

Reserved On : 24/11/2025
Pronounced On : 17/12/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 84 of 2025

With
R/CIVIL REVISION APPLICATION NO. 88 of 2025
With
R/CIVIL REVISION APPLICATION NO. 92 of 2025
With
R/CIVIL REVISION APPLICATION NO. 93 of 2025
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R/CIVIL REVISION APPLICATION NO. 302 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

Approved for Reporting	Yes	No
	YES	

SUNNI MUSLIM IDGAH MASJID TRUST
Versus
HARDIK SITARAM PATEL & ANR.

Appearance:

RIZWAN SHAIKH(7146) for the Applicant(s) No. 1
MR MANISH S SHAH(5859) for the Opponent(s) No. 2
MR YASH V GUPTA(11814) for the Opponent(s) No. 1
VISHAL K ANANDJIWALA(7798) for the Opponent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI

CAV JUDGMENT

1. **Rule.** Learned advocates appearing for the respective respondents waive service of Rule. With the consent of the learned advocates for both sides, the matters are taken up for final hearing.
2. By this common judgment and order, this Court proposes to adjudicate a batch of Civil Revision Applications, they being interlinked and involving an identical factual matrix, common legal issues, and a substantially similar dispute *inter se* the parties.
3. For the sake of convenience and clarity, the cases have been classified into three distinct groups. The first group comprises matters instituted by the *Sunni Muslim Idgah Masjid Trust, Sidhpur*, hereinafter referred to as the “*Sidhpur Group*”, with *Civil Revision Application No. 88 of 2025* being treated as the lead matter. The second set of cases has been filed by the *Sarkhej Roza*

Committee, Makarba, hereinafter referred to as the “***Sarkhej Group***”, where ***Civil Revision Application No. 274 of 2025*** shall serve as the lead matter. The third group pertains to proceedings initiated by the ***Vadodara Saher Masjid Sabha Trust, Vadodara***, hereinafter referred to as the “***Vadodara Group***”, with ***Civil Revision Application No. 161 of 2025*** designated as the lead matter. 4.5. All the three categories of cases emanate from Waqf Suits instituted before the Waqf Tribunal under Section 83(1) of the Waqf Act, 1995.

A. LITIGATION HISTORY:-

4. All the three groups pertain to Waqf institutions, which instituted Waqf Suits before the Gujarat State Waqf Tribunal (hereinafter referred to, for the sake of brevity, as “***the Waqf Tribunal***”) under Section 83 of the Waqf Act, 1995, read with the relevant provisions, seeking recovery of possession of Waqf properties from the tenants and/or alleged encroachers, along with ancillary reliefs including mesne profits.

4.1. The Waqf Tribunal, upon a preliminary scrutiny of the pleadings, found that the plaintiff–Waqf institutions had neither correctly valued the suits nor affixed the requisite court fees commensurate with such valuation. Consequently, in the year 2024, the Tribunal at first instance passed orders directing the respective Waqf plaintiffs to rectify the valuation of the suits and to pay the deficit court fees within the stipulated time, with a clear caveat that

failure to do so would invite rejection of the plaint under Order VII Rule 11(b) and (c) of the Code of Civil Procedure, 1908 (for short, “CPC”).

4.2. Despite such categorical directions, the Waqf plaintiffs failed to cure the defects by correcting the valuation or by depositing the requisite court fees. Resultantly, the Waqf Tribunal proceeded to exercise its jurisdiction under Order VII Rule 11(b) and (c) CPC and rejected the plaints by separate orders passed on respective dates in the respective matters.

4.3. Insofar as the matters relating to the Vadodara Group are concerned, it is noteworthy that during the pendency of the Waqf Suits, an application was filed invoking the provisions of the CPC seeking, *inter alia*, striking off certain pleadings and exclusion of certain reliefs from the purview of valuation and court fees. The said application, however, did not alter the eventual course of events leading to rejection of the plaint.

4.4. In the Sidhpur Group matters, the Waqf Tribunal, in addition to rejecting the plaints, passed adverse directions against the concerned officers of the Waqf, directing them to deposit the entire litigation expenses, including advocate’s fees, into the Waqf’s bank account, as also to refund the emoluments received by them in their capacity as officers of the Gujarat State Waqf Board. Such directions were premised on the finding that the rejection of the plaints was occasioned due to their negligence. The Tribunal further

directed the Gujarat State Waqf Board not to appoint *Mr. Umardaraz Chasmawala* as Executive Officer and to recover the amounts as directed in the aforesaid orders..

4.5. Being aggrieved and dissatisfied with the judgments and orders passed by the Waqf Tribunal rejecting the complaints in exercise of powers under Order VII Rule 11 clauses (b) and (c) of the CPC, the aforesaid group of Civil Revision Applications have been preferred under Section 83(9) of the Waqf Act, 1995, *inter alia*, on the grounds delineated in the respective memoranda of revisions.

B. APPEARANCE:-

5. On behalf of the revisionists, learned Advocate Mr. M.T.M. Hakim led the submissions, which were duly adopted by the other learned advocates appearing for the revisionists. So far as the respondents are concerned, learned Government Pleader Mr. Gursharan Virk, assisted by learned Advocate Mr. Manish Shah appearing for the Gujarat State Waqf Board, advanced the principal arguments. The learned advocates appearing for the remaining respondents adopted the submissions canvassed by the learned Government Pleader Mr. Gursharan Virk.

C. SUBMISSION OF THE REVISIONISTS:-

6. In the course of extensive arguments, learned Advocate Mr. Hakim, appearing for the revisionists, with reference to the pleadings in the respective Waqf suits, contended that the initial

order in the Sidhpur group of matters was rendered only by two Members of the Waqf Tribunal. It was emphatically submitted that such constitution is in clear breach of the statutory mandate of the Waqf Act, which requires the Tribunal to consist of three Members. It was further urged that by the said initial order, the Chairman and one Member of the Waqf Tribunal directed the plaintiff-Waqf to make good of the deficit court fees and to rectify the valuation of the suits. However, since the said order was passed by an improperly constituted Tribunal comprising only two Members, the same is *coram non judice* and is rendered *void ab initio*.

6.1. On this premise, it was strenuously argued that the foundational order, which ultimately culminated in the rejection of the complaints in the Sidhpur group of matters, suffers from an inherent and incurable jurisdictional defect, inasmuch as it was not passed by a Tribunal constituted in accordance with the statutory quorum prescribed under the Waqf Act. Consequently, all subsequent orders founded upon such defective exercise of jurisdiction are vitiated and liable to be set aside on this score alone.

6.2. Learned Advocate Mr. Hakim further submitted that Section 109 of the Waqf Act, 1995 unequivocally vests the State Government with the rule-making power for effectuating the purposes and objects of the Act. It was contended that, in exercise of the said statutory mandate, the Gujarat State Waqf Tribunal (Procedure) Rules, 1998 (for the sake of brevity, “*the Waqf Rules*”)

came to be framed and continue to hold the field even as of today. According to learned Advocate, the aforesaid Rules constitute a complete, exhaustive, and self-contained procedural code governing proceedings before the Waqf Tribunal. However, despite such comprehensiveness, the Rules remain conspicuously *sub silentio* on the crucial aspect of levy or collection of court fees upon the institution of proceedings or Waqf suits under Section 83 of the Waqf Act. In the absence of any express statutory prescription or delegated legislation authorising the imposition of court fees, the insistence upon payment thereof, it was urged, is wholly *dehors* the statutory scheme and impermissible in law.

6.3. It was urged that in the absence of any express statutory prescription or delegated legislation providing for the levy of court fees in respect of proceedings before the Waqf Tribunal, any insistence by the State Government or the Tribunal requiring payment of court fees is wholly *de hors* the statute and, therefore, legally untenable. Learned Advocate Mr. Hakim submitted that the rule-making authority was fully conscious of the concept of court fees while framing the Waqf rules, as is evident from the specific provision incorporating charges for issuance of certified copies, which may at best amount to a cursory reference to court fees. Save and except such limited provision, there exists no other rule framed by the State Government authorising the levy of court fees on Waqf suits instituted before the Tribunal.

