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ADVOCATES AND SOLICITORS

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Legal Updates, Insights and Summary Judgements

This update covers:

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Recent Judgements

CIVIL

A A Estates Private Limited vs. Kher Nagar Sukhsadan Co-operative Housing Society Ltd. & Ors. [Arising out of SLP (C) No. 10758 of 2025])

In the instant case, the Supreme Court ruled that development rights under a development agreement, which was validly terminated by a property owner prior to the commencement of the Corporate Insolvency Resolution Process (**CIRP**) against the developer, do not constitute an "asset" or "property" of the corporate debtor. Consequently, such rights are not protected by the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("**the IBC**"). The Court held that the High Court was justified in exercising its writ jurisdiction under Article 226 of the Constitution to direct statutory authorities to grant redevelopment permissions to a new developer, as such directions did not interfere with the insolvency process concerning non-existent assets.

The appeal was filed by a developer (**Corporate Debtor**) and its Resolution Professional against a Bombay High Court judgment. The developer had entered into a Development Agreement in 2005 with a Co-operative Housing Society for a redevelopment project that stalled for nearly two decades. Citing persistent defaults, the Society terminated the agreement and, after the developer entered CIRP for a second time, appointed a new developer. When the Resolution Professional objected to the new appointment citing the moratorium, the Society filed a writ petition seeking directions for statutory authorities to grant approvals to the new developer.

When the Resolution Professional objected to the new appointment citing the moratorium, the Society filed a writ petition seeking directions for statutory authorities to grant approvals to the new developer. The High Court allowed the petition. The Appellants argued before the Supreme Court that the development rights were a valuable asset of the corporate debtor, protected by the Section 14 moratorium, and that the High Court's order illegally extinguished this asset, undermining the CIRP. They contended that the termination was invalid and that the writ petition was not maintainable. They relied on *Victory Iron Works Ltd v. Jitendra Lohia* to argue that development rights are assets under the IBC. The Respondent Society argued that the agreement was lawfully terminated for non-performance long before the CIRP began, meaning no subsisting right or asset existed to be protected. It contended that since the developer never had physical possession, the moratorium under Section 14(1)(d) was inapplicable, as held in *Rajendra K. Bhutta v. Maharashtra Housing and Area Development Authority.* The Society further submitted that the writ was maintainable as it sought a public law remedy against statutory inaction and that the developer's conduct had deprived its low-income members of their right to shelter under Article 21 of the Constitution.

The Supreme Court, siding with the Respondents, dismissed the appeal. The Court held that the termination of the development agreement was valid, lawful, and effective, as it was based on the developer's prolonged and inexcusable default, which occurred well before the initiation of the CIRP. Applying the principles laid down in *Gujarat Urja Vikas Nigam Ltd v. Amit Gupta,* the Court found that the termination was based on grounds unrelated to insolvency. Consequently, no subsisting contractual or proprietary right survived in favour of the corporate debtor on the insolvency commencement date. The Court clarified that the moratorium under Section 14 does not revive terminated contracts or create rights where none exist. It further held that the High Court's intervention was justified, as its constitutional jurisdiction under Article 226 is not ousted by the IBC, particularly in matters concerning the public duties of statutory authorities. The Court concluded by observing that the IBC was not designed to be a refuge for corporate debtors who, by their conduct, display no bona fide intention to fulfil their obligations, especially in social welfare projects that implicate the constitutional promise of dignified living.

CIVIL

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Shri Digant vs. M/S. P.D.T. Trading Co. & Ors. (Civil Appeal No(s). 13801/2025)

In the instant case, the Supreme Court ruled that the High Court had exceeded its supervisory jurisdiction under Article 227 of the Constitution of India by interfering with a well-reasoned order of the Appellate Court. The Court held that the High Court's decision to remand the matter to the Trial Court was based on a misconceived application of the rules for withdrawal of a Vakalatnama, as the Advocate for the Defendants (Respondents herein) had only filed a 'no instructions' pursis and had not sought permission to withdraw his appearance. The Supreme Court found that the fault for non-prosecution of the case lay with the Defendants themselves and restored the eviction decree passed by the Trial Court.

