ALBA LAW OFFICES

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INDEX

S. No.	Particulars	Page No.
1.	Person Involved in Joint Venture Agreement Arrangement with Developer is not a Homebuyer *[M. Marudhachalam Vs M/s. Harish Builders (S.R.No.41 of 2024)]*	6
2.	Delay of 18 Years in Handing Over Possession of Plot: Haryana RERA Directs Ramprastha Promoters to Pay Interest *[Pranav Goel Vs M/s Ramprastha Promoters & Developers Pvt. Ltd (Complaint No. 2438 of 2023)]*	7
3.	Bank Cannot Be Held Liable for Lapse in Coverage Unless Explicitly Agreed: NCDRC *[Canara Bank Vs. M/S. Shree Shakti Foam (F.A. No. 391/2023)]*	8
4.	Registrar Can Set Aside Sale of Property on Grounds Other Than Those Raised by Decree Holder: Kerala HC *[The West Chalakudy Service Co-Operative Bank Ltd V The Special Sale Officer (W.P.(C) No. 23060 of 2024)]*	9
5.	Voidable Sale Deed Binding on Consolidation Authorities Unless Cancelled by Civil Court: Supreme Court *[Khursheed v. Shaqoor (Neutral Citation: 2024 INSC 764)]*	10
6.	Complaints Regarding Goods Bought for Livelihood Cannot Be Dismissed Without Evaluation: NCDRC	11

	[Kamaljeet Singh Shekhawat Vs. Komatsu India Pvt. Ltd. (F.A. No. 1876/2017)]	
7.	"Himalaya Evecare versus Wipro Evecare": the Delhi High Court upholds interim injunction against Wipro for passing off *[Wipro Enterprises Private Limited v. Himalaya Wellness Company & Ors., (FAO (OS) (COMM) 145/2023)]*	12
8.	The Rajasthan High Court takes Suo moto cognizance of a pumped storage project that is expected to cause felling of 1.19 lakhs tree *[IN RE: Save the trees (1.19 lakh in number) proposed to be cut down for establishment of Pumped Storage Project in Shahbad Block District Baran]*	13
9.	The Bombay High Court holds that the Shri Sai Baba Sansthan Trust in Shirdi is exempt from income tax on 'hundis' *[Commissioner of Income Tax (Exemptions), Mumbai v. Shree Sai Baba Sansthan Trust – Shirdi, (FAO (OS) (COMM) 145/2023)]*	14
10.	District Consumer Disputes Redressal Commission, Chandigarh levies penalty of Rs 19,000 upon MakeMyTrip and Go Airlines for deficiency of services causing disruptions in family's planned trip to Thailand *[Amir Kohar v. Make My Trip India Pvt. Ltd. and Anr., (CC/206/2023)]*	15
11.	District Consumer Commission grants compensation to a car owner *[Jonathan Brainard v. Tata Motors Ltd. & Ors. (Consumer Case No. 189/2023)]*	16

12.	NCDRC Directs GNIDA to pay compensation to the home buyer. *[Greater Noida Industrial Development Authority & Anr. v. Ashish Deep (F.A. No. 652/2021)]*	17
13.	Delhi High Court holds that there is continuous duty of the arbitrator to disclose any conflict of interest. *[FLFL Travel Retail Lucknow Private Limited v. Airports Authority of India & Anr., (Neut. Cit. No. 2024:DHC:7800)]*	18
14.	Supreme Court reiterates that post-award interest is not subject to contract between the parties. *[R.P. Garg v. The Chief General Manager, telecom Department & Ors. (Neut. Cit. No. 2024:INSC:743)]*	19
15.	Supreme Court clarifies that a judgment cannot be based on ambiguous and unclear admissions. *[Rajesh Mitra @ Rajesh Kumar Mitra vs Karnani Properties Limited, (Neut. Cit. No. 2024:INSC:719)]*	20
16.	Kerala High Court Limits Judicial Review in Infrastructure Projects *[Wahabuddin v. State of Kerala & Other Cases – W.A. Nos. 1558, 1582 & 1583 of 2024]*	21
17.	No New Evidence Permissible Under Section 37 Appeal, Bar of Limitation Applies: Allahabad High Court *[State of Uttar Pradesh and 2 others v. M/S Virat Construction, (2024:AHC:171241-DB)]*	22

