

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 12018 OF 2017

Thrity Dara Dastoor & Ors	...Appellants
<i>Versus</i>	
Malad Gymkhana Ltd	...Respondent

Mr Shashank Choudhary, a/w sunitha Perumal, i/b Sachin V
Masurkar, for the Appellants.
Mr Piyush M Shah, for the Respondent.

CORAM: G.S. PATEL, J
DATED: 31st July 2017

PC:-

1. The appeal seeks to rely on a document that is not part of the Trial Court. No leave of this court was sought to annexe that document. It is most unfair to the learned Judge of the Trial Court to impeach his order with the assistance of a document not shown to that court, the benefit of which was not available to that court and to which that court had no opportunity to apply its mind.
2. The appeal is dismissed on this limited ground.
3. It will be open to the appellants to apply for amendment of the plaint and to seek relief with notice on the basis of the fresh document.

4. I am making it clear that I am dismissing this because I consider this most improper and unfair. I am told that the document in question was obtained only later. It is a document of 13th June 2002. The suit is of 4th July 2014 and in any case this document was available to the plaintiff in November 2014, not only after the appeal was filed. Ground after ground in the appeal is based on this document. There is no reason why it should not have been brought to the notice of the learned judge of the City Civil Court.

5. The appeal is dismissed. The dismissal is without costs; this one time.

(G. S. PATEL, J)