The case originated from a civil suit (Civil Suit No. 85 of 2014) filed by the Appellant (Plaintiff) for possession of a property under **Section 16(1)(g) and (n) of the Maharashtra Rent Control Act, 1999.** The suit was initially ordered to proceed ex-parte against the Defendants, but this order was later recalled, and they filed their written statements. During the proceedings, the Defendants' advocate submitted a pursis, informing the court that he had not received any instructions from his clients despite sending them a letter. The Trial Court proceeded with the suit, recorded the Plaintiff's evidence, and ultimately decreed the suit in favour of the Plaintiff on 04.03.2015. The Defendants' appeal to the District Judge (Appellate Court) was dismissed, but their subsequent writ petition before the High Court was allowed, and the matter was remanded to the Trial Court.

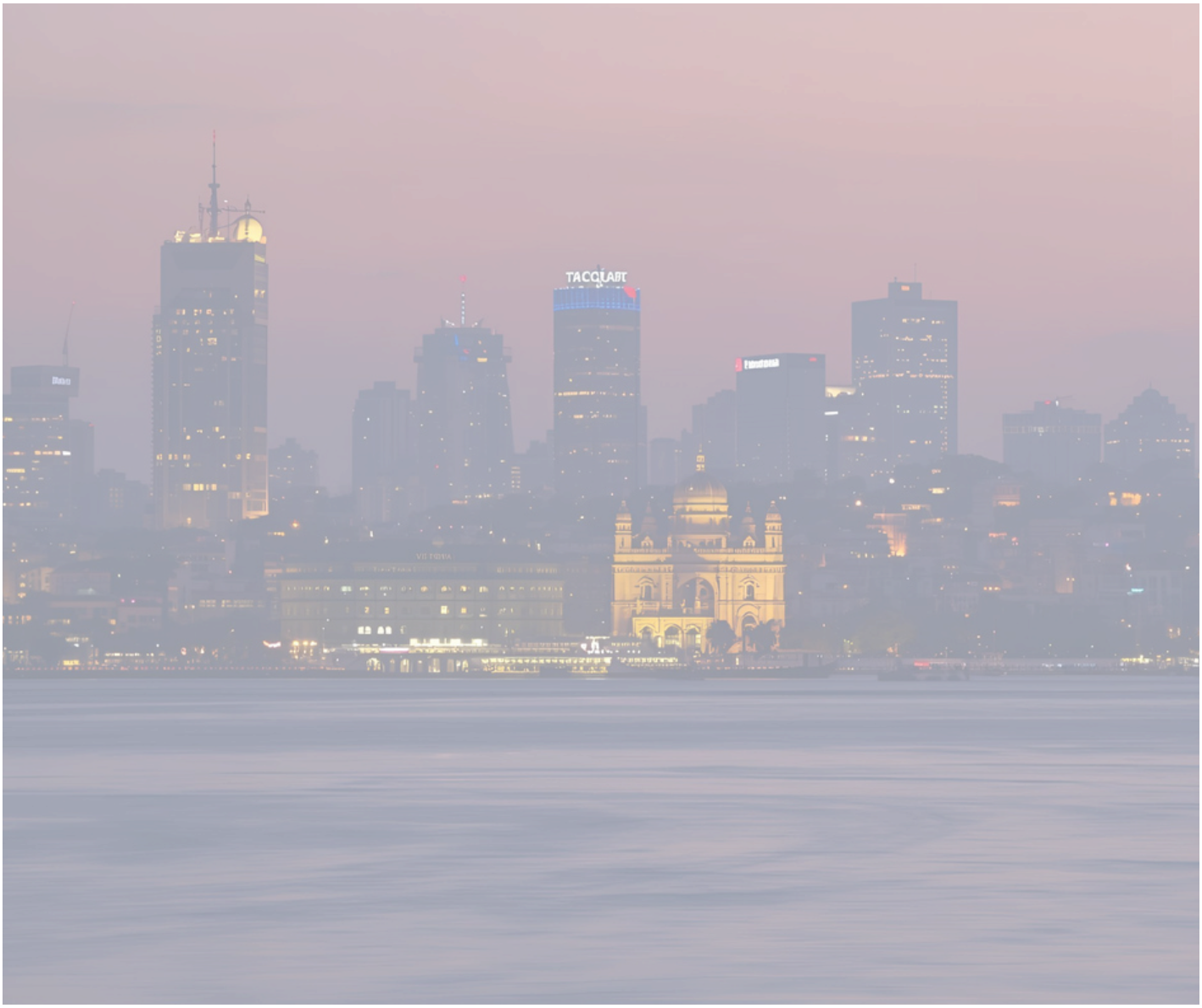
The case originated from a civil suit (Civil Suit No. 85 of 2014) filed by the Appellant (Plaintiff) for possession of a property under **Section 16(1)(g) and (n) of the Maharashtra Rent Control Act, 1999.** The suit was initially ordered to proceed ex-parte against the Defendants, but this order was later recalled, and they filed their written statements. During the proceedings, the Defendants' advocate submitted a pursis, informing the court that he had not received any instructions from his clients despite sending them a letter. The Trial Court proceeded with the suit, recorded the Plaintiff's evidence, and ultimately decreed the suit in favour of the Plaintiff on 04.03.2015. The Defendants' appeal to the District Judge (Appellate Court) was dismissed, but their subsequent writ petition before the High Court was allowed, and the matter was remanded to the Trial Court.