18.	Police's Unauthorized Property Seizure is "Lawlessness" and Criminal cases shall not meddle with the civil matters in any manner: Supreme Court *[Ramratan @ Ramswaroop & Anr. versus State of Madhya Pradesh (Criminal Appeal No 4402 of 2024)]*	23
19.	Supreme Court Rules on Specific Performance and Consent from All Co-owners *[Janardan Das & Ors. v. Durga Prasad Agarwalla & Ors (2024 INSC 778)]*	24
20.	Havells awarded permanent injunction by the Delhi High Court against a repeat offender infringing its registered designs *[Havells India Limited v. Electromech India Private Limited & Anr. (CS(COMM) 423/2023)]*	25
21.	The Delhi High Court elaborated on its supervisory jurisdiction to hear a writ petition preferred against an erroneous interpretation of Section 11 read with Section 42 of the Arbitration and Conciliation Act, 1996 by the District Court *[M/s CP Rama Rao Sole Proprietor v. National Highways Authority of India, (WP(C) 11484/2023)]*	25

HIGHLIGHTS OF THE MONTH

- **Person Involved in Joint Venture Agreement Arrangement with Developer Is Not a Homebuyer**

[M. Marudhachalam Vs M/s. Harish Builders (S.R.No.41 of 2024)]

In a recent ruling, the Tamil Nadu Real Estate Regulatory Authority (TNRERA) dismissed a complaint filed by M. Marudhachalam ("**Complainant**"), who claimed to be a homebuyer in a joint venture agreement concerning the "Uthra Flats" project in Madipakkam, Chennai. The bench determined that the Complainant's status as a party to the joint venture excluded him from being classified as a homebuyer under the Real Estate (Regulation & Development) Act, 2016 (RERA).

The case stemmed from the decision of flat owners to demolish an aging apartment building and construct a new one with a developer under a joint venture. The apartment owners and the builder entered in a sharing arrangement for construction of the new apartment. The construction was delayed, and the builder ("**Respondent**") failed to complete the flat in stipulated period.

TNRERA reviewed the circumstances surrounding the complaint and referenced key sections of RERA. Section 3(2) of RERA stipulates that registration of a real estate project is unnecessary if the project area is less than 500 square meters or comprises fewer than eight apartments. With the total project area being 4800 sq. ft. (approximately 445 sq. meters), the project was deemed exempt from registration. Furthermore, TNRERA invoked Section 2(zk) of RERA, which defines a promoter as a person who constructs buildings with the intent to sell. The authority clarified that the Respondent acted merely as a builder rather than a promoter, as

they constructed the flats at their expense and offered them as consideration instead of cash payments. Consequently, the authority concluded that Complainant's involvement in the joint venture arrangement did not qualify him as a homebuyer or allottee, leading to the rejection of his complaint.

Read here

- **Delay Of 18 Years in Handing Over Possession of Plot: Haryana RERA Directs Ramprastha Promoters to Pay Interest**

[Pranav Goel Vs M/s Ramprastha Promoters & Developers Pvt. Ltd (Complaint No. 2438 of 2023)]

In a notable ruling, the Haryana Real Estate Regulatory Authority (HRERA) has ordered M/s Ramprastha Promoters & Developers Pvt. Ltd. (the "**Builder**") to pay interest on the amount received from one, Pranav Goel (the "**Complainant**") due to an 18-year delay in handing over possession of a plot in the Ramprastha City project in Gurugram.

The Complainant booked the plot, for which he fully paid via cheque on September 4, 2006. The Builder had promised to deliver the possession within 30 months, with an extension of 180 days, making the due date for possession March 3, 2009. However, despite taking full payment, the Builder failed to provide the possession and did not execute a builder-buyer agreement, which the Complainant had repeatedly requested.

The HRERA examined the nature of the receipt provided by the Builder, referencing the Indian Contract Act, which defines agreements and contracts. It highlighted that the lack of a specific plot number and project details further complicated the Complainant's situation. Relying on the precedent of Nishant Bansal Vs M/s Parsvnath Developers Limited, HRERA ruled that if the Builder cannot provide the booked plot, it must find a similar plot from the open market at its own expense.

Consequently, the HRERA directed the Builder to allot a specific plot number and issue an allotment letter within 90 days. Additionally, due to the 18-year delay, the

	Builder was ordered to pay interest at a rate of 11.10% per annum for each month of delay, from the original due date until actual possession is handed over. Read here
○	**Bank Cannot Be Held Liable for Lapse in Coverage Unless Explicitly Agreed: National Consumer Disputes Redressal Commission (NCDRC)** *[Canara Bank Vs. M/S. Shree Shakti Foam (F.A. No. 391/2023)]* In a significant ruling, the NCDRC established that a borrower is primarily responsible for insuring its goods. The NCDRC clarified that a bank cannot be held liable for any lapse in insurance coverage unless it has explicitly agreed to take on that responsibility. The complainant in the instant case, engaged in the business of quilts and foams, secured a loan from Canara Bank, which also facilitated insurance for the stock and godown. The bank deducted the insurance premium from the complainant's account without disclosing which insurance company was involved. After a fire destroyed the goods stored in the godown, the complainant alleged that the bank had failed to renew the insurance timely. It claimed that the bank insured the already-damaged stock and godown without conducting an inspection. As a result, the complainant approached the State Commission of Uttar Pradesh, seeking compensation for the loss of stock, damages for mental agony, and litigation costs, citing "deficiency in service" by the bank. The State Commission ruled in favor of the complainant, ordering the bank to pay the insured amount, along with Rs. 20,000 for mental, physical, and economic damages. The bank subsequently appealed to the NCDRC. In its appeal, the bank acknowledged that it held the insurance documents but emphasized that it acted based on the complainant's instructions. The bank contended that it was the complainant's duty to inform them about policy renewals and to provide the necessary receipts.

