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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7724 OF 2023

Sambhaji Baburao Bhosale

.. Petitioner

Versus

Bhairu Ramchandra Dhanavde and Ors.

.. Respondents

-
- Mr. Chetan Gajanan Patil, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 01, 2024.

P.C.:

- 1.** Heard Mr. Patil, learned Advocate for the Petitioner.
- 2.** Present Writ Petition takes exception to the impugned order dated 16.06.2022 passed on Application below Exhibit “96” which is at Exhibit “D” - page No.36 of the Writ Petition allowing the Application filed by one Sagar Shrikant Karade his seeking impleadment in Special Civil Suit No.273 of 2012. Suit is filed by the Plaintiff against 12 Defendants seeking specific performance of contract dated 02.04.2009. Though copy of that contract is not appended to the Writ Petition, Mr. Patil informs the Court that Sagar Shrikant Karade is not a signatory nor executor to the Agreement dated 02.04.2009. Infact, according to the Petitioner, he is a third party having no nexus whatsoever in the Suit property. Application for impleadment is filed much belatedly by Sagar Shrikant Karade on 13.01.2022 i.e. 10 years after filing of the

Suit proceedings on the premise that he has a substantive right in the Suit property derived from his father. How the said right has been derived from his father is not explained nor stated in the Application which is at Exhibit "C" - page No.31 of the Writ Petition. If at all Sagar Shrikant Karade has any substantive right in the Suit property, he can exercise the same by filing an appropriate proceedings i.e. Civil Suit in the Civil Court and invoking any remedy that may be available to him in law. There is no case made out by the Applicant i.e. Sagar Shrikant Karade in his Application nor he is a party to the Agreement of which specific performance is sought.

3. The learned Trial Court has held that in a Suit for specific performance of the contract passing of the decree for specific performance of contract without enforcing the decree for possession in execution would be of no avail and in the event if before the Suit is decided by the learned Trial Court and if it is found that Defendants are not in possession of the Suit property and the Applicant is, then the very purpose of getting the decree in favour of the Plaintiff would be frustrated. Such approach of the learned Trial Court to allow impleadment of Sagar Shrikant Karade is *prima facie* on the face of record illegal and cannot be allowed by any Court of law. The issue in execution of the decree if passed cannot precede the decree. Decree is yet to be granted. It is not yet granted. Right of the Intervenor is not explained in his Application. His nexus and locus with respect to the

Suit property is not stated.

4. It is seen that on 27.06.2023, notice was issued to Respondent No.13 and there are 3 Reports made by the Registry with respect to issuance of notice through Court. All 3 Reports show that Respondent No.13 has been served i.e. service has been attempted on Respondent No.13 as per copy of postal track consignment report which shows that the door is locked and intimation has been served. On that ground, for the last almost one year, service report is shown to be awaited. This Court cannot await and protract the present Writ Petition any further.

5. Mr. Patil informs the Court that Affidavit of service of having effected private service on Respondent No.13 in the present Petition has been filed.

6. In the present Writ Petition, Suit is filed in the year 2012 and it needs some progress and finality. In that view of the matter, the impugned order dated 16.06.2022 cannot be sustained and stands quashed and set aside.

7. The learned Trial Court is directed that impleadment of Respondent No.13 as Defendant No.13 in the Suit proceedings shall be struck off from the record and file of Special Civil Suit No.273 of 2012. It is further directed that Special Civil Suit No.273 of 2012 shall be determined as expeditiously as possible and in any event within a

period of six months from today.

8. Needless to state that all contentions of the parties to the Suit are expressly kept open in the Suit for specific performance of contract between the parties.

9. It is clarified that parties shall not take any unnecessary adjournments and the Trial Court shall grant adjournment only if it is utmost necessary.

10. Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings.

11. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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