The primary argument of the Defendants before the Appellate Court and the High Court was that they were denied an adequate opportunity to present their case. They contended that upon their counsel filing a 'no instructions' pursis, the Trial Court was obligated to serve a notice on them to engage another counsel. It was argued that the procedure for withdrawal of Vakalatnama, as prescribed under **Clause 660(4) of the Civil Manual and Rule 8(4) of the Bombay High Court Appellate Side Rules, 1960**, was not followed. The Defendants relied on several precedents, including ***Rafiq and another vs. Munshilal and another,*** to argue that a party should not suffer due to the misdemeanor or inaction of their counsel. Before the Supreme Court, the Appellant argued that the High Court erred in exercising its supervisory jurisdiction under **Article 227 of the Constitution** to interfere with the detailed and well-reasoned order of the Appellate Court. It was submitted that the Defendants had made no effort to contest the proceedings for over three months between the filing of the pursis and the final judgment, which demonstrated their intent to delay the proceedings. The Appellant emphasized that the advocate had not 'withdrawn his Vakalatnama but had only claimed 'no instructions', and therefore, the fault lay with the litigant for failing to provide instructions. The Appellate Court had correctly noted that the Defendants were evasive about whether they had received the notice sent by their own advocate.

The Supreme Court allowed the appeal, setting aside the High Court's order. The Court reiterated that the jurisdiction under Article 227 is supervisory, not appellate, and should be used sparingly to correct jurisdictional errors, not mere errors of fact or law. The Court found that the Appellate Court had conducted a "threadbare analysis" and had taken a plausible view based on the record that the Defendants' conduct was casual, indifferent, and aimed at delaying the suit. There was no jurisdictional error in the Appellate Court's order that warranted interference from the High Court. The Supreme Court held that the High Court's entire exercise was "misconceived" because it incorrectly applied the procedure for 'withdrawal of Vakalatnama' to a situation where the advocate had only filed a 'no instructions' pursis. The pursis did not seek withdrawal, nor did the court permit it. The Court concluded that a Defendant cannot take advantage of their own wrong.

Given that the Defendants failed to act for over three months and were evasive about the notice from their counsel, the blame lay with them and not the court or the advocate.

Ultimately, the Supreme Court restored the order of the Trial Court as affirmed by the Appellate Court, thereby upholding the eviction decree.