	The NCDRC assessed whether the bank was liable for failing to insure the complainant's goods. The agreement executed between the parties explicitly stated that the bank was not obligated to insure the goods. Furthermore, the NCDRC highlighted the absence of substantial proof regarding the complainant's claimed losses, apart from letters sent to the police and the bank. It reiterated the principle established in "Oriental Bank of Commerce vs. HS Traders & Ors.," which emphasized that the borrower bears the primary responsibility for insurance. Ultimately, the NCDRC concluded that the bank was not deficient in service under the Consumer Protection Act, 2019. As a result, the State Commission's order was overturned, and the bank's appeal was upheld. Read here
○	**Registrar Can Set Aside Sale of Property on Grounds Other Than Those Raised by Decree Holder: Kerala HC** *[The West Chalakudy Service Co-Operative Bank Ltd V The Special Sale Officer (W.P.(C) No. 23060 of 2024)]* In a recent ruling, the Kerala High Court clarified the Registrar's authority to set aside sale of a property based on grounds beyond those presented by the decree-holder. The Court highlighted that individuals affected by a property sale must approach the Registrar within 30 days if they believe there has been a material irregularity, mistake, or fraud, as outlined in Rule 83 of the Kerala Co-operative Societies Rules. The case involved the West Chalakudy Service Co-operative Bank Ltd., which purchased property at a public auction after the original owners defaulted on their loans. The bank sought confirmation of the sale but faced challenges when the Registrar insisted on obtaining a no-objection certificate (NOC) from the Tahsildar before confirming the sale.

	The bank contested this requirement, arguing that the Registrar had no authority to demand such a NOC under the Co-operative Societies Act or the relevant rules. The court noted that if the sale is not challenged within 30 days, the Registrar is obligated to confirm it and issue a certificate. Ultimately, the court ruled that the Registrar had not set aside the sale and therefore must confirm it. The demand for a no-objection certificate from the Tahsildar was deemed inappropriate. The petition was granted, and the court upheld the cooperative bank's rights regarding the confirmation of the sale. Read Here
○	**Voidable Sale Deed Binding on Consolidation Authorities Unless Cancelled by Civil Court: Supreme Court** *[Khursheed & Anr. v. Shaqoor (Neutral Citation: 2024 INSC 764)]* In a significant ruling, the Supreme Court clarified that a voidable sale deed remains binding on consolidation authorities until it is annulled by a competent Civil Court. The Court emphasized that there is no restriction on the Civil Court's jurisdiction to hear cases seeking the cancellation of such sale deeds. The case arose from a dispute over agricultural land, where the mother of Petitioner No. 1 falsely claimed inheritance and sold the land. The Respondent filed a civil suit to cancel the sale deed, mentioning fraud. Initially, the Civil Court dismissed the suit under the U.P. Consolidation of Holdings Act, 1954 ("**Consolidation Act**") leading the Respondent to challenge this decision in the Uttarakhand High Court. The High Court ruled that the suit for cancellation of a voidable sale deed due to fraud could proceed in Civil Court, despite the provisions of the Consolidation Act. The Petitioners moved to the Supreme Court against the High Court's order. The Supreme Court analyzed the relevant sections of the Consolidation Act, particularly, Sections 5(2)(a) and 49. The Court aimed to determine whether the

	publication of a consolidation notification would result in the abatement of pending civil suits regarding fraudulent sale deeds. Citing the landmark case, *Ningawwa v. Byrappa (1968)*, the Court distinguished between "void" and "voidable" documents. It explained that while a fraudulent misrepresentation regarding the document's character renders it void, misrepresentation about its contents makes it merely voidable. The ruling further referred to *Dularia Devi v. Janardan Singh (1990)*, establishing that voidable documents remain valid until a competent court sets them aside. Ultimately, the Supreme Court dismissed the Special Leave Petition, affirming that voidable sale deeds are enforceable unless a court cancels them, thus allowing the Respondent's civil suit to proceed. Read here
○	**Complaints Regarding Goods Bought for Livelihood Cannot Be Dismissed Without Evaluation: National Consumer Disputes Redressal Commission (NCDRC)** *[Kamaljeet Singh Shekhawat Vs. Komatsu India Pvt. Ltd. & Anr. (F.A. No. 1876/2017)]* In a recent ruling, the NCDRC, emphasized that complaints concerning goods purchased for livelihood must undergo thorough examination. The Commission stressed that no rigid formula should dictate the determination of whether a purchase serves a commercial purpose. The Complainant bought a Hydraulic Excavator. Shortly after purchase, the excavator began to exhibit mechanical problems. When the Complainant requested the return of the defective parts, the company did not comply, prompting him to file a complaint alleging *"deficiency in service*." The State Commission of Rajasthan dismissed the complaint, claiming that the Complainant did not qualify as a

