

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

CIVIL REVISION APPLICATION NO. 636 OF 2017

Mandar Villa Co-operative Housing Society Builder and Private Limited Through its Chairman Mr.Deelip Gaikawad & Ors.	...	Applicants
V/s.		
Imtiyaz s/o. Ismail Baig & Ors.	...	Respondents

AND

CIVIL REVISION APPLICATION NO. 638 OF 2017

Mandar Villa Co-operative Housing Society Builder and Private Limited Through its Chairman Mr.Deelip Gaikawad & Ors.	...	Applicants
V/s.		
Peer Karamali Shah Dargah Trust, Panvel Through its Chief Trustee Samiulla s/o. Anwar Patel & Ors.	...	Respondents

- Mr.Rafique Ahmed Shaikh for the Applicants.
- Mr.Anoop V. Patil for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th DECEMBER, 2017.

P.C. :

1] Heard learned counsel for the Applicants and Respondents.

2] By these Revision Applications, the Applicants are challenging the common order dated 25th October, 2017 passed by the Chairman, Maharashtra State, Waqf Tribunal, Aurangabad, thereby rejecting the applications filed by the Applicants; namely Exh.62 in Waqf Suit No.30 of 2017 and Application Exh.50 in Waqf Suit No.35 of 2017. The said applications were filed by the Applicants herein for framing of the preliminary issue about the jurisdiction of the Court to entertain the suit and for rejection of the plaint under Order 7 Rule 11 (d) of Civil Procedure Code (for short “C.P.C.”) on the ground that it is barred by limitation and *res-judicata*.

3] As per the order passed by this Court on 28th July, 2017 it was directed that the Tribunal should first hear and decide the applications filed under Section 9-A of C.P.C. and only thereafter take up the applications filed under Order 39 Rule-1 of C.P.C..

4] According to learned counsel for the Applicants, the Tribunal has however, vide its impugned order held that it was not necessary to frame the issue of preliminary jurisdiction under Section 9-A of C.P.C. and no grounds are made out rejection of the plaint under

Order-7 Rule-11-d of C.P.C.. According to learned counsel for the Applicants, this order of the Tribunal is therefore clearly in violation or in breach of the order passed by this Court.

5] However, as rightly submitted by learned counsel for the Respondents, the perusal of the impugned common order passed by the Tribunal reveals that the Tribunal has considered all the contentions raised by the Applicants relating to the suit being barred by any provision of the law as far as jurisdiction was considered. The Tribunal has relied upon the provisions of Section 83-1 of the Waqf Act, 1995 and held that it has jurisdiction to determine the dispute raised in both the suits and therefore on that count the suits are not barred by law.

6] As regards the issues relating to *res-judicata* and the suit being barred by limitation, the Tribunal has held that these issues are the mixed questions of fact and law; at the stage, the Applicants had not even filed written statement and therefore these issues which are mixed questions of facts and law cannot be decided and accordingly the Tribunal has held that from the averments in the plaint, it cannot be said that the suit is barred by law so as to reject the same under Order-7 Rule-11(d) of C.P.C..

7] The impugned common order passed by the Tribunal, therefore, cannot be called as illegal or unjust so as to warrant interference therein.

8] Needless to state that the issues relating to *res-judicata* and limitation are the mixed questions of law and facts and therefore when the Defendant has not even filed the written statement and not shown as to how the suit is barred by *res-judicata* and law of limitation , the Tribunal was not in a position to decide the same and thats exactly what the Tribunal has observed by stating that, at this stage there is no need to frame the preliminary issue on these aspects as and when the Applicants-Defendants file written statement and produce some material to show that the suit is apparently barred by law of limitation or barred by *res-judicata*, the Tribunal may consider the same. Therefore, on this count also there is no reason to warrant interference in the impugned order passed by this Court.

9] Both the Revision Applications stand dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]