

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

CIVIL REVISION APPLICATION NO.165 OF 2018

SUNIL PANDITRAO DAUND AND OTHER

VERSUS

SAJID NAZIRUDDIN ZAHIRODDIN AND OTHER

...

Mr. M. S. Kulkarni, Advocate for the Applicants.

Mr. Mujtaba Gulam Mustafa, Advocate for the Respondent
Nos. 1 to 3.

...

CORAM : R.M. JOSHI, J

DATE : MARCH 15, 2023

PER COURT :

1. This application is filed taking exception to order dated 27.08.2018 passed below Exhibit – 46 in Waqf Suit No. 92/2014.

2. The defendant in the said suit preferred an Application Exhibit 46 under Order VII, Rule 11 of Code of Civil Procedure for rejection of the plaint. Amongst other contentions, one of the contention is that the suit property is admittedly not included in the list of Waqf and as it is not a Waqf property, the Tribunal has no jurisdiction to entertain the suit.

3. Perusal of the impugned order indicates that the learned Tribunal has not dealt with the all issues raised before it.

4. It is pertinent to note that in spite of specific objection is raised with regard to the bar of the suit by provisions of law, the said aspect has not been dealt with by learned Tribunal while passing impugned order. The submissions made by the respective parties on the merit of said issue cannot be entertained by this Court in this Application for the first time. In the result, the only option remains for this Court to set aside the order in question and remit back the application to the Tribunal for fresh consideration.

5. Hence, the following order :

O R D E R

- a) Application is allowed.
- b) The impugned order passed below Exhibit-46 in Waqf Suit No. 92/2014 is hereby set aside.
- c) Learned Tribunal to decide Exhibit-46 afresh as expeditiously as possible and in any case, within a period of six months.

(R.M. JOSHI, J.)