'consumer' under the relevant consumer protection laws, as he used the excavator in a family business. The NCDRC pointed out that the complaint was fundamentally about alleged manufacturing defects and service failures. They noted that the Complainant had to return the excavator to the company for repairs multiple times, a fact the company did not dispute. However, the machine company failed to provide adequate evidence to demonstrate that the Complainant was not a 'consumer.' They highlighted that the presumption of commercial use was based on assumptions rather than concrete evidence.

The NCDRC found that the State Commission erred by dismissing the complaint and failed to apply the right consumer test. The appeal was allowed, and the State Commission's order was set aside, remanding the case for fresh adjudication with proper consideration of all evidence.

Read here

- **"Himalaya Evecare versus Wipro Evecare": the Delhi High Court upholds interim injunction against Wipro for passing off**

[Wipro Enterprises Private Limited v. Himalaya Wellness Company & Ors., (FAO (OS) (COMM) 145/2023)]

In the present appeal preferred by Wipro ("**Appellant**"), the Division Bench comprising Hon'ble Justices Mr. Vibhu Bakhru and Ms. Tara Vitasta Ganju, Delhi High Court upheld the interim injunction granted by the Single Judge in favour of Himalaya ("**Respondent**") on the basis of the identical rival marks "EVECARE".
A case of passing off instead of infringement was made out because while the rival marks were identical, the Appellant's trademark was registered in Class 3 whereas the Respondent's trademark was registered in Class 5.
The act of passing off was further established by the fact that the Respondent was not only the prior and first adopter of the mark "EVECARE" but also that the products had a common consumer base, similar trade channels as well as the two

being hush products, leading to higher likelihood of confusion since consumers are unlikely to openly enquire about its details. The High Court agreed that the rival products were allied and cognate since the product description under the identical rival marks can fall under both Class 3 and 5.

The High Court maintained the interim injunction awarded to the Respondent on the baseline understanding that a consumer cannot be said to be not confused by such identical trademarks merely on the ground that the classification of the rival trademarks is different – a consumer cannot reasonably be expected to base their purchases on nice classifications.

Read Here

- **The Rajasthan High Court takes Suo moto cognizance of a pumped storage project that is expected to cause felling of 1.19 lakhs tree**

[IN RE: Save the trees (1.19 lakh in number) proposed to be cut down for establishment of Pumped Storage Project in Shahbad Block District Baran]

The Rajasthan High Court Division Bench at Jodhpur has directed for the matter to be listed as writ petition in the next 10 days from the date of the present order (09.10.2024), before the appropriate roster after taking cognizance of a proposed pumped storage that is expected to lead to cutting down of over one lakh trees 15 kilometers away from the Kuno National Park in the Baran district.

The High Court, while not yet passing any interim order, upheld the judgement in ***M K Ranjitsinh & Ors Vs. Union of India & Ors. (Writ Petition (Civil) No.838 of 2019*** as under:

"*25. Without a clean environment which is stable and unimpacted by the vagaries of climate change, the right to (4 of 10) life is not fully realised. The right to health (which is a part of the right to life under Article 21) is impacted due to factors such as air pollution, shifts in vector- borne diseases, rising temperatures, droughts,*

	shortages in food supplies due to crop failure, storms, and flooding. The inability of underserved communities to adapt to climate change or cope with its effects violates the right to life as well as the right to equality. This is better understood with the help of an example. If climate change and environmental degradation lead to acute food and water shortages in a particular area, poorer communities will suffer more than richer ones. The right to equality would undoubtedly be impacted in each of these instances. *35. India faces a number of pressing near-term challenges that directly impact the right to a healthy environment, particularly for vulnerable and indigenous communities including forest dwellers. The lack of reliable electricity supply for many citizens not only hinders economic development but also disproportionately affects communities, including women and low-income households, further perpetuating inequalities. Therefore, the right to a healthy environment encapsulates the principle that every individual has the entitlement to live in an environment that is clean, safe, and conducive to their well-being. By recognizing the right to a healthy environment and the right to be free from the adverse effects of climate change, states are compelled to prioritize environmental protection and sustainable development, thereby addressing the root causes of climate change and safeguarding the wellbeing of present and future generations. It is imperative for states like India, to uphold their obligations under international law, including their responsibilities to mitigate greenhouse gas emissions, adapt to climate impacts, and protect the fundamental rights of all individuals to live in a healthy and sustainable environment.*" The High Court did not pass any interim order as the Court was informed that the trees will not be cut till at least the next 15 days from the date of the present order since stage one approval from the State itself is pending. Stage I approval is the working permission for cutting of trees and commencement of work.
○	**The Bombay High Court holds that the Shri Sai Baba Sansthan Trust in Shirdi is exempt from income tax on 'hundis'**

