ALBA LAW OFFICES

Newsletter | December 2024

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HIGHLIGHTS OF THE MONTH

- **Interpretation of Arbitration Clauses Must Ensure Full Effect: Rajasthan High Court**

  [M/s Argon Remedies Pvt. Ltd. vs. Rajasthan Medical Services Corporation Ltd. ARBAP-64/2023]

  The Rajasthan High Court recently emphasized that arbitration agreements should be interpreted to honor the parties' intent to resolve disputes through arbitration. Even if certain clauses seem to limit the scope, courts should interpret them to uphold, not undermine, the arbitration process.

  The dispute arose when M/s Argon Remedies Pvt. Ltd. alleged wrongful cancellation of a purchase order by Rajasthan Medical Services Corporation Ltd. Despite the Respondent's objection to the arbitration clause's validity, the Court ruled in favor of arbitration, affirming that the clause demonstrated the parties' clear intent to arbitrate, even without explicit wording on the finality of the arbitrator's decision.

  Read Here

- **Mere Pendency of Suit Not a Bar for Mutation Entry: Rajasthan High Court**

  [Satya Narayan vs. State of Rajasthan; 2024:RJ-JD:48962]

  In a recent ruling, the Rajasthan High Court held that the mere pendency of a suit cannot justify denying a bona fide purchaser's application for mutation, especially when a petition for a temporary injunction has already been rejected.

  The case involved a bona fide purchaser who applied for mutation after obtaining necessary permissions for residential construction. A third party, claiming

	ownership, filed a suit and sought an injunction, both of which were dismissed. Despite this, municipal authorities rejected the mutation application citing the pending suit. The Court ruled that the rejection was "unreasonable" and "frivolous", emphasizing that a bona fide purchaser cannot be denied mutation rights due to a pending suit, particularly when no injunction exists. The Court directed authorities to process the mutation in the Petitioner's favor. Read Here
○	**Plaintiff Must Prove Financial Readiness for Specific Performance: Supreme Court** *[R. Shama Naik vs. G. Srinivasiah, (SLP(C) No. 13933/2021)]* The Supreme Court of India recently reaffirmed that under Section 16(c) of the Specific Relief Act, 1963, individuals seeking specific performance of a sale agreement must prove both their "readiness" and "willingness" to fulfill the contract. In a case involving a 2005 sale agreement, the Petitioner paid half the agreed consideration but alleged the Respondent failed to complete the sale. The trial court ruled in favor of the Petitioner, but the Karnataka High Court overturned the decision, citing the Petitioner's failure to prove financial readiness. The Supreme Court upheld this, stressing the need for clear evidence of both financial ability and genuine intent to perform the contract. The appeal was dismissed as the Petitioner failed to meet these requirements.
○	**Condition requiring perpetual services of the données is equivalent to modern day slavery: Supreme Court** *[Smt. Naresh Kumari & Ors. v. Smt. Chameli & Ors. (Neut. Cit. No.: 2024:INSC:965)]* In a landmark ruling, the Supreme Court of India declared that a gift deed imposing a condition for perpetual, unpaid services is unconstitutional, as it amounts to forced

	labor and violates fundamental rights. The case involved a 1953 oral gift deed with such a condition on the données and their successors. The Court held that such a condition is not only illegal but also morally wrong, equating it to modern-day slavery. Citing Article 23 of the Constitution, which prohibits forced labor, the Court reinterpreted the condition to apply only to past services, not as a perpetual obligation. While the gift deed itself was not invalidated, this ruling ensures that the donees can retain peaceful possession of the property. The decision has significant implications for property law and human rights, emphasizing the need to protect individuals from exploitation, even in gift transactions. Read here
○	**Disputes falling within the exclusive jurisdiction of statutory authorities are not arbitrable: Supreme Court** *[Dushyant Janbandhu v. M/s Hyundai AutoEver India Pvt. Ltd. (Neut. Cit. No.: 2024:INSC:966)]* The Supreme Court recently reaffirmed that disputes falling within the jurisdiction of statutory authorities are not arbitrable. In this case, the dispute over non-payment of wages and termination of employment was governed by the Payment of Wages Act, 1936, and the Industrial Disputes Act, 1947. Applying the principles from *Vidya Drolia v. Durga Trading Corporation* (Civil Appeal No. 2402/2019), the Court ruled that such disputes are non-arbitrable as they are covered by mandatory statutory provisions. The Court also imposed a ₹5 lakh cost on the respondent for pursuing arbitration in bad faith, deeming it an abuse of the legal process. Read here
○	**Delhi High Court holds that certain provisions of CPC can be applied to the court orders passed in arbitration proceedings.**

