2026:AHC:232609

HIGH COURT OF JUDICATURE AT ALLAHABAD

WAQF APPEAL No. - 20 of 2026

Ahmad Jamal

…..Appellant(s)

Versus

U.P. Sunni Central Waqf Board and 2 others

…..Respondent(s)

Counsel for Appellant(s)	:	Tanishk Goyal
Counsel for Respondent(s)	:	Sudhanshu Pandey

AFR

Court No. - 35

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

1. Heard Sri Tanishk Goyal, appearing along with Sri Arpit Agarwal learned counsel for the appellant, Sri Devendra Mishra, holding brief of Sri Punit Gupta learned counsel appearing for Respondent No. 1-U.P. Sunni Central Waqf Board and Sri Sudhanshu Pandey, learned counsel appearing for respondent No. 3.

2. The present appeal, preferred under Section 83(9) of The Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 (hereinafter referred to as the ‘Act of 1995’), is directed against the order dated 31.08.2026 passed by the U.P. Waqf Tribunal, Lucknow (hereinafter referred to as the ‘Tribunal’) in Waqf Appeal No. 05 of 2018 (Ahmad Jamal v. U.P. Sunni Central Waqf Board and Others), whereby the appellant's application, Paper No. *ka*-104, seeking amendment of the memorandum of appeal, has been rejected.

3. By the impugned order, the Tribunal declined to permit the amendments proposed by the appellant under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'). The Tribunal essentially proceeded on the consideration that the memorandum of appeal, as already amended pursuant to its earlier order dated 29.12.2022 passed on application Paper No. *ka*-121, contained sufficient factual averments and legal grounds to enable adjudication of the controversy; that the further amendments sought were not necessary for determining the real questions in controversy; and that the appellant had failed to furnish a satisfactory explanation for not incorporating the additional grounds now sought to be introduced at the earlier stage, despite having knowledge of the relevant facts.

4. The Tribunal also considered the application in the backdrop of the judgment and order dated 17.02.2025 passed by this Court in Civil Revision No. 36 of 2025, whereby the earlier decision of the Tribunal was set aside and the matter remitted for fresh adjudication in the light of specified considerations, subject to a direction for time-bound disposal.

5. The principal issue arising for consideration in the present appeal is whether, having regard to the nature of the proposed amendments, the pleadings already on record, the stage of the proceedings and the scope of the remand, the Tribunal was justified in declining the amendment or whether its decision suffers from any legal infirmity warranting interference by this Court.

FACTUAL BACKGROUND AND LITIGATION HISTORY

6. The controversy giving rise to the present appeal emanates from a protracted dispute concerning the management of a Waqf-alal-aulad created by Haji Sheikh Abdul Samad under a registered Waqf deed dated 04.08.1931. The dispute, in particular, concerns succession to and continuance in the office of Mutawalli, governed by the terms and stipulations contained in the said deed.

7. The registered Waqf deed dated 04.08.1931 prescribed the line of hereditary succession and the eligibility criteria for appointment to the office of Mutawalli from amongst the descendants of the waqif.

Following the demise of the founder, Haji Abdul Hai functioned as Mutawalli. Upon his death, Nizam-ul-Hai alias Titu alias Farid was appointed Mutawalli on 20.05.1999. However, the order appointing Nizam-ul-Hai alias Titu alias Farid was subsequently recalled and on 04.09.2000, the appellant namely Ahmad Jamal was appointed as a Mutawalli of the said Waqf.

8. The order dated 04.09.2000, whereby the appellant was appointed as Mutawalli, was initially challenged by Nizam-ul-Hai before this Court by filing a writ petition, which came to be dismissed. The said appointment was thereafter questioned by him by way of a reference before the Board, which was also dismissed. Consequently, the appellant continued to hold the office of Mutawalli pursuant to the aforesaid appointment.

9. The controversy resurfaced when Zia-ul-Islam, father of Nizam-ul-Hai, asserted an independent claim to the office of Mutawalli and initiated proceedings before the Board by moving an application under Section 64 of the Act, 1995, seeking removal of the appellant. The Board, by order dated 04.04.2018 removed the appellant from the office of Mutawalli.

10. Aggrieved by the aforesaid order, the appellant instituted Waqf Appeal No. 05 of 2018 before the Tribunal under Section 64(4) of the Act of 1995. The challenge, *inter alia*, was founded upon alleged violations of the principles of natural justice, non-service of notice, non-supply of the inquiry report and non-compliance with the statutory safeguards contemplated under Section 64(3) of the Act of 1995.

11. During the pendency of the appeal, the original complainant, Zia-ul-Islam, died on 12.12.2021. Thereafter, by order dated 18.05.2022, the Board appointed respondent No. 3, Firoz Adil, son of late Zia-ul-Islam, as Mutawalli of the waqf.

12. Upon coming to know of the aforesaid appointment, the appellant moved an application seeking amendment of the memorandum of appeal, registered as Paper No. *ka*-121. The proposed amendment sought, *inter alia*, to bring on record the subsequent appointment of

respondent No. 3, raise objections concerning his lineage and eligibility with reference to the terms of the registered Waqf deed, and question the manner in which the appointment had been made, including the alleged denial of an opportunity of hearing. The Tribunal, by an order dated 29.12.2022, allowed the application, pursuant to which the memorandum of appeal was amended.

13. The Tribunal thereafter proceeded to adjudicate the appeal and, by judgment dated 19.11.2024, dismissed Waqf Appeal No. 05 of 2018, thereby sustaining the order of the Board removing the appellant from the office of Mutawalli.

14. The appellant assailed the judgment dated 19.11.2024 before this Court by instituting Civil Revision No. 36 of 2025. This Court, by judgment and order dated 17.02.2025, set aside the decision of the Tribunal and remitted the matter for fresh adjudication. The Tribunal was directed to decide the appeal afresh, in accordance with law, within two months from the date of receipt of a certified copy of the order, after affording an opportunity of hearing to both parties, taking into consideration Sections 14, 22 and 64(3) of the Act of 1995 and returning a decision on Issue No. 6 framed in its earlier judgment dated 19.11.2024.

15. Following the remand, certain further procedural steps were taken before the Tribunal. On 12.05.2026, the appellant submitted a proposed list of additional issues. Subsequently, by order dated 06.07.2026, the Tribunal permitted respondent No. 3 to place additional written objections on record. Thereafter, on 30.07.2026, the appellant moved a further application seeking amendment of the memorandum of appeal, registered as Paper No. *ka*-104. Thus, the application came to be filed after the earlier amendment had already been allowed and the proceedings had undergone adjudication once before being remitted by this Court for fresh consideration.