	[Commissioner of Income Tax (Exemptions), Mumbai v. Shree Sai Baba Sansthan Trust – Shirdi, (FAO (OS) (COMM) 145/2023)] The Bombay High Court held that the Shri Sai Baba Sansthan Trust ("**the Trust**") is exempt from income tax on 'hundis' which allow anonymous donations, on the ground that the Trust is a religious and charitable institution. The appeal in the present matter led to the High Court interpreting Section 80G and Section 115BBC of the Income Tax Act, 1961 ("**the Act**"). Section 80G allows tax deductions where donations are paid towards certain funds, charitable institutions, etc., and Section 115BBC states that anonymous donations received by charitable trusts over a certain slab are taxable with wholly religious institutions being exempt from the same. The High Court scrutinized the aims and objects of the Trust and read both the provisions simultaneously along side Shri Sai Baba Sansthan Trust (Shirdi) Act, 2004, to ascertain the kind of works and activities undertaken by the Trust, and determined that the Trust was exempt from taxation since reading Section 115BBC(2)(b) with Section 80G of the Act leads to the conclusion that the Trust is a charitable institution which is also substantially religious. Read Here
○	**District Consumer Disputes Redressal Commission, Chandigarh levies penalty of Rs 19,000 upon MakeMyTrip and Go Airlines for deficiency of services causing disruptions in family's planned trip to Thailand** *[Amir Kohar v. Make My Trip India Pvt. Ltd. and Anr., (CC/206/2023)]* MakeMyTrip and Go Airlines ("**Respondents**") in the present case were held liable for deficiency in services in accordance with Rule 4(10) of the Consumer Protection (E-Commerce) Rules, 2020 which states "*Every e-commerce entity shall effect all payments towards accepted refund requests of the consumers as prescribed by the*

	Reserve Bank of India or any other competent authority under any law for the time being in force, within a reasonable period of time, or as prescribed under applicable laws." The factual background of the case is that the complainant had booked tickets to Thailand in a planned manner including tickets of hotels and of the return trip to India after an offer published by MakeMyTrip. However, Go Airlines had caused repeated cancellations and re-scheduling of the trip despite timely booking of the tickets and also, the repeated cancellations had caused the complainant to bear additional cost towards the trip. The complainant consequently raised the issue of refund of the additional cost borne by him solely due to the Respondent's fault, however, the said grievance was not resolved leading to the present consumer complaint. The District Forum held that merely because MakeMyTrip is an intermediary does not absolve it of its liability towards the complainant when it was proved on record that the tickets were booked via its platform and therefore, the Respondents were duty-bound to fulfill their services. The complainant was awarded the total refund of the additional cost borne by him with interest as well Rs 10,000 as compensation for mental agony caused by the Respondents' failure to fulfill their duties.
○	**District Consumer Commission grants compensation to a car owner** *[Jonathan Brainard v. Tata Motors Ltd. & Ors. (Consumer Case No. 189/2023)]* Recently, the District Consumer Disputes Redressal Commission at Hyderabad - II ("**Commission**") granted compensation to a car owner after his car caught fire. The brief facts of the case are that the Complainant, i.e., Jonathan Brainard, had purchased a car, i.e., TATA NEXON EV, which caught fire a year after its purchase. Aggrieved thereby, the Complainant filed a complaint before the Commission alleging a manufacturing defect.

