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ADVOCATES AND SOLICITORS

July 2025

Legal Updates, Insights and Summary Judgements

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Recent Judgements

CIVIL

Machhindranath S/o Kundlik Tarade (deceased) through LRs v. Ramchandra Gangadhar Dhamne & Ors. [2025 INSC 795]

The Hon'ble Supreme Court has addressed an important question concerning land transactions made in contravention of the Maharashtra Co-operative Societies Act, 1960. The dispute arose over agricultural land that had been mortgaged by the Machhindranath, ("original plaintiff") to a registered co-operative society as security for a loan. Despite the subsisting statutory charge, the original plaintiff later executed a registered sale deed in favour of his nephew and son-in-law (Defendant No.1), and on the same day, executed an unregistered document ("Ram Ram Patra") promising reconveyance upon repayment. Defendant No.1 subsequently sold part of the land to Defendant No.2.

The original plaintiff later filed a suit seeking possession and reconveyance of the land, asserting that the original sale was not a true sale but a security arrangement for a loan of ₹5,000. The Hon'ble trial court ruled in favour of the plaintiff, holding the sale void under Section 48 of the Maharashtra Co-operative Societies Act, which prohibits such transactions without prior permission of the society. However, the High Court later reversed this finding, and the matter eventually reached the Supreme Court.

The Hon'ble Supreme Court held that while Sections 47 and 48 do impose an embargo on alienating land charged to a co-operative society, such alienations are not void ab initio but are instead voidable at the instance of the society. Since the society in this case had not challenged the transaction and had, in fact, released its charge upon repayment of the loan, the plaintiff could not invoke the statutory protection to undo his own transaction. The Hon'ble Court emphasized the principle that no person can take advantage of his own wrong (*ex turpi causa non oritur actio*), stating that it would be inequitable to allow the plaintiff to benefit from a sale he himself executed in contravention of the law.

Additionally, the Hon'ble Court found that the so-called reconveyance deed lacked legal sanctity as it was unregistered, vaguely worded, and did not stipulate any timeframe or interest for repayment. There was also no evidence that the plaintiff ever attempted to repay the amount to Defendant No.1. Furthermore, the Hon'ble Court held that Defendant No.2, who purchased the land from Defendant No.1, was a bona fide purchaser for value, as he relied on a registered sale deed and had no reason to suspect any illegality.

Ultimately, the Hon'ble Supreme Court upheld the judgment of the Hon'ble High Court, dismissing the appeal and holding that the plaintiff was not entitled to the reliefs sought. The Court clarified that while statutory violations like those under Section 48 Maharashtra Co-operative Societies Act, 1960 may render transactions voidable, they do not automatically nullify them unless the aggrieved party, the co-operative society, seeks such annulment. This case reinforces the importance of statutory compliance in land transactions and underscores the judiciary's reluctance to assist litigants who act in bad faith or attempt to profit from their own unlawful conduct.

Judgement

The Delhi High Court in the present case reaffirmed the key procedural and substantive principles governing commercial suits. The case arose from a dispute concerning a refundable, interest-free security deposit of ₹5,00,000 paid by One97 Communications Ltd. ("Respondent" in the present matter) to R. Santosh ("Appellant" in the present matter), the proprietor of Sharada Talkies, under a Ticketing and