16. By application Paper No. *ka*-104, the appellant sought to introduce further factual averments and legal grounds, besides certain consequential corrections and modifications to the prayer clause. The

proposed amendments, broadly speaking, pertained to the following aspects:

(i) The alleged non-service of show-cause notices dated 04.10.2017 and 15.11.2017, as well as the subsequent publication of the latter notice in newspapers, which, according to the appellant, reflected *mala fide* intentions in the proceedings initiated for his removal from the office of Mutawalli;

(ii) The legality and validity of the order dated 18.05.2022, passed by the Chairman of the Board acting singly, whereby respondent No. 3 was appointed as Mutawalli on the basis of a legal opinion dated 13.05.2022. The appellant sought to question the said appointment on the grounds, *inter alia*, that it was made without affording him an opportunity of hearing and without jurisdiction or authority under the Act of 1995;

(iii) The alleged violation of the principles of natural justice and Article 14 of the Constitution of India, with particular reference to Sections 32(2)(d) and 32(2)(g) of the Act of 1995, to contend that the power in question vested in the Board and could not have been exercised by the Chairman acting singly;

(iv) The issuance of a notice dated 16.10.2019 under Section 54 of the Act of 1995 to late Zia-ul-Islam, and the relevance thereof to the controversy;

(v) Certain consequential corrections, including correction of the reference to respondent No. 2 as respondent No. 3 in the memorandum of appeal, and modification of the prayer clause to specifically incorporate the order dated 04.04.2018, the office memorandum dated 10.04.2018, the corrigendum dated 24.04.2018 and the connected order.

17. The application was opposed by the respondents. Their principal objection was that the material facts sought to be introduced through the proposed amendments, particularly those concerning the appointment of respondent No. 3 on 18.05.2022, were already within the appellant's knowledge when he had moved the earlier amendment application, Paper No. *ka*-121, in 2022. It was contended that, despite having obtained permission to amend the memorandum of appeal at that stage,

the appellant had failed to incorporate the additional grounds now sought to be introduced and had furnished no satisfactory explanation for seeking a further amendment after an unexplained and prolonged interval. It was also urged that permitting the proposed amendments would unnecessarily enlarge the scope of the controversy and impede the expeditious adjudication mandated by this Court in its remand order dated 17.02.2025.

18. By the impugned order dated 31.08.2026, the Tribunal rejected application Paper No. *ka*-104. In doing so, it essentially held that the memorandum of appeal, as amended pursuant to the earlier order dated 29.12.2022, already contained adequate factual averments and legal grounds to enable adjudication of the challenge to the removal order dated 04.04.2018; and that the further amendments sought were not necessary for determining the real questions in controversy. The Tribunal also took into consideration the fact that the application sought to introduce further amendments at a stage when the matter had already been remitted for fresh adjudication under a time-bound mandate issued by this Court. It was in these circumstances that the Tribunal declined to permit a further amendment of the memorandum of appeal, leading to the institution of the present appeal.

RIVAL SUBMISSIONS

Submissions on behalf of the Appellant

19. Learned counsel appearing for the appellant assailed the impugned order and advanced the following submissions:

19.1 It was contended that an appeal is a continuation of the original proceedings and that the principles governing amendment of pleadings under Order VI Rule 17 of the Code of Civil Procedure apply equally to a memorandum of appeal. An amendment necessary for determining the real questions in controversy ought not to be declined on technical or procedural considerations. According to learned counsel, the eligibility of respondent No. 3 for appointment as Mutawalli, particularly in the light of the registered Waqf deed dated 04.08.1931, was intrinsically connected with the dispute concerning the appellant’s removal and the

subsequent appointment made during the pendency of the appeal. It was, therefore, urged that the proposed amendments were relevant to the controversy already before the Tribunal and that their rejection was inconsistent with the principles governing the exercise of power to permit amendment of pleadings.

19.2 It was further submitted that, although the Tribunal had allowed the earlier amendment application, Paper No. *ka*-121, by order dated 29.12.2022, it had failed to frame specific issues concerning the appointment and eligibility of respondent No. 3. The subsequent application, Paper No. *ka*-104, was stated to have become necessary to address that omission and to place the appellant's objections on record with greater precision. Learned counsel submitted that specific issues were required to be framed concerning the validity of the appointment of respondent No. 2 by order dated 04.04.2018; the lineage and eligibility of respondents Nos. 2 and 3 in the light of the registered Waqf deed; and the validity of the appointment of respondent No. 3 on 18.05.2022 during the pendency of the appeal, allegedly without affording the appellant an opportunity of hearing. It was urged that, in the absence of appropriate pleadings and issues, material aspects of the controversy would remain unaddressed and that the proposed amendment was necessary to facilitate their effective adjudication.

19.3 Learned counsel maintained that the proposed amendments neither introduced a controversy foreign to the proceedings nor altered their fundamental nature. The central dispute, according to him, continued to concern the legality of the appellant's removal from the office of Mutawalli and the consequences arising therefrom. The proposed amendments were stated to elaborate the existing challenge by incorporating further averments concerning the proceedings culminating in the appellant's removal, the subsequent appointment of respondent No. 3, and the statutory and procedural requirements governing such appointment. It was also submitted that the amendment application contained an explanation for not incorporating the proposed averments at

an earlier stage, which, according to learned counsel, had not received adequate consideration in the impugned order.

19.4 It was further contended that the proposed amendments raised material questions concerning the appointment of respondent No. 3 on 18.05.2022, allegedly made by the Chairman of the Waqf Board acting singly, and the competence of the authority which had made the appointment under the Act of 1995. The appellant sought to question the appointment with reference to Sections 32(2)(d), 32(2)(g) and 63 of the Act of 1995, the alleged absence of notice or opportunity of hearing, and the eligibility of respondent No. 3 under the registered Waqf deed dated 04.08.1931. Learned counsel submitted that the office of Mutawalli could not be regarded as devolving automatically upon the heir of an incumbent merely upon the latter's death, and that the appointment of respondent No. 3 required examination in the light of the governing statutory provisions and the terms of the Waqf deed. The proposed amendments were also stated to be necessary for clarifying the consequential relief sought in relation to the order dated 04.04.2018 and the subsequent appointment dated 18.05.2022.

19.5 Learned counsel next placed reliance upon the judgment and order dated 17.02.2025 passed by this Court in Civil Revision No. 36 of 2025, whereby the Tribunal's earlier decision had been set aside and the case remitted for fresh adjudication after hearing the parties and taking into consideration the matters specified therein. It was contended that the proposed amendments ought to have been considered in the context of the direction for fresh adjudication. Reliance was also placed upon the order dated 06.07.2026, by which the Tribunal had permitted respondent No. 3 to place fresh written objections on record. According to learned counsel, the receipt of further pleadings from respondent No. 3 after remand was a relevant circumstance which warranted consideration of the appellant's request to amend the memorandum of appeal, insofar as such amendment was necessary for determining the controversy. The Tribunal's decision to permit respondent No. 3 to supplement his

objections while declining the appellant's request was, therefore, questioned as being unjustified.

19.6 Lastly, learned counsel submitted that the Tribunal had erred in treating the time limit fixed by this Court for disposal of the appeal as a ground for rejecting the amendment application. It was contended that a direction for expeditious disposal could not, by itself, preclude an amendment otherwise necessary for effective adjudication of the dispute. Learned counsel also pointed out that, according to the appellant, effective steps towards compliance with the remand directions had not been taken for a considerable period, whereas on 06.07.2026, fresh objections on behalf of respondent no.3 were entertained by the Waqf Tribunal. In these circumstances, it was urged that the application for amendment ought to have been examined on its own merits and not declined merely with reference to the time-bound direction for disposal. On the aforesaid submissions, learned counsel prayed that the impugned order dated 31.08.2026 be set aside and the application for amendment, Paper No. *ka*-104, be allowed.

