defendant Nos.3 to 5, defendant No.2 and Dr. Narayan Kabra in favour of defendant No.1 Sau.Mamta, on 14th October, 2009, under ten days of the re-marriage of the plaintiff. Indisputably, defendant No.3 Miss Nidhi and defendant No.4 Mater Ajinkya were then minors. The defendant Nos.4 and 5 have instituted independant suits questioning the gift-deed. The relationship between defendant No.1 and defendant Nos.6 and 7 is also not in dispute. The defendant No.1 transferred the suit property in favour of defendant Nos.6 and 7 by the registered sale-deed dated 22nd September,2020 for a consideration of Rs.1,07,46,000/-.

14] In the backdrop of the aforesaid facts a strenuous effort was made on behalf of the petitioners to

demonstrate that though the suit was instituted by the plaintiff in the year 2012, yet the plaintiff had not diligently pursued the application for temporary injunction preferred therein and the instant application [Exhs.70,95 and 112] came to be preferred after defendant Nos.6 and 7 started development of the suit property. This delay in seeking injunctive relief was not adequately considered by the appellate Court, urged learned Counsel for the petitioners.

15] It was further submitted that the fact that the defendant Nos.4 and 5 were minors at the time of execution of the gift-deed, is a matter which can be considered in the suits which have been instituted by defendant Nos.4 and 5. There is no material to indicate that defendant Nos.4 and 5 have pursued the relief of temporary injunction in those suits. In the circumstances, the appellate Court could not have passed the impugned order, which totally deprived the petitioners from exercising their right of ownership over

the suit property.

16] I am afraid to accede to the submissions so far as binding efficacy of the gift-deed on the interest of defendant Nos.4 and 5. In view of the provisions contained in section 8(2) of the Hindu Minority and Guardianship Act, 1956 a natural guardian is not empowered to alienate the immovable property of a minor without the previous permission of the Court. Under sub-section (3) of Section 8 any disposal of the immovable property by natural guardian in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him. It can not be gainsaid that the plaintiff could not have gifted away the interest of defendant Nos.4 and 5 in the suit property in favour of defendant No.1 under the gift-deed dated 14th October, 2009. To this extent, the gift-deed, even if taken at par, does not bind the interest of defendant Nos.4 and 5.

17] The circumstances in which the gift-deed came to be executed by the plaintiff and defendant Nos.2 to 5 in favour of defendant No.1 also assume critical significance. Firstly, the relationship between the plaintiff and defendant No.1 was of co-sister. Secondly, the plaintiff had re-married on 5th October, 2009. The execution of the gift-deed on 14th October, 2009, is too close for comfort. Thirdly, the situation in which the plaintiff and her minor children found themselves after the demise of late Nitin is a matter which warrants consideration while appreciating the claim of the plaintiff. Ordinarily, it does not appeal to human credulity that a lady who has lost her husband and has minor children to look after, would voluntarily execute a gift-deed, that too in favour of a co-sister, depriving her children of the roof over their head.

18] Mrs. Rashmi Kulkarni attempted to salvage the position by advancing a submission that the defendant No.1 had provided necessities of life to plaintiff and

her children, especially defendant No.3 Miss Neha and had also discharged the debts and liabilities of late Nitin. I am afraid, this endeavour to introduce an element of consideration in the sense of *quid pro quo* would run counter to the claim of gift on account of natural love and affection.

19] From the standpoint of the petitioners, it is necessary to appreciate their claim of being bonafide purchasers for value without notice. Again, the relationship between the vendors and purchasers assumes significance. The defendant No.7 is the daughter of defendant No.1. There is a declaration appended to the sale-deed that the suit property was not subject matter of any litigation. This again was not correct to the knowledge of defendant No.1 as the suit was instituted in the year 2012 itself. In-fact, the lis was registered and an entry was recorded in the city survey record, which came to be subsequently deleted. In the face of this record, it would be rather difficult to believe that

the petitioners were unaware of the pending litigation and the competing claims of the plaintiff and defendant Nos.3 to 5.

20] Even on the aspect of consideration, the matter is not free from an element of suspicion. The sale-deed recites that consideration was received by defendant No.1 from defendant Nos.6 and 7 in the form the three post-dated cheques which were payable on 22nd December, 2020. It is true that sale can be for consideration paid or promised. This factor by itself may not assume significance and, at the trial, defendant Nos.6 and 7 may succeed in establishing that the consideration, was in-fact, paid. However, at this juncture, if all these circumstances are cumulatively taken into account, the claim of the petitioners of being bonafide purchaser for value without notice is in the realm of controversy.

