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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.33 OF 2021

Mohammad Idris Shaikh Sardar Mujawar= **APPLICANT**
(Orig.Deft.No.2)

VERSUS

1) Shaikh Fakir Mohammad @
Fakhroddin s/o Nizamuddin Mujawar
and others = **RESPONDENT/S**
(Resp.No.1 is orig.
plaintiff and rest
are orig.Defts.)

Ms.Almas Abdul Qadar, Advocate for Applicant;

Mr.Mujtaba Gulam Mustafa, Advocate for Resp.No.1;

Mr.Shaikh Shafique AR Ahmed, Advocate for
Resp.Nos.2.1.1 to 2.1.5;

Mr.YB Pathan, Advocate for Resp.No.3.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 8th June , 2021.

PER COURT :-

1. Present Civil Revision Application, under Section 115 of Code of Civil Procedure, has been filed by original Defendant No.2 to challenge the order dated 23.3.2021 below Exhibit-5 in Waqf Suit No.38/2021 passed by the Maharashtra State Waqf Tribunal, Aurangabad, (herein after referred to as the Tribunal) whereby the said application filed by original plaintiff (present Respondent No.1) came

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to be allowed and the present applicant, his servants, agents or anybody claiming through him were restrained from causing interference and obstruction in the functions rendered by the plaintiff as Mujawar/Qadim/Mutawalli of Dargah Hazrat Peer Musa Quadri Rah., situated at Chalisgaon, District Jalgaon, during further extended period of one year, i.e. from 3rd March 2021 to 14th March, 2022.

2. Heard learned Advocates appearing for the respective parties.

3. It has been vehemently submitted on behalf of the revision applicant (original defendant No.2) that the impugned order passed by the Waqf Tribunal, is illegal and unnecessarily sympathetic towards the original plaintiff. It is not in dispute that the present plaintiff as well as defendant No.2 have the customary right to act and perform the duties as Mujawar/Qadim/Mutawalli of the said Dargah, however, as per the customs by rotation and it is performed by various families. It is also not in dispute that the plaintiff's turn

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was for the period commencing from 14th March, 2020 to 2nd March, 2021. However, he had filed an application before Respondent No.2 – Trust (Deft.No.1) on 25.12.2020, stating that due to lockdown and the pandemic situation, he could not perform the duties and his period be extended by eight months. That application came to be rejected and, therefore, he filed the Waqf Suit, in which he had prayed for extension of time and restrain the present revision applicant from interfering with his duties. There was no genuine reason given by the plaintiff to do so. The Tribunal has also not considered it in its proper perspective. The Tribunal could not have only considered the plaintiff's point of view and come to wrong conclusion that no prejudice would be caused to the present applicant, the said order deserves to be set aside.

4. It will not be out of place to mention here that present Respondent No.2 (original Defendant No.1) is supporting the present applicant (original Defendant No.2). The Trust has clearly stated that the pandemic situation has nothing to

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do with the right or duty to be performed by the plaintiff and the said period cannot be extended.

5. Defendant No.2 had filed say to Exhibit-5 and raised an objection, stating that the contents about authorization of a person for a limited period cannot be entertained in such a way. In fact, there is no prima facie case shown by the plaintiff nor there was a question of balance of convenience in his favour, as he has already enjoyed one year tenure and he is residing within the premises of the Dargah. He has done the act of selling the articles even during the pandemic situation and earned huge amount.

6. Learned Advocate appearing for Respondent No.1 (original plaintiff) vehemently submitted that the Tribunal has passed a legal order, giving natural justice. The plaintiff was dependent on the offerings those were offered at the Dargah by the devotees or followers. However, due to the pandemic situation, when the Government has closed all the religious places, he could not perform his duties, could not visit the Dargah and could not

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get any earning during the said period. No prejudice was going to be caused to original Defendant No.2 as his turn would start after the extended period and it would be for one year. He can earn thereafter. The Tribunal has rightly declared the year 2020 as "Zero year". The plaintiff has right to enjoy the post of Mujawarship. It is not only his right but also pious services that he is supposed to render to the Dargah. He has paid salaries of Imam, Mozzam, Cleaner. He has also paid electricity charges. All those documents have been filed before the Tribunal and, therefore, the Tribunal has rightly extended the period.