Submissions on behalf of the Respondents

20. Learned counsel appearing for the Board and learned Counsel appearing for respondent No. 3 opposed the appeal and supported the impugned order, advancing the following submissions:

20.1 The respondents submitted that respondent No. 3 had been appointed as Mutawalli on 18.05.2022 and that the appellant, having thereafter moved an application for amendment of the memorandum of appeal, registered as Paper No. *ka*-121, which was allowed on 29.12.2022, was fully aware of the said appointment. The appellant had, at that stage, an opportunity to incorporate his objections concerning the appointment, lineage and eligibility of respondent No. 3. No satisfactory explanation, however, had been furnished for seeking a further amendment through Paper No. *ka*-104, filed on 30.07.2026, after a considerable lapse of time.

20.2 It was further submitted that the order dated 17.02.2025 passed by this Court in Civil Revision No. 36 of 2025 had remitted the matter for

fresh adjudication in the light of the statutory provisions and the specific issue identified therein. The remand, according to the respondents, did not contemplate an unrestricted reopening of the proceedings or permit the introduction of additional controversies beyond what was necessary for the adjudication directed by this Court. The proposed amendments, particularly those concerning the lineage, pedigree and eligibility of the respondents and the validity of subsequent appointments, were stated to enlarge the scope of the appeal beyond the controversy required to be reconsidered pursuant to the remand.

20.3 The respondents contended that the memorandum of appeal, as amended pursuant to the order dated 29.12.2022, already contained grounds challenging the order dated 04.04.2018 and that the appellant could advance his submissions on the basis of the existing pleadings and material available on record. The omission to frame particular issues by the Tribunal did not, by itself, render a further amendment necessary. It was urged that the appellant could not rely merely upon the absence of separately framed issues to justify the introduction of additional pleadings, particularly when the relevant facts were already within his knowledge and an earlier application for amendment had been allowed.

20.4 It was also submitted that the proposed amendments sought to introduce further factual and legal questions concerning the appointment of respondent No. 3 on 18.05.2022, the competence of the Chairman to make such appointment, the applicability of Sections 32 and 63 of the Act of 1995, and the eligibility of the respondents under the terms of the registered Waqf deed. According to the respondents, these grounds could not be introduced at such a belated stage in the absence of a satisfactory explanation for their omission from the earlier amendment. The appellant had, therefore, failed to demonstrate that the proposed amendments were necessary for adjudication of the controversy arising from the existing pleadings.

20.5 The respondents further submitted that the Tribunal’s decision to permit respondent No. 3 to place additional written objections on record by order dated 06.07.2026 did not, by itself, confer upon the appellant an

automatic right to seek a further amendment of the memorandum of appeal. The application for amendment was required to be considered independently, with reference to the necessity of the proposed amendments, the explanation for the delay and their effect upon the scope of the proceedings. It was contended that the appellant had failed to establish that the permission granted to respondent No. 3 furnished any justification for allowing the amendments sought through Paper No. *ka*-104.

20.6 Lastly, the respondents submitted that, in view of the earlier adjudication, the limited scope of the remand by this Court and the direction for expeditious disposal, the Tribunal had rightly declined to permit further amendments which would enlarge the controversy and impede the proceedings. The impugned order, it was urged, did not deprive the appellant of the opportunity to advance submissions on the basis of the existing pleadings or prevent the Tribunal from considering the grounds already forming part of the memorandum of appeal. It was, therefore, contended that no error in the exercise of the Tribunal's discretion had been demonstrated so as to warrant interference by this Court in the present appeal under Section 83(9) of the Act of 1995.

POINTS FOR DETERMINATION

21. Upon consideration of the rival submissions, the impugned order and the material available on record, the following questions arise for determination:

21.1. The scope and extent of the power of an appellate forum, including a Waqf Tribunal exercising appellate jurisdiction, to permit amendment of a memorandum of appeal under Order VI Rule 17 read with Section 107(2) and Order XLI Rule 2 of the Code of Civil Procedure, 1908.

21.2. Whether, following a remand by the High Court directing fresh adjudication within a specified period and with reference to identified matters, an appellant may seek a further amendment introducing factual grounds which were already in existence and within his knowledge prior to the remand and, if so, the considerations governing the exercise of such power.

21.3. Whether, in the facts and circumstances of the present case, the Tribunal was justified in rejecting the amendment application, Paper No. *ka*-104, and whether the impugned order warrants interference by this Court in the exercise of its appellate jurisdiction under Section 83(9) of the Act of 1995.

STATUTORY FRAMEWORK AND JURISPRUDENTIAL ANALYSIS

Scope of the power to amend pleadings in appellate proceedings

22. The controversy in the present appeal raises questions concerning the exercise of the power to amend a memorandum of appeal at a stage when the proceedings have already undergone an earlier amendment, adjudication by the Tribunal and remand by this Court for fresh consideration in accordance with specified directions. The question is not merely whether an amendment can be permitted in appellate proceedings, but whether the particular amendments sought by the appellant were necessary for effective adjudication of the controversy before the Tribunal and whether the discretion exercised by it in declining the application was consistent with the principles governing amendment of pleadings.

23. The power to permit amendment of pleadings is intended to advance the cause of justice by enabling the court to determine the real questions in controversy between the parties. Such power, however, is neither unfettered nor exercisable as a matter of course. Its exercise requires consideration of the nature and relevance of the proposed amendment, its necessity for determining the controversy, the stage of the proceedings, the explanation furnished for the delay, the prejudice likely to be caused to the opposite party and whether the amendment would merely elaborate an existing case or introduce a substantially new or inconsistent factual foundation. The object is to facilitate a fair and effective adjudication, without permitting the amendment process to become a means of unnecessarily enlarging or recasting the dispute.

24. These considerations assume particular significance in the present case. The appellant had earlier obtained permission to amend the memorandum of appeal by order dated 29.12.2022 on application Paper

No. *ka*-121. The Tribunal thereafter decided the appeal on 19.11.2024. This Court, by judgment and order dated 17.02.2025 passed in Civil Revision No. 36 of 2025, set aside that decision and remitted the matter for fresh adjudication. The subsequent application, Paper No. *ka*-104, was filed on 30.07.2026, seeking further amendments concerning, *inter alia,* the alleged non-service of notices, the legality of the appointment of respondent No. 3, the authority of the Chairman of the Board to make such appointment, and consequential modifications to the pleadings and prayer clause. The permissibility of these amendments must, therefore, be examined in the light of the statutory framework governing amendment of pleadings, the nature of the existing controversy and the terms of the order of remand.

