

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

CIVIL REVISION APPLICATION NO. 221 OF 2017

SYED MUMTAZ SYED GAFOOR

VERSUS

THE MAHARASHTRA STATE BOARD OF WAQFS, THROUGH ITS CHIEF
EXECUTIVE OFFICER AND ANOTHER

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Advocate for the Petitioner : Shri Vakil Afzal Husain M..

Advocate for Respondent 2 : Shri Kazi S.S..

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th June, 2018

Per Court:

1 The Applicant, who is the original Plaintiff before the Waqf Tribunal in Waqf Suit No.12/2016, is aggrieved by the impugned order dated 17.11.2017, by which, the application Exhibit-68 seeking leave to amend the application for temporary injunction and the plaint, has been partly allowed.

2 I have heard the learned Advocates for the respective sides at length. Respondent No.1, though served, has not caused an appearance. Nevertheless, Respondent No.1 is a formal party.

3 The grievance of the Applicant is that it was on account of inadvertence and oversight that an important aspect that has now been mentioned in the proposed paragraph 18-A, was left out. The other

proposed amendments are consequential to paragraph 18-A. It is stated that factual details have been set out in the proposed paragraphs and the same would be necessary for the proper adjudication of the suit.

4 The learned Advocate for Respondent No.2 points out that the temporary injunction application filed by the Applicant has already been rejected by the Tribunal. Being aggrieved, he had moved this Court earlier in Civil Revision Application No.105/2016, which was rejected by the judgment dated 09.01.2017. Consequentially, the suit was expedited and directed to be decided on or before 31st December, 2017. It is informed that this Court has now extended the time for expeditious disposal of the suit.

5 The learned Advocate for Respondent No.2 submits, in the alternative, that if this Court is inclined to permit the Applicant to amend the plaint, heavy costs be imposed and the said amount be donated for a justifiable humane cause.

6 I find from the record that the application for temporary injunction having been rejected by the Tribunal and the earlier Civil Revision Application preferred by the Applicant having been dismissed by this Court, would disentitle the Applicant from seeking amendment to the application for temporary injunction. The suit is at the stage of recording of evidence as the issues have been framed. The amendment to the extent to which it has been allowed by the impugned order, has reversed the

stage to the filing of the additional written statement by the Respondents.

7 I am of the view that as the Tribunal has permitted the amendment for seeking declaration of hereditary sajjada nasheen and mutwalli, the proposed paragraph 18-A would become relevant for proper adjudication of the suit. Even otherwise, there is no dispute that the cause of action would not be altered if the application Exhibit-68 is allowed only to the extent of the suit.

8 Considering the above, this Civil Revision Application is partly allowed. In addition to the impugned order, the Applicant would be at liberty to introduce paragraph 18-A to the plaint and consequentially, the amendment as proposed in clauses 2(e) and (f) of Exhibit 68 to the plaint, is allowed. Amendment shall be carried out on or before 22.06.2018.

9 The Respondents would be at liberty to file their additional written statement on or before 06.07.2018. The Applicant shall deposit an amount of Rs.1000/- (Rupees One Thousand) as donation with the Dean, Government Medical College and Hospital (Ghati Hospital), Aurangabad on or before 22.06.2018 and shall produce the copy of receipt of such payment before the Waqf Tribunal. If such receipt or proof of deposit is not produced as per the above direction, the Waqf Tribunal would refuse leave to the Applicant to carryout the amendment.