6.4. Learned Advocate further submitted that a holistic reading of the Statement of Objects and Reasons of the Waqf Act unmistakably reflects its benevolent and beneficent legislative intent, which is also borne out from the definition contained in Section 3(r) read with Section 3A of the Act. The Waqf Act has been enacted with the avowed object of protecting, preserving, and administering Waqf properties dedicated for religious and charitable purposes, as well as for objects of public utility sanctioned by Muslim law. It was, therefore, contended that when a Waqf approaches the Tribunal in furtherance of such statutory and religious obligations, particularly for recovery of possession of Waqf property from tenants or encroachers, fastening such proceedings with the burden of court fees would defeat the very ethos and legislative philosophy underlying the Act.

6.5. It was vehemently submitted that the learned Tribunal has completely misconstrued and misappreciated the object and scheme of the Waqf Act and has passed cryptic and overly technical orders, which operate to frustrate and emasculate the salutary purpose of the legislation. According to the learned Advocate, the direction to levy court fees, and the consequential rejection of the complaints for non-compliance thereof, result in a manifest miscarriage of justice and undermine the very life-blood of the Waqf Act, which is intended to safeguard and *sub-serve* the interests of Waqf institutions and properties. Consequently, the impugned orders, being contrary to both the letter and spirit of the Waqf Act, deserve

to be interdicted in exercise of the revisional jurisdiction of this Court.

6.6. Learned Advocate Mr. Hakim further submitted that Section 83(1) of the Waqf Act, 1995, which finds place in Chapter VIII of the Act, empowers the State Government to constitute Waqf Tribunals for the determination of any dispute, question, or other matter relating to a Waqf or Waqf property, including eviction of tenants and adjudication of the rights and obligations of the lessor and lessee in respect of such property under the Act. It was emphasized that the Legislature, with deliberate legislative intent, has employed the expression “Tribunal” and not “Court” while providing the adjudicatory mechanism under the Waqf Act.

6.7. Building upon the said premise, it was contended that the proceedings contemplated under Chapter VIII of the Waqf Act are expressly taken out of the domain of conventional Civil Courts and are entrusted to a specialised Tribunal, which is designed to adopt a summary and efficacious procedure in furtherance of the benevolent object of protecting and administering Waqf properties. Hence, such proceedings, instituted for a pious and public purpose, cannot be subjected to the exaction of court fees applicable to civil suits.

6.8. Learned Advocate Mr. Hakim further argued that the Waqf Act is conspicuously silent on the applicability of any court-fee legislation, whether Central or State, to proceedings before the

Waqf Tribunal. In the absence of an express statutory mandate, it was urged that the State Government cannot, by a process of judicial or administrative ingenuity, impose court fees upon disputes contemplated under Section 83, for adjudication of which a Tribunal, and not a Court, has been constituted.

6.9. Elaborating further, learned Advocate submitted that judicial proceedings under Chapter VIII of the Waqf Act commence by way of an application and culminate in an order. Such proceedings neither originate in a plaint nor partake the classical trappings of a civil suit. They are not strictly adjudicatory in the sense contemplated by the CPC, nor do they conclude in a decree or award so as to attract the incidence of court fees ordinarily leviable in civil litigation.

6.10. It was further urged that the final order passed by the Waqf Tribunal under Chapter VIII does not answer the description of a “decree” as defined under Section 2(2) of the CPC, inasmuch as the adjudication is rendered by a Tribunal and not by a Civil Court, and the proceedings do not arise out of a suit. Consequently, in the absence of any statutory requirement for the passing of a decree under Section 83 of the Waqf Act, the very foundation for levying court fees namely, the institution of a suit and adjudication culminating in a decree is conspicuously absent. Ergo, the question of payment or levy of court fees for determination of rights before the Waqf Tribunal does not arise at all.

6.11. Referring to analogous proceedings conducted before various Waqf Tribunals functioning outside the territorial limits of the State of Gujarat, learned Advocate Mr. Hakim submitted that, at the highest, only a nominal or fixed court fee could ever be contemplated. However, the insistence of the State Government and the Waqf Tribunal upon payment of *ad valorem* court fees, akin to those leviable in civil suits, does not comport with a proper exposition of the statutory scheme nor does it withstand juridical scrutiny.

6.12. It was, therefore, emphatically contended that the initial order passed by the Tribunal directing fixation and payment of court fees, followed by the subsequent order rejecting the plaint for non-payment of such fees and for failure to correct the suit valuation, is vitiated in law. According to learned Advocate, the said orders are manifestly erroneous, legally untenable, and egregiously contrary to the scheme and object of the Waqf Act, and hence cannot be sustained in the eye of law.

6.13. In support of the aforesaid submissions, learned Advocate Mr. Hakim placed reliance upon the judgment of the Hon'ble Supreme Court in **Diwan Bros. v. Central Bank of Bombay and Others, (1976) 3 SCC 800; H.H. Maharana Sahib Shri Bhagwat Singh Bahadur of Udaipur v. State of Rajasthan, (1963) SCC OnLine SC 199; Paramjeet Singh Patheja v. I.C.D.S., (2006) 13 SCC 22; and Polotek Rubber Industries v. State of Gujarat, 1996**

(2) GLH 592, to buttress the proposition that proceedings before Tribunals, which are not Civil Courts *stricto sensu*, cannot mechanically be subjected to the rigours of court-fee statutes applicable to civil suits.

6.14. So far as the specific question of levy of court fees on applications under Section 83 of the Waqf Act is concerned—whether no court fee at all is leviable or, at the highest, only a fixed and nominal fee, learned Advocate Mr. Hakim further fortified his submissions by drawing sustenance from the decisions in *Karnataka Board of Wakfs v. Joharmal Jawani, I.L.R. 1990 Kar 679; Shri Shanishwar Devasthan Trust, Shinganapur v. Sayyed Sahukar Mehboob, 2016 (4) Mh. L.J. 491; and Shaikh Karimoddin s/o Shaikh Rahimoddin v. M/s Kothari Builders, Civil Revision Application No. 63 of 2008 (Bombay High Court)*.

6.15. Another limb of submission canvassed by learned Advocate Mr. M.T.M. Hakim pertains to the constitution of the Waqf Tribunal in the “Sidhpur group” of matters. It was vehemently urged that the very first order passed in those proceedings came to be rendered by a Bench comprising only two Members, thereby falling short of the statutorily mandated strength of three Members as envisaged under Section 83(4) of the Waqf Act, 1995. Such an order, it was contended, is *coram non judice*, wholly without jurisdiction, and thus bereft of any binding statutory force. Learned Advocate Mr. Hakim submitted that the composition of a three-

Member Tribunal is not directory but mandatory in nature; any infraction thereof would render the adjudicatory exercise *ab initio void* and a nullity in the eye of law, the doctrine of *coram non judice* applying with full vigour.

6.16. To buttress the aforesaid proposition, learned Advocate Mr. Hakim placed reliance upon the decisions in *Md. Tamiljul Haque v. Md. Tahammul Haque; 2015 SCC Online Cal 6494, Telangana State Waqf Board v. Quader Hussain and Another; 2021 SCC Online TS 1524, Asrafbhai Noorbhai Khalifa v. State of Gujarat; 2022 (0) AIJEL-HC 244141*, as well as *Mohammad Amin Mohammad Ishak Pathan, Partner of Haji Mohammad Ishak & Co. v. Ahmedabad Muslim Bavarchi Jamat through Mutawalli/Trustees, Civil Revision Application No. 104 of 2022*.

6.17. Learned Advocate further submitted that in an apparent attempt to surmount the conundrum arising from the non-constitution of a full-fledged three-Member Tribunal, the State Government issued a notification dated 16.08.2024 amending Rule 71(1). However, it was contended that where delegated legislation comes into direct conflict with the parent statute, namely, Section 83(4) of the Waqf Act, the latter must prevail. An amendment to the Rules, it was submitted, cannot eclipse, dilute, or override a clear statutory mandate, nor can it retrospectively cure the inherent jurisdictional defect arising from a decision rendered by an improperly constituted Tribunal. In support of this submission,

learned Advocate Mr. Hakim placed reliance upon *State of M.P. v. Bhola; (2003) 3 SCC 1, St. John's Teachers Training Institute v. Regional Director, NCTE; (2003) 3 SCC 321, ITW Signode India Ltd. v. CCE; (2004) 3 SCC 48, and NOVA Ads v. Department of Municipal Administration and Water Supply; (2008) 8 SCC 42.* Accordingly, it was urged that all orders emanating from proceedings conducted by a Tribunal not constituted in accordance with Section 83(4) of the Waqf Act stand vitiated *in limine* and are unsustainable in law.

