



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1807 OF 2025

Shirin Munir Merchant]
Age: 63 years, Occ.- Housewife,]
Resi. Add. - Room No. 12-C,]
Aminabad, Aga Hall Estate,]
Nesbit Road, Mumbai - 400010] **...Appellant**

Versus

- 1) Prince Aly Khan Hospital,]
Aga Hall, Nesbit Road, Mazagaon, Mumbai-]
400 010.]
]]
- 2) Amin Manekia, Trustee]
- 3) Amir Ali Kotadia, Trustee]
- 4) Mrs. Almas Manekia, Trustee,]
All adults, Indian Inhabitant,]
Having their office address at,]
Prince Aly Khan Hospital,]
Aga Hall, Nesbit Road,]
Mazagaon, Mumbai-400 010]
- 5) The Chief Officer, M. B.R. & R Board, (MHADA]
Unit)]
Griha Nirman Bhavan, Kalanagar, Bandra]
(East), Mumbai-400 051.]
- 6) The Executive Engineer, E-1 Division, M.B. R.]
& R Board,]
Ground Floor, bldg. No. 34,]
Abhuday Nagar, Kala Chowki,]
Mumbai- 400 033.]
- 7) Maharashtra State Board of Wakf,]
through its C.E.O.]
Office at Panchakki, Aurangabad.] **...Respondents**

*Mr. S. M. Gorwadkar a/w Ms. Renuka Gorwadkar, Mr. Swaraj Savant, Mr. Varun Thanawala, Mr. Soham Lande i/b Mr. Yusuf Baugwala, for the Appellant.
Mr. Yusuf Mucchala a/w Mr. Sagheer Khan, Mr. Aqil Khan, Ms. Afsha Khan, Ms. Fatima Rumani i/b Judicare Law Associates, for the Respondent Nos. 1 to 4.*

CORAM : SHARMILA U. DESHMUKH

RESERVED ON : January 12th, 2026

PRONOUNCED ON : February 03rd, 2026

JUDGMENT:

1. Heard.
2. **Admit.** With consent taken up for final disposal.
3. The present Appeal is at the instance of the original Plaintiff in Waqf Suit No 175 of 2019 challenging the order dated 17th January, 2025 rejecting the Appellant's application for amendment of the plaint. The parties are referred to by their status before the Waqf Tribunal.
4. Waqf Suit No. 175 of 2019 was filed seeking a declaration *inter alia* that the No Objection Certificates (for short '**NOCs**') issued by MHADA authorities to Defendant No. 1 are illegal, null and void ab initio and not binding on the waqf institution and for quashing and setting aside the same. The plaint came to be amended on 8th April, 2022 and further relief of status quo on the trust properties and restraint order against Defendant No 1 was sought.
5. The Defendant Nos 1 to 3 filed their written statement raising an objection to the jurisdiction of the waqf tribunal disputing the Defendant No. 1's status as waqf or that its properties are waqf

properties. It was contended that the suit has been filed on erroneous assumption that the property of Defendant No.1 and/or Defendant No. 1 itself is shown in the list of auqaf dated 5th May, 2005, whereas the list was withdrawn by the Waqf Board by its notification dated 23rd February, 2008. It was stated that Defendant No. 1 is a trust registered under the provisions of Maharashtra Public Trust Act, 1950 and is not a waqf as per Section 3 of the Waqf Act, 1955. The Defendant No. 1 is registered with Charity Commissioner and has never been registered with the Waqf Board.

6. On 23rd October, 2024, an application for amendment below Exhibit 90 was filed by the Plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) proposing incorporating of additional relief of declaration that the Defendant No 1's properties are waqf properties and for consequential amendments, which was opposed by the Defendant No 1. By the impugned order dated 17th January, 2025, the Tribunal rejected the amendment application leading to the present Appeal.