ARBITRATION

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LHindustan Construction Company Ltd. vs. Bihar Rajya Pul Nirman Nigam Limited and Others (2025 SCC OnLine SC 2578)

In the instant case, the Supreme Court ruled that a High Court does not possess the jurisdiction to review its own final order appointing an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 ("**the A&C Act"**). The Court held that an arbitration clause containing a unilateral appointment mechanism that has become legally unenforceable does not render the entire agreement to arbitrate void. Instead, the defective appointment procedure is severable, and the court can appoint an independent arbitrator to uphold the parties' primary intention to resolve disputes through arbitration. The Court also found that a party that actively participates in arbitral proceedings for years and jointly seeks extensions of the arbitrator's mandate is deemed to have waived its right to object to the proceedings under Section 4 of the A&C Act.

The Appeal arose from a dispute under a 2014 construction contract containing an arbitration clause (Clause 25). After a second dispute arose, the Appellant (**Hindustan Construction**) invoked arbitration. When the Respondent (**Bihar Rajya Pul Nirman Nigam**) failed to appoint an arbitrator, the Appellant approached the Patna High Court, which appointed a sole arbitrator in August 2021. The arbitration proceeded for over three years with more than seventy sittings, and both parties jointly applied for and were granted extensions of the Arbitrator's mandate under Section 29A of the A&C Act. However, in 2024, the Respondent filed a review petition against the 2021 appointment order. The High Court first directed the arbitrator to halt proceedings and then, in its final judgment, dismissed the Appellant's original Section 11 petition, holding that the arbitration clause was inoperative. The Appellant argued before the Supreme Court that the High Court had no power to review its final order under the A&C Act, which is a self-contained code. It contended that the Respondent, by its active participation, was estopped from challenging the arbitration. The Respondent defended the High Court's order, arguing that Clause 25 contained a negative covenant stipulating that if the Managing Director could not appoint an arbitrator "for any reason," then "the matter shall not be referred to arbitrator at all." Since the law now prohibits unilateral appointments, this condition was triggered, extinguishing the agreement to arbitrate. To force arbitration would be to rewrite the contract against the principle of party autonomy.

The Supreme Court, siding with the Appellant, held that the High Court's exercise of review jurisdiction was fundamentally flawed. The Court reiterated that the A&C Act is premised on minimal judicial intervention (Section 5), and once an order under Section 11 is passed, the court becomes functus officio. The Court then addressed the validity of Clause 25, holding that the substantive agreement to arbitrate must be distinguished from the appointment procedure. Relying on the doctrine of severability, the Court found that the unenforceable unilateral appointment mechanism and the arbitrary negative covenant could be severed without destroying the core agreement to arbitrate. It held that such clauses in public-private contracts are violative of Article 14 of the Constitution. Furthermore, the Court held that the Respondent's conduct participating in over seventy hearings, filing pleadings, and jointly moving applications under Section 29A constituted a clear waiver of its right to object under Section 4 of the A&C Act.

The Supreme Court therefore set aside the Patna High Court's review order, restored the arbitration, directed appointment of a substitute arbitrator within two weeks and ordered that the proceedings continue from the stage already reached, with a target for conclusion within one year. The Court reaffirmed that judicial intervention under the A&C Act must remain narrow and cannot be used to unravel arbitration midstream.

ARBITRATION

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Balaji Steel Trade vs. Fludor Benin S.A. & Ors. (Arbitration Petition No. 65 of 2023)

In the instant case, the Supreme Court dismissed a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**the Act, 1996**"), holding that Indian courts lack jurisdiction to appoint an arbitrator when the principal or "mother" agreement between the parties designates a foreign juridical seat. The Court ruled that the arbitration clause in the main Buyer and Seller Agreement (BSA), which stipulated arbitration in Benin, was determinative and could not be superseded or novated by clauses in subsequent ancillary contracts providing for arbitration in India. The Court further held that the Petitioner was barred by the principle of issue estoppel from re-litigating issues already decided by the Delhi High Court in a related anti-arbitration injunction suit.