[ADO India Pvt. Ltd. v. ATS Housing Private Limited (Neut. Cit. No.: 2024:DHC:9461)]

The Delhi High Court recently ruled that Sections 152 and 153 of the Civil Procedure Code, 1908, can be applied to rectify clerical or arithmetic errors in court orders within arbitration proceedings, as long as they do not alter the order's fundamental intent.

In a specific case, ADO India Pvt. Ltd. sought correction of a typographical error in a work order number in an order appointing an arbitrator. While the Arbitration and Conciliation Act, 1996, addresses errors in arbitral awards, it doesn't cover errors in court orders. The Court emphasized that corrections should not prejudice the other party and should preserve the original intent of the order. However, the power to rectify is limited to clerical or arithmetic errors and cannot be used for substantive changes.

- **Orissa High Court rules that copyright infringement disputes are arbitrable**

[Shri Binaya Kumar naik v. Sanjay Kumar Naik & Anr. (Arb. P. No. 9/2024)]

The Orissa High Court has determined that disputes arising from copyright infringement are indeed arbitrable. This ruling signifies a significant development in the realm of intellectual property law and arbitration.

In this case, a party filed an application under Section 11(6) of the Arbitration Act to appoint an arbitrator to resolve a copyright infringement dispute. The opposing party contested the arbitrability of the dispute, citing the Supreme Court's judgment in Vidya Drolia & Ors.v. Durga Trading Corporation (Civil Appeal No. 2402/2019) ("**Vidya Drolia Case**").

The High Court carefully examined the Supreme Court's ruling in Vidya Drolia Case. It clarified that while the Supreme Court had recognized that copyright

infringement claims are generally arbitrable, there may be specific circumstances where they might not be. It was held in the Vidya Drolia Case that:

"*...Therefore, a claim for infringement of copyright against a particular person is arbitrable, though in some manner the arbitrator would examine the right to copyright, a right in rem. Arbitration by necessary implication excludes actions in rem…"*

After considering the facts and circumstances of the case, the Hon'ble Court proceeded to appoint the sole arbitrator to adjudicate upon the disputes between the parties.

Read Here

- **Dharma Productions film 'Jigra' faces trademark infringement charge by Medecins Sans Frontieres (MSF)**

  [Medecins Sans Frontieres International v. Dharma Productions Private Limited & Ors., (CS(COMM) 1134/2024)]

  The plaintiff, commonly known as 'Doctors without Borders', has moved the Delhi High Court to claim relief from the alleged trademark infringement by the film makers due to a particular shot in the film that the plaintiff alleged "*creates the dangerous and highly defamatory impression that the plaintiff's credibility can be used for illegal immigration and that anyone can impersonate as MSF worker to illegally cross international borders*".

  In the film, the contested scene features the actors disguising themselves as doctors who are associated with an organization known as 'Medics without Frontiers' or 'Doctors without Borders' in order to illegally enter Malaysian waters. The use of the terms, as the plaintiff argued, "*causes immense damage to its reputation and goodwill and tarnishes the plaintiff's image as an independent and impartial humanitarian organization, especially, in political sensitive and conflict-ridden zones*".