6.18. Another limb of argument advanced by the learned Advocate Mr. Hakim rests upon the existence of a distinct and self-contained procedural regime governing proceedings before the Waqf Tribunal. It was contended that, having regard to the separate procedural framework embodied in the Waqf Rules, coupled with the express stipulations contained in Sections 83(5) and 83(6) of the Waqf Act, 1995, the applicability of the CPC stands clearly excluded.

6.19. It was further submitted that Section 83(6) of the Waqf Act opens with a *non obstante clause*, thereby conferring an overriding effect over the provisions of the CPC, and consciously empowering the Tribunal to regulate its own procedure in the manner prescribed. According to the learned Advocate, the legislative intent is pellucid: proceedings before the Waqf Tribunal are not to be shackled by the rigours of the CPC but are to be conducted in accordance with the

special procedure engrafted under the Act and the Rules framed thereunder, thus reinforcing the *sui generis* character of the Tribunal and its proceedings.

6.20. Learned Advocate Mr. Hakim further submitted that the Hon'ble Supreme Court, in **Rashid Wali Beg v. Farida Pindara and Others; (2022) 4 SCC 414**, has lucidly expounded the category of persons entitled to institute proceedings before the Waqf Tribunal, namely: (i) the Mutawalli of a Waqf; (ii) a person interested in the Waqf; and (iii) any other person aggrieved by an order made under the provisions of the Act or the Rules framed thereunder.

6.21. It was further submitted that Section 85 of the Waqf Act expressly bars the jurisdiction of the Civil Court, thereby conferring exclusive jurisdiction upon the Waqf Tribunal in matters enumerated under the Act. In this regard, reliance was placed upon paragraph 54 of the judgment in **Rashid Wali Beg (supra)**.

6.22. Learned Advocate Mr. Hakim contended that the legislature has, with clear and conscious intent, made specific provisions of the CPC applicable to proceedings under the Waqf Act wherever it deemed necessary; however, the CPC as a whole has not been bodily lifted and applied to the proceedings before the Waqf Tribunal.

6.23. To elucidate this submission, reference was made to Sections

4, 35(5), 36(5), 64(6), 71(2), and 86 of the Waqf Act, amongst other provisions, to demonstrate that the applicability of the CPC is expressly limited and circumscribed.

6.24. On this premise, it was vehemently urged that since the provisions of the CPC are not made applicable to proceedings under Chapter VIII of the Waqf Act in their entirety, Order VII Rule 11 of the CPC would not stand attracted, nor could it be invoked by the learned Waqf Tribunal. Consequently, the learned Waqf Tribunal lacked the jurisdiction to reject the plaint in purported exercise of powers under Order VII Rule 11 of the CPC.

6.25. It was, therefore, submitted that the impugned order passed by the learned Waqf Tribunal rejecting the Waqf suit is *non est* in the eyes of law, manifestly arbitrary, and contrary to the settled principles governing the field.

6.26. To fortify the aforesaid submissions, learned Advocate Mr. Hakim placed reliance upon the decisions in *South India Corporation (P) Ltd. v. Secretary, Board of Revenue, 1963 SCC OnLine SC 19*; *Sumaran Singh v. Rajasthan Board of Muslim Waqf, (2007) WLC 398*; *Ahle Sunnatwala Jamat Jogi Madina Masjid, represented by its duly appointed Mutawalli S.A. Rahim v. Haji Saiyed Irfan Husain Saheb and Others, 2023 SCC OnLine Mad 8364*; *Vimla Devi (Smt.) and Another v. Rajendra Kumar and Others, (2004) 1 ACJ 504*; *Lokhandwala Irfanbhai Hanifbhai v. Dabhoi Mercantile Co-operative Society Ltd., (2014)*

1 GLR 786; and Ethiopian Airlines v. Ganesh Narayan Saboo, (2011) 8 SCC 539.

6.27. Learned Advocate Mr. Hakim also placed reliance upon the judgment of the Hon'ble Apex Court in **U.P. Sunni Central Waqf Board, Lucknow (Revisionist) v. Mohammad Nihal and Others, 2023 SCC OnLine All 2842.**

6.28. It was lastly contended that, in the "Sidhipur group" of matters, the learned Waqf Tribunal has palpably exceeded the confines of its statutory jurisdiction in passing a sweeping and unwarranted order against the Executive Officer of the Waqf.

6.29. In view of the aforesaid premises, learned Advocate Mr. Hakim earnestly prayed that all the revision applications be allowed and that the impugned judgment and order, whereby the Waqf applications came to be rejected, be quashed and set aside.

D. SUBMISSION OF THE RESPONDENT:-

7. The learned Government Pleader, Mr. Virk, stoutly opposed the submissions advanced by learned advocate Mr. Hakim and drew the attention of the Court to the pleadings contained in the applications preferred by the revisionists before the Waqf Tribunal seeking determination of the reserved rights. It was submitted that the revisionists were fully conscious of the applicability of the Gujarat Court Fees Act, 2004 as well as the Suits Valuation Act, 1887 and accordingly had valued their applications both for the

purpose of payment of court fees and for conferring jurisdiction.

7.1. It was further pointed out that the revisionists had, in unequivocal terms, expressly undertaken in their pleadings that if any deficit court fee were found payable at a later stage, the same would be duly made good. According to the learned Government Pleader, such an undertaking unmistakably evinces the readiness and willingness of the revisionists to pay the requisite court fees. It was contended that these pleadings are not mere cosmetic averments, but rather deliberate assertions made with full awareness of the legal consequences.

7.2. Learned Government Pleader Mr. Virk also relied upon the judgment of the *Andhra Pradesh High Court in Jamia alias Juma Mosque v. Reddy Sikander Saheb, 1975 (1) APLJ 82*, to submit that court fees were held applicable and the relevant Court Fees Act and Suits Valuation Act were enforced. Reliance was further placed upon Civil Revision Application No. 74 of 2016 decided by the High Court of Judicature at Bombay, Bench at Aurangabad, wherein it was held that court fees legislation applies and suits must be properly valued.

7.3. Judgments in *Karnataka Board of Waqfs v. Joharmal Jawanji, ILR 1990 KAR 679*, and *Muhammadali v. Alavi, CRP (Waqf) No. 27 of 2020* decided by the Karnataka High Court, were also pressed into service on the issue of applicability of court fees statutes.

7.4. Lastly, reliance was placed upon *Shamsher Singh v. Rajinder Prasad, (1973) 2 SCC 524*, wherein the Hon'ble Supreme Court held that the question of sufficiency or deficiency of court fees must be determined on a plain reading of the plaint. It was submitted that in the present case, the revisionist–petitioners, being fully conscious of this legal position, had themselves valued the proceedings for the purpose of court fees as well as jurisdiction, and had furnished undertakings to make good any deficiency. Having done so, they cannot now audaciously contend that no court fees are payable or leviable.

7.5. Learned Government Pleader Mr. Virk further submitted that the arguments now canvassed by learned advocate Mr. Hakim on behalf of the revisionists run directly counter to their own pleadings before the Waqf Tribunal, thereby exposing the inherent hollowness and self-contradictory nature of the submissions presently advanced.

7.6. It was next contended that though proceedings under Chapter VIII of the Waqf Act are styled as “*applications*”, in substance and effect they partake the character of a “*suit*”, inasmuch as they involve adjudication of adversarial disputes between contesting parties. In the case at hand, the Waqf claims proprietary rights over the property and, by instituting the application (in effect, a suit), seeks recovery of possession from the tenant along with *mesne profits* computed in accordance with the applicable lease rules.