7. Mr. Gorwadkar, learned senior advocate appearing for the Appellant would submit that the amendment was necessitated by reason of subsequent development, which was the order of Hon'ble Apex Court giving rise to cause of action to seek declaration that the Defendant No 1's properties are waqf properties. Pointing out to the

pleadings in the plaint, he submits that there are sufficient assertions in the plaint laying the foundation for seeking the additional relief of declaration of status of Defendant No 1 as waqf. He submits that the Defendant No 1 had approached the Bombay High Court challenging the constitution of State Board of Waqf and had also preferred Waqf suit seeking deletion of the Defendant No 1 from the list of waqfs dated 5th May, 2005. He submits that in those proceedings, the Bombay High Court directed the Survey Commissioner to take into consideration the bifurcation list and other list in existence at the time of conducting survey proceedings, which order was challenged by State Board of Waqf before the Hon'ble Apex Court to which present Defendant No 1 was party. He submits that the Hon'ble Apex Court opened a window for the Respondents such as Defendant No 1 whose case had been accepted by the Bifurcation Committee and the list of waqfs dated 13th November, 2003 and 30th December, 2004 were set aside and they were directed to approach Defendant No. 7-Waqf Board for determination of their status as per provisions of Section 5 of the Waqf Act, 1995. He submits that the Defendant No 1 did not approach the committee within the time frame and Defendant No 1 was transferred to the waqf board, and hence, the proposed amendment.

8. He submits that the Tribunal rejecting the application for amendment firstly by going into the merits of the matter to come to a

conclusion that the Defendant No. 1 does not come under the purview of the order of the Hon'ble Apex Court and secondly on the ground of limitation. He submits that in the case of **Rajesh Kumar Aggarwal and Others vs K. K. Modi and Others**¹ the Hon'ble Apex Court has held that while considering the application for amendment, the Court should not go into the correctness or falsity of the case of amendment and should not record a finding on the merits of the amendment.

9. He submits that in so far the other ground of limitation is concerned, the position has been settled by the decision of Hon'ble Apex Court in **Life Insurance Corporation of India vs Sanjeev Builders Private Limited And Another**². He submits that the proposed amendment is necessary for effective adjudication of the dispute and as held by the Hon'ble Apex Court, delay cannot be a ground for rejection and where the aspect of delay is arguable, the issue of limitation can be framed separately for decision. He submits that the Tribunal has read the findings of the Hon'ble Apex Court in the said decision in isolation and has rejected the amendment on the ground of the amendment being time barred claim. He submits that the Respondent has not raised the issue of jurisdiction and there is bare denial to its status as waqf in the written statement.

10. *Per contra*, Mr. Muucchala, learned senior advocate

1 AIR 2006 SC 1647

2 (2022) 16 SCC 1

appearing for Respondent No 1 would submit that the amendment sought a declaration as regards the status of the Defendant No. 1, which amendment was time barred by virtue of which valuable right had accrued by lapse of time. He would further submit that the proposed amendment changes the nature of the suit from challenging the NOCs granted for re-development into a suit seeking declaration of status. He would further submit that the application itself is actuated by malafide, and therefore, ought not to be allowed. He submits that there is no basis in the plaint for pleading that the Defendant No. 1 is Waqf which contention was denied firstly at the stage of filing reply to Exhibit 5 application for injunction and subsequently in the written statement. He submits that the decision of the Hon'ble Apex Court does not give rise to fresh cause of action as the Hon'ble Apex Court has restored the list of waqf dated 13th November, 2003, wherein the Defendants name is admittedly not included. He submits that by the proposed amendment, a time barred relief is being sought which is not permissible. He submits that none of the subsisting list declares the Defendant No. 1 as waqf, and therefore, there is no basis for the proposed amendment.

11. He submits that even by excluding the period of Covid 19 pandemic, the proposed amendment is barred by limitation. He submits that by refusing amendment, the Court has granted discretionary relief, which ought not to be interfered with as no perversity is demonstrated.

He submits that the decision of **Life Insurance Corporation vs Sanjeev Builders Private Limited and Others (supra)** specifically rules out a time barred claim being introduced by way of proposed amendment. He would submit that pursuant to the NOCs granted, the construction has already been put up. In support, he relies upon the following decisions:-

i) **Maulvi Muhammad Fahimal Haq vs Jagat Ballav**

Ghosh³

ii) **Krishnaji Anajee Bhute vs Dhandajee And**

Others⁴

12. The facts of the case would give rise the following points for determination:

(i) whether the proposed amendments introduces a new cause of action or changes the nature of the suit.

(ii) whether the proposed amendments cannot be permitted as it seeks to introduce a time barred claim.

