



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

907 WRIT PETITION NO. 9961 OF 2022

M/s Vyankateshwara Constructions Co. Jalgaon Through Partner Rahul
Panditrao Deshmukh And Another

VERSUS

Rachana Samit Shah And Others

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Advocate for the Petitioner : Mr. Hiwrekar S. D.

Advocate for Respondent No.1 : Mr. Jagiasi Dinesh S.

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CORAM : R. M. JOSHI, J.

Dated : July 02, 2024

PER COURT :-

1. Heard. By consent of both sides heard finally at the stage of admission.
2. Petitioners are intervenor in Special Civil Suit No.52/2017 filed by respondent No.1 against respondent No.2 for specific performance of contract. Petitioner filed application before the Trial Court to implead himself as defendant on the ground that there is agreement to sell executed by respondent No.1 herein on 04/01/2013 in his favour in respect of the suit property. It is also contended that on the said property loan has been obtained and the petitioner is a guarantor to the said loan transaction. It is his submission that defendants No.3 and 4 have subsequent to filing of suit applied for joining themselves as party and they were joined as party, and therefore, petitioners are also be joined as defendants in the suit.
3. Learned Counsel for the respondent No.1 supported the impugned order.
4. It is undisputed fact that a suit in question is for specific performance

of contract i.e. agreement executed by defendant No.1 in favour of plaintiff in the suit. The scope of suit therefore is limited to the extent on decision on the issue whether the plaintiff proves that he is entitled to specific performance of contract after proving his readiness and willingness to perform the part of the contract and other required condition as contemplated by the agreement in question. As far as present petitioners are concerned they are not party to the said agreement. They could be joined as party provided they have right, title or interest in the suit property. Admittedly, the claim of the petitioner does not go beyond the purported agreement to sell executed on 04/01/2013 by defendant No.1 in his favour. Needless to say that no right, title or interest is created in favour of the petitioners on the basis of such agreement to sell. Apart from this, as rightly observed by the learned Trial Court that the petitioners have not filed any suit for specific performance of contract within the period of limitation. Merely because petitioners are guarantor to the loan transaction in respect of the suit property, they do not become a necessary or proper party to the suit.

5. In view of above discussion, this Court find no reason to interfere in the impugned order as the learned Court has rightly rejected the application. Hence petition stands dismissed.

(R. M. JOSHI, J.)

vj gawade/-.