The petition was filed by Balaji Steel Trade, seeking the appointment of a sole arbitrator for a composite arbitration involving three Respondents. The Petitioner had a Buyer-Seller Agreement (**BSA**) with Respondent No. 1 (**Fludor Benin S.A.**), which provided that arbitration "will take place in Benin." To facilitate supplies, the Petitioner entered into separate Sales Contracts with Respondent No. 2 and High Seas Sales Contracts (**HSSAs**) with Respondent No. 3, both of which contained clauses for arbitration in New Delhi under Indian law. After disputes arose, Respondent No. 1 initiated arbitration in Benin. The Petitioner resisted this and filed an anti-arbitration injunction suit before the Delhi High Court, which was eventually dismissed. Concurrently, the Petitioner filed the present Section 11 petition before the Supreme Court. The Petitioner argued that all agreements formed a single composite transaction and that the group of companies doctrine, as laid down in *Cox & Kings Ltd. v. SAP India (P) Ltd.*, warranted a single arbitration in India. It was contended that the arbitration clauses in the later contracts novated the BSA's clause and that Benin was merely a venue, not the juridical seat, citing *Mankastu Impex Pvt. Ltd. v. Airvisual Ltd*. The Respondents, led by Respondent No. 1, argued that the dispute was an international commercial arbitration seated in Benin, thereby ousting the jurisdiction of Indian courts under Part I of the Act, 1996.

The Supreme Court, siding with the Respondents, held that its jurisdiction under Section 11 was ousted at the threshold. The Court affirmed the principle established in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO)* that Part I of the Act, 1996 does not apply to arbitrations seated outside India. It found that Article 11 of the BSA (specifying Benin as the place) and Article 5 of its Addendum (specifying Benin law as the governing law) unequivocally established Benin as the juridical seat. The Court rejected the novation argument, finding no clear intention to substitute the BSA's dispute resolution mechanism with those in the ancillary Sales Contracts and HSSAs. A significant basis for the dismissal was the doctrine of issue estoppel. The Court held that the Delhi High Court's findings in the anti-arbitration suit that the BSA was the principal agreement and its arbitration clause was operative were findings on jurisdictional facts that could not be re-agitated. The Court also noted that the Benin arbitration had already concluded and an award had been rendered, making the Petitioner's attempt to initiate parallel proceedings untenable.

Finally, the Court found the Petitioner's reliance on the group of companies doctrine to be misplaced, observing that a mere overlap in shareholding is insufficient to bind non-signatories without a clear mutual intention. For these reasons, the Supreme Court concluded that the petition was fundamentally misconceived and legally untenable, and accordingly dismissed it.

CRIMINAL

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Inder Chand Bagri vs. Jagdish Prasad Bagri and Another (2025 INSC 1350)

The brief facts of the case are that the appellant-accused along with four other individuals decided to constitute a partnership firm vide partnership deed dated 01.10.1976. The aim of the said partnership firm was to carry on business of construction of warehouses and godowns and subsequently letting them out to third parties. The appellant accused agreed to bring into the partnership the land owned by him for the purpose of business. 2 godowns were constructed on that land and leased out to the Food Corporation of India. A supplementary agreement was entered into by the partners that allowed the appellant-accused to use the property for his own use and when the lease ended, the land would revert back to the appellant-accused. The partners then decided to dissolve the partnership firm w.e.f. 01.04.1997. The Guwahati Civil Court passed an ex-parte preliminary decree declaring the firm as dissolved from 08.09.2000. The appellant-accused executed a sale deed in favor of his nephew for the disputed property on 20.06.2011. The respondent filed a suit against the appellant-accused and the rest of the partners contending that the disputed property belongs to the firm and put a permanent restrain on the appellant-accused from alienating the property. The respondent also filed a complaint case on 19.09.2013 against the appellant-accused and Ajit Bagri (accused no.2) contending that they dishonestly misappropriated the disputed property. The Guwahati Sub-Divisional Magistrate took cognizance of the complaint and summoned the appellant-accused to appear before the court. Aggrieved by the order of the Sub-Divisional Magistrate, the appellant-accused preferred a criminal petition to the Guwahati High Court praying for the quashing of the cognizance order and complaint case made. The High Court quashed the complaints against accused no.2 but refused to do so against the complaints against the appellant-accused, holding that a prima facie case has been made against him, and the material relied upon by him does not warrant quashing of the case made out against him. The High Court directed the Trial Court to proceed with the criminal proceedings against the appellant-accused. Aggrieved by this order, the appellant-accused has preferred the present appeal.