7. Taking into consideration the above said admitted points, we need not deliberate on them, but only a note will have to be taken to that extent. Important point to be noted is that the order passed by the Tribunal does not reflect that any such document is there, showing that Mujawar would be entitled to get the offerings that would be offered by the followers/devotees. Further, it appears that defendant No.1 is a registered Trust.

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Even from the Trust documents or whatever entries are with the Waqf Board, the custom would have been reflected and note of that has not been taken in the impugned order. No doubt, everybody has suffered due to the pandemic situation, but when it comes to the rights and the Tribunal exercising its quasi-judicial powers, it should see as to whether there is any support for the said right and whether such order can be passed. Both the parties say that it is a custom that is followed mainly and the Mujawarship would be enjoyed by those families as per the customs for a period of one year. Since last so many years, this custom is being followed. Then question arises as to whether due to such pandemic situation, the Tribunal had any right to extend the said period ? We must take a note of the fact that sometimes there would be less offerings even in any given year. In such situation, whether that Mujawar will have a right to ask for extension of period till his earnings come to equivalent to the earlier or an average earnings by a Mujawar. Now also the religious places are not opened. Under such circumstance, the Tribunal could not have predicted that during the extended period the

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plaintiff would earn. First of all, when the contention is made that the plaintiff is entitled to get the offerings, then it should have been supported by proper documentation. Another documentation would have in support of the fact that the Mujawar, whose period is there, should pay the salaries of Imam, Mozzam, Cleaner and electricity charges. Whether these persons are not the employees of the Trust, was also a question, which ought to have been addressed by the Tribunal. Merely because the plaintiff has come with a case that he has paid certain amounts to these persons, whether he can get extension of period.

8. Further, the fact is required to be noted is that whether authority to extend the period vests either with the Trust or the Tribunal. The plaintiff had filed the application to the Trust, firstly to extend the period and when that application came to be rejected by the Trust by holding a meeting on 25.12.2020, he has filed the Waqf Suit. Whether that decision taken by the Trust is subject to challenge before the Waqf Tribunal is also a question. When all these

questions were involved, without answering them or making an endeavour to discuss them, the Tribunal has straightway passed the impugned order, restraining the defendant No.2 from obstructing the enjoyment of the plaintiff during the extended period.

9. Another aspect to be noted is that the Tribunal has given the relief at the interim stage, which is in fact prayed in the main suit. Whether this can be allowed at the interim stage and that too without going into all those aspects is a question. There appears to be no proper application of mind by the Tribunal. Definitely, that application was filed under Order 39 Rule 1 and 2 of CPC for temporary injunction, for which legal right should have been shown. The Tribunal was not expected to take the said decision only on the basis of sympathy. The defendant Nos. 1 and 2 were not at all responsible for the situation. They have not done any such act, which can be said to be prejudicial. Refusal to extend the period by defendant No.1 cannot be said to be prejudicial only to the plaintiff because defendant No.1 was

supposed to take into consideration the rights of defendant No.2 as well as the customs. The defendant No.2 cannot be said to be interested in dispossessing the plaintiff from the office of Mujawar for the simple reason that the period was not extended by the defendant No.1 and it was the turn of the defendant No.2 and he would be certainly interested in taking charge of his turn. The Tribunal has totally erred in stating that the year has to be treated as "Zero year". If this analogy is used everywhere then it would create chaos. Every Mutawalli of every Dargah; every priest/Poojari/Gurav of every temple or any such person, who is connected with religious activities, either in a temple or any such place of worship, would come with same prayer. The plaintiff has not been singled out in this situation and, therefore, the Tribunal was not expected to approach the case with a view only the plaintiff has suffered a lot due to the pandemic situation. When the entire approach of the Tribunal is wrong and erroneous, the impugned order cannot be allowed to sustain. There was no question of irreparable loss for the plaintiff nor balance of convenience

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lies in his favour. Hence, the impugned order deserves to be set aside. Accordingly, following order is passed, -

ORDER

i. The Civil Revision Application stands allowed;

ii. The impugned order dated 23.3.2021 below Exhibit-5 in Waqf Suit No.38/2021 passed by the Maharashtra State Waqf Tribunal, Aurangabad, is hereby quashed and set aside. The said Application at Exhibit-5 stands rejected.

iii. The parties to bear their own costs.

(SMT. VIBHA KANKANWADI)
JUDGE

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