7.7. Learned Government Pleader further submitted that the proceedings before the Waqf Tribunal are thus quintessentially adversarial in nature and culminate in substantive reliefs, including restoration of the property to the Waqf by exercising lease or tenure. Arguendo, merely describing such proceedings as an “*application*” cannot absolve the Waqf from the statutory obligation of paying court fees.

7.8. It was also urged that any final adjudication rendered by the Waqf Tribunal is executable as a decree of a Civil Court and is, in fact, enforceable through the Civil Court, thereby clothing such adjudication with all the trappings of a decree.

7.9. Learned Government Pleader Mr. Virk further submitted that prior to the amendment of the Waqf Act, claims relating to recovery of possession of leased Waqf properties were required to be instituted before the Civil Court, and at the relevant point of time, such proceedings indisputably attracted payment of court fees. Merely because such disputes now fall within the exclusive domain of the Waqf Tribunal by virtue of statutory intervention does not, *ipso facto*, alter the applicability of the Court Fees Act to proceedings initiated under Chapter VIII of the Waqf Act.

7.10. It was lastly contended that the legislative object in tribunalising disputes relating to determination of lease rights and eviction of tenants under Chapter VIII of the Waqf Act was to ensure expeditious and summary adjudication and to extricate such

matters from the rigours and procedural intricacies of ordinary civil trials. However, such tribunalisation cannot be construed as a legislative intent to exempt litigants from the obligation of paying court fees.

7.11. Learned Government Pleader Mr. Virk submitting that, as on date, no notification has been issued by the State Government exempting petitions filed under Chapter VIII of the Waqf Act from the levy of court fees as assessed under the Gujarat Court Fees Act.

7.12. Learned Government Pleader, Mr. Virk, further placed reliance upon Entry 3 of List II of the Seventh Schedule to the Constitution of India and submitted that the said entry confers legislative competence upon the State to levy court fees in respect of all Courts, save and except the Supreme Court of India.

7.13. It was further submitted that the State Legislature, in exercise of the aforesaid constitutional power, enacted the Gujarat Court Fees Act, 2004 (Gujarat Act No. 4 of 2004), which was duly published in the Gujarat Government Gazette on 06.03.2004, with a view to consolidate and amend the law relating to fees leviable in Courts and public offices in the State of Gujarat, excluding only those fees falling under Entries 77 and 96 of List I of the Seventh Schedule to the Constitution of India.

7.14. Learned Government Pleader Mr. Virk invited the attention of the Court to Section 1(5) of the Gujarat Court Fees Act and

submitted that, in the absence of any specific provision to the contrary in a special or local law, the provisions of the said Act would govern the levy of fees in Courts and public offices.

7.15. Referring to Section 4 of the Gujarat Court Fees Act, it was emphasized that the legislature has consciously employed the expression “*Court of Justice*” and not merely “*Civil Court*”, thereby signifying a wide and inclusive application of the Act. According to the learned Government Pleader, this legislative choice clearly indicates that the Gujarat Court Fees Act is intended to extend to proceedings conducted under Chapter VIII of the Waqf Act before the Waqf Tribunal.

7.16. Learned Government Pleader Mr. Virk further relied upon Sections 6(20)(d) of the Gujarat Court Fees Act to contend that the said provision governs the assessment and levy of court fees in suits pertaining to disputes between landlord and tenant, which are directly comparable to proceedings seeking eviction and recovery of possession.

7.17. He further adverted to Schedule I of the Gujarat Court Fees Act and the various Articles contained therein to demonstrate that the legislature has repeatedly used the expressions “*plaint*”, “*application*”, and “*petition*” interchangeably for the purpose of assessment of court fees.

7.18. By referring to Article 3 of Schedule I, it was submitted that

even a petition filed under the Arbitration and Conciliation Act, 1996 is statutorily treated as a plaint and is subjected to *ad valorem* court fees. Reliance was also placed upon Article 4 of Schedule I to submit that an application seeking to set aside a decree, or an order having the force of a decree, is to be treated as a plaint, deemed to be a suit, and is liable to *ad valorem* court fees.

7.19. Reference was further made to Article 7 of Schedule I, to contend that any application seeking substantive relief capable of valuation in terms of monetary gain or prevention of monetary loss—including cases where an application or petition is treated as a plaint or described merely as a mode of obtaining relief—would attract *ad valorem* court fees.

7.20. In view of the aforesaid statutory framework, learned Government Pleader Mr. Virk submitted that the Gujarat Court Fees Act squarely applies to applications instituted under Chapter VIII of the Waqf Act.

7.21. It was submitted that this legal position was well within the conscious knowledge of all the revisionist–petitioners, as is evident from the fact that they themselves valued their applications both for the purpose of court fees and for jurisdiction, and further furnished an undertaking to make good any deficiency in court fees if so required or directed.

7.22. Ergo, it was contended that the plea of non-applicability of

the Gujarat Court Fees Act is wholly illogical, untenable, and contrary to settled principles of law.”

7.23. Learned Government Pleader Mr. Virk contended that although the Waqf Act is a Central enactment, however in view of Entry 3 of List II of the Seventh Schedule of the Constitution of India, the legislative competence to levy court fees squarely vests in the State Legislature. The Central enactment, being of uniform application across the country, is conspicuously silent on the subject of court fees, leaving it to the respective States to prescribe and levy court fees as empowered under the Constitution. Consequently, different States levy different court fees in accordance with their respective statutes. In the State of Gujarat, the State Government has not notified any provision prescribing fixed court fees or a separate court-fee structure for applications under Section 83 of the Waqf Act; consequently, such applications are subject to ad valorem court fees as levied under the Gujarat Court Fees Act.

7.24. Learned Government Pleader Mr. Virk further submitted that notwithstanding the strenuous arguments advanced by the revisionists asserting that no court fees are payable on petitions instituted under Chapter VIII of the Waqf Act, they have miserably failed to point out any statutory provision or notification of the State Government expressly exempting such proceedings from the levy of court fees.

7.25. Replying to the contention regarding the alleged non-applicability of the CPC to proceedings under Chapter VIII of the Waqf Act, learned Government Pleader Mr. Virk submitted that such an argument is startling and wholly misconceived. He drew attention to Sections 83(5), 83(6), 83(7), and 83(8) of the Waqf Act and submitted that, in view of Section 83(5), the Tribunal is deemed to be a Civil Court and is vested with the same powers as are exercisable by a Civil Court under the CPC while trying a suit or executing a decree or order.

7.26. It was emphasized that the legislature has consciously employed the expression “*shall*” in the aforesaid provisions, thereby rendering the applicability of the CPC mandatory and explicit. The interpretation sought to be placed upon Section 83(6) by the learned advocate for the revisionists was argued as illogical and erroneous. It was further clarified that the *non-obstante* clause in Section 83(6) merely empowers the Tribunal to regulate its own procedure, notwithstanding the procedural framework of the CPC, but does not in any manner exclude the substantive applicability of the CPC.

7.27. Referring to Section 83(7), learned Government Pleader Mr. Virk submitted that a decision rendered on an application under Chapter VIII has the force of a decree of a Civil Court, which further reinforces the applicability of the CPC. Reliance was also placed on Section 83(8), which mandates that execution of any

decision or order of the Tribunal shall be carried out by the Civil Court in accordance with the provisions of the CPC.

7.28. It was thus urged that a harmonious reading of Sections 83(5) to 83(8) of the Waqf Act unequivocally establishes that the CPC applies to judicial proceedings under Chapter VIII of the Act. While Section 83(6) enables the Tribunal to adopt its own procedure, such procedural autonomy does not exclude or negate the applicability of the CPC. Consequently, the contention that the CPC has no application whatsoever to proceedings under Chapter VIII of the Waqf Act was categorically refuted as untenable.

7.29. Learned Government Pleader Mr. Virk placed reliance upon the judgment of the Hon'ble Supreme Court in **Syed Mohideen v. Ramnathpura Peria and Others, (2010) 13 SCC 62**, wherein it has been categorically held that since the Tribunal is deemed to be a Civil Court, it can exercise all the powers of a Civil Court while trying a suit or executing a decree.