	Although the plaintiff sought for exemption for Pre-Institution Mediation under the Commercial Courts Act, 2015, the High Court in order to encourage amicable settlement, has still referred the dispute to Pre-Institution Mediation.
○	**The Supreme Court sets aside the National Consumer Disputes Redressal Commission (NCDRC) order which declared interest rates beyond 30% on credit card default as unfair trade practice** *[Hongkong and Shanghai Banking Corp. Ltd. V. Awaz & Ors., (Civil Appeal No. 5273 of 2008)]* The Supreme Court recently set aside the NCDRC's ruling that declared interest rates over 30% charged by banks on credit card defaults as unfair. The complainant, Awaz (a consumer association), had argued that rates between 36% and 49% violated RBI guidelines. The banks, including the appellant, contended that the RBI exclusively determines interest rates under the Banking Regulation Act, 1949, and that courts cannot adjudicate on such matters. The Court also held that bank policies do not qualify as "services" under the Consumer Protection Act, 1986, and thus the NCDRC lacked jurisdiction to hear the case. Read Here
○	**The iconic characters Popeye and Tintin are set to enter the public domain in the United States on January 1, 2025** As per the U.S. legislation, the Copyright Act of 1976, Chapter 3, some of the earliest comic characters ever published – Popeye and Tintin – are to enter the public domain on January 1, 2025 with the 95-year old long copyright tenure coming to an end. Chapter 3 of the Copyright Act of 1976 states that any anonymous work, pseudonymous work or work made for hire is vested with a copyright tenure of 95

	years from date of its publication or 120 years from date of its creation, whichever is earlier. Both Popeye and Tintin were first published in the year 1929 and are considered works for hire, therefore, falling within the 95-year long copyright window. From January 2025 onwards, the first published/earliest version of the two characters can be used by any person without the need for any permission from or payment or compensation to any copyright holder.
○	**The Delhi High Court grants interim injunction in favour of journalist Rajat Sharma to prevent unauthorized use of his personality rights and trademarks of the news channel, India TV** *[Rajat Sharma & Anr. v. Tamara Doc & Ors., (CS(COMM) 1147/2024)]* The Delhi High Court directed Meta to takedown/block/remove any such content that is infringing on the personality rights of Rajat Sharma ("**Petitioner**) and the trademarks of the news channel, India TV. The case came to be when the Petitioner's personality traits were being distorted by means of AI technology to circulate and promote purported drug(s) for certain ailments. The Petitioner also claimed that the defendants were infringing upon the trade marks of his news channel, India TV along with the copyrighted content for their own business gains ultimately leading to false endorsements by the Petitioner. The Delhi High Court noted that given the Petitioner's status as a 'celebrity' and "*unique position as a trusted voice in Indian households, any misrepresentation of his endorsement risks irreparable damage not only to his personal reputation but also to public trust at large*". The High Court opined that the misuse of his personality can exacerbate public safety and therefore, the gravity of the case involves sensitive nuances pertaining to public welfare and consumer protection.
○	**The Supreme Court decides that full court fee refund on dispute amicably settled by mediation under the Code of Civil Procedure (CPC) not possible**

[Sanjeevkumar Harakchand Kankariya v. Union of India & Ors., (SLP (C) No. 1904 of 2015)]

The Supreme Court clarified that the settlement preferred under Section 89 of the CPC is dissimilar to the settlement through Lok Adalat which is governed by the Legal Services Authorities Act, 1987 (LSA) because settlements through Lok Adalat are treated as court decrees and the LSA states that the litigants are entitled to a full refund of the court fee. On the other hand, there is firstly no statutory mandate for such a refund under a settlement through mediation under the CPC and secondly that any refund is incidental since such refund is not the primary concern of mediation.

The Apex Court also held that a settlement through Lok Adalat cannot be considered the same as mediation as the two are distinct from each and that certain similarities cannot lead to an equal treatment by the law.

Read Here

- **Mere Possession of Property by Mortgagor Does not Convert Mortgage by Conditional Sale into Simple Mortgage**

[Leela Agrawal vs. Sarkar & Anr., (Civil Appeal Nos. 12538-12539 of 2024)]

The Supreme Court recently clarified that a mortgagor's possession of property does not convert a mortgage by conditional sale into a simple mortgage. The Court emphasized that the terms of the mortgage agreement are pivotal in determining the nature of the transaction under Section 58(c) of the Transfer of Property Act, 1872. This section defines a "mortgage by conditional sale," where the property is sold to the mortgagee on the condition that the sale becomes absolute if the debt is not repaid, and void if repaid within the specified time.

