

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9007 OF 2024

Sikandar Parack and Ors.

}*Petitioners*

(*Orig. Defendants*)

: *Versus* :

M/s. Burj Realty and anr.

}*Respondents*

(*No.1/Orig. Plaintiff*)

Mr. Anoop Sharma, *for the Petitioners.*

Mr. Mutahhar Khan *a/w. Ms. Kavisha Shah i/by. India Law Alliance, for
Respondent No.1.*

Mr. B.B. Dahiphale, *AGP for State- Respondent No.2.*

CORAM : SANDEEP V. MARNE, J.

Dated : 10 July 2024.

P.C. :

1) The challenge in the present petition is to the order dated 28 March 2024 passed by the Small Causes Court rejecting the application at Exhibit-27 which was filed by the Petitioners/Defendants seeking stay of the suit till conclusion of proceedings before the Wakf Tribunal.

2) It appears that the Petitioners had earlier filed an application for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure on the ground of bar of jurisdiction under Section 85 of the Wakf Act, 1995. The application has been rejected by the Small Causes Court by order dated

20 February 2023. At that time, the Appeal filed by the Petitioners before the Waqf Tribunal challenging the order dated 6 February 2019 passed by the Waqf Board was pending. Now it appears that in the said Appeal, the proceedings are remanded for fresh decision by the Waqf Board by order dated 15 May 2023. On the basis of this changed circumstance, Petitioners moved application at Exhibit-27 seeking the suit to be kept in abeyance till conclusion of the proceedings before the Waqf Board. In my view, in their Written Statement, the Defendants have already raised the plea of jurisdiction. In the event, the Waqf Board issues a declaration that the property in question is a Waqf property, the Defendants would be in a position to press their defence of jurisdiction to get the suit dismissed. In that view of the matter, the proceedings of the suit cannot be stayed merely on the basis of remand order passed by the Maharashtra State Wakf Tribunal. The Small Causes Court has rightly rejected the application of the impugned order. No interference is warranted in the impugned order. The Writ Petition is **rejected**.

NEETA
SHAILESH
SAWANT

Digitally
signed by
NEETA
SHAILESH
SAWANT
Date:
2024.07.11
11:16:42
+0530

[SANDEEP V. MARNE, J.]