

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL APPEAL NO.541 OF 2019
IN
COMMERCIAL NOTICE OF MOTION NO.161 OF 2017
IN
COMMERCIAL SUIT NO.164 OF 2017**

RAJESH
VASANT
CHITTEWAN

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RAJESH VASANT
CHITTEWAN
Date: 2021.09.20
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M/s Dee Kay Gears

And Another

... Appellants

Versus

M/s Skicon Infrastructures Pvt. Ltd.

And Others

... Respondents

.....

Mr. Dharmesh Panchal i/b Rajesh Khobragade for the Appellants.

Mr. Sagar Patil for Respondent Nos.23 to 25.

.....

**CORAM : NITIN JAMDAR AND
G.A. SANAP, JJ.**

DATE : 16 SEPTEMBER 2021

P. C. :

. The Appellants have challenged the order 22 January 2019 passed by the learned Single Judge disposing of Commercial Notice of Motion No.161 of 2017 in Commercial Suit No.164 of 2017 filed by the Appellants.

2 The Appellants by the notice of motion had sought relief of

injunction and other directions. The impugned order reads thus.

“1. On 27 November 2018 the matter was adjourned on the ground that settlement talks are going on. On 11th December 2018, again adjournment was given as last chance. On 15th January 2019, again the matter was adjourned to today at the request of applicants. Today, I am informed that the settlement terms are yet to fructify. When I asked the counsel for applicants to go on with the matter since last chance was given, the counsel refused to go on with the matter and stated that parties have now decided to meet on 5 February 2019 to discuss about settlement.

2 Therefore, notice of motion dismissed.”

3 From the perusal of the order, it is clear that the notice of motion is not dismissed on merits, but it is dismissed for non-prosecution.

4 Since the notice of motion is not dismissed on merits, it is not necessary for us to entertain the Appeal. It is always open to the Appellants like any other litigant to apply to the learned Single Judge to recall the order and request the learned Single Judge to hear the notice of motion merits on such conditions the learned Single Judge may deem fit, and it is open to the learned Single Judge to consider the request. In view of this option being available to the Appellants, it is not necessary to keep the Appeal pending.

5 With the above observations, the Appeal is disposed of.

(G.A. SANAP, J.)

(NITIN JAMDAR, J.)