Order VI Rule 17 read with Section 107(2) of the Code of Civil Procedure

25. Order VI Rule 17 of the Code of Civil Procedure, 1908, confers power upon the court to permit either party to alter or amend its pleadings at any stage of the proceedings, on such terms as may be just, where such amendment is necessary for determining the real questions in controversy between the parties. The provision embodies the principle that procedural rules are intended to facilitate adjudication on the merits and that a party should not ordinarily be deprived of an opportunity to have the real controversy determined merely on account of an avoidable deficiency in its pleadings. At the same time, the requirement that the amendment must be necessary for determining the real questions in controversy imposes a judicial restraint upon the exercise of that power.

26. Section 107(2) CPC provides that, subject to the conditions and limitations prescribed, an appellate court shall have the same powers and shall perform, as nearly as may be, the same duties as are conferred and imposed by the Code upon courts of original jurisdiction in respect of suits instituted therein. The provision enables an appellate court to exercise appropriate procedural powers, including the power to permit amendment of a memorandum of appeal, subject to the applicable statutory requirements and the nature of the appellate proceedings.

27. Consequently, the circumstance that an amendment is sought in a memorandum of appeal, rather than in a plaint or written statement, does not, by itself, place the request beyond the scope of amendment jurisdiction. The appellate forum possesses the requisite procedural authority to consider such an application. Equally, the availability of that power does not confer an unconditional right upon a litigant to amend the memorandum of appeal whenever a further ground or factual assertion is sought to be introduced. The proposed amendment must satisfy the governing requirements of relevance, necessity, procedural fairness and consistency with the nature and scope of the proceedings.

28. It is, therefore, necessary to distinguish between the existence of the power to permit an amendment and the circumstances in which that power ought to be exercised. While the appellate forum is competent to consider an amendment, the exercise of that authority remains subject to judicial scrutiny. The forum must examine whether the proposed amendment assists in determining the real controversy, whether it merely clarifies or elaborates a case already set up or introduces a substantially new factual foundation, and whether its allowance would prejudice the opposite party or disrupt the orderly progress of the proceedings. The mere fact that an amendment is procedurally permissible does not dispense with the requirement of establishing its necessity in the facts of the particular case.

Principles governing the exercise of amendment jurisdiction

29. The governing principles for determining an application for amendment have been authoritatively explained by the Supreme Court in **Revajeetu Builders & Developers v. Narayanaswamy & Sons**[1]**, and Life Insurance Corporation of India v. Sanjeev Builders Private Limited**[2]**.** The primary consideration is whether the proposed amendment is necessary for determining the real questions in controversy. The court must also examine whether the amendment is *bona fide,* whether it alters the fundamental nature of the case, whether it causes prejudice or injustice to the opposite party, and whether the controversy can be effectively

1 (2009) 10 SCC 84
2 (2022) 16 SCC 1

adjudicated on the basis of the existing pleadings and material. These considerations are not to be applied mechanically or in isolation, but cumulatively, having regard to the facts and procedural stage of the case.

30. In **State of Maharashtra v. M/s. Hindustan Construction Company Ltd.,**[3], the Supreme Court recognised the power of an appellate court to permit amendment of the memorandum of appeal and the introduction of additional grounds, subject to the principles governing the exercise of such discretion. The fact that an amendment is sought at the appellate stage does not, by itself, constitute a sufficient ground for its rejection. The nature of the proposed amendment, its connection with the controversy already before the appellate forum and its effect upon the rights of the opposite party remain material considerations. A distinction must, therefore, be maintained between a ground which elaborates an existing controversy and one which introduces a new factual case requiring further investigation.

31. This Court has considered the application of these principles in **Smt. Munni Devi v. Smt. Shashikala Pandey**[4]. It was held that the proviso to Order VI Rule 17 CPC cannot be applied in a rigid or mechanical manner to an amendment of grounds in appellate or revisional proceedings. The fact that the proviso may not operate as an inflexible statutory embargo in such proceedings, however, does not confer an unrestricted right to amend. The considerations underlying the requirement of due diligence remain relevant to the exercise of discretion, particularly where the proposed amendment seeks to introduce factual pleas which were within the applicant's knowledge and could reasonably have been raised at an earlier stage. A distinction must also be maintained between a pure question of law arising from the existing pleadings and record and a new factual plea which would require the factual controversy to be reopened. The bona fides of the applicant, the necessity of the proposed amendment, the possibility of prejudice and its effect upon the progress of the proceedings are, therefore, relevant considerations.

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3 (2010) 4 SCC 518
4 2026:AHC:58829

32. The principle has also been applied by this Court in ***Asif* Ansari v. Himanshu Sharma and Another**[5]**.** While considering an application seeking amendment of the memorandum of appeal, this Court held that an amendment which merely reiterates legal pleas already forming part of the pleadings or grounds of appeal may be declined as unnecessary. Such refusal does not, by itself, extinguish the right of a party to advance a pure question of law arising from the existing pleadings and material at the stage of final hearing, provided its consideration does not require investigation into facts not already on record. The determinative consideration is, therefore, not the mere omission of a legal proposition from the existing grounds, but whether the proposed amendment is necessary for effective adjudication and whether its refusal would result in prejudice or failure of justice.

33. The aforesaid principles require the proposed amendments in the present case to be examined in the context of the pleadings and amendments already forming part of the pending appeal. The fact that the memorandum of appeal had earlier been amended by Paper No. *ka*-121 is not, by itself, a ground for refusing a subsequent amendment. Equally, the fact that the proposed amendments relate to the broader dispute concerning the office of Mutawalli does not establish their necessity. The material question is whether the additional averments and grounds sought to be introduced are necessary for adjudication of the controversy or whether the existing pleadings and record already permit the appellant to advance the relevant contentions. Where a proposed amendment merely supplies further particulars to a ground already available, its necessity must be demonstrated. Where it introduces new factual allegations requiring a fresh inquiry or enlarges the controversy beyond what is necessary for deciding the pending appeal, the forum may decline it. The absence of a satisfactory explanation for belatedly seeking such an amendment is also relevant in assessing its *bona fides* and necessity, but cannot substitute for an examination of the nature and effect of the amendment itself.

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5 2026:AHC:131272

Due diligence and the effect of delay

34. The proviso to Order VI Rule 17 CPC places an additional restriction upon the exercise of the power to amend pleadings after commencement of trial. It provides that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that, despite due diligence, the party could not have raised the plea before commencement of trial. The statutory requirement is intended to prevent a party from introducing, at an advanced stage, factual pleas which could reasonably have been raised earlier and to ensure that the process of amendment does not result in avoidable delay or disruption of the adjudication.

35. The requirement of due diligence cannot be treated as a mere formality. The court must examine whether the plea sought to be introduced was within the applicant's knowledge, whether it could reasonably have been raised at an earlier stage and whether the explanation furnished accounts for its omission. The mere assertion that an amendment is necessary for determining the real controversy does not dispense with the obligation to satisfy the applicable statutory requirements. Equally, due diligence must be examined in the factual context of the proceedings, having regard to the nature of the proposed amendment, the stage at which it is sought and the explanation furnished for the omission.

36. In **Chander Kanta Bansal v. Rajinder Singh Anand**[6]**,** the Supreme Court explained the significance of due diligence in the context of the proviso to Order VI Rule 17 CPC. Similarly, in **Vidyabai v. Padmalatha**[7]**,** the Court emphasised the mandatory nature of the statutory restriction applicable after commencement of trial. These decisions underscore that the court must address the statutory conditions governing amendment rather than proceed solely on the general proposition that amendments should ordinarily be permitted to facilitate adjudication on the merits.