	The Complaint stated that within 11 months of purchase the car developed problems and wouldn't run properly. The authorized service center replaced the HV battery pack with a refurbished one. A month later, the car caught fire while the Complainant was driving it. The accident also caused him severe injuries. The Complainant argued that the fire originated from the car's electric system. To buttress his argument, the Complainant relied upon the fire department's report which indicated at the electrical origin for the fire. The Respondents, on the other hand, denied the allegations, claiming the fire resulted from the crash and the battery wasn't faulty. After hearing the contentions from both the sides, the Commission concluded that a manufacturing defect caused the fire. The Commission ruled in favor of the Complainant, holding all the Respondents, i.e. - Tata Motors Ltd., Tata Motors Passenger Vehicles Ltd., the Dealer, and the Service Center jointly liable. It ordered a full refund of the car's cost with interest, plus compensation of Rs 2.5 lakh for the injured Complainant.
○	**NCDRC Directs GNIDA to pay compensation to the home buyer** *[Greater Noida Industrial Development Authority & Anr. v. Ashish Deep (F.A. No. 652/2021)]* The National Consumer Disputes Redressal Commission ("**NCDRC**") has delivered a significant ruling establishing that the issuance of a possession certificate without completing the project constitutes a deficiency in service. The Complainant, i.e., Ashish Deep (Respondent, *herein*), had been allotted a house by the Appellant, i.e., Greater Noida Industrial Development Authority ("**GNIDA**") but faced delays in construction and additional charges were imposed by Appellant/ GNIDA. Despite the issuance of a lease deed and possession certificate, the house remained incomplete and uninhabitable. The Complainant/Respondent filed a complaint with the Uttar Pradesh State Consumer Disputes Redressal Commission ("**State Commission**"), seeking possession of the house, compensation for mental agony, reimbursement for rent, and nullification of the demand letter and litigation

	costs. The State Commission allowed the complaint and directed the Appellant/GNIDA to complete the construction and hand over the house in a liveable condition within six months. Additionally, the Appellant/GNIDA was required to pay Rs. 1,00,000 for mental and financial agony and Rs. 25,000 for litigation costs. However, the Appellant/GNIDA appealed the State Commission's decision to the NCDRC. Wherein it was contended by the Appellant/GNIDA that the impugned order was arbitrary and against facts and evidence, and erroneous as the Respondent himself was not adhering to the terms and conditions of the allotment. The Complainant/Respondent, on the other hand, contented that the fact that an e-Tender notification for certain works published on 05.01.2021 clearly establishes that the work was not completed. It was argued by the Complainant/Respondent that the failure to complete the project constituted the deficiency of services on the part of the Appellant/GNIDA. After considering the rival contentions, The NCDRC noted that the house was incomplete despite the lease deed and possession certificate being issued, which constituted a deficiency in service. Ultimately, the NCDRC directed the Appellant/GNIDA to complete the house, compensate the Complainant/Respondent with 6% interest, and pay Rs. 1,00,000 as litigation costs.
○	**Delhi High Court holds that there is continuous duty of the arbitrator to disclose any conflict of interest.** *[FLFL Travel Retail Lucknow Private Limited v. Airports Authority of India & Anr. (Neut. Cit. No. 2024:DHC:7800)]* The Delhi High Court has recently ruled that arbitrators have a continuous duty to disclose any conflicts of interest throughout arbitration proceedings. This ruling emphasizes the importance of transparency and impartiality in arbitration.

	The Court considered a case where the petitioner challenged the arbitrator's award, alleging that the arbitrator had failed to disclose a conflict of interest and had violated other procedural requirements. The Court found that the arbitrator had violated Section 12 of the Arbitration and Conciliation Act, 1996, ("**the Act")** which requires arbitrators to disclose any circumstances that may give rise to justifiable doubts about their independence or impartiality. The court held that the arbitrator's failure to disclose a previous appointment by one of the parties constituted a violation of this section. The Court also found that the arbitrator had violated Section 18 of the Act, which requires parties to be given a fair opportunity to present their case. The Court held that the arbitrator had failed to provide the petitioner with sufficient time to respond to evidence submitted by the other party.
○	**Supreme Court reiterates that post-award interest is not subject to contract between the parties.** *[R.P. Garg v. The Chief General Manager, telecom Department & Ors. (Neut. Cit. No. 2024:INSC:743)]* The Supreme Court of India recently reaffirmed the statutory right to post-award interest in arbitration proceedings. The brief facts of the case are that a dispute had arisen between the Appellant, i.e., R. P. Garg and the Respondents. As per the terms of the contract between the parties, the dispute was referred to the arbitrator. The arbitrator had passed an award in favour of the Appellant but refused to allow any post award interest. The executing court also upheld that award. However, in appeal, the District Court held that the Appellant was entitled to the post-award interest. The decision of the District Court was challenged by way of revision petition by the Respondents before the High Court of Punjab and Haryana. The High Court allowed the revision and refused to