AS TO POINT NO. (i) :

13. The plaint as initially filed challenged the NOCs issued by MHADA for re-development of the Defendant No 1's properties. The plaint proceeds on the basis that the Defendant No 1 is a waqf and its

3 1922 SCC Onl Pat 205

4 AIR 1930 Bom 61

properties are waqf properties. In paragraph 13 of the plaint, it is pleaded that the Defendants had approached the Charity Commissioner for seeking sanction for re-development, which was without jurisdiction as the trust registration done under B series had been transferred to waqf board pursuant to government notification. In paragraph 16, it is pleaded that the Defendant No 1 is declared as waqf vide notification dated 5th May, 2005. In paragraph 19, it is pleaded that Defendant Nos 2 to 4 do not have any authority to develop the waqf property as per interim order of Hon'ble Apex Court dated 11th May, 2012. In paragraph 20 of the plaint, it is pleaded that the NOC issued by MHADA is against the provisions of Waqf Act, 1955.

14. A holistic reading of the plaint would indicate sufficient assertions as regards the status of the Defendant No 1 as waqf. Indeed it is the very basis for the challenge to the NOCs issued by MHADA. Armed with the case of the Defendant No 1 being a waqf, the suit was filed before the waqf tribunal. This specific case of the Plaintiff has been denied in the written statement raising a preliminary objection to the very jurisdiction of the Tribunal. The contention is that the suit has been filed on erroneous assumption that the property of Defendant No 1 or Defendant No 1 itself is shown in the list of waqfs dated 5th May, 2005. The rival pleadings on record gave rise to material proposition of fact and the denial of its status as waqf would require framing of

necessary issues as regards the jurisdiction of the Tribunal which would entail an inquiry into the status of the Defendant No 1 as waqf. Even though the suit was filed challenging the NOC's issued by MHADA, the Tribunal would be required to go into the incidental and ancillary question of the status of the Defendant No 1 irrespective of whether any relief of declaration of Defendant No 1 as waqf was sought or not. The proposed amendment though pleaded on the subsequent cause of action of order of Hon'ble Apex Court seeks to incorporate an additional relief of declaration of the status of Defendant No 1, which even otherwise was required to be gone into for proper adjudication of the controversy in dispute. The proposed amendments did not introduce any fresh cause of action and did not change the character of the suit. The Defendant No 1 by reason of the amendment did not have to meet any new claim. Hence, Point No (i) is answered accordingly.

AS TO POINT NO (ii):

15. The Plaintiff's application for amendment is filed in the year 2024 based on the cause of action being the subsequent order of the Hon'ble Apex Court. The schedule of amendments seeks to incorporate the pleadings about the litigation instituted by the Defendant No 1 in the Bombay High Court, the Waqf suit of the year 2007, the order of Hon'ble Apex Court and the resultant consequence of being transferred to the waqf board by not approaching the committee within the

prescribed time limit. The contention that due to failure to approach the committee within the time frame fixed by the Hon'ble Apex Court has resulted in Defendant No 1 being transferred to waqf board is an issue of fact to be decided in trial.

16. The Tribunal ventured into the merits of the amendment to arrive at a finding that the Defendant No 1 is neither in the list of auqaf dated 13th November, 2003 which relates to Bombay region nor in the list of auqaf dated 30th December, 2004. It holds that the list of auqaf dated 5th May, 2005 has already been withdrawn in which the name of Defendant No 1 did find place. It held that the name of Defendant No 1 does not find place in the report of bifurcation committee either as waqf or a trust and the name of Defendant No 1 was found in the list of auqaf dated 5th May, 2005 which has been withdrawn on 23rd February, 2008. It held that the Defendant No 1 does not come under the purview of the order of the Hon'ble Apex Court and rejected that the cause of action arose due to subsequent event i.e. passing of judgment of Hon'ble Apex Court dated 20th October, 2022. The findings of the Tribunal practically gives finality to the issue of jurisdiction and status of Defendant No 1 as not being a waqf, which issue required evidence to be led. There cannot be any dispute about the settled position in law that while adjudicating the application for amendment, it is impermissible to venture into the merits of the amendment, which is

precisely what has been done by the Tribunal rendering the decision vulnerable.

