

**THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11154 OF 2012**

M/s. B. J. Enterprises	)	
A registered partnership firm through	)	
its partners 1. Shri Bhagwandas Patel	)	
Age 72 years, occ Business	)	
2.Shri Surendra Patel	)	
Age-Adult, Occ-Business	)	
through power of attorney holder	)	
Shri Anup Maganlal Patel Age 48 years,	)	
Occ Business, Office Unit No.89,	)	
Nalanda Shopping Centre Ground Floor,	)	
Bandu Gore Marg, in front of Municipal	)	
School, Goregaon (W) Mumbai 400 062	)	..Petitioners

VERSUS

1 Ganu Gangaram Mhatre (deceased)	)
through LRS.	)
1/1 Shridhar Ganu Mhatre	)
Age 51 years, Abhikung Building	)
Room No.102, 1 st floor, Behind Dandekar	)
Hospital Line Ali, Panvel Taluka Panvel	)
District Raigad	)
1/2 Hareshwar Ganu Mhatre	)
Age 42, years, A/P Nhave, Taluka Panvel	)
District Raigad	)
1/3 Hemant Ganu Mhatre	)
A/P Nhave, Taluka Panvel District Raigad)	)
1/4 Suman Ramesh Gharat	)
Age 49 years, Yashanand Society,	)
B-606, Vishnu Nagar, Near Gajanan	)
Vadapav, Naupada District Thane	)
1/5 Uttara Dnyaneshwar Bhoir	)
Age 47 years, Dhrapuri (Elephant) Uran	)
Taluka Uran, District Raigad	)
1/6 Alka Jagannath Patil	)

Age 45, years, Nhave, Taluka Panvel)
District Raigad)

1/7 Sulkshna Hanuman Mhatre)
Age 43, years, Nhave, Taluka Panvel)
District Raigad)

1/8 Asha Laxman Bhoir)
Age 52 years, Dharapuri (Elephant) Uran)
Taluka Uran, District Raigad)

2 Smt. Anusaya Pandurang Mhatre)
Age Adult Occ Agriculturist,)
R/at Nhave Post Nhave Tal Panvel)
Dist Raigad)

3 Shri Rajan D. Patil)
Age Adult, Residing at N.L.-5, Building)
No.28, Room No.4, Sector No.3, Nerul,)
Dist Navi Mumbai)

4 Bhoomi and Bhoomapan Adhikari)
CIDCO Maryadit, CIDCO Bhavan, 7th floor))
C.B.D.Belapur, Navi Mumbai)

5 The Estate Officer (vasahat Adhikari))
CIDCO Maryadit, CIDCO Bhavan, 1st floor))
C.B.D.Belapur, Navi Mumbai)

6 Atirikt Nagar Rachnakar Adhikari)
(Bhandkam Parwangi))
CIDCO Maryadit, CIDCO Bhavan, 4th floor))
C.B.D.Belapur, Navi Mumbai)

7 Shri Mahadeo Dharma Keni)
Age 47 occ Business,)
Anjani Apartment, Plot No.15, Sector)
No.4, Plot No.301, New Panvel, Raigad)

..Respondents

Mr. Salik Khan for the Petitioner
Mr. Dushyant Pagare for the Respondent No.2
Mr. C. M. Lokesh for the Respondent Nos.4 to 6
Mr. R. U. Dholakia for the Respondent No.7

CORAM : R. M. SAVANT, J.
DATE : 16th FEBRUARY, 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 2-1-2012 passed by the Learned Civil Judge Senior Division, Panvel, by which order the application Exhibit 33 filed by the Applicant i.e. the Respondent No.7 herein for his impleadment in the Suit in question, came to be allowed and resultantly the Respondent No.7 herein was directed to be impleaded in the Suit as a party Defendant.

3 The reading of the said order discloses that the Plaintiffs/Petitioners had not filed its reply to the said application Exhibit 33 and the Trial Court has merely on the basis of the averments made in the application deemed it appropriate to allow the same. A perusal of the averments made in the application discloses that the Applicant claims that the Defendants have entered into a transaction with him in respect of the suit property, pursuant to which he claims that he has paid the consideration by cheque and cash, however, no details have been mentioned in that regard. It is also pertinent to note that the Applicant has averred that through his Advocate he had called upon the Defendants to perform their part of the agreement. The

Applicant therefore has a grievance against the Defendants in respect of the non completion of the transaction and has virtually averred that he is also seeking specific performance of the alleged agreement entered into with him by the Defendants. Hence in so far as the Applicant is concerned, the rights if any he has are inchoate and have not crystallised into any document either into an Agreement for Sale or a Sale Deed, which is executed in his favour.

4 In my view therefore, the Trial Court in the conspectus of the aforesaid facts has erred in allowing the application Exhibit 33 and thereby directed the impleadment of the Applicant in the Suit in question which has been filed by the Plaintiffs for specific performance against the Defendants. In that view of the matter, the impugned order dated 2-1-2012 would have to be quashed and set aside and is accordingly quashed and set aside. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

5 However, it is clarified that it would be open for the Respondent No.7 herein i.e. the Applicant who has filed the application Exhibit 33 to assert his right by independent proceedings if he so chooses and if any such proceedings are filed, needless to state that the same would be decided on their own merits and in accordance with law.

[R.M.SAVANT, J]