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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 6336 OF 2024
IN
SECOND APPEAL(ST) NO. 2556 OF 2023**

Jivan Chandumal Shivdasani ... Applicant/Appellant
Vs.
Jagannath Jijaba Babar and Another ... Respondents

Mr. Ganesh Murthy for the Applicant.

CORAM : GAURI GODSE, J.

DATE : 13th SEPTEMBER 2024

ORDER :

1. Heard learned counsel for the applicant. This application is for condonation of delay of 26 days in filing the Second Appeal. Learned counsel submits that the Second Appeal raises substantial questions of law with regard to incorrect appreciation of the documents produced by the appellant by way of additional evidence.

2. He submits that though the First Appellate Court permitted the appellant to produce additional documents on record under Order XLI Rule 27 of the Code of Civil Procedure, 1908 ("CPC"), the procedure

prescribed under Rule 28 of Order XLI of CPC is not followed. He thus submits that based on the additional documents produced before the First Appellate Court, the appellant should have been given an opportunity to prove the appellant's case regarding the document to show that he was biological son of Chandumal.

3. I have perused the application as well as the Second Appeal. The Second Appeal raises following substantial questions of law :

(i) Whether the First Appellate Court ought to have examined the documents produced by way of additional evidence as per Rule 28 of Order XLI of the CPC ?

(ii) Whether the First Appellate Court erred in discarding the documents produced by way of additional evidence without following the procedure prescribed under Rule 28 of Order XLI of the CPC ?

4. Issue notice in Interim Application No. 6336 of 2024 to the respondents returnable on 3rd December 2024. Office is directed to issue notice alongwith copy of this order.

5. In addition to court notice, learned Advocate for the applicant to serve the respondents by private service alongwith copy of this order and file service affidavit before the next date.

[GAURI GODSE, J.]