



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

**CIVIL REVISION APPLICATION NO.135 OF 2025**

1. Irshan Nawab Khan,  
Age : 30 Years,  
Occ. Business and Agri.,  
r/o. Post Chinchapur,  
Tq. Ashti, Dist. Beed
2. Shaikh Razzak Hussain,  
Age : 60 Years,  
Occ. Business and Agri.,  
r/o. Post Chinchapur,  
Tq. Ashti, Dist. Beed
3. Shaikh Rehman @ Rahim Hussain,  
Age : 59 Years,  
Occ. Business and Agri.,  
r/o. Post Chinchapur,  
Tq. Ashti, Dist. Beed
4. Aslam Sherkhan Pathan,  
Age : 40 Years,  
Occ. Business and Agri.,  
r/o. Post Chinchapur,  
Tq. Ashti, Dist. Beed

..Applicants

Vs.

Maharashtra State Board of Waqfs,  
Aurangabad, through its  
Chief Executive Officer,  
Panchakki, Aurangabad

..Respondent

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Mr.Anand P. Bhandari, Advocate for applicants  
Mr.Y.B.Pathan, Advocate for respondent  
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**CORAM : AJIT B. KADETHANKAR, J.**  
**DATE : OCTOBER 09, 2025**

**ORDER :-**

The applicants instituted a Waqf Suit before learned Waqf Tribunal, Aurangabad, for declaration that the suit properties mentioned in Clause A of the claim are private properties of the plaintiffs. The suit, upon institution, was initially, given a *Kaccha* number (stamp number) No.9 of 2025. It further appears that the Registry of learned Tribunal, while verifying the plaint filed by the applicants, recorded some office objections. The Assistant Superintendent of the Tribunal found some non-compliance and raised two objections, which are as follows:-

- (i) There is no specific averments as to when the cause of action first accrued.
- (ii) No compliance of notice prescribed under Section 89 of the Waqf Act, 1995.

2. In view of the objections, the matter was referred to learned Chairman of the Tribunal, who, vide his order dated 07.02.2025, held *inter alia* that the suit was barred by limitation referring to the cause of action to file the suit. Another finding was recorded that the notice under Section 89 of the Waqf Act was a

condition precedent to lodge the suit and on account of failure of the applicants to issue such notice, the suit was barred. With such findings, learned Chairman exercised the powers under Order VII Rule 11 of the Code of Civil Procedure and rejected the plaint. As such, as against rejection of the plaint, the applicants has lodged the present Civil Revision Application.

3. Heard Mr.Bhandari, learned counsel for the applicants and Mr.Pathan, learned counsel for the respondent (sole) – Waqf Board (herein after referred to as “Board”).

4. It is trite law that an issue of limitation is a mixed question of law and facts. Such issue cannot be dealt with by the court summarily that too, under Order VII Rule 11 of the Code. It is true that the suit may necessarily involve an issue of limitation but the law requires that, since it is a mixed question of law and facts, the parties must be given an opportunity to lead proper evidence to convince the court that the proceedings is within limitation or is not within limitation, as the case may be. In the instant case, learned Tribunal, after discussing a vast, has arrived at the conclusion that the plaint was not filed within the limitation.

5. Mr.Bhandari, learned counsel for the applicants, would submit that on one hand, learned Tribunal has observed that the suit is barred by limitation as the cause of action to file the suit has arisen much before filing of the suit; whereas, on the other hand, learned Tribunal observed that the plaintiffs have not made out a cause of action to file the suit. He would submit that it is the only point in which power under Order VII Rule 11 of the Code has to be exercised. He would submit that the plaintiffs have narrated true facts of their case and have disclosed such cause of action, which brought the plaint within limitation. May it be.

6. In the light of another issue in the matter, i.e. observation of learned Tribunal that the suit is barred under the Waqf Act itself since the notice under Section 89 of the Waqf Act was not issued by the applicants, Mr.Bhandari, learned counsel, would submit that such issue becomes a predominant objection to the plaint and if learned Tribunal has rejected the suit on the point of suit being barred by any provision of law, learned Tribunal ought not to have rendered finding on the other aspects of the matter, i.e. cause of action as well as limitation.

7. Mr.Pathan, learned counsel for the respondent – Board, although supports the findings rendered by learned Tribunal, however, fairly submits that if the plaintiffs propose to file a fresh proceedings by undertaking exercise under Section 89 of the Waqf Act, the issues of cause of action as well as limitation can be kept open for both the parties to contest on merit.

8. In my considered view, although there are certain contingencies given in Order VII Rule 11 of the Code, which empower the court to reject the plaint in the given circumstances and if the court is of the opinion that the suit itself is barred by any provision of law, then in the case like one which is in hand, the Plaintiff/Petitioner ought to have been given sufficient opportunity to defend the objection, instead of deciding the limitation issue while the objection was raised as Office Objection by the Registry of the learned Tribunal.

9. Mr.Bhandari, learned counsel for the applicants, would submit that he may be permitted to file a fresh suit, which would be filed in compliance of Section 89 of the Waqf Act and the issues of cause of action as well as limitation may be kept open to be canvassed to the satisfaction of learned Tribunal. Mr.Pathan, learned

counsel for the respondent, in all fairness, concedes to this. However, as recorded above, he submits that the respondent be given full opportunity to oppose the plaint on the point of cause of action as well as limitation.

10. In view of the above, the Civil Revision Application stands disposed of in terms of the following order:-

(i) The order dated 07.02.2025, passed by learned Chairman, Maharashtra State Waqf Tribunal/District Judge, Aurangabad, below application (Exh.1) in Waqf Kachha No.9 of 2025, is quashed and set aside.

(ii) The applicants are at liberty to institute a fresh suit in accordance with the provisions of law.

(iii) The issues of cause of action as well as limitation are kept open to be canvassed by the respective parties on its own merit, with liberty to lead the evidence appropriately.

(iv) It is clarified that the findings rendered by learned Tribunal in the order impugned as also any observation made in the present order, shall not come in the way of either party and learned Tribunal shall decide those findings afresh on its own merit and its own wisdom.

(v) Mr.Bhandari, learned counsel for the applicants, on instructions, undertakes that the applicants will not change the nature, structure and the contents of the plaint, except the exercise of issuance of notice under Section 89 of the Waqf Act.

**[AJIT B. KADETHANKAR, J.]**

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