

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

WRIT PETITION NO.11129 OF 2022

JITENDRA CHAMPALAL KANKRIYA
VERSUS
MAHAVEER CIVIL ENGINEER AND SERVICES PVT. LTD.
THROUGH ITS DIRECTOR ASHOK VIJAYKUMAR KOTECHA

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Mr. G. S. Rane, Advocate for the Petitioner.
Mr. G. V. Wani, Advocate for Respondent.

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CORAM : SANDEEP V. MARNE, J.

DATED : 11th NOVEMBER, 2022.

PER COURT:-

1. By this petition the petitioner challenges the order dated 04.10.2022 passed by the 5th Joint Civil Judge, Senior Division, Jalgaon on application below Exhibit-344 in Special Civil Suit No.8/2015 whereby, the Trial Court while framing additional issue, has proceeded to delete original issue nos.1 and 2.

2. Mr. Rane, learned counsel appearing for the petitioner has serious objection to the deletion of original issue no.1, which reads as under:

<u>Issue No.1:-</u>	Whether the plaintiff proves that the defendant is in wrongful possession over the suit property?
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3. Mr. Rane, learned counsel would submit that the burden of proving wrongful possession over the suit property rests squarely on the plaintiff

and unless the plaintiff discharges that burden, the defendant need not prove his possession over the property in capacity as tenant.

4. In my opinion the Trial Court has already framed following additional issue:

<u>Issue No.2:-</u>	Whether the defendant proves that he is in possession of the suit properties as a tenant since year 2007?
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5. In my opinion aforesaid issue no.2 framed by the Trial Court would cover the position about the possession of the defendant over the suit property being lawful. There is no error committed by the Trial Court in deleting issue no.1.

6. The petition is devoid of merits and the same is dismissed without orders as to cost.

(SANDEEP V. MARNE)
JUDGE