

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

WRIT PETITION NO.11947 OF 2015

1. Kadarkhan s/o Mohammadkhan Pathan,
Age: 92 years, Occ: Agri.,
2. Iliyaskhan s/o Khadarkhan Pathan,
Age: 55 years, Occ: Agri.,
3. Rahmatkhan s/o Kadarkhan Pathan,
Age: 52 years, Occ: Agri.,
4. Kasidkhan s/o Khadarkhan Pathan,
Age: 49 years, Occ: Agri.,
5. Tajkhan s/o Khadarkhan Pathan,
Age: 47 years, Occ: Agri.,
6. Jamalkhan s/o Khadarkhan Pathan,
Age: 44 years, Occ: Agri.,
7. Firozkhan s/o Khadarkhan Pathan,
Age: 41 years, Occ: Agri.,

All R/o. Patel Chowk, Latur.

...Petitioners

versus

1. Gopal s/o Harikishan Zanvar,
Age: 52 years, Occ: Business,
R/o. Latur.
2. Mangaladevi w/o Gopal Zanvar,
Age: 47 years, Occ: Household & business,
R/o. Latur.

...Respondents

.....
Mr. B.R. Kedar, Advocate for petitioners
Mr. S.S. Rathi, Advocate for respondents
.....

CORAM : N.W. SAMBRE, J.

DATE : 15th DECEMBER, 2015

ORAL ORDER :

Special Civil Suit No. 122 of 2009 for specific performance of contract is pending on the file of learned Joint Civil Judge, Senior Division, Latur, in which application Exhibit-115 for framing additional issue, moved by petitioners came to be rejected by an order dated 09/09/2015, as such, present writ petition.

2. Mr. Kedar, learned Counsel for the petitioners-defendants would urge that in view of provisions of Order 14 Rule 3-C of Code of Civil Procedure the issue which is sought to be canvassed and considered by learned trial Court should have been permitted framed. According to him, the issue as regards non fulfillment of certain conditions of the agreement dated 13/05/2007 is the issue, which goes to the root of the matter and should have been accordingly framed by learned trial Court. He would then urge that it is always open for the present petitioners-defendants to raise inconsistent pleas.

3. The claim is opposed by learned Counsel for the respondents-plaintiffs on the ground that the petitioners are *estopped* from raising such plea as agreement dated 13/05/2007 is denied by petitioners. He would then urge that the order speaks for reason for

rejection which does not call for any interference.

4. Having considered the submissions, it is noted that the petitioners-defendants have disputed execution of the agreement in question, which is dated 13/05/2007. Of course, it is open for the petitioners-defendants to raise inconsistent pleas in the written statement, however, it is required to be noted that once having denied the execution of the agreement in question, the plea of the petitioners-defendants that the additional issue in relation to discharge by the present respondents-plaintiffs as regards fulfillment of conditions thereto is completely uncalled for as it is for the plaintiffs to prove that such agreement was executed pursuant to denial by the defendants. In view thereof, in my opinion, the plea as is sought to be raised was rightly rejected by learned trial Court. No case for interference is made out in extraordinary writ jurisdiction. The writ petition fails, stands dismissed.

[N.W. SAMBRE, J.]