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

**APPEAL FROM ORDER (STAMP) NO. 15056 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 15057 OF 2016**

Vivek Mahajan & Ors. .. Appellants
Vs.
Municipal Commissioner of Gr. Bombay & Anr. .. Respondents

Mr. Pradeep Havnur for the Appellants.
Mrs. M. R. Bhoir for the Respondent-BMC.

CORAM : G. S. KULKARNI, J.
DATE : 17th NOVEMBER, 2016.

P. C. :

1. Not on board. Mentioned. Taken on board.
2. The conduct of the appellants is absolutely disturbing. The appeal memo indicates that this appeal has been filed against an order dated 31.05.2016 passed by the learned Judge of City Civil Court at Mumbai. The appeal was filed without a copy of the impugned order. This appeal in this situation was moved before the learned Vacation Judge on 03.06.2016, where the learned Vacation Judge was pleased to pass the following order:

*"1. Issue notice returnable on 17th June, 2016. Till then Respondents are directed to maintain **status-quo** as on today.
2. The learned Counsel Mr. Mahadik for Respondent No.1 waives service of notice."*

3. Now, when the matter is listed today, learned counsel for the appellants has tendered across the bar an order dated 31.05.2016, a copy of which appears to have been issued on 02.06.2016. The same is taken on record and marked 'X' for identification. Learned counsel submits that this order is the impugned order by which the appellants have considered that the ad interim relief was rejected. The said order reads thus:

"31/05/16 *CORAM : HHJ SHRI S.B. JAGTAP, ADDL. CITY
CIVIL AND SESSIONS JUDGE (C.R.NO.4)*
1448/16 *(Matter pertains to C.R.no.7)*
 Adv. N.R. Tiwari for plff. present.
 Adv. for plff. is directed to serve W/sum upon
 deft. through bailiff and submit the report.
 Adjd. to 06.06.2016 before regular court."

4. From the perusal of the above order it is clear that the order in no manner indicates that any Notice of Motion was moved before the Court seeking any ad interim relief. However, the appellant represented before this Court and made the Court to believe that ad interim relief is refused by the Court and, therefore, the present appeal has been filed, and on this impression, the learned Vacation Judge was pleased to grant an order of status quo in favour of the appellants on 03.06.2016. The appellants thereafter have not even bothered to place the said order on record and in my opinion deliberately only to enjoy the ad interim protection granted by the learned Vacation Judge. The litigants are required to approach the Court with clean hands and absolute fairness. In

the present case this is patently lacking on the part of the appellants. The ad interim order dated 03.06.2016 passed by this Court of status quo is enjoyed till date. This is not what is expected of a litigant who has approached this Court. In these circumstances, this appeal deserves to be dismissed for two reasons, firstly the appellants are guilty of misrepresenting this Court that there is an order rejecting ad interim reliefs and obtaining a protection under the order dated 03.06.2016 and secondly for the reason as there is no order of refusal of an ad interim relief which has been challenged in this appeal so as to maintain an appeal under Order 43 Rule 1 of the CPC. The Appeal from Order is accordingly dismissed however with costs of Rs.50,000/- to be deposited by the appellants with the Legal Services Authority within a period of one week from today and compliance of the same be placed on record of this appeal.

5. Mr. Havnur, learned counsel for the appellants submits that the ad interim protection, which is granted by this Court, ought to be continued, so that the appellants can move the Trial Court for injunctory reliefs.

6. In the facts of the case, the request is not reasonable and ought not to be granted. The same is also opposed by the learned counsel appearing for the Municipal Corporation. However, in the interest of justice, as the order dated 03.06.2016 passed by this Court continued to remain in operation till date, time of one week is granted to the appellants

to move the Trial Court in any such application. However, the same shall be heard subject to the appellants depositing costs as directed. If the costs are not deposited, the Trial Court shall not entertain any application of the appellants for hearing of the Notice of Motion or for that matter any proceeding which may be filed by the appellants in the suit.

7. In view of the dismissal of the Appeal from Order, Civil Application (Stamp) No.15057 of 2016 does not survive and stands disposed of.

8. Though the appeal stands disposed of, list this appeal after two weeks for recording of compliance. High on Board (HOB).

[G. S. KULKARNI, J.]