37. The application of these considerations to appellate proceedings requires attention to the procedural stage and the nature of the

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6 (2008) 5 SCC 117
7 (2009) 2 SCC 409

proceedings. The proviso to Order VI Rule 17 CPC expressly refers to commencement of trial. An appellate proceeding, particularly one in which the earlier decision has been set aside and the proceedings remitted for fresh adjudication, cannot in every respect be equated with a suit in which evidence is being recorded for the first time. The proviso, therefore, cannot be applied mechanically merely because an amendment is sought in an appeal. At the same time, the considerations underlying due diligence, including the applicant's knowledge of the relevant facts and the explanation for not raising them earlier, remain material to the exercise of amendment jurisdiction. The court must assess the proposed amendment in the context of the stage actually reached and the nature and scope of the proceedings restored for adjudication.

38. In the present case, the order dated 29.12.2022 permitting the earlier amendment assumes significance. The appointment of respondent No. 3 had already taken place on 18.05.2022. The appellant, upon becoming aware of that appointment, had moved application Paper No. *ka*-121, seeking to bring the appointment on record, question it with reference to the registered Waqf deed dated 04.08.1931 and raise objections concerning the lineage and eligibility of respondent No. 3. The Tribunal allowed that application by a detailed order dated 29.12.2022. The subsequent application, Paper No. *ka*-104, filed on 30.07.2026, therefore, required the appellant to explain not merely his knowledge of the appointment, but also why the additional factual pleas and statutory grounds now sought to be introduced had not been incorporated in the earlier amendment.

39. The explanation sought to be given in this regard has to be examined in the context of the fact that the appointment of respondent No. 3 and the appellant's objections thereto were already the subject of the earlier amendment application. The proposed grounds concerning the appointment, the authority of the Chairman and the eligibility of respondent No. 3 were not founded upon an event which occurred only after the earlier amendment had been allowed. The appellant was, therefore, required to demonstrate why those grounds could not

reasonably have been raised when Paper No. ka-121 was filed and allowed. The explanation furnished must be assessed against this procedural history and the nature of the additional pleas now sought to be introduced.

40. Delay, by itself, is not conclusive of the question whether an amendment should be permitted. The decisive consideration is whether the explanation for the omission is satisfactory when examined alongside the nature and necessity of each proposed amendment and whether the existing pleadings and material are inadequate to enable adjudication of the issues properly arising in the pending appeal. In the present case, the fact that the appellant had already obtained permission to amend the memorandum of appeal after becoming aware of the subsequent appointment, but did not then incorporate the additional factual pleas now sought to be introduced, is a relevant circumstance. It assumes particular significance where the proposed amendments would require the Tribunal to examine additional factual questions which are not shown to be indispensable for deciding the appeal within the scope of the remand.

Amendment of pleadings and the limits of adjudication

41. The power to amend pleadings must also be considered in the light of the fundamental principle that adjudication ordinarily remains confined to the case presented by the parties. In **Ram Sarup Gupta (Dead) by LRs v. Bishun Narain Inter College**[8], the Supreme Court emphasised that pleadings serve to inform the opposite party of the case it has to meet and that, although their substance must be considered rather than their form, a party ordinarily cannot travel beyond the material facts pleaded in support of its case. The same principle was reiterated in **Bachhaj Nahar v. Nilima Mandal**[9], wherein the Supreme Court explained that a court cannot ordinarily adjudicate upon a distinct factual case which was neither pleaded nor one which the opposite party had an adequate opportunity to meet. A deficiency in the express formulation of pleadings, however, does not necessarily defeat

8 (1987) 2 SCC 555
9 (2008) 17 SCC 491

adjudication where the parties understood the controversy and had an adequate opportunity to address it.

42. The requirement of pleadings must not, however, be confused with a prohibition against elaborating an existing case. Where an amendment merely clarifies the factual basis of a challenge already raised, its consideration may facilitate adjudication without altering the essential nature of the proceedings. On the other hand, where an amendment introduces a distinct cause of challenge or raises disputed questions of fact requiring a fresh inquiry, the court must examine whether such questions properly arise within the scope of the proceedings and whether the opposite party would be afforded an adequate opportunity to respond. The relevant distinction is between supplying particulars necessary to determine an existing controversy and introducing a separate factual controversy under the guise of amendment.

43. In the present case, the appellant's challenge to the order dated 04.04.2018 concerns his removal from the office of Mutawalli. The subsequent appointment of respondent No. 3, made during the pendency of the appeal, may be relevant to the extent that it has a bearing upon the controversy already before the Tribunal or the relief sought by the appellant. However, the validity of that appointment cannot automatically be treated as an unrestricted and independent subject of adjudication merely because it concerns the same office. The relationship between the challenge to the appellant's removal and the subsequent appointment must be examined with reference to the existing pleadings, the nature of the relief claimed and the questions which the Tribunal is required to determine in the pending appeal.

44. The same consideration applies to the proposed averments concerning lineage, pedigree and eligibility under the registered Waqf deed dated 04.08.1931. The fact that the deed governs succession to or eligibility for the office of Mutawalli may be relevant to the controversy, but the mere reference to the deed does not, by itself, make every question concerning the appointment of a subsequent Mutawalli necessary for adjudication of the appeal against the appellant's removal.

The Tribunal was required to examine whether the proposed amendments were necessary to determine an issue already arising from the existing pleadings or whether they would introduce a distinct controversy requiring adjudication beyond the proper scope of the pending appeal.

Amendment of the memorandum of appeal and the appellate forum's discretion

45. The existence of the power to permit amendment of a memorandum of appeal must be distinguished from the question whether a particular amendment ought to be allowed. In **M/s. Hindustan Construction Company Ltd.** (supra), the Supreme Court, upon considering Order XLI Rules 2 and 3 CPC, recognised the power of an appellate court to permit amendment of the memorandum of appeal. The existence of such power, however, does not dispense with the requirement that its exercise must be justified having regard to the nature of the proposed amendment and the controversy already before the appellate forum. The exercise of that power must remain consistent with the nature of appellate adjudication and the procedural rights of the parties.

46. An appeal ordinarily proceeds upon the grounds stated in the memorandum of appeal, subject to the applicable procedural rules governing the consideration of additional grounds. Order XLI Rule 2 CPC regulates the grounds upon which an appellant may be heard and the circumstances in which additional grounds may be considered. The provision is required to be read in conjunction with the general appellate powers under Section 107 CPC and the principles governing amendment of pleadings. It is, therefore, necessary to distinguish between a request to amend the memorandum by incorporating further factual averments and a request to urge an additional legal ground on the basis of facts and material already forming part of the record. The latter may, in an appropriate case, be considered without requiring a corresponding amendment of the pleadings.