	grant any post-award interest. Aggrieved thereby, the Appellant approached the Supreme Court. The Court addressed the issue of post-award interest, which is the interest payable on the amount awarded by an arbitral tribunal after the award is passed. The Court noted that while pre-award interest is subject to contractual agreements between the parties, post-award interest is a statutory right that cannot be contracted out. This means that even if the contract between the parties states otherwise, the award holder is still entitled to post-award interest in terms of Section 31(7)(b) of the Arbitration and Conciliation Act, 1996. The Court further clarified that the rate of post-award interest can be determined by the arbitrator in the award itself. If the arbitrator does not specify the rate, the statutory rate will apply. This ensures that award holders receive timely compensation, including interest for the post-award period, without being subject to arbitrary contractual terms. Read Here
○	**Supreme Court clarifies that a judgment cannot be based on ambiguous and unclear admissions.** *[Rajesh Mitra @ Rajesh Kumar Mitra vs Karnani Properties Limited (Neut. Cit. No. 2024:INSC:719)]* The Supreme Court recently clarified the interpretation of Order XII Rule 6 of the Civil Procedure Code, 1908, regarding the admissibility of statements as judicial admissions. The court emphasized that a judgment cannot be solely based on an unclear, ambiguous, or equivocal admission. Such admissions must be clear, unequivocal, and unconditional to warrant a judgment without a full trial. In this case, the court delved into a dispute between a landlord and tenant regarding tenancy rights. The landlord argued that the tenant's rights were limited to a five-year period after the death of the original tenant, as per the West Bengal Tenancy

Premises Act, 1997 ("**Old Law**"). The tenant, however, contended that they inherited tenancy rights under the West Bengal Premises Tenancy Act, 1956("**New Law**").

The landlord relied on a statement made by the tenant in another case to support their claim. However, the Supreme Court scrutinized the statement and found it to be ambiguous and inconclusive. The court reasoned that the statement was a mixed question of fact and law, and it could not be used to extinguish the tenant's rights accrued under the repealed Old Law.

The court's decision highlights that a mere statement, even if made in a judicial proceeding, cannot be used to deprive a party of their rights without a thorough analysis of its clarity, unequivocal nature, and consistency with legal principles.

Read Here

- **Kerala High Court Limits Judicial Review in Infrastructure Projects**

  Wahabuddin v. State of Kerala & Other Cases – W.A. Nos. 1558, 1582 & 1583 of 2024

  The Kerala High Court recently dismissed an appeal challenging the land acquisition process for constructing a Railway Over Bridge (ROB) at Edava in Thiruvananthapuram. The complainants, local residents, argued that the alignment would cause hardship and that alternative routes had not been adequately considered. In this context, "alignment" means the planned path or route chosen for the construction of the Railway Over Bridge (ROB). Specifically, it involves the precise layout or positioning of the bridge and related infrastructure within the designated land area. However, the respondents in the instant matter, including the Roads and Bridges Development Corporation and the District Collector, maintained that the alignment was carefully chosen after reviewing alternative routes and conducting an expert study by the National Transportation Planning and Research Centre (NATPAC).

  The Court reiterated that judicial review in technical matters related to infrastructure projects and land acquisition should remain limited. Delays in such projects could

	lead to substantial cost escalation, creating a financial burden on the public. Noting that the authorities had provided sufficient consideration to alternative routes, the court concluded that judicial interference beyond this point would hinder project progress. Read Here
○	**No New Evidence Permissible Under Section 37 Appeal, Bar of Limitation Applies: Allahabad High Court** *State of Uttar Pradesh and 2 others v. M/S Virat Construction –[2024: AHC:171241-DB]* The Allahabad High Court recently emphasized the limited scope for courts to intervene in arbitration matters under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996. The Court ruled that in appeals under Section 37, new evidence or amended grounds cannot be introduced, as this would essentially create a new appeal. Section 34 allows for setting aside an arbitral award, while Section 37 provides grounds for appeal but is restricted in scope. In this case, the State of Uttar Pradesh ("Appellant") sought to overturn a commercial court judgment that upheld an arbitration award favoring M/s Virat Construction ("Respondent"). This award arose from a 2008 tender for construction work, which faced multiple delays due to the Appellant's actions. As a result, the Respondent suffered financial losses, prompting arbitration. In May 2022, the Arbitrator ruled in favor of the Respondent, and the State's attempt to challenge this award under Section 34 was dismissed by the commercial court, leading to the current Section 37 appeal. The Appellant argued that the commercial court failed to review the tender details properly and claimed the award was patently illegal and violated contract terms. They argued that delays were partly the Respondent's fault, which the court allegedly overlooked. However, the Respondent countered stating that fresh grounds and revisiting evidence not disclosed or mentioned prior, after the