In this case, the Respondent (borrower) mortgaged property to the Appellant (lender) for ₹75,000, agreeing to repay ₹1,20,000 (including interest) within three

years. The mortgage deed stipulated that failure to repay within this period would result in the property being transferred to the Appellant as an absolute sale.

When the Respondent attempted to repay the debt in 1993, after the repayment period had passed, the Appellant refused, claiming ownership based on non-payment. The Respondent filed a civil suit, and the trial court ruled in favor of the Respondent. The High Court upheld this decision in appeal, challenging the Appellant's claim of ownership.

The Supreme Court, however, ruled that the Respondent's possession was merely permissive, intended to safeguard the property, and not indicative of ownership. The Court affirmed the validity of the mortgage terms, recognizing the conditional sale provision in the event of default. Consequently, the appeal was allowed in favor of the Appellant.

Read here

- **Amendments Allowed for Possession Claims Even at Execution Stage: Supreme Court Clarifies Section 22 of the Specific Relief Act of 1963**
  [Birma Devi & Ors. vs. Subhash & Anr., Special Leave Petition (Civil) No. 29397 of 2024]

  The Supreme Court has reaffirmed the scope of Section 22 of the Specific Relief Act, 1963, which allows plaintiffs to amend pleadings to seek additional relief, such as possession or partition, even during the execution stage of a decree. This provision is designed to prevent multiple legal proceedings and ensure justice for the decree-holder.

  In a recent case, the plaintiffs filed a suit for specific performance of an agreement to sell property. The trial court ruled in their favor but did not explicitly include possession in the decree. During execution proceedings, subsequent purchasers of the property objected, arguing that possession could not be granted as it was not explicitly decreed.

	The executing court sided with the objectors and refused to issue a possession warrant. However, the Rajasthan High Court overturned this decision, ruling that a decree for specific performance inherently includes possession, provided the original defendant has no competing claim to the property. The subsequent purchasers challenged the High Court's order, but the Supreme Court upheld the High Court's reasoning and dismissed the defendants' claims. Read here
○	**Pre-Existing Rights in Compromise Decree Do Not Require Registration or Stamp Duty** *[Mukesh v. The State of Madhya Pradesh & Anr. Civil Appeal No. 14808 of 2024]* The Supreme Court of India has ruled that a compromise decree recognizing pre-existing rights over property does not require registration under the Registration Act, 1908, or attract stamp duty under the Indian Stamp Act, 1899. In this case, the plaintiff ("Plaintiff") filed a civil suit asserting ownership and possession of agricultural land. The dispute arose when an adjacent landowner attempted to sell the land, threatening the Plaintiff's possession. The case was settled through a compromise, and a decree was issued in 2013 re-affirming the Plaintiff's right of possession and title. However, when the Plaintiff sought mutation of the land, the concerned Tehsildar demanded stamp duty, claiming that the decree re-affirming the rights of the Plaintiff created new property rights. The Supreme Court clarified that registration is not required under Section 17(2)(vi) of the Registration Act for decrees affirming pre-existing rights, as they do not create new rights over the property. It emphasized that the Plaintiff merely asserted his existing rights, and the decree did not transfer or convey new ownership. Additionally, the Court held that stamp duty is not applicable to such decrees under the Indian Stamp Act. Since the decree was not an instrument of transfer, it did not fall within the scope of chargeable documents. Allegations of collusion to evade stamp duty were also dismissed due to lack of evidence. The Court directed authorities to update the revenue records in the Plaintiff's name without requiring