21] The situation which thus emerges is that the plaintiff's case on its own is of such a nature that it

throws a cloud of doubt over the voluntary transfer of the suit property by way of gift without any duress. On the other hand, even if the gift deed is taken at par, the same does not bind the interest of defendant Nos.4 and 5 as they were minors. The defendant No.1 thus cannot convey a better title to defendant Nos.6 and 7, at least to the extent of the undivided interest of defendant Nos.4 and 5.

22] It is trite law that the appellate Court should be slow in interfering with the discretionary order passed by the Court of first instance. In the case of **Skyline Education Institute [Supra]** on which reliance was placed on behalf of the petitioners and respondent No.2, after adverting to a large number of authorities, the Supreme Court enunciated the legal position in the following words :-

"16. The ratio of the above noted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by

cogent reasons, the appellate court will be loath to interfere simply because on a *de novo* consideration of the matter it is possible for the appellate court to form a different opinion on the issues of *prima facie* case, balance of convenience, irreparable injury and equity."

[emphasis supplied]

23] In the case of Abidbhai Ibrahimhai [Supra] a learned Single Judge of this Court adverted to the aforesaid pronouncement in the case of Skyline Education Institute [Supra] and culled out the ratio that an appeal filed against an order granting or refusing temporary injunction is an appeal against exercise of discretion and, therefore, it is appeal on principle and as such, the appellate Court must not reassess the material and seek to reach a conclusion different from the one, if the one reached by that Court was reasonably possible on the material.

24] There can be no duality of opinion on the aforesaid proposition. In the case at hand, the appellate Court proceeded to correct the exercise of discretion by the trial Court. In the circumstances of

the case, an order of not creating third party interest is not adequate. There is a clear and present apprehension. From the recitals in the sale-deed it becomes evident that the two storey structure over the suit property has been demolished to the prejudice of plaintiff and defendant Nos.3 to 5. If the petitioners erect construction over the suit property, as they profess to do, and that too by creating encumbrances thereon by availing a huge loan of Rs.2,15,00,000/-, the plaintiff and especially defendant Nos.4 and 5 would be left in the lurch. Since the gift-deed does not bind interest of defendant Nos.4 and 5, they have have an indefeasible right over the suit property, *in praesenti*. Conversely, if defendant Nos.6 and 7 are restrained from carrying out the construction over the suit property, the loss is such which can be compensated in terms of money as the question would be of payment of interest in the interregnum on account of non-utilization of the loan amount.

25] For the same reasons, the prayer for allowing defendant Nos.6 and 7 to carry out construction, subject to deposit of certain amount in the Court, does not appear to be a legitimate option. Even if, the petitioners undertake that they will not claim equities, yet, the issue of the security interest created in the suit property by the Bank would arise. In the event defendant Nos.6 and 7 make huge investment in the suit property, the right of the defendant Nos.4 and 5 to enforce partition would be severely prejudiced, even if the gift-deed is held valid qua the other donors. Therefore, I am not persuaded to accede to the submission on behalf of the petitioners.

26] The upshot of the aforesaid consideration is that in the circumstances of the case, the order of injunction passed by the appellate Court restraining the defendant Nos.6 and 7 from changing the nature of the suit property and carrying on construction thereon, seems absolutely necessary to protect the interest of the

plaintiff and defendant Nos.3 to 5. Resultantly, this Court does not find any justifiable reason to interfere with the impugned order in exercise of extra-ordinary writ jurisdiction. However, having regard to the nature of the dispute, it would be expedient to direct the trial Court to hear and decide the suit expeditiously.

27] Before parting it is clarified that the observations hereinabove are made for the purpose of deciding the justifiability of the interim order and the trial Court shall not be influenced by these observations while deciding the suit.

28] Hence, the following order :-

O R D E R

The petition stands dismissed.

The trial Court is directed to hear and decide RCS No.793 of 2012 as expeditiously as possible and preferably within a period of nine months

from the date of the appearance of the parties.

The parties shall appear before the trial Court
on 14th June, 2021.

Rule discharged.

No costs.

[N . J . JAMADAR , J .]