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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER (ST) NO. 26524 OF 2025
WITH
INTERIM APPLICATION NO. 11366 OF 2025
IN
APPEAL FROM ORDER (ST) NO. 26524 OF 2025**

Mahefoozul-E-Haq Khan

Appellant /
.. Orig. Plaintiff

Versus

Gulzar Yunus Patel and Ors.

Respondents /
.. Orig. Defendants

.....

- Mr. Sandeep Mishra, Advocate for Appellant.
- Mr. Kailas S. Dewal a/w. Mr. Yash Dewal, Advocates for Respondent No.16.

.....

CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 01, 2025.

P.C.:

- 1.** Heard Mr. Mishra, learned Advocate for Appellant and Mr. Dewal, learned Advocate for Respondent No.16.

INTERIM APPLICATION NO.11366 OF 2025

- 2.** Present Interim Application has been filed by Appellant for seeking condonation of delay. Mr. Mishra, learned Advocate informs the Court that there is delay of 94 days in filing the present Appeal From Order. Hence the Application.

3. Mr. Dewal in his usual fairness informs the Court that he has no objection to allow the present Interim Application. His stand and fairness is appreciated by the Court.

4. I have perused the Interim Application.

5. For the reasons stated in the Interim Application, Interim Application stands allowed. Delay of 94 days in filing the Appeal From Order stands condoned.

6. In view of the above, Interim Application is allowed and disposed.

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7. After allowing Interim Application, present Appeal From Order is taken up for hearing forthwith.

8. In the present Appeal From Order, there are two orders which are impugned, one is order dated 29.01.2025 directing issuance of notice to Defendants in Suit proceedings for settlement of issues and to hear them on Application for temporary injunction below Exhibit '5' filed by Plaintiff since ad-interim relief is not granted at the time of issuance of notice. Plaintiff being aggrieved has challenged this order. Next, learned Advocate for Plaintiff informs Court that pursuant to above order, Plaintiff filed Application below Exhibit '22' seeking maintenance of *status quo* by parties in respect of suit property qua

Defendant No.16 only. That Application below Exhibit '22' is still pending. Plaintiff is aggrieved. Plaintiff has therefore knocked the doors of this Court by filing the present Appeal From Order and urged the Court to grant ad-interim relief to Plaintiff in the above circumstances.

9. This Court cannot be a fact finding Court in the first instance, *inter alia*, and decide disputed questions of fact summarily. That is undoubtedly the prerogative of the Trial Court especially when a substantive Exhibit '5' Application is pending before Trial Court. Application below Exhibit '22', *inter alia*, encumbrances itself in the Exhibit '5' Application filed by Plaintiff. Said Application below Exhibit '5' is pending for the past more than 10 months before the Trial Court.

10. In that view of the matter, learned Trial Court is directed to determine Exhibit '5' Application as expeditiously as possible and in any event within a period of eight (8) weeks from today after hearing all concerned parties including Defendant No.16 and pass a speaking order thereafter.

11. At this juncture, Mr. Dewal informs Court that Defendants have filed Application below Exhibit '25' under Order VII Rule 11 read with Order II Rule 2 of the Civil Procedure Code, 1908 seeking dismissal of Suit proceedings. If that be the case, learned Trial Court is directed to hear the said Application before it determines the Exhibit

‘5’ Application since Application under Order VII Rule 11 goes to the root of the matter and is required to be decided first before any other proceedings is taken up for hearing in the pending Suit proceedings. Learned Trial Court can also decide all above Interlocutory Applications together, if so desired. Parties shall co-operate with the learned Trial Court and shall not take any unnecessary adjournments.

12. If reply is not filed, the same is directed to be filed within a period of four weeks from today.

13. In view of the above, Appeal From Order is disposed.

[MILIND N. JADHAV, J.]

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by AJAY
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