

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

945 CIVIL REVISION APPLICATION NO. 185 OF 2023

SANJAY SHESHRAO SARVADE AND OTHERS
VERSUS
ZAKIYODDIN AFZALUDDIN AND ANOTHER

...
Advocate for the Applicants : Mr. Vivek Bhavthankar
Advocate for Respondent No.1 : Mr. J.A.H. Deshmukh
...

CORAM : SANDIPKUMAR C. MORE, J.
DATED : August 08, 2024

ORDER:-

1. Heard rival submissions at admission stage.
2. The Civil Revision Application is filed for challenging the order dated 08.08.2023 whereby the learned Chairman, Waqf Tribunal, Aurangabad has held that the issue of jurisdiction raised under application at Exh.34 filed by the present applicants can be decided along with the other issues which are already framed in Waqf Suit No. 82 of 2013.
3. The applicants in the aforesaid application had claimed that the Civil Court in Regular Civil Suit No. 186 of 1975 has already declared that the present suit property in dispute is not a Wakf Property. The learned counsel for the applicants submits that the appeal against the decision in the aforesaid

civil suit has already been dismissed and the Second Appeal also got abated.

4. He pointed out that as per Section 7 of the Waqf Act, 1995, it is provided in clause (b) that if any question in respect of the property whether property is of Waqf or not, is decided by the Civil Court in suit instituted before commencement, the Tribunal shall not re-open such question. Thus, he submitted that the competent Civil Court before commencement of this Act has already decided the nature of the suit property being not a Waqf property on 30.06.1983.

5. It is significant note that the learned Tribunal has not rejected the application of the present applicants, but only said that the said objection to the jurisdiction will be decided along with other issues. Since under Order XIV Rule 2 of the Code of Civil Procedure the Court has to pronounce judgment on all the issues, however, a liberty has been given to the Courts under sub-rule 2 of Rule 2 to decide or dispose the suit on any issue of law only if it relates to the jurisdiction of the Court.

6. In the instant case, the applicants are contending that once the Civil Court has declared the suit property not being the property of Waqf, then the learned Tribunal will have no

jurisdiction to re-open any issue for declaring the same as Waqf Property. In the light of aforesaid provision, the impugned order is hereby set aside and the learned Tribunal is directed to decide Issue No.6 as per the provision under Order XIV Rule 2 sub-rule 2 of C.P.C. ahead of the other issues.

7. Accordingly, the Civil Revision Application stands disposed of.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni