

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 768 OF 2024
WITH
INTERIM APPLICATION NO. 15266 OF 2024
IN
SECOND APPEAL NO. 768 OF 2024**

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Shivapurta Bhimanna Tolnure Since ...Appellant/Applicant
Deceased Through His Lrs.

Vs.

Nagar Parishad Akkalkot Thr. Chief ... Respondents
Executive Officer

Mr. Sumedh Modak for the Appellant/Applicant.

CORAM : GAURI GODSE, J.

DATED : 6th DECEMBER 2024

ORDER:

1. Heard learned counsel for the appellant. The second appeal raises following substantial questions of law which are formulated in paragraphs a and b:

(a) The substantial question of law that arises for consideration for this Hon'ble High Court is as to whether, the Ld. First Appellate Court erred in rendering the impugned judgment and decree without properly re-appreciating the

evidence and as is required under Section 96 of the CPC, 1908 when the paperbook before the Ld. First Appellate Court did not contain the affidavit in lieu of examination in chief filed by the original plaintiff under Order XVIII Rule 4 of CPC, 1908, his cross examination and exhibited documents, which had been incorrectly destroyed by resorting to paragraph 544 of the Civil Manual despite the appeal being pending on the file?

(b) The substantial question of law that arises for consideration for this Hon'ble High Court is as to whether, the Ld. First Appellate Court erred in not remanding the matter back to the Ld. Trial Court under Order XLI Rule 23-A of CPC, 1908 on account of absence of evidence on record due to incorrect destruction of trial Court record which was contrary to paragraph 544(2) of the Civil Manual, when the Appellants had moved application at Exhibit 21 for remand of the appeal specifically on the above ground?

2. Issue notice to the respondent on the aforesaid questions of law for final disposal of the second appeal at admission stage.
3. In addition to Court notice, learned advocate for the appellant shall serve the respondents by private notice and file affidavit of service.

4. Notice is made returnable on 5th February 2025.

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5. Rule on interim relief in terms of prayer clause (b) is made returnable on 5th February 2025.

6. In addition to Court notice, learned advocate for the applicant shall serve the respondents by private notice and file affidavit of service before the next date

7. Till next date, there will be ad-interim relief in terms of prayer clause (b).

(GAURI GODSE, J.)