

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.2171 OF 2025**

Dhanlaxmi Nagari Sahakari
Patsanstha Ltd. Karad
through authorized representative/Manager
Rajiv Khaniya Kundap,
Age: 52 Yrs, Occp: Service,
R/o. 482, Morya Arcade, Shaniwar Peth,
Near Popatbhai Petrol Pump, Karad,
Tal. Karad, Dist. Satara. ..Petitioner

Versus

1. Sanjay Chandrakant Chavan,
Age: 52 Yrs, Occu: Builder,
R/o. Varad Residency Nagala Park E-Ward,
Kolhapur, Dist: Kolhapur.
2. Dhananjay Jayant Solunkhe,
Age: 52 Yrs, Occu: Business,
R/o. Shrijay Plot No.29,
Ideal Cooperative Housing Society,
Sahar Mala, Kolhapur, Dist: Kolhapur. ..Respondents.

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Mr. Kalpesh Uttam Patil, Advocate for Petitioner.
Mr. Nikhil N. Pawar, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

**RESERVED ON : 22nd SEPTEMBER, 2025.
PRONOUNCED ON : 15th OCTOBER, 2025.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The present petitioner impugns order dated 03.08.2024 passed below Exhibit-15 in Special Civil Case No.125/2024 by Civil Judge

Senior Division, Kolhapur, whereby application of petitioner seeking impleadment as party in Special Civil Suit No.125/2024 has been declined.

3. The respondent no.1 instituted Special Civil Suit No.125/2024 before Civil Judge Senior Division at Kolhapur seeking decree of specific performance of contract on the basis of agreement to sale dated 29.01.2019 executed by respondent no.2. It is contention of respondent no.1 that he has paid entire consideration amount to respondent no.2 in terms of agreement to sale dated 29.01.2019. Therefore, he is entitled for decree of specific performance of contract against respondent no.2.

4. The petitioner-Co-operative Credit Society filed application below Exhibit-15 under Order I Rule 10 of Code of Civil Procedure seeking impleadment as defendant in suit instituted by respondent no.1 on the ground that on 24.04.2019 petitioner sanctioned loan in favour of respondent no.2 and disbursed amount. According to petitioner, since respondent no.2 defaulted in repayment of loan, proceeding under Section 101 of Maharashtra Co-operative Societies Act, 1960 (for short 'MCS Act, 1960') was initiated. Eventually, on 13.06.2023 recovery certificate has been issued. Even action under Rule 107 has been initiated and suit property has been possessed by Society. Therefore, they are necessary party in suit. It is further pleaded that respondent nos.1 and 2 in collusion with each other have

filed suit and likely to obtain collusive decree with intention to frustrate right of petitioner-Society.

5. The aforesaid application was opposed by respondent no.1/plaintiff. The Trial Court after considering law laid down by Supreme Court in case of *Kasturi vs. Iyyamperumal and others*¹ held that in a suit for specific performance of contract, applicant, who is foreigner to contract cannot be impleaded as party. Eventually, rejected application. Hence, this Writ Petition.

6. Mr. Kalpesh Patil, learned Advocate appearing for petitioner submits that petitioner-Co-operative Credit Society advanced loan of Rs.10,50,00,000/- to defendant and his family members. In pursuance to default in repayment of loan, recovery proceedings under provisions of MCS Act, 1960 have been initiated and possession of property is delivered to Society. If respondents successfully obtains collusive decree, it would create hindrance in recovery proceeding and amount of Rs.4,54,85,495/- is subject matter of recovery as per certificate issued under Section 101 of MCS Act, 1960.

7. Per contra, Mr. Nikhil Pawar, learned Advocate appearing for respondents supports impugned order.

8. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that issue raised in

¹ AIR 2005 SC 2813.

this Writ Petition is no more *res integra*. The Supreme Court in case of ***Kasturi*** (supra) has considered all possible arguments, which can be advanced on behalf of intervenor in suit for specific performance of contract. In case of ***Kasturi*** (supra) Supreme Court observed in paragraph nos.7, 9, 10 and 11 as under:

“7. In our view, a bare reading of this provision namely, second part of Order 1 Rule 10 sub-rule (2) of the CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party.

9. We have carefully considered sub-sections (a) to (e) of Section 19 of the Act. From a careful examination of the aforesaid provisions of sub-sections (a) to (e) of the Specific Relief Act we are of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but they were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of section 19 of the Specific Relief Act.

10. That apart, from a plain reading of section 19 of the Act we are also of the view that this section is exhaustive on the question as to who are the parties against whom a contract for specific performance may be enforced.

11. As noted hereinafter, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the

guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in Tasker Vs. Small¹ made the following observations:

“It is not disputed that, generally, to a bill for a specific performance of a contract for sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a Court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as in law, the contract constitutes the right and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it.”
[Emphasis supplied]”

9. In light of aforesaid observations, if contentions of petitioner are considered, it can be observed that respondent no.1 is raising his claim for specific performance of contract based on agreement to sale dated 29.01.2019, whereby respondent no.2 agreed to sell suit property in his favour. The said agreement precedes date of disbursement of loan. The order dated 13.06.2023 passed by Recovery Officer shows that

there is no reference of mortgage of suit property with petitioner-Society prior to date of agreement to sale. The Recovery Certificate dated 15.02.2022 shows that petitioner-Society had disbursed loan on 31.07.2019 in favour of respondent no.2. In that view of matter, petitioner cannot be said to be necessary party in suit for specific performance of contract between respondent nos.1 and 2.

10. In case petitioner has any independent right in suit property and decree is passed in suit, petitioner has to exhaust independent remedy under law. The decree passed in suit would not bind petitioner or frustrate any such independent right. Therefore, petitioner would be at liberty to either obstruct execution of order to protect their possession by taking recourse to relevant provision of Code of Civil Procedure, if they are available to them or to file independent suit for declaration of their right against respondents.

11. In result, this Court do not find any infirmity or jurisdictional error in this impugned order. Hence, Writ Petition stands rejected.

12. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE