



123..

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6380 OF 2023

(Narayan s/o. Vitthalrao Kurhadkar and another...Vs.... Shri Gunaji s/o. Parbat
Karadbhajne and others)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. S.S.Sitani, counsel for petitioners.

Mr. R. Kadu, counsel for respondent No. 1.

Mr. M.Y. Wadodkar, counsel for respondent Nos. 2 & 3.

CORAM : AVINASH G. GHAROTE, J.

DATE : 14-12-2023

Heard learned counsel Mr. S.S.Sitani for the
petitioner.

2. The petition questions the order dated 18.9.2023, passed by the learned trial Court below Exh. 17 by which the application filed by the present petitioners/plaintiffs for impleadment of the Punjab National Bank ("PNB" for short, hereinafter) as party defendant No. 2 to the suit, has been dismissed.

3. Mr. Sitani learned counsel for petitioners submits that since the suit property was mortgaged with the PNB and it is the petitioners/plaintiffs, who have paid the amount of OTS, on account of which, the property has become free of charge, the PNB would be necessary party to the suit.

4. Mr. M.Y. Vadodkar for respondent Nos. 2 and 3 does not dispute, that the OTS amount in respect of the mortgage of the suit property has been paid by the petitioners on account of which, the charge created on the property has been satisfied. He however, submits that this by itself, cannot make the respondent Nos. 2 and 3 proper or necessary parties to the suit, and therefore, impugned order is correct.

5. It is a settled position of law that in a suit for specific performance, the parties to the suit are those who are parties to the agreement, and what is being required to be decided, is the enforcement of the agreement based upon the terms contained in it. The PNB/respondent Nos. 2 and 3 by no stretch of imagination can be said to be a party to the agreement of sale, specific performance of which is sought to be enforced, even if it was a mortgagee of the subject property.

6. In that light of the matter, I do not see any reasons to interfere in the impugned order. The petition is therefore, dismissed. No costs.

[AVINASH G. GHAROTE, J]