7.30. Reliance was also placed upon **A. Nawab John v. V.V.N. Subramaniam, (2012) 7 SCC 738**, to contend that a plaint can be rejected under Order VII Rule 11 of the CPC if it has not been properly valued. Further reliance was placed on **S.A. Khadeer v. G.V.R. Anjaneyulu, 2003 (3) APLJ 445**, wherein it has been held that a Court has discretion to reject the plaint under Order VII Rule 11 if court fees are not paid despite directions.

7.31. Learned Government Pleader Mr. Virk also referred to **General Officer Commanding, Rashtriya Rifles v. CBI and Another, (2012) 6 SCC 228**, particularly paragraph 32 thereof, to submit that “*legal proceedings*” signify proceedings regulated or prescribed by law, in which a party pursues a remedy before a Court of Justice, thereby excluding purely administrative or departmental proceedings drawing analysis from the decision. It was contended that proceedings under Chapter VIII of the Waqf Act, wherein the Waqf seeks eviction of a tenant and recovery of *mesne profits*, are quintessentially adversarial and adjudicatory in nature and squarely fall within the ambit of judicial proceedings.

7.32. Expanding further, reliance was placed upon **Babu Lal v. M/s Hazari Lal Kishori Lal and Others, (1982) 1 SCC 525**, wherein the term “*proceeding*” has been interpreted broadly to include the carrying on of any action of law or legal process before a Court of law. On this basis, it was reiterated that proceedings initiated under Chapter VIII of the Waqf Act unmistakably constitute judicial proceedings.

7.33. It was further submitted that by virtue of the amendment to Rule 71, the State Government has removed doubt and treated that two member shall not be considered as *non-corum*. The *vires* of the said amendment has not been challenged before any competent Court and, therefore, the amendment continues to hold the legislative value and applies to the case at hand. Even otherwise,

reliance was placed upon *Lal Shah Baba Dargah Trust v. Magnum Developers, (2015) 17 SCC 65*, to contend that the absence of notification regarding a multi-member Tribunal would not vitiate a decision rendered by a two-member Tribunal.

7.34. In summation, learned Government Pleader Mr. Virk submitted that the learned Tribunal has committed no error, much less any error of law, in passing the impugned orders. It was urged that a Court exercising revisional jurisdiction would not reappreciate factual aspects but would confine itself strictly to errors of jurisdiction or law, neither of which is demonstrated in the present case.

7.35. It was, therefore, prayed that all the revision applications be dismissed with exemplary costs.

8. Heard learned advocates for both the sides and perused the records meticulously.

E. PRIME ISSUE:-

9. Upon a holistic consideration of the rival submissions and the arguments advanced by the learned advocates appearing for the respective parties, the following two seminal questions arise for determination:-

(i) Whether the provisions of the Gujarat Court Fees Act, 2004 are applicable to a suit/application instituted under Chapter VIII of the

Waqf Act, 1995; and

(ii) Whether the provisions of the CPC are attracted and applicable to a suit/application filed under Chapter VIII of the Waqf Act, 1995.

F. ANALYSIS (RE LAW):-

10. The learned Advocate appearing for the revisionists submitted that Section 83(3) of the Waqf Act employs the expression ‘*application*’ in relation to proceedings for determination of any dispute or question pertaining to a Waqf or Waqf property, including eviction of tenants and adjudication of the rights and obligations of the lessor and lessee in respect of the suit property, and that such proceedings since is not “suit”, but mere “application” do not attract the levy of court fees. For ready reference, Sections 83(1) and 83(3) of the Waqf Act read as under:

“83(1). The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.

83(3). Where any application made under sub-section (1) relates to any waqf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the waqf actually and voluntarily resides, carries on business or personally works for gain, and, where

any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the waqf or any other person interested in the waqf or the waqf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such waqf or waqf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interest of justice to deal with the application afresh.”

10.1. A perusal of the aforesaid provisions indicates that the Waqf Act contemplates the institution of an application for judicial proceedings under Chapter VIII for determination of any dispute, question, or other matter relating to a Waqf or Waqf property, including eviction of a tenant and adjudication of the respective rights and obligations of the lessor and the lessee in respect of such property.

10.2. This clearly suggests that the application envisaged under Section 83(3) of the Waqf Act partakes the character of adversarial litigation, wherein the competing rights of the landlord and the tenant are required to be adjudicated, eviction of the tenant is sought, and the rights and obligations of the lessor and lessee fall for judicial determination.

10.3. In this context, reference may be made to Order VI Rule 1 of the CPC which defines the term '*pleading*', and which reads as under:-

“Pleading” shall mean plaint or written statement.”

10.4. Order VII Rule 1 of the CPC prescribes the particulars required to be contained in a plaint. The said provision reads as under:-

“1. Particulars to be contained in plaint.—

The plaint shall contain the following particulars:—

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence *non-corum* ce of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose;
- (f) the facts showing that the Court has jurisdiction;
- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as

the case admits.”

10.5. Interestingly, the Legislature has consciously not employed the expression ‘*suit*’ but has instead used the term ‘*plaint*’ in Order VI Rule 1 as well as Order VII Rule 1 of the CPC. The contention advanced on behalf of the revisionists is that since the Waqf Act does not employ the expressions ‘*plaint*’ or ‘*suit*’, the provisions of the Court Fees Act are not attracted.

10.6. The term ‘*plaint*’ has been defined in Halsbury’s Laws of India, Volume 7, as under:-

“Although, the term ‘*plaint*’ has not been defined in the Code of Civil Procedure 1908 it may be described as a complaint or a form of action. It is a pleading of the plaintiff.”

10.7. Halsbury’s Laws of England, Fifth Edition, defines the expression ‘*application*’ as under:-

“Where a party, or a non-party, needs to seek a decision, a remedy or permission from the court in connection with proceedings, the process is called an application.”

10.8. Black Law Dictionary defines the word “*application*” in the following manner:-

“APPLICATION. A putting to, placing before, preferring a request or petition to or before a person. The act of making a request for something.

10.9. The term *plaint* has been defined in Black’s Law Dictionary, 9th Edition as:-

“PLAINT. In civil law. A complaint; a form of action, particularly one for setting aside a testament alleged to be invalid. This word is the English equivalent of the Latin "querela." In English practice. A private memorial tendered in open court to the judge, wherein the party injured sets forth his cause of action. A proceeding in inferior courts by which an action is. Commenced without original writ. "

10.10. The Judicial Officer's Law Lexicon, 2012 volume defines the expression "Suit" as under:-

“1. “Word “Suit” means all proceedings of a judicial or quasi-judicial nature in which the disputes of parties are adjudicated before courts of competent jurisdiction.”

“2. Suit" in its undertaking is a term of wide amplitude, Broadly, a "suit" is a proceeding in a Court of Justice for the enforcement of a right denoting a legal proceeding of a civil kind. It is a proceeding in a Court according to the forms of law for enforcement of the forms of law the remedy to which a party deems itself entitled Lord Coke defines a suit to be "actio nihil aliud est, quam jus persequendi in judicio quod sibi debetur" meaning "an action is nothing else than the right of pursuing in a Court of Justice, that which is due to one." Blackstone simply says that a "suit" is a legal demand of one's rights. In its generic sense, a "suit" is the pursuit or prosecution of some claim. The term "suit" in its wide sense may be treated as applying to any original proceeding in a Court of Justice by which a party pursues the remedy which the law grants him. The modes of proceedings may be many depending upon the different stages in the litigation, that is, proceedings in the original Court, Court of appeal, proceedings in the nature of review or revision and execution proceedings. The legal signification of the word "suit" is very broad, and the term has also a much narrower meaning when it is examined in the procedural sense.”

10.11. Shorter Oxford Dictionary, 6th Edition defines the plaint as “The action or an act of plaining; A statement or representation of wrong, injury, or injustice suffered; a complaint. Formerly also, cause or matter of complaint; an oral or written statement of grievance made to a court for the purpose of obtaining redress; an accusation, a charge.”

11. Shorter Oxford Dictionary, 6th Edition defines the suit as “Sue to a person for something, Sue for in a court of law *non-corum*.”