The court held that the respondent has failed to make a prima facie case of cheating as under Section 420 of the IPC. The allegations made by the respondent cannot fall under the ambit of section 420 at all and that there is no offence that can be made out against the appellant-accused. There must be some dishonest intention of the part of the appellant-accused that must be made out not by presumption, but rather by cogent facts, which is not done so in this case.

The court also held that the offence of criminal breach of trust also cannot be made out against the appellant-accused, as under Section 405 of IPC punishable under Section 406 of IPC. The respondent had failed to place any record in front of the court that showed that he had placed the property in the trust of the appellant-accused and that there had been a dishonest intention on the part of the appellant-accused. The court thus held that it would lead to grave injustice if the proceedings continued against the appellant-accused in any court and thus quashed all the proceedings going on in front of the Sub-Divisional Magistrate as well.
The appeal was allowed.

Case Summary

Arraycom (India) Limited v. State of Gujarat & Ors [2025 (11) TMI 1872 – Gujarat High Court]

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Facts

- TThe Petitioner is a GST-registered company engaged in manufacturing electronic materials, solar power installations, and system integration. For FY 2020–21, the Petitioner availed Input Tax Credit (ITC) on GST paid on an insurance premium paid to United India Insurance Co. Ltd.

- The insurance policies were Standard Fire and Special Perils Policies, covering Stock-in-trade Manufacturing equipment and business premises (including STFI and earthquake cover).

- The GST department issued DRC-01A (intimation) and later DRC-01 (show cause notice) under Section 73 of the CGST/GGST Acts wherein the department disallowed ITC of Rs. 1,72,884, alleging that the insurance pertained to motor vehicles, which is blocked credit under Section 17(5)(b) of the CGST Act.

- A recovery notice under Section 79(1)(c) was issued, and the Petitioner's bank account was attached. The statutory appeal period had expired, so the petitioner approached the High Court under writ jurisdiction.

Issue:

Whether Input Tax Credit on insurance premium paid for stock-in-trade and business premises can be disallowed under Section 17(5) of the CGST Act by wrongly treating it as motor vehicle insurance?

Petitioner's contentions:

- The insurance policies do not relate to motor vehicles but to stock-in-trade, plant and machinery, business premises.

- Section 17(5) blocks ITC only for motor vehicle-related insurance, not for property or stock insurance.

- The department failed to examine the insurance policy documents, despite them being submitted during adjudication.

- Since the appellate remedy had lapsed, the writ petition was maintainable due to patent lack of jurisdiction and factual error

Held that:

- Section 17(5) applies only when ITC is claimed in respect of motor vehicles or related services. On examination of the insurance policies, the Court found:
  - They were Standard Fire and Special Perils policies;
  - Coverage was for stock, manufacturing equipment, and premises;
  - There was no motor vehicle coverage at all.

- The adjudicating authority ignored the documentary evidence and proceeded on incorrect factual assumptions and disallowing ITC on such incorrect facts amounts to jurisdictional error and non-application of mind.

- Since all other additions were dropped and only this erroneous disallowance survived, the order was unsustainable. In such glaring and undisputed factual error, the High Court rightly exercised writ jurisdiction despite the availability (and lapse) of appellate remedy.

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