47. The power to permit amendment cannot be exercised without regard to the stage of the appeal, the nature of the proposed changes and the procedural rights of the respondent. The appellate forum must ensure that an amendment does not operate to circumvent the requirements governing the introduction of additional grounds or convert the pending appeal into proceedings of a substantially different character. Where the proposed amendment requires the introduction of new factual material, the court must also consider whether the opposite party would require an opportunity to file a response, produce evidence or otherwise meet the case sought to be introduced. Such consequences are relevant in determining both the necessity and the permissibility of the amendment.

48. In the present case, the appellant relies upon the circumstance that the earlier amendment was permitted on 29.12.2022, but the Tribunal failed to frame specific issues concerning the appointment and eligibility of respondent No. 3. This contention brings into focus the distinction between amendment of pleadings and formulation of issues. The purpose of framing issues is to identify the material propositions of fact and law upon which the parties are at variance and which require adjudication. If the existing pleadings disclose a controversy requiring determination, the omission to frame an appropriate issue may call for its formulation or reconsideration by the Tribunal. Such omission does not necessarily mean that the pleadings themselves require a further amendment.

49. Where the existing memorandum of appeal already contains the material factual averments and grounds necessary to raise a particular controversy, the appropriate course may be to consider the framing or reformulation of issues, as permissible under the applicable procedure. A further amendment would be warranted only if the existing pleadings do not adequately disclose the material facts or grounds sought to be urged. The distinction is material because the power to amend pleadings is intended to facilitate determination of the real controversy and cannot be treated as a substitute for every procedural step which the adjudicating forum may be required to undertake in deciding the appeal. Conversely, the availability of the power to frame or reformulate issues cannot be

used to decide a distinct factual case which has not been pleaded and which the opposite party has not had an opportunity to meet.

Effect and scope of an order of remand

50. The scope of proceedings following remand is determined primarily by the terms and substance of the remand order. Where an appellate or revisional court sets aside an earlier decision and directs fresh adjudication subject to specified directions, the subordinate forum is bound to proceed in accordance with those directions. A remand does not, by itself, extinguish every procedural power otherwise available to the forum, nor does it confer an unrestricted right upon either party to reopen all aspects of the dispute. The forum is required to give effect to the remand order while exercising its procedural powers in a manner consistent with the purpose and scope of the remand.

51. A direction for time-bound disposal is a relevant consideration in determining whether a proposed amendment would unnecessarily prolong the proceedings. Such a direction, however, cannot, by itself, be construed as an absolute prohibition against every amendment sought after remand. Where an amendment is demonstrably necessary for determining a material question arising from the existing controversy and falling within the scope of the proceedings, its consideration cannot be excluded solely on the ground that a time limit has been prescribed. The adjudicating forum must balance the requirement of expeditious disposal against the need for fair and effective adjudication. The time-bound nature of the remand may weigh against an amendment which introduces an avoidable factual inquiry, but it cannot justify refusal of an amendment which is genuinely indispensable for deciding the appeal in accordance with law.

52. Conversely, a remand for fresh adjudication does not automatically entitle a party to introduce every factual ground which could have been raised before the earlier decision. Where the proposed amendments relate to facts already within the applicant's knowledge, the forum must examine whether the amendments are genuinely necessary for determining the issues arising in the pending appeal and within the

scope of the remand, or whether they would enlarge the controversy beyond what is required for fresh adjudication. The fact that the earlier decision has been set aside and the proceedings restored for reconsideration does not, by itself, afford a fresh opportunity to reconstruct the pleadings without regard to the stage already reached or the explanation for the earlier omission.

53. The permission granted to one party to place fresh pleadings on record does not, by itself, confer an unconditional right upon the opposite party to amend its pleadings. The nature and scope of the additional pleadings, their relevance to the issues under consideration and the extent to which they introduce a new plea requiring a response are relevant considerations. The requirement of procedural fairness may necessitate an appropriate opportunity to meet a permissible new case. Such opportunity, however, does not invariably require or justify an unrestricted amendment of the memorandum of appeal. The forum must examine the actual contents of the additional pleadings and determine what opportunity, if any, is necessary to ensure that neither party is prejudiced.

Principles emerging from the statutory framework and authorities

54. The legal position emerging from the statutory provisions and the authorities discussed above may be summarised thus: The power to permit amendment of a memorandum of appeal is available to the appellate forum and is not exhausted merely because an earlier amendment has been allowed or the appeal has once been adjudicated. Nor does an order of remand, even when accompanied by a direction for time-bound disposal, operate as an absolute bar against a subsequent amendment. The exercise of that power, however, is governed by considerations of necessity, relevance, *bona fides*, procedural fairness and the proper scope of the pending proceedings. A party cannot claim an unrestricted right to introduce, by successive amendments, factual pleas relating to circumstances which were already within its knowledge and could reasonably have been incorporated at an earlier stage. The fact that a proposed amendment relates to the same broad subject matter does

not, by itself, establish its necessity for adjudication of the pending appeal. The decisive consideration is whether the existing pleadings and material on record are sufficient to enable determination of the issues which properly fall for adjudication, including those arising from the remand. Where the existing pleadings already disclose the material factual foundation of an issue, omission to frame or appropriately formulate that issue does not, by itself, justify a further amendment. Equally, refusal to incorporate a legal proposition by way of amendment does not preclude a party from advancing a pure question of law arising from the existing pleadings and record, provided its consideration does not require investigation into an unpleaded factual case. The appellate forum must, therefore, distinguish between an amendment genuinely required to facilitate effective adjudication and one which merely seeks to enlarge or recast the controversy at a belated stage.

Legal principles governing appellate interference

55. The question whether the order of the Tribunal warrants interference must be examined in the light of the jurisdiction exercised by this Court under Section 83(9) of the Act of 1995. The present proceedings arise from an order passed by the Tribunal in a pending Waqf appeal, rejecting an application for amendment of the memorandum of appeal. The decision of the Tribunal is, therefore, subject to scrutiny in the exercise of the statutory appellate jurisdiction conferred upon this Court. The question is whether, on an examination of the applicable legal principles and the material on record, the Tribunal was justified in declining the proposed amendments.

56. An order passed on an application for amendment involves the exercise of judicial discretion. Such discretion must be exercised in accordance with the governing statutory provisions and the principles laid down by the courts. The appellate court must examine whether the Tribunal applied the correct legal standard, took into account the material circumstances, assessed the necessity and relevance of the proposed amendments and considered the effect of the amendments upon the existing controversy and the procedural rights of the opposite

party. Where the discretion has been exercised on an erroneous understanding of the law or the pleadings, or upon considerations which do not sustain the conclusion reached, the appellate court is competent to correct the error. Equally, the mere fact that another view may be possible does not, by itself, establish that the order is legally unsustainable. The scrutiny must be directed to the correctness and propriety of the decision in the light of the statutory framework and the facts of the case.

57. The impugned order must, therefore, be examined not merely by reference to the conclusion reached by the Tribunal, but also by reference to the reasoning adopted in arriving at that conclusion. In particular, it must be ascertained whether the Tribunal considered the proposed amendments in the context of the earlier amendment allowed on 29.12.2022, the existing pleadings and grounds of appeal, the nature of the additional pleas sought to be introduced through Paper No. *ka*-104, the explanation furnished for their omission at the earlier stage, and the terms and purpose of the remand order dated 17.02.2025. It must also be examined whether the Tribunal appropriately distinguished between additional factual averments requiring a fresh inquiry and legal grounds which could be urged on the basis of the existing pleadings and record. The assessment of these considerations would determine whether the refusal to permit the proposed amendments calls for interference in the present appeal.