17. The other ground for rejection of the proposed amendments is that the declaration seeking the status of the Defendant No 1 as waqf is time barred claim. The suit was filed on 17th October, 2019 and in the reply to Exhibit 5 filed on 4th November, 2019 it was asserted that the suit property is not a waqf property but a trust property and the Defendant No. 1 is a trust and not a waqf. This denial can also be found in the written statement filed on 15th January, 2021. The amendment application filed in 2024, contended that as per the order of Hon'ble Apex Court, the Defendant No. 1 failed to approach the five member committee within the time frame and the Defendant No. 1 was transferred to the Waqf Board, and hence, its properties are governed under the Waqf Act, 1955.

18. In case of **Life Insurance Corporation of India vs Sanjeev Builders Private Limited and Another (supra)**, the Hon'ble Apex Court has laid down the guiding principles in the context of adjudication of amendment application. The Hon'ble Apex Court concluded its findings in paragraph 71 as under:-

71.1 Order 2 Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of

amendment being barred under Order 2 Rule 2 CPC is, thus, misconceived and hence negated.

71.2 All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order 2 Rule 2 CPC.

71.3 The prayer for amendment is to be allowed

71.3.1 if the amendment is required for effective and proper adjudication of the controversy between the parties,

71.3.2. to avoid multiplicity of proceedings, provided,

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4 A prayer for amendment is generally required to be allowed unless:

71.4.1 by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

71.4.2 the amendment changes the nature of the suit,

71.4.3 the prayer for amendment is malafide, or

71.4.4 by the amendment, the other side loses a valid defence.

71.5 In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

71.6 Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

71.7 Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

71.8 Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

71.9 Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

71.10 Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment

sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

71.11 Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi.)

19. The decision emphasizes and reiterates the well settled principle that all amendments which are necessary for effective and proper adjudication of the controversy in dispute should be allowed. In context of time barred claim, it carves out an exception where the amendment raising time barred claim results in divesting the other side of valuable accrued right and where a time barred claim is sought to be introduced, the fact that the claim is time barred becomes a relevant factor for consideration.

20. Applying the said principles to the facts of the present case,

it cannot be disputed that irrespective of whether the amendment is allowed or not, the status of the Defendant No 1 as waqf would be an issue in the suit and the Tribunal in order to answer the issue of jurisdiction would be bound to render a finding on the status of the Defendant No 1 as waqf. For answering the issue, evidence will be required to be led by both the parties. It is not as if the Defendant No 1 is required to meet a new claim and thus it cannot be accepted that the amendment takes away a valuable right accrued to the Defendant No 1 of its status of being a trust not being subject to adjudication.

21. A time barred claim, ordinarily, cannot be permitted to be introduced by way of amendment, however, this is not an absolute principle and the Court has the discretion to permit introduction of time barred claim in order to do complete justice. Where however, the amendment results in changing the character of the suit so as to set up an entirely new case alien to the case initially set upon the plaint, the amendment cannot be allowed. In the present case, by way of amendment, the relief of declaration of status of Defendant No 1 is sought which is predicated on facts already pleaded in the plaint.

22. It also needs to be noted that the amendment is pre-trial amendment which requires a liberal approach. The Defendant No 1 would have the chance to meet the case during trial. The equities can be balanced by directing that the amendment will not relate to the date of

filing of the suit and appropriate issue of limitation be framed and decided. As such, where the issue of jurisdiction will involve consideration of status of Defendant No 1, the amendment will not cause irreparable prejudice to the Defendant No 1. In my view, the amendment being necessary to effectively adjudicate the main issue in controversy between the parties cannot be rejected on the ground of limitation. Point No (ii) is answered accordingly.

23. The decisions relied upon by Mr. Mucchala were rendered in the context of Section 23 of the Limitation Act, 1963 dealing with continuous cause of action, which has not been argued by Mr. Gorwadkar.

24. Resultantly, the First Appeal succeeds. The order of the Tribunal dated 17th January, 2025 is hereby quashed and set aside. The amendment application below Exhibit 90 is allowed with the direction that that the amendment will not relate back to the date of the filing of the suit and appropriate issue of limitation shall be framed and decided by the Tribunal.

(SHARMILA U. DESHMUKH, J.)