12. Thus, the interplay of the expressions “*plaint*”, “*application*”, and “*suit*” unmistakably indicates that these terms are employed in different connotations under different statutes. A complaint, broadly speaking, is but a form of legal action instituted by a person seeking redressal of a grievance as well as adjudication of competing rights of the party. Simplest meaning of application is to make urge before adjudicating authority to settle or decide quarrel. At the cost of repetition, it is apposite to advert to Section 83(1) of the Waqf Act, 1995, wherein the legislature has expressly conferred a right upon a Mutawalli, a person interested in a waqf, or any other person aggrieved by an order made under the Act or the Rules framed thereunder, to prefer an application for determination of any dispute, question, or other matter relating to a waqf or waqf property, including eviction of a tenant and determination of the rights and obligations of the lessor and the lessee in respect of such property.

13. The application before the Waqf Tribunal, which constitutes

the subject matter of the present revision, has been instituted precisely for the purposes of eviction of a tenant from waqf property and for adjudication of the reciprocal rights and obligations of the lessor and the lessee thereof. Chapter VIII of the Waqf Act squarely falls within the *rubric* of “*judicial proceedings*”, and the procedural mechanism governing such adversarial litigation commences with an application under Section 83(3) of the Waqf Act. The proceedings thereafter are conducted in a manner akin to a civil suit, wherein a written statement is invited, issues are framed, the parties are afforded full opportunity to adduce evidence, to advance arguments, and ultimately, the Waqf Tribunal renders its decision determining the rights of the landlord and tenant as well as the rights and obligations of the lessor and the lessee in relation to the waqf property.

14. In substance and in effect, therefore, such proceedings are essentially in the nature of a suit, albeit styled as an “application”. It is also of relevance to note that Chapter VIII of the Waqf Act bears the heading “*Judicial Proceedings*”, which fortifies the aforestated conclusion. In **General Officer Commanding, Rashtriya Rifles (supra)**, the Hon’ble Supreme Court, in paragraph 29, has explicated the expression “legal proceedings” in the following terms:

“29. The phrase ‘legal proceeding’ connotes a term which means the proceedings in a court of justice to get a remedy which the law permits to the person aggrieved. It includes any formal steps or measures employed therein.

15. Legal proceedings has been defined in para 32 of the aforesaid judgment as under:-

“Legal proceedings” means proceedings regulated or prescribed by law in which a judicial decision may be given; it means proceedings in a court of justice by which a party pursues a remedy which a law provides, but does not include administrative and departmental proceedings.”

16. In **Babu Lal (supra)**, the Hon’ble Supreme Court, while drawing aid from the Oxford Dictionary, elucidated the meaning of the expression “proceedings” in the following terms:-

17. The word 'proceeding' is not defined in the Act. Shorter Oxford Dictionary defines it as "carrying on of an action at law, a legal action or process, any act done by authority of a court of law; any step taken in a cause by either party". The term 'proceeding' is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted. The word 'proceeding' in section 22 includes execution proceedings also. In *Rameshwar Nath v. Uttar Pradesh Union Bank* such a view was taken. It is a term giving the widest freedom to a court of law so that it may do justice to the parties in the case. Execution is a stage in the legal proceedings. It is a step in the judicial process. It makes a stage in litigation. It is a step in the ladder. In the journey of litigation there are various stages. One of them is execution.

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The term "proceeding" is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression

with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which Judicial business is conducted.

The word "proceeding" in Section 22 in my opinion includes execution proceedings also....”

17. It is not even the case of the revisionists that the institution of judicial proceedings under Chapter VIII of the Waqf Act, by preferring an application under Section 83(3) thereof, does not prescribe a legal course of action for enforcement of rights against a tenant, or that such proceedings do not envisage adjudication of the rights and obligations of the lessor and the lessee. On the contrary, the aforesaid statutory scheme clearly demonstrates that, whether the lis is instituted in the form of a plaint, a suit, or an application, once an action is set in motion before a Court or Tribunal for determination of competing rights *inter se* the parties and for grant of consequential redress by way of a judicial determination having force of executable decree, the same necessarily attracts the levy of court fees, in accordance with law.

18. Article 246 read with List II of the Seventh Schedule to the Constitution of India confers legislative competence upon the State to enact laws in respect of matters enumerated therein, and Entry 3 thereof expressly empowers the State to prescribe the fees chargeable in all Courts within the State, save and except the Supreme Court. In exercise of the said constitutional mandate, the Gujarat Court Fees Act, 2004 (Gujarat Act No. 4 of 2004) came to be enacted, with effect from 06.03.2004, with a view to

consolidating and amending the law relating to fees leviable in Courts and public offices, and in respect of certain matters in the State of Gujarat, other than those falling within Entries 77 and 96 of List I of the Seventh Schedule to the Constitution of India.

19. Section 1(5) of the Gujarat Court Fees Act, 2004 reads as:-

“In the absence of any specific provision to the contrary, nothing in this Act shall affect any special law now in force relating to fees taken in the courts and public offices.”

20. It was the contention of the learned advocate, Mr. M.T.M. Hakim, that the Waqf Act is silent with regard to payment of court fees and that the Waqf Rules are likewise silent on the said aspect, and therefore, no court fee is required to be paid on an application instituted under the Act. However, the applicability of Section 1(5) of the Gujarat Court Fees Act, 2004, clearly indicates that the said enactment governs the fees leviable in Courts and public offices within the State, in absence of any special law governing issue of levy of court fees.

21. Section 4 of the Gujarat Court Fees Act expressly interdicts the filing, exhibiting, or recording of any document in any Court of justice, or its receipt or furnishing by any public office, unless the fee of an amount not less than that prescribed in either the First Schedule or the Second Schedule, as the case may be, has been duly paid in respect thereof.

22. Section 83 of the Waqf Act empowers the Waqf Tribunal to

adjudicate upon any dispute, question, or other matter relating to a waqf or waqf property, and the Tribunal is expressly deemed to be a Civil Court, being vested with all the powers of a Civil Court under the CPC for the purpose of trying a suit or executing a decree or order. In such a statutory framework, the mere nomenclature of the initiating pleading as an “*application*” cannot be distinguished from a “*plaint*” as “suit”, when in substance and effect it seeks determination of the rights and obligations of the parties. Ergo, no inflexible or uniform rule can be laid down to the effect that court fees are wholly inapplicable to proceedings under Section 83 of the Waqf Act.

23. It is equally clear that there is no blanket exemption from payment of court fees in respect of every application filed under Section 83 of the Waqf Act in the State of Gujarat. Learned advocate Mr. M.T.M. Hakim, appearing for the revisionist, has failed to point out any State notification, circular, or statutory instrument issued by the State Government granting waiver from the levy of court fees on applications instituted under Section 83 of the Waqf Act.

24. *Per contra*, learned Government Pleader Mr. Virk, appearing on behalf of the Waqf Tribunal, stated in no uncertain terms that the provisions of the Gujarat Court Fees Act, 2004 are squarely applicable to applications instituted under Section 83 of the Waqf Act. It is pertinent to note that the legislative intent to levy court

fees is further reinforced by the Gujarat State Waqf Rules, 2023, which expressly provide for payment of fixed court fees in regards to election petition.

25. Articles 3, 4, and 7 of the Gujarat Court Fees Act clearly evince that the said enactment and its provisions are applicable to judicial proceedings undertaken before Courts and Tribunals, and, by necessary implication, also to judicial proceedings under Chapter VIII of the Waqf Act. In the absence of any specific statutory provision, notification, circular, or executive instruction issued by the State Government exempting Waqf proceedings from the levy of court fees, the general law governing court fees must prevail and apply.

26. The judgment in **Karnataka Board of Wakfs (supra)** also recognizes that court fees are exigible in proceedings under the Waqf Act. Similarly, a Division Bench of the Kerala High Court in **Muhammadali (supra)** has directly addressed the issue as to whether a suit is properly valued for the purposes of court fees and jurisdiction, and has categorically held, in paragraph 10 thereof, that the provisions relating to court fees are applicable to proceedings instituted under Chapter VIII of the Waqf Act.

