



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

Writ Petition (WP) No. 5693 of 2023

Madhukar S/o Harichand Sawarbande

Versus

Surekha W/o Sanghpal Chichmalkar

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.G.Karmarkar, Advocate for the petitioner.

CORAM : ANIL S. KILOR, J.

DATED : 31st AUGUST, 2023.

The application for deletion of issue no.2 which relates to maintainability of the suit, on the point of res judicata, came to be rejected vide impugned order dated 14th July, 2023 below Exhibit 46 passed by the Joint Civil Judge, Senior Division, Bhandara, in Regular Civil Suit No. 116 of 2022, is under challenge in the present writ petition.

2. Nothing has been pointed out by the learned counsel for the petitioner that how the said issue is not relevant or how the framing of said issue will cause prejudice to the petitioner. The said issue goes to the root of the matter. It will decide the point of maintainability and therefore, even if the pleadings are

not made in the written statement, the Court can go into the said issue. Moreover, the plaintiff will get every opportunity to answer the said issue and to point out the suit is maintainable and principle of res judicata will not apply.

3. In that view of the matter, I do not find any error committed by the learned trial Court while passing the impugned order. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]