APPLICATION OF THE ABOVE PRINCIPLES TO THE FACTS OF THE PRESENT CASE

58. The record reveals that application Paper No. *ka*-121 was allowed by the Tribunal on 29.12.2022, after the appointment of respondent No. 3 as Mutawalli on 18.05.2022. Through the said application, the appellant sought to bring the subsequent appointment and the consequential facts on record, questioned the appointment with reference to the registered Waqf deed dated 04.08.1931, raised objections concerning the eligibility of respondent No. 3 and sought his impleadment in the appeal. The earlier amendment, therefore, had

already brought the subsequent appointment and the appellant's challenge thereto within the ambit of the pending proceedings. The precise extent to which the statutory and factual grounds now sought to be introduced through Paper No. *ka*-104 were covered by the earlier amendment, however, requires separate examination.

59. The subsequent application, Paper No. *ka*-104, filed on 30.07.2026, sought to introduce further averments concerning the alleged non-service of show-cause notices dated 04.10.2017 and 15.11.2017, the competence of the Chairman to appoint respondent No. 3 with reference to Sections 32 (2)(d) and 32 (2)(g) and Section 63 of the Act of 1995, the notice dated 16.10.2019 issued under Section 54 of the Act, and consequential modifications to the pleadings and prayer clause. The appellant maintains that the application furnished reasons for not incorporating these averments at an earlier stage. The relevant consideration, however, is not merely whether an explanation was stated in the application, but whether it satisfactorily accounts for the omission, particularly when the appointment of respondent No. 3 and the appellant's objections concerning that appointment had already been brought on record through Paper No. *ka*-121. The appellant was required to demonstrate both the necessity of the additional averments and the reason why they could not reasonably have been incorporated in the earlier amendment. The delay, though not conclusive by itself, is a material circumstance to be considered alongside the nature and effect of the proposed amendments.

60. The appellant's contention that the Tribunal failed to frame specific issues concerning the appointment and eligibility of respondent No. 3 does not, by itself, establish the necessity of a further amendment. The original appeal challenged the order dated 04.04.2018 on grounds which included non-service of notice and violation of the principles of natural justice. The subsequent appointment of respondent No. 3, together with the appellant's objections concerning his lineage and eligibility under the registered Waqf deed, was also brought on record through Paper No. *ka*-121, which was allowed on 29.12.2022. The

question, therefore, was whether the existing amended memorandum disclosed the factual foundation and grounds necessary for determination of the controversy which the appellant sought to have adjudicated. To the extent that such foundation was already available in the pleadings, omission to frame an appropriate issue could be addressed by the Tribunal by considering the formulation or reformulation of issues in accordance with law. A further amendment would be necessary only to the extent that an essential factual foundation or ground was absent from the existing pleadings. The omission to frame an issue cannot automatically be treated as justification for introducing further pleadings, just as the power to frame issues cannot dispense with the requirement of pleadings where a distinct factual case is sought to be introduced.

61. The appellant's submission that the proposed amendments do not alter the fundamental nature of the proceedings must also be examined in the context of the controversy actually pending before the Tribunal. The appeal is directed against the order dated 04.04.2018 removing the appellant from the office of Mutawalli. The subsequent appointment of respondent No. 3 on 18.05.2022 may have a bearing upon the controversy or the consequential relief claimed by the appellant. Indeed, that appointment and the appellant's objections concerning the lineage and eligibility of respondent No. 3 had already been brought on record through the earlier amendment. However, the validity of that appointment does not, merely because it concerns the same office, automatically become an unrestricted and independent subject of adjudication in the appeal against the appellant's removal. The connection between the challenge to the removal and the subsequent appointment must be established with reference to the existing pleadings, the relief claimed and the questions which the Tribunal is required to determine. The proposed amendments could, therefore, be permitted only to the extent that they were necessary for adjudication of the controversy properly arising in the pending appeal and did not introduce an independent dispute beyond its permissible scope.

62. The proposed grounds concerning the competence of the Chairman to make the appointment under Sections 32 (2)(d) and 32 (2) (g) and Section 63 of the Act of 1995 require consideration distinct from the challenge to the appointment already raised through Paper No. *ka*-121. The earlier amendment brought the appointment of respondent No. 3 and the appellant's objections thereto on record. It does not necessarily follow that every statutory ground now sought to be urged was also expressly pleaded. The question, however, is whether incorporation of those grounds by way of amendment was necessary for adjudication of the pending appeal. To the extent that the challenge raises a pure question of law concerning the authority competent to make the appointment, founded upon the statutory provisions and the order already forming part of the record, the appellant would not necessarily be precluded from advancing that contention merely because a formal amendment has been refused. The position would be different if the proposed ground depended upon additional factual averments requiring investigation. The distinction is between an additional legal contention arising from the existing record and the introduction of a new factual foundation requiring adjudication.

63. The proposed amendments concerning the show-cause notices dated 04.10.2017 and 15.11.2017 must be examined with reference to the grounds already taken in the memorandum of appeal concerning non-service of notice and violation of the principles of natural justice. The original challenge to the removal order itself included an objection founded upon non-service of notice and non-supply of the inquiry report. The proposed references to the particular notices, including the alleged publication of the notice dated 15.11.2017, were required to be examined to determine whether they supplied particulars of the existing challenge or introduced an additional factual plea. The mere addition of particulars concerning the notices would not, by itself, establish the necessity of a further amendment if the existing pleadings already enabled the Tribunal to examine the alleged denial of notice and opportunity of hearing. The appellant was required to demonstrate what material deficiency in the

existing pleadings those additional averments sought to cure and why their incorporation was necessary for adjudication of the appeal.

64. The proposed averment concerning the notice dated 16.10.2019 issued under Section 54 of the Act of 1995 stands on a different footing. The said notice was issued after the removal order dated 04.04.2018. Its relevance to the challenge against that order, or to any question arising within the scope of the pending appeal and the remand, was required to be specifically demonstrated. The mere fact that the notice related to the same waqf or to a person connected with the proceedings did not, by itself, make it a necessary part of the controversy. Similarly, the proposed changes to the prayer clause could be considered if they were consequential and served to clarify the relief already arising from the existing pleadings. They could not, however, be employed to introduce an independent challenge to a separate order without satisfying the requirements governing such an amendment and demonstrating that the challenge properly fell within the scope of the pending proceedings.

65. The appellant's contention that the remand order dated 17.02.2025 required fresh adjudication and did not prohibit further amendments is correct to the extent that the direction for time-bound disposal did not, by itself, extinguish the Tribunal's power to permit an amendment necessary for effective adjudication. The remand required the Tribunal to undertake fresh adjudication in accordance with law, taking into consideration Sections 14, 22 and 64(3) of the Act of 1995 and returning a decision on Issue No. 6 framed in its earlier judgment. The Tribunal was, therefore, required to exercise its procedural powers consistently with those directions. Equally, the appellant's allegation that effective steps towards compliance with the remand directions were not taken within the prescribed period does not, by itself, establish the necessity or *bona fides* of the proposed amendments. Their permissibility had to be determined on their own merits, with reference to the existing pleadings, the explanation for the omission, the nature of the additional averments sought to be introduced and the scope and purpose of the remand.