27. Learned advocate Mr. M.T.M. Hakim, however, placing reliance upon the decision in **Polotek Rubber Industries (supra)**, vehemently contended that just as the Bombay Court Fees Act was held to be inapplicable to applications submitted before the Co-

operative Tribunal or the Board of Nominees, by parity of reasoning, applications tendered before the Waqf Tribunal would likewise not attract the levy of court fees. I am not impressed by the submission canvassed by the learned advocate Mr. M.T.M. Hakim, inasmuch as the Gujarat Co-operative Societies Act contains its own distinct and self-contained scale of court fees. Applications instituted under the said Act are, therefore, governed by the fee structure specifically prescribed therein, and for that very reason, the provisions of the Bombay Court Fees Act were held to be inapplicable to proceedings under the Gujarat Co-operative Societies Act.

28. The judgment relied upon by the learned advocate Mr. M.T.M. Hakim in *Shri Shanishwar Devasthan Trust (supra)* to contend that no court fee is leviable on applications instituted before the Waqf Tribunal, on the premise that the Tribunal is constituted under a special enactment and that, in the absence of any specific legislation by the State Government, the provisions relating to court fees would not be applicable, does not advance the case of the revisionists. In *Shri Shanishwar Devasthan Trust (supra)*, the Bombay High Court, while advertng to Rule 40 of the Waqf Rules (applicable in the State of Maharashtra), observed that the said Rule was silent as regards the quantum of court fees payable on an application. The issue before the Court therein was confined to the jurisdiction of the Waqf Tribunal to try and decide a suit in the context of Section 9A of the Code of Civil Procedure

(Maharashtra Amendment). In that backdrop, the Court made a cursory observation regarding the inapplicability of the Bombay Court Fees Act. Such an observation, rendered in the peculiar factual and legal context of the said case being *obiter dicta*, cannot be pressed into service to advance a sweeping proposition that no court fee is leviable on an application filed under Section 83(3) of the Waqf Act.

29. Reference was also made to the judgment in ***Shaikh Karimoddin (supra)*** to contend that the provisions of the Bombay Court Fees Act were held to be inapplicable to the proceedings in question. For the aforesaid reasons, I am unable to persuade myself to accept the said submission insofar as reliance on ***Shaikh Karimoddin (supra)*** is concerned.

30. In a nutshell, an application instituted under Section 83(3) of the Waqf Act is aimed at adjudication of the rights and obligations of the lessor and the lessee in respect of waqf property. Such proceedings are, therefore, governed by the provisions of the Gujarat Court Fees Act, 2004, more particularly in view of Section 1(5) thereof, which renders the Act applicable to judicial proceedings undertaken under the Waqf Act as well.

31. In the absence of any blanket exemption or statutory interdiction against the levy of court fees on applications filed under Section 83(3) of the Waqf Act, which in substance and effect partake the character of a plaint, the submission that no court fee is

chargeable thereon is wholly misconceived and liable to be rejected. In all, an expansive interpretation of the phrases “suit”, “plaint”, and “application”, in the context of “judicial proceedings” under Chapter VIII of the Waqf Act, leaves no manner of doubt that the proceedings contemplated therein are adversarial in nature and adjudicate and determine the competing rights of parties arrayed in opposition to each other. In the absence of any statutory exemption, such proceedings certainly attract the levy of court fees. Thus, the submission of learned advocate Mr. M.T.M. Hakim is found to be wholly misconceived and devoid of merit.

32. One more aspect which merits consideration is that, in several of the matters, the application—more particularly paragraphs 8 and 11 thereof—unequivocally acknowledges the requirement of payment of court fees before the Waqf Tribunal. The suit has also been valued for the purposes of jurisdiction. When this aspect was specifically brought to the notice of the learned advocate Mr. M.T.M. Hakim, he was unable to offer any satisfactory explanation as to why such pleadings had been consciously incorporated in the plaint.

33. So far as reliance placed by the learned advocate Mr. M.T.M. Hakim on the judgment in *U.P. Sunni Central Waqf Board (supra)* to contend that no court fee is payable is concerned, the said decision arose out of an application preferred by a Mutawalli under Section 54 of the Waqf Act seeking removal of an encroachment.

The said application was in the nature of a request or representation to the Chief Executive Officer to initiate appropriate action and did not involve adversarial litigation or adjudication of *inter se* rights of the parties. Consequently, the question of levy of court fees did not arise in that context.

34. The present proceedings stand on an entirely different footing. Here, the reliefs sought include a declaration and delivery of peaceful and vacant possession of the waqf property. These proceedings are adversarial in character, wherein the rights and obligations of the contesting parties are required to be judicially determined. An application instituted under Section 83 of the Waqf Act, forming part of the judicial proceedings contemplated under Chapter VIII thereof, therefore, partakes the character of a plaint or suit and necessarily attracts the provisions of the Gujarat Court Fees Act, 2004.

35. The second issue pertains to the applicability of the provisions of the CPC to judicial proceedings under Chapter VIII of the Waqf Act, 1995. At the outset, it would be apposite to advert to Sections 83(5) to 83(8) of the Waqf Act, 1995, which read as under:-

“83(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

83(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

83(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

83(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).”

36. Section 83(5) of the Waqf Act, 1995, unequivocally provides that the Tribunal shall be deemed to be a Civil Court and shall exercise the same powers, as well as discharge the same duties, as are vested in a Civil Court under the CPC while trying a suit or executing a decree or order.

37. Section 83(6), which opens with a non obstante clause, stipulates that the Tribunal may regulate its own procedure, as may be prescribed, provided such procedure is consistent with the provisions of the CPC. The presence of the non obstante clause does not exclude the operation of the CPC; rather, it reinforces that any prescribed procedure must yield to the CPC in the event of inconsistency.

38. Section 83(7) further ordains that a decision rendered by the Tribunal shall have the force and effect of a decree of a Civil Court. Section 83(8) contemplates that the execution of the Tribunal’s decision shall be carried out by the Civil Court having jurisdiction, in accordance with law.

39. A conjoint reading of Sections 83(5) to 83(8) leaves no

manner of doubt that the provisions of the CPC, are fully applicable to judicial proceedings under Chapter VIII of the Waqf Act. The statutory scheme clearly envisages that, while the Tribunal may follow any additional or special procedure as may be prescribed, such procedure must necessarily be in consonance with, and not repugnant to, the provisions of the CPC.

40. Thus, It is clear that in deciding any dispute relating to the procedure specially provided by the act i.e. Waqf Act or the waqf rules the tribunal shall be guided by provision contained in the CPC as far as possible. In that circumstances the provision of the CPC applies to the proceedings. The Supreme Court in *Syed Mohideen* (*supra*) cleared position of law. Paras 5 and 6 are relevant, they reads as under:-

“5. We agree with the aforesaid observations of the High Court and see no reason to interfere with the same. We, however, may make it clear that in terms of Section 83(5) of the Wakf Act, 1995 the Wakf Tribunal is deemed to be a civil court and has the same powers as are exercised by the civil court under the Code of Civil Procedure, 1908 while trying a suit or executing a decree or order.

6. The civil courts are in turn competent to issue injunctions in terms of Order 39 Rules 1 and 2 and Section 151 CPC. Similar orders can, therefore, be passed by the Wakf Tribunal also in suits that are legally triable by it if a case for grant of such injunction or direction is made out by the party concerned. These observations shall not, however, be understood to mean that we are expressing any opinion on whether a case for grant of an injunction had been made out in the matter at hand. All that we wish to clarify is that if the Wakf Tribunal upon consideration of all the relevant facts

and circumstances comes to the conclusion that a case for grant of interim injunction has been made out it shall be free to issue any such injunction.”

41. In view of the explicit statutory mandate that the Waqf Tribunal is deemed to be a Civil Court and is vested with the same powers as are exercisable by a Civil Court under the CPC while trying a suit or executing a decree or order, there exists no justification whatsoever to exclude the applicability of Order VII Rule 11 of the CPC. Consequently, the provisions of Order VII Rule 11 CPC are fully attracted to proceedings before the Waqf Tribunal.