	arbitration has concluded, essentially forms a new appeal. They relied on Supreme Court cases to reinforce minimal judicial interference in arbitration awards. The High Court dismissed the appeal, noting that the Arbitrator had addressed each claim thoroughly. The Court found no basis in the Appellant's arguments and highlighted that excessive court intervention could undermine arbitration's goals of efficiency and finality. Read Here
○	**Police's Unauthorized Property Seizure is "Lawlessness" and Criminal cases shall not meddle with the civil matters in any manner: Supreme Court** *Ramratan @ Ramswaroop & Anr. versus State of Madhya Pradesh (Criminal Appeal No 4402 of 2024)* The Supreme Court recently criticized the police for overstepping their authority by intervening in a private property dispute. The Court condemned the police's action of seizing keys and taking control of the disputed property, calling it "lawlessness" and stating that police involvement in property possession matters without legal grounds is entirely unacceptable. The case arose from allegations that the appellants had committed criminal trespass by entering the Complainant's property and building a wall to block access. When the High Court granted bail to the accused, it imposed conditions requiring them to pay for demolishing the wall. It also ordered the police to hand the keys of the disputed property to the Complainant. The State challenged these bail conditions, arguing that a separate civil lawsuit was already ongoing to settle the property ownership. They contended that the criminal court should not make decisions impacting civil rights or property possession. The Supreme Court agreed, stating that criminal courts should not impose bail conditions that interfere in civil disputes or affect property rights. Read Here

- **Supreme Court Rules on Specific Performance and Consent from All Co-owners**

[Janardan Das & Ors. v. Durga Prasad Agarwalla & Ors (2024 INSC 778)]

In a recent Supreme Court ruling, the Court clarified that plaintiffs seeking specific performance of a sale agreement involving property with multiple co-owners must secure consent from all co-owners. The ruling emphasized that reliance on some co-owners without obtaining the express consent of all is insufficient to claim specific performance under Section 16(c) of the Specific Relief Act, 1963. In this case, the plaintiffs had an agreement with only two of the five co-owners but did not engage the remaining three, who were essential parties for the sale to proceed legally.

The Court pointed out that Section 16(c) requires plaintiffs to show continuous readiness and willingness to fulfill the essential terms of a contract. Here, the plaintiffs did not make any effort to involve the absent co-owners within the stipulated timeframe, reflecting a lack of proactive measures expected under the law. The Court found that merely depending on assurances from some co-owners did not absolve the plaintiffs from securing complete consent, especially as they were aware that the property's ownership was shared.

The Court also addressed the limitations of a General Power of Attorney (GPA) from 1982, which the plaintiffs relied on to argue authority for the sale. The Court observed that a partition deed of 1988 had specifically revoked this GPA regarding property sales, restricting the attorney's role to rent collection alone. The decision underscored that co-owners must either directly participate in sale agreements or provide clear and valid authorization through an unambiguous power of attorney.

This case reinforces that for property contracts involving multiple owners, all parties' consent is crucial. Plaintiffs cannot rely solely on partial agreements and must demonstrate their readiness and willingness by taking comprehensive steps to involve every necessary party in the transaction.

	Read Here
○	**Havells awarded permanent injunction by the Delhi High Court against a repeat offender infringing its registered designs** *[Havells India Limited v. Electromech India Private Limited & Anr. (CS(COMM) 423/2023)]* The present case pertains to design infringement by the defendants, against whom Havells, the petitioner, had already filed prior suits to restrain the defendants from infringing the petitioner's registered designs and trade marks. In the present matter, the defendants did not contest the petitioner's claim of infringement of its registered designs and only sought imposition of nominal costs. Since the defendants had also furnished an undertaking refraining from any further infringement, the petitioner agreed to not pray for damages and confined itself to legal costs only. Read here
○	**The Delhi High Court elaborated on its supervisory jurisdiction to hear a writ petition preferred against an erroneous interpretation of Section 11 read with Section 42 of the Arbitration and Conciliation Act, 1996 by the District Court** *[M/s CP Rama Rao Sole Proprietor v. National Highways Authority of India, (WP(C) 11484/2023)]* In the present case, the issue arose from the District Judge's erroneous interpretation of Section 11 read with Section 42 of the Arbitration and Conciliation Act, 1996 ("the Act") in light of a petition preferred under Section 34 of the Act. The District Judge had decided that a Section 34 petition is not maintainable before

the commercial court by virtue of Section 42 of the Act since an application under Section 11 was previously presented before the High Court.

Section 11 pertains to constitution of the Arbitral Tribunal and Section 42 grants exclusive jurisdiction to the court that first receives an application in relation to an arbitration agreement, i.e., that the court has jurisdiction over the arbitration proceedings and all subsequent applications arising from the agreement.

The Delhi High Court, while hearing the matter, reiterated the settled position of law that a petition under Section 11 of the Act cannot be construed as an "application" to the court and hence, Section 42 cannot be invoked in this regard.

The High Court also stated that the District Judge's refusal to set aside the arbitral award under Section 34 of the Act cannot be construed as a ground for appeal under Section 37 because there was no adjudication under Section 34 of the Act - the refusal was due to the District Judge's erroneous understanding of it lacking jurisdiction to hear the petition. Therefore, the High Court exercised its power of superintendence under Article 227 of the Constitution of India and set aside the impugned order and revived the Section 34 petition previously preferred in the case.

Read here

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