

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
COMMERCIAL APPEAL FROM ORDER NO.10 OF 2024
IN
NOTICE OF MOTION NO.102215 OF 2023
FROM
COMMERCIAL SUIT NO.100621 OF 2022

M/s.Srushti Exports (India) Pvt. Ltd. & Ors.] .. Appellants

vs.

Chetan P. Shah] .. Respondent

Mr.Aman Kacheria a/w Ms.Vritee Ssoni, Reeti Upadhyay i/b Agarwal & Dhanuka Legal for the Appellants.

Mr.Sheelang Shah a/w Ms.Dhwani Bagdai i/b VRAJ Legal for Respondent.

**CORAM : ALOK ARADHE, CJ. &
BHARATI DANGRE, J.**

DATE : 30th JANUARY, 2025.

P.C.

1. In the present Appeal filed under Order XLIII Rule 1(d) of the Code of Civil Procedure, 1908, the Appellants have assailed the validity of the order dated 12/01/2024 by which ex-parte order dated 04/05/2023 passed in Commercial Suit No.621/2022 has been set aside subject to the Appellants' depositing 50% of the decretal amount being a sum of Rs.12,00,000/-.

2. When the matter was called today, the learned counsel for the Respondent has raised a preliminary objection that the Appeal filed under Order XLIII Rule 1(d) of the CPC is not maintainable as the same lies only against the Application rejecting an Application under Order IX Rule 13 of the CPC.

3. In view of aforesaid submission, the learned counsel for the Appellants seeks leave of this Court to withdraw the Appeal with liberty to take recourse to the said remedy as may be available to them in law.

4. In view of the aforesaid request and facts of the case, Appeal is dismissed as withdrawn, with liberty as prayed for.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)