42. Learned advocate Mr. M.T.M. Hakim placed reliance upon the judgment in **South India Corporation (supra)**; however, the said decision was rendered in an altogether different factual matrix and, therefore, has no application to the controversy at hand. Insofar as the judgment in **Ahle Sunnatwala Jamat Jogi Madina Masjid (supra)** is concerned, the view taken therein—that the provisions of Order VII Rule 11 or Order IX Rule 9 of the CPC are inapplicable to proceedings before the Waqf Tribunal—stands eclipsed by the subsequent and authoritative pronouncement by Apex Court in **Syed Mohideen (supra)**.

43. Nonetheless, the provisions of the Gujarat State Waqf Rules, 2023, make it pellucidly clear that the provisions of the CPC, as well as the Gujarat High Court Rules, are applicable in addition to the Waqf Rules, 1998, to proceedings instituted under Chapter VIII

of the Act. The relevant Rule of the Gujarat State Waqf Rules, 2023 reads thus:-

“Rule 76. In deciding any question relating to procedure not specifically provided by the Act or these Rules, the Tribunal shall, as far as possible, be guided by the provisions contained in the Code of Civil Procedure, 1908, the Gujarat High Court Rules, and the Gujarat State Waqf Tribunal (Procedure) Rules, 1998.”

44. The judgment in *Vimla Devi (Smt.) (supra)* pertains to proceedings under the Motor Vehicles Act and, ex facie, has no bearing on the issues arising in the present case. Similarly, the decision in *Lokhandwala Irfanbhai Hanifbhai (supra)* deals with proceedings under the Gujarat Co-operative Societies Act and is wholly inapposite to the submissions advanced by the learned advocate Mr. Hakim.

45. Thus, where the statute itself expressly makes the provisions of the CPC applicable, the submission canvassed by learned advocate Mr. Hakim that the CPC does not apply to proceedings before the Waqf Tribunal is devoid of substance and cannot be countenanced.

46. In the case at hand, the learned Waqf Tribunal rejected the plaint by invoking the provisions of Order VII Rule 11 of the CPC on account of deficiency and insufficiency of court fees. Admittedly, there is no independent or specific provision under the Waqf Act, the Rules framed thereunder, or the Gujarat State Waqf Rules, 2023 governing rejection of a plaint on the ground of

insufficiency of court fees. In such circumstances, recourse to the provisions of the CPC was not only permissible but inevitable.

47. It is an undisputed position that, in the first instance, the Waqf Tribunal had passed an order directing the Waqf, being the plaintiff, to make good of the deficit court fees and to rectify the valuation of the suit. The said order was never assailed by the Waqf plaintiff independently, despite sufficient opportunity having been granted. Upon lapse of the time granted under the said order, the learned Waqf Tribunal proceeded to exercise its jurisdiction under Order VII Rule 11 clauses (b) and (c) of the CPC and rejected the plaint.

48. It is also noticeable that the first order passed by the Waqf Tribunal, directing correction of the valuation of the suit for the purposes of court fee and jurisdiction, was not challenged before any higher forum until the plaint came to be rejected. In the present revision, both orders have been simultaneously challenged. The question, therefore, arises whether, in the absence of a valid and timely challenge to the first order directing the Waqf plaintiff to correct the valuation for court fee and jurisdiction and to make good the deficiency of the court fees, the second order rejecting the plaint can be assailed on the ground of non-payment of sufficient court fees. Mr. M.T.M. Hakim, learned advocate for the revisionists, has failed to lift the veil from this conspicuous aspect.

49. In view of foregoing reasons, this Court does not discern any palpable illegality, jurisdictional infirmity, or error of law in the

impugned orders warranting interference in exercise of revisional jurisdiction.

50. One additional contention was advanced by the learned advocate Mr. M.T.M. Hakim to the effect that, in the matters pertaining to the “Sidhpur group”, the initial order was passed by the Chairman and one Member of the Waqf Tribunal. Invoking Section 83(4) of the Waqf Act, which provides that the Tribunal shall consist of three Members—one being the Chairman and the other two Members—it was contended that the first order directing the Waqf, as plaintiff, to make good of the deficiency in court fees, having been passed only by the Chairman and one Member, was *coram non judice*. However, the said submission overlooks the statutory development. For removal of any doubt, the State Government amended Rule 71(1) of the Gujarat State Waqf Rules, 2023, with effect from 16.08.2024, clarifying that the Tribunal shall not be rendered coram non judice merely because, at any given point of time, the post of a Member remains vacant or a Member other than the Chairman is absent. The amended Rule expressly recognizes the competence of the Chairman of the Tribunal to function and discharge judicial duties in such eventualities. Rule 71 of the Gujarat State Waqf Rules, 2023 reads as under:-

“71. Appointment of a Member of Tribunal, having knowledge of Muslim Law and Jurisprudence and functioning of Tribunals - (1) The Government shall appoint one person as Member to the Tribunal having qualification prescribed under clause (c) of sub-section (4)

of section 83 of the Act who is or has been a member of the State Judicial Service holding a rank, not below that of a Senior Civil Judge, Class 1.

(2) For Removal of any doubts, the tribunal shall not be treated as non-Coram. If, at any given time the office of the members remains vacant or any Member other than the Chairman remains absent, the Chairman of the Tribunal shall be competent to function.

(3) The salary, allowances and service conditions of a retired Judicial Officer shall be determined by the Government from time to time. The Government may discontinue service of retired Senior Civil Judge in public interest as it deems fit.”

51. In “Siddhpur group” matters the first order was passed on 8.11.2024 it was passed by the chairman and member of the of the Gujarat State waqf Tribunal in view of the amended rule 71(2) which came into force from 16 August 2024. Thus, passing of such order by member and chairman would not be treated as non corum judice.

52. In **Lal Shah Baba Dargah Trust (supra)** the Supreme Court has discussed the issue of insufficient corum in the tribunal and its effect upon the decision in para 38 which is extracted:-

38.Having regard to the law discussed hereinbefore and giving our anxious consideration in the matter, we are of the definite opinion that the High Court has committed serious error of law in holding that after the Amendment Act, 2013 came into force, the one-member Tribunal exercising jurisdiction ceased to exist even though a fresh notification constituting three-member Tribunal has not been notified. The High Court further erred in law in directing the civil court to decide the disputes in respect of wagi property.”

53. In view of the foregoing analysis and the prevenient ratiocination, the last contention canvassed by the learned advocate Mr. M.T.M. Hakim also fails to survive and is, accordingly, rejected.

54. Insofar as the certain directions issued by the learned Waqf Tribunal against the Executive Officer of the Sunni Muslim Dargah Masjid, Sidhpur, in the “Sidhpur Group” matters are concerned, this Court does not deem it appropriate to enter into an examination of the legality or validity thereof, in the absence of any challenge laid by the concerned Executive Officer, namely Mr. Umardaraz Chasmawala. Indubitably. To be noted that the said directions were issued in *personam* against him, and in the absence of challenge by him, any adjudication thereon would be wholly unwarranted.

55. As regards the reliance placed by the learned advocate for the revisionists upon certain judgments dealing with the competence of tribunals functioning with less than the prescribed quorum of three members, the same is of no avail to the revisionists as it is in the teeth of the amendment to Rule 71 of the Gujarat State Waqf Rules. It is apposite to note that the vires of the said amended Rule have neither been assailed nor called into question before any competent fore. In absence whereof, the very foundation of the said argument crumbles.

56. The decision in **Diwan Bros. (supra)**, relied upon by the learned advocate Mr. Hakim, is clearly distinguishable on facts as

well as on law, inasmuch as the said judgment arose in the context of the Displaced Persons Act, where application by displaced person, was held to be non-chargeable of court fee in background of object of the Act, as well as non-adjudicatory nature of the proceedings, so also decision arrived therein had no force of decree. The ratio *decidendi* thereof cannot be transplanted to the present statutory framework governing Waqf Tribunals, and the analogy sought to be drawn pales into insignificance in light of the aforesaid discussion.

57. For the reasons recorded hereinabove, all the Revision Applications are devoid of merit and are accordingly **dismissed**. Rule stands discharged.

57.1. Any interim relief granted earlier, if in force, stands vacated forthwith.

57.2. The Registry is directed to place a copy of this judgment in each of the connected petitions.

MANISH MISHRA

(J. C. DOSHI,J)