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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.334 OF 2018

Dynamic Realtors Private Ltd. ...Appellant
vs.
Sunflex Builders Pvt.Ltd. ...Respondent

Mr.Pramod N. Patil for the appellant
Mr.Devashish Jagirdar i/b Jayakar & Partners for the
respondent

CORAM : A.S.OKA, &
 M.S.SONAK,JJ.
DATE : OCTOBER 22, 2018

P.C.:

1 The learned counsel appearing for the appellant invited our attention to the findings recorded in the paragraphs 6 and 8 of the impugned order. He submitted that the learned Single Judge has concluded the issue of bar of limitation and it is held that the claim made by the appellant is barred by limitation.

2 The learned Single Judge, by the impugned order, has dismissed the petition filed by the appellant by invoking section 433 (3) and 434 (1)(a) of the Companies Act,1956 for winding up the respondent-company. The jurisdiction of the Company Court under the said Act is discretionary. The observations made regarding the bar of limitation are not concluded finding on the issue of bar of

limitation. The said observations are made for a limited purpose of considering whether the order of winding up could be passed on the Company Petition. If the appellant approaches the Competent Court of Law for recovery of his claim, the Competent Court will have to decide it on its own merits without being influenced by the observations in the impugned order. The issue of limitation will have to be decided by the Competent Court on its own merits.

3 In view of the aforesaid legal position, the learned counsel for the appellant seeks permission to withdraw this appeal with liberty to file a Civil suit. Accordingly, the appeal is disposed of as withdrawn with liberty as prayed. All contentions on merits are kept open.

(M.S.SONAK,J.)

(A.S.OKA,J.)