



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.189 OF 2024

Shaikh Saleem Shaikh Kasam Patel Wahegaonkar ...Applicant

Versus

Maharashtra State Board of Waqfs,
Through Its Chief Executive Officer & Ors. ...Respondents

Adv. Saeed S. Shaikh for Applicant.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 16th DECEMBER 2024.

P.C.:-

1. Original Defendant No.1 in Waqf Suit No.172 of 2021 takes exception to common order dated 29th August 2024 passed by Waqf Tribunal below Exhibits 18 and 23. Defendant No.1 moved two applications below Exhibits 18 and 19 contending that previously Waqf Suit No.88 of 2011 was filed by Applicant/Defendant No.1. The said suit has been decreed. The order passed therein has attained finality. The issues raised in the present suit are already answered in previous suit, therefore, present suit is barred in view of Section 11 of the Code of Civil Procedure, 1908. However, learned Waqf Tribunal by order dated 29th August 2024 rejected both the applications.

2. Mr. Saeed Shaikh, learned Advocate appearing for the Applicant submits that previous suit has been decided by Waqf Tribunal

was vide order dated 13th October 2016. One of the Defendants in that suit had assailed said decree in Civil Revision Application (Stamp) No.17225 of 2021 before this Court. However, the said civil revision application is dismissed for non-removal of office objections by order of learned Registrar Judicial dated 30th September 2021. As such, decree attained finality. The issues involved in earlier suit cannot be reopened by filing subsequent suit. According to him, plaint is liable to be rejected under Order VII Rule 11(d), as barred by law.

3. Having considered submissions advanced, it can be observed that the principal objection sought to be raised on behalf of Defendants is that suit is barred by principal of resjudicata. Learned Waqf Tribunal relying upon the judgment of Hon'ble Supreme Court in case of ***Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors.*** in Civil Appeal No.4665 of 2021 decided on 9th August 2021 observed that the issue of resjudicata requires consideration of the pleading issues and decision in previous suit. Therefore, plea for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 is not open on that ground.

4. Apparently, except plea of bar of resjudicata, no other ground is raised in the application seeking rejection of plaint. The view taken by learned Waqf Tribunal appears to be inconsonance with law. No

jurisdictional error is brought on the notice of this Court.
Consequently, there is no merit in civil revision application.

5. Civil Revision Application stands dismissed.

(S. G. CHAPALGAONKAR, J.)