

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

**WRIT PETITION NO.3485 OF 2020
WITH
WRIT PETITION NO. 3517 OF 2020**

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|----|---|---|-------------------------|
| 1. | Pravin S/o Kapoorchand Surana | } | |
| | Age : 44 Years, Occu. : Business, | } | |
| | R/o. Flat No. 6, Trilok Plaza, | } | |
| | Shahaganj, Chauraha, Aurangabad. | } | |
| 2. | Smt. Seema w/o Pravin Surana, | } | |
| | Age : 41 years, Occu. : Business & Household, | } | |
| | R/o Flat No. 6, Trilok Plaza, Shahaganj, | } | |
| | Chauraha, Aurangabad. | } | ... Petitioners. |

VERSUS

- | | | | |
|----|-----------------------------------|---|------------------------|
| 1. | M/s. Trilok Builders, | } | |
| | Through its Partner, | } | |
| | Pankaj S/o Trilokchand Pande, | } | |
| | Age : 47 Years, Occu. : Business, | } | |
| | R/o CTS No. 4-4-87/2, | } | |
| | Pande Bhavan, Chauraha, | } | |
| | Opp to Bank of Maharashtra | } | |
| | Aurangabad | } | |
| 2. | Manikchand S/o Balchand Gangawal, | } | |
| | Age : 70 Years, Occu. : Business, | } | |
| | R/o. Shahaganj, Aurangabad. | } | |
| | Tq. & Dist. Aurangabad. | } | ... Respondents |

...

Advocate for Petitioners : Mr. Shailendra S. Gangakhedkar

Advocate for Respondents : Mr. A. P. Bhandari

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CORAM : MANGESH S. PATIL, J.

DATED : 17 JUNE 2022

ORAL JUDGMENT :

1. Since the parties are the same and represented by same learned advocates, in view of the peculiar facts and circumstances obtaining in the matters, both these petitions are being disposed of by this common judgment.

2. Rule. Rule in both these petitions is made returnable forthwith. With the consent of the parties, the matters are heard finally at the stage of admission.

3. The petitioners are the persons who are claiming specific performance of an agreement to sell an immovable property, executed between them and the respondents in both these petitions.

4. The respondents have filed Special Civil Suit No.32 of 2007 seeking cancellation of the agreement on the grounds mentioned in the plaint. The petitioners appeared in that matter and the suit is awaiting hearing.

5. Simultaneously, the petitioners also filed Special Civil Suit No. 60 of 2014 seeking specific performance of the self same agreement sought to be cancelled by the respondents. In the suit for cancellation of the agreement, the petitioners submitted an application (Exh.77) and by the order dated 29 November 2014, the trial court directed both the suits to be tried simultaneously. By moving an application (Exh.127) in the same suit, the petitioners once again made the request to club, try and decide both the suits

by common evidence.

6. The respondents opposed that application on the ground *inter alia* that already the request was considered while passing the order on the application (Exh.77) and was rejected.

7. The learned Judge refused to consider the request in the application (Exh.127) on the ground that already the application (Exh.77) was dismissed. It is this order which is under challenge in Writ Petition No. 3485 of 2022.

8. The petitioners in their suit for specific performance bearing No. Special Civil Suit No. 60 of 2014 submitted an application (Exh.32) and prayed for framing of additional issues as under :

“1. Do the plaintiff prove that the defendant are refused to execute sale deed in favour of plaintiff ?

2. Do the plaintiffs prove that they are ready and willing to perform their part of contract ?

3. The suit is barred by Limitation?

4. Are the plaintiffs entitled for claimed reliefs?

5. What order & Decree?”

9. By the order under challenge in Writ Petition No. 3517 of 2020, the trial court has rejected the application.

10. I have heard the learned advocates of both the sides.

11. Learned advocate Mr. Gangakhedkar for the petitioners would vehemently submit that since the rights being claimed by both the sides are mutually exclusive, in as much as fate of one suit depends upon the decision in the other suit, it would be just, proper and convenient for the parties and even for the court, if the evidence is recorded common in both the suits, which would also save time and energy. The request was innocuous and ought to have been considered by the trial court on its own merits, which it has failed.

12. Learned advocate Mr. Bhandari would submit that whatever request that was being made by moving application (Exh.77) by the petitioners was considered on its own merits and was not completely allowed. Though there was a similar request to conduct a joint trial, the learned Judge had merely directed both the suits to be tried simultaneously, but separately. This order was passed in the year 2014. The respondents' suit has been filed wayback in the year 2007. The petitioners suffered that order and after a long slumber made another attempt with same prayers, which the trial court has rightly refused to consider.

13. Learned advocate Mr. Gangakhedkar, as far as the order rejecting the petitioners' request to recast the issues submits that it may be considered on its own merits.

14 The facts are not much in dispute at least to the extent of filing of the suits and the respective stands. The petitioners did make a request by moving an application (Exh.77), for clubbing and trying both the suits together. As can be seen from the contents of the application even it was tried to be pointed out that if the suits were to be tried separately it would consume time which can be saved. The learned Judge instead of considering to the entire request merely directed both the suits to be tried simultaneously. If this was the state of affairs, I find no perversity or illegality in the order passed by the learned trial Judge in refusing to consider the request once again. Indeed, going by the prayers made in the application (Exh.77) and the present application (Exh.127) on which the order under challenge is passed, there is no material evidence. The petitioners were aware that the request was for joint trial, but was precisely turned down by the trial court way back in the year 2014. They allowed that order to stand for a period of six years and then have made another attempt at the same end which has been turned down by the trial court. In my considered view, the order of the trial court refusing to hold a joint trial, in the peculiar facts and circumstances of the case cannot be said to be either perverse or illegal.

15. So far as the order refusing to frame the issues at the instance of the petitioners, a bare look at the issues sought to be added would clearly demonstrate that apart from the fact that those can be said to have been

implicitly covered by the extant issues regarding entitlement of the petitioners to have specific performance, *prima facie*, indirectly those require the respondents who are the defendants in the suit for specific performance to prove certain facts. It is for them to explore and prove the facts which make the direction for the specific performance, impossible. Whatever grounds they have raised in their written statement for opposing the specific performance, certainly it is for them to establish the facts. However, expecting them to prove these facts by framing specific issues is unnecessarily. Entitlement of petitioners to seek specific performance would depend upon proof of very many facts regarding each of which a separate issue need not be framed.

16. The parties so long they are alive to the stand of the rival, every fact asserted by one side and controverted by the other side need not be a part of separate issue. It is only the material averment which is relevant.

17. Though not in so many reasons, the learned Judge by the order under challenge in Writ Petition No.3517 of 2020 has rightly rejected the application, there is no illegality or perversity.

18. Both the writ petitions are dismissed. Rules are discharged.

19. Hearing of the suits is expedited.

(MANGESH S. PATIL, J.)