

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7414 OF 2011**

Amrut Rakhamasa Kshatriya	)	
Age 71 years, occuaption:	)	
Business residing at 3,	)	
Rajendra Colony, Nashik Road,	)	
422101, Talulka and District	)	
Nashik (Chief promoter of Jai	)	
Vijay Co-operative Housing	)	
Society (proposed)	)	..Petitioner

Vs.

1 Barjor Rustam (Rustamji) Joshi	)
Age 62 years, occupation	)
Business residing at 25,	)
Hira Meher, 108, Ode House	)
Road, Colaba Mumbai 400 005	)

2 Shri Faramroz Rustam (Rustamji) Joshi)	)
Age 63 years, Occupation: Business	)
residing at Pande Bunglow, Pande Road	)
Colaba, Mumbai 400 005	)

3 Shri Zarir Rustam (Rustamji) Joshi	)
Age 59 years, Occupation Business	)
residing at 25, Hira Meher, 108, Ode	)
House Road, Colaba Mumbai 400005	)

4 Shirin Rustam (Rustamji) Joshi	)
alias Sou Shirin Rustam Anwiya	)
Age 55 years, occupation: Household	)
residing at C-31, Meherjin, 109-A, Ode	)
House Road, Colaba Mumbai 400005	)

5 Roshan Zarir Joshi	)
Age 60 years, Occupation Household	)
residing at 26, Hira Meher, 108, Ode	)
House Road, Colaba Mumbai 400005	)

6 Khurshid Shiroy Bhoomgara	)
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Age 29 years, Occupation Advocate)
residing at 26, Hira Meher, 108, Ode)
House Road, Colaba Mumbai 400005)

7 Shri Jagdish Mawji Bhagat alias Patel)
Age 43 Years, Occupation)
Builder/Developer, residing at Aditya)
Darshan Apartment, Anand Nagar,)
Nashik Road, Taluka and District Nashik)

8 Shri Vijay Limji Patil)
Age 46 years, Occupation)
Builder / Developer residing at 43,)
Pasaydan, Satsang Colony, Vidya Nagari)
Dapur, Dhule)

..Respondents

Mrs. A. R. S. Baxi for the Petitioner
Mr. G. R. Agarwal for the Respondents

CORAM : R. M. SAVANT, J.
DATE : 13th OCTOBER, 2015

ORAL JUDGMENT

1 Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this court is invoked against the order dated 21-7-2011 passed by the Learned Joint Civil Judge Senior Division, Nashik, by which order, the application Exhibit 124 filed under Order I Rule 8 of the Civil Procedure Code, by the Plaintiff to prosecute the Suit in a representative capacity, came to be rejected.

3 The Suit in question has been filed for specific performance of the agreement dated 19-9-1974 entered into by and between one Mohan Sambar with the forefathers of the Defendant Nos.1 to 6. The subject matter of the said agreement is the land bearing Survey No.118/4-1 Plot No.1, admeasuring 544 sq.mtrs. which the Chief Promoter Mohan Sambar had intended to purchase on behalf of the proposed Co-operative Housing Society, known as Vijay Co-operative Housing Society. The said plot was intended to be purchased, to provide housing accommodation to its members who are 11 in number. In the Suit a preliminary issue of limitation came to be framed in the context of the prayers sought in the Suit that is of specific performance of the agreement dated 19-9-1974 declaration and injunction sought by the Plaintiff. The Trial Court by order dated 15-2-2010 recorded that in so far as prayer for specific performance is concerned, the same is barred by limitation. However the relief of declaration and injunction was held to be within limitation.

4 The Plaintiff aggrieved by the said order dated 15-2-2010 holding that the relief of specific performance was barred by limitation has filed a Writ Petition in this Court being Writ Petition No.6603 of 2011 challenging the said order. The said Writ Petition came to be allowed by an order passed today and the matter has been relegated back to the Trial Court for a denovo consideration of the said issue of limitation in so far as prayer for specific

performance is concerned and to be decided within the particular time frame.

5 The Plaintiff filed an application Exhibit 113 for impleading the other members of the proposed Co-operative Housing Society as Plaintiff to the Suit. The said application was filed under Order I Rule 10 of the Civil Procedure Code. The Trial Court has rejected the said application by order dated 1-7-2011 for the reasons mentioned in the said order. The Plaintiff thereafter filed the instant application Exhibit 124 under Order I Rule 8(1) of the Civil Procedure Code. The application is founded on the fact that the Suit is being prosecuted by the Plaintiff not exclusively for himself but for other members of the proposed Housing Society and therefore the Plaintiff be allowed to prosecute the Suit in a representative capacity by granting leave under Order VIII Rule 1(a) of the Civil Procedure Code. The Trial Court has rejected the said application by the impugned order dated 21-7-2011.

6 The gist of the reasoning of the Trial Court is that the earlier application Exhibit 113 has been rejected by it, which was also filed for impleadment of the other members of the unregistered Co-operative Housing Society. In view of Order VI Rule 17 an application filed at the said stage could not be entertained as the same has been filed belatedly.

7 Heard the Learned Counsel for the parties. The Learned Counsel

for the parties sought to make submissions for and against the leave being granted under Order VIII Rule 1 of the Civil Procedure Code.

8 In the instant case, it is required to be noted that the Plaintiff has filed the Suit in question for specific performance of the agreement dated 19-9-1974 entered into by the Chief Promoter of the proposed Co-operative Housing Society Mohan Sambar with the forefathers of the Defendant Nos.1 to 6. Hence the relief which the Plaintiff is seeking is for the benefit of the members of the proposed Co-operative Housing Society. The Trial Court had rejected the earlier application Exhibit 113 on the ground that members of the proposed Co-operative Housing Society could not be impleaded as Plaintiffs. However, the instant application has been rejected on the ground that the earlier application was rejected as also on the ground that the same does not satisfy the due diligence test under Order VI Rule 17 of the Civil Procedure Code.

9 In my view, having regard to the fact that the Plaintiff is prosecuting the Suit for the benefit of the other members of the proposed society and not for any personal benefit, it would be just and proper to set aside the impugned order dated 21-7-2011 and allow the application Exhibit 124. The impugned order to accordingly stand set aside resultantly the application Exhibit 124 would stand allowed. Amendment to be carried out within two weeks from date and the amended cause title to be furnished to the

Learned Counsel for the Respondents i.e. the Defendants in the Suit.

10 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]