



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No.4966 OF 2025

(Rekha Nandkishor Sharma Vs. Manoj s/o. Bhikchand Agrawal)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. A.S. Dhore, Advocate for petitioner.

CORAM : ROHIT W. JOSHI, J.

DATE : 02nd SEPTEMBER, 2025.

1. Present petitioner is defendant in Special Civil Suit No.64/2011 pending on the file of the learned 3rd Civil Judge, Senior Division, Akola. The respondent has filed a suit for specific performance of contract with respect to an agricultural land. Vide order dated 29th March, 2022 passed in Writ Petition No.986/2022 which also arose out of the same civil suit, the learned trial Court was directed to frame issues with respect to the fact as to whether the plaintiff is an agriculturist within the meaning of Section 89 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 and refer the same for adjudication before the Agricultural lands Tribunal constituted under the said Act. It appears that pursuant to the said order the issue is decided by the competent Authority and it is held that the plaintiff is not an agriculturist.

2. In view of above, present petitioner, defendant in civil suit, filed an application for framing of a preliminary issue and dismissal of the suit on the ground that the plaintiff is not an agriculturist and, therefore, not entitled to decree for specific

performance of contract with respect to suit property i.e. agricultural land. The learned trial Court has rejected the said application vide order dated 10th July, 2025. The present petition is filed being aggrieved by the said order. The learned counsel for the petitioner is right in his submission that although Section 9A of the Civil Procedure Code which was introduced vide Civil Procedure Code Maharashtra Amendment Act of 1977 is repealed by the C.P.C. Maharashtra Amended Act of 2018, the preliminary issue could be framed in view of Order 14 Rule 2 of the C.P.C. However, although it is held that the respondent-plaintiff is not an agriculturist, yet the learned trial Court may consider granting a conditional decree for specific performance of contract inasmuch as a person who is not an agriculturist is also entitled to purchase agricultural land, subject however, by obtaining permission from the competent Authority under the Tenancy **Act**.

3. In view of above, civil suit could not have been dismissed by framing a preliminary issue.

4. In that view of the matter, no case is made out for interference, writ petition stands dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)