	registration or stamp duty, reinforcing that pre-existing rights affirmed through compromise decrees enjoy statutory exemptions. Read Here
○	**Mere Rise in Price or Inadequacy of Price Not a Hardship for Refusing Specific Performance: Supreme Court** *[Parswanath Saha v. Bandhana Modak (Das) & Anr., (Neu. Cit. 2024 INSC 1022)]* The Supreme Court has clarified that a mere rise in property prices or inadequacy of the agreed sale price cannot justify denying specific performance of a contract. In case hardship is claimed, it must be unforeseen and unrelated to the terms of the agreement. In this case, the appellant ("Appellant") entered into a registered agreement for sale with the father of the respondent no. 2 for ₹17.5 lakh, paying ₹4 lakh as earnest money. The property in question was owned by the father of respondent no. 2. After the father of the respondent no. 2 passed away, the respondents herein i.e. the wife and minor son of the deceased ("Respondents"), refused to execute the sale deed in favour of the Appellant. The Appellant then filed a suit for specific performance, seeking possession of the property. The Trial Court ruled in favor of the Appellant and directed for execution of the sale deed, but the High Court overturned the trial court's decision, citing potential hardship to the Respondents, who claimed they would become homeless if the property was sold. The Supreme Court disagreed with the High Court's view, stating that hardship must be evaluated at the time of the agreement's execution and should be supported by evidence. The Court found no proof of unforeseen hardship as stated by the Respondents at the time of signing the agreement. Moreover, the hardship claimed by the Respondents was not caused by any actions of the Appellant. The Court restored the Trial Court's decree and ruled in favour of the Appellant, enhanced the balance sale amount to ₹20 lakhs. The Respondents were directed to execute the sale deed upon receiving the revised amount. Read here

- **A Sole Surviving Coparcener Can Dispose of Coparcenary Property as His Separate Property: Karnataka HC**

  [Parth Ghorpade & Anr. v. Indrajeet D. Ghorpade & Ors., (Miscellaneous First Appeal No. 6434/2024)]

  In a significant judgment, the Karnataka High Court ruled that a sole surviving coparcener has the right to sell, mortgage, or gift coparcenary property as if it were his separate property, without any legal necessity. This means that when there is only 'one' surviving coparcener left in a Hindu Undivided Family (HUF), he has the complete authority to dispose of the family property, irrespective of any need or benefit to the family.

  The case involved a dispute over a property where the appellants and the respondents had coparcenary rights. The Trial Court had refused to restrain the respondents from alienating or constructing on the property. The appellant argued that the property acquired by their great-grandfather, was being wrongly interfered with by the respondents. The High Court noted that while a joint family property could be alienated by the manager (coparcener) only for legal necessity or family benefit, a sole surviving coparcener can dispose of it freely.

  The Court emphasized that once sons or grandsons are born, they automatically become coparceners, and the property can no longer be disposed of by the sole coparcener. In this case, the Trial Court had failed to consider crucial facts and material on record, leading to its decision being overturned. The High Court partly allowed the appeal, granting a temporary injunction till disposal of suit to prevent the respondents from alienating the property until the matter is resolved.

  Read here

- **The Supreme Court rejected the notion of optional arbitration.**

  [Tarun Dhameja vs. Sunil Dhameja, (Neut. Cit. No. 2024 INSC 973)]

  The Supreme Court of India recently passed a significant order on the interpretation and enforcement of arbitration clauses. In the present case, the Hon'ble Court unequivocally rejected the concept of optional arbitration, where parties could choose to invoke arbitration only by mutual agreement.

	The Court emphasized that the inclusion of an arbitration clause within an agreement signifies a commitment to resolving disputes through this mechanism. It clarified that the presence of such a clause does not grant parties unfettered discretion to avoid arbitration. Read here
○	**Supreme Court clarifies the grounds for challenging the confirmed sales under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ("SARFESI Act").** *[Celir LLP vs. Mr. Sumati Prasad Bafna (Neut. Cit. No. 2024 INSC 978)]* The Supreme Court of India recently clarified the grounds for challenging confirmed sales of property conducted under SARFAESI Act. The Court emphasized that mere procedural deviations or minor irregularities in the sale process are generally insufficient to warrant the setting aside of a confirmed sale. To overturn a sale, a party must demonstrate the presence of serious flaws that go to the very heart of the sale process. These flaws typically include: • Fraud: Intentional deception or misrepresentation that materially affects the sale. • Collusion: Secret or illegal cooperation between parties to the detriment of others involved in the sale. • Inadequate Pricing: A sale price significantly below market value, suggesting a lack of fair competition or deliberate undervaluation. • Underbidding: Instances where the property is sold for a price which is lower than the reserve price or other genuine bids. The Court also emphasized upon the importance of timely objections and observed that the parties are expected to raise concerns about any irregularity during the sale process itself, before the sale is confirmed. Raising objections after the sale is finalized, particularly when the alleged irregularities did not cause any significant prejudice to the affected party, is unlikely to be successful. Read here