66. The appellant's reliance upon the order dated 06.07.2026, whereby respondent No. 3 was permitted to file fresh written objections, also requires consideration. Such permission did not automatically confer a corresponding or unrestricted right upon the appellant to amend the memorandum of appeal. The application for amendment was required to be examined independently. Nevertheless, procedural fairness required the Tribunal to ensure that the appellant was afforded an appropriate opportunity to meet any new plea introduced through the additional objections, to the extent that such plea was relevant to the adjudication. The nature and scope of those objections, and whether they introduced a factual or legal case beyond the existing pleadings, were therefore relevant considerations. The question was not whether the appellant was entitled to an amendment merely because respondent No. 3 had been permitted to file additional objections, but whether the contents of those objections made any particular amendment necessary to afford the appellant a fair opportunity of meeting the case set up against him.

67. The aforesaid analysis shows that application Paper No. *ka*-104 could not be determined merely on the ground that an earlier amendment had already been allowed, nor could it be allowed merely because the proceedings had been remitted for fresh adjudication and respondent No.3 had been permitted to file additional objections. The Tribunal was required to examine the nature and necessity of the proposed amendments in the context of the pleadings already on record, the appellant's knowledge of the relevant facts, the explanation for their omission from the earlier amendment, the scope of the pending appeal and the directions contained in the remand order. In particular, it was necessary to distinguish between grounds already forming part of the controversy, additional legal grounds capable of being urged on the existing record, and new factual averments which would enlarge the dispute or require a fresh inquiry. The earlier amendment bringing the appointment of respondent No. 3 and the challenge thereto on record was a relevant circumstance, but could not, by itself, justify rejection of every additional ground. Equally, the appellant could not claim that

every further averment concerning the same office was necessary merely because it related to the broader dispute concerning the Mutawalliship.

68. On an examination of the impugned order in the light of the aforesaid considerations, this Court finds that the Tribunal declined the application not merely on the ground that an earlier amendment had been allowed or that the proceedings had been remitted for fresh adjudication. It took into account that the amended memorandum of appeal already contained the factual averments and grounds necessary to examine the challenge to the removal order and that the subsequent appointment of respondent No. 3, together with the appellant's objections concerning his lineage and eligibility, had already been brought on record through Paper No. *ka*-121. The proposed amendments, insofar as they sought to introduce further factual averments concerning the notices and additional grounds relating to the subsequent appointment, were not shown to be indispensable for determination of the controversy falling within the scope of the remand. The Tribunal's conclusion that the existing pleadings were adequate for adjudication of the pending appeal and that the proposed amendments were not necessary for that purpose cannot, in the circumstances, be regarded as an erroneous exercise of discretion. The circumstances relied upon by the appellant have also been considered by this Court. They do not establish that refusal of the proposed amendments would occasion prejudice or impede effective adjudication of the controversy properly arising before the Tribunal.

69. The proposition that refusal of an amendment does not necessarily preclude a party from raising a pure question of law at the stage of final hearing has also been recognised by this Court in **Asif Ansari** (supra). Where the proposed amendment merely reiterates a legal plea capable of being urged on the basis of the existing pleadings and grounds of appeal, its incorporation by way of amendment may be declined as unnecessary. Such refusal does not, by itself, deprive the party of the opportunity to advance a pure question of law arising from the existing pleadings and material on record, provided its consideration does not require investigation into facts which are not already part of the record. The

relevant consideration is whether the proposed amendment is necessary for effective adjudication of the controversy and whether its refusal would result in prejudice or failure of justice.

70. Applying the aforesaid principle to the present case, rejection of the application for amendment would not, by itself, preclude the appellant from advancing such legal submissions as are available to him on the basis of the existing pleadings and material on record. Any such submission shall, however, be considered by the Tribunal at the stage of fresh adjudication in accordance with law, subject to its relevance to the controversy involved and the directions contained in the remand order dated 17.02.2025. This would not confer upon the appellant any liberty to introduce a new factual case or travel beyond the pleadings already on record. The Tribunal shall remain at liberty to examine the admissibility and merits of such legal submissions at the appropriate stage, without treating the rejection of the amendment application, by itself, as a bar to consideration of a pure question of law arising from the existing record.

CONCLUSION AND ORDER

71. For the reasons discussed above, this Court finds that the appellant has failed to demonstrate that the amendments proposed through application Paper No. *ka*-104 were necessary for the effective adjudication of the controversy in the pending appeal. Nor has it been shown that the Tribunal, in rejecting the application by order dated 31.08.2026, committed any error warranting interference in the exercise of appellate jurisdiction under Section 83(9) of the Act of 1995. No ground for interference is, therefore, made out.

72. The present appeal is, accordingly, **dismissed**. The order dated 31.08.2026 passed by the U.P. Waqf Tribunal, Lucknow, in Waqf Appeal No. 05 of 2018, rejecting application Paper No. *ka*-104, is left undisturbed. It is, however, clarified that rejection of the amendment application shall not preclude the appellant from advancing such submissions, including pure questions of law, as may legitimately arise from the existing pleadings and the material available on record. The

Tribunal shall consider such submissions in accordance with law, subject to the scope of the remand.

73. It is further clarified that where the factual foundation and the grounds giving rise to a controversy are already disclosed in the existing pleadings, omission to frame an appropriate issue shall not, by itself, preclude the Tribunal from considering whether an issue, or an appropriately reformulated issue, is required for effective adjudication of the pending appeal. Any such course shall remain subject to the applicable procedural law, the scope of the remand order dated 17.02.2025 and the requirement of affording the parties an adequate opportunity of hearing. This clarification shall not be construed as permitting the introduction of a fresh factual case beyond the existing pleadings or enlargement of the controversy beyond the scope of the remand.

74. This Court, by order dated 17.02.2025 passed in Civil Revision No.36 of 2025, had directed the Tribunal to decide the pending Waqf appeal within a period of two months. The said period having elapsed and the appeal still being pending, the Tribunal is directed to make every endeavour to conclude the proceedings expeditiously and, preferably, within a further period of three months from the date of production of a certified copy of this judgment. This direction is issued in continuation of the directions contained in the order dated 17.02.2025. The Tribunal shall undertake the adjudication on the basis of the pleadings and material properly forming part of the record and consider the rival submissions in accordance with law. Nothing contained in this judgment shall be construed as an expression of opinion on the merits of the dispute concerning the appellant’s removal from the office of Mutawalli or the subsequent appointment of respondent No.3.

75. There shall be no order as to costs.

(Dr. Yogendra Kumar Srivastava, J.)

November 06, 2026
RKK/-

Digitally signed by :-
RAJ KUMAR KANNAUJIA
High Court of Judicature at Allahabad