○	**The Supreme Court reiterates the conditions to invoke Section 53-A of the Transfer of Property Act, 1882 (TPA)** *[Giriyappa & Anr. v. Kamalamma & Ors., (SLP(C) 30804 of 2024)]* In a recent decision, the Supreme Court clarified the conditions under which Section 53A of the Transfer of Property Act (TPA) can be invoked. The Court emphasized that a transferee cannot seek protection under this provision unless they can show that a sale agreement was executed, forming the basis for their claim to possession. The Court outlined the following essential requirements for the application of Section 53A: 1. A written agreement must exist between the transferor and transferee, detailing the terms necessary to effect the transfer of immovable property. 2. The transferee must either take possession of the property in part performance of the contract or continue to hold possession in accordance with its terms. 3. The transferee must have undertaken actions that further the contract's terms, and be either ready to fulfill or have already fulfilled their obligations under the agreement. Additionally, the Supreme Court explained the underlying purpose of Section 53A, noting that it aims to protect transferees who have taken possession based on unregistered documents or contracts that are difficult to prove due to technical issues. The provision was introduced to resolve conflicting interpretations and, more importantly, to safeguard transferees who, in good faith, take possession or make improvements to the property based on documents that may be ineffective as transfers or contracts that cannot be fully substantiated due to registration deficiencies. Read Here
○	**The Supreme Court holds that default is not necessary for a debt to qualify as financial debt under the Insolvency and Bankruptcy Code, 2016 (IBC)** *[China Development Bank v. Doha Bank Q.P.S.C. & Ors., (Civil Appeal No. 7298 of 2022)]*

	In its recent ruling, the Supreme Court held that contingent claims, such as those arising from future events like shortfalls in the realization of secured assets, qualify as legitimate financial debts under Section 5(8) of the Insolvency and Bankruptcy Code (IBC), provided they meet the necessary criteria. The Court further clarified that guarantees or similar contractual covenants, even when there is no direct borrowing by the Corporate Debtor, confer the status of a Financial Creditor. The Court reiterated the importance of interpreting contracts in their entirety to accurately reflect the true intentions of the parties involved. It also emphasized that the definition of "financial debt" under Section 5(8) is expansive and encompasses guarantees—whether contingent or direct—as financial debt. Additionally, the Court pointed out that obligations arising from hypothecation agreements can be treated as financial guarantees if they include provisions obligating the guarantor to cover any shortfalls in case of default. The judgment reinforced that the language of Section 5(8) is clear in encompassing guarantees, regardless of how the debt is disbursed. Read Here
○	**The Supreme Court condemns constructions carried out in violation of approved building plans or without any planning permission** *[Rajendra Kumar Barjatya & Anr. v. U.P. Avas Evam Vikas Parishad & Ors., (Civil Appeal No. 14604 of 2024)]* The Supreme Court stated that illegal constructions, regardless of their age or investment, cannot be legalized. The Court expressed the view that buildings constructed in violation of or deviation from the approved building plan, or those erected without any authorization from the local authorities, should not be condoned. It emphasized that every construction must comply rigorously with the established rules and regulations. The Court also noted that officials who issue incorrect completion or occupancy certificates for unauthorized buildings should face disciplinary action. Additionally, the Court made it clear that delays in addressing illegal constructions, along with

	administrative failures, regulatory inefficiencies, the costs incurred in construction, and negligence by the relevant authorities, cannot be used as justifications for allowing such illegal structures to persist. Furthermore, the Court criticized regularization schemes, arguing that the State fails to recognize the long-term harm caused by such illegal buildings, including their disruptive impact on orderly urban development and the irreversible environmental damage they cause. Read Here

CONTACT

ALBA LAW OFFICES

3D, Girdhar Apartment 28, Firozshah Road New Delhi – 110001
| Tel: +91-11-3545 4252 |

Email: delhi@albalawoffices.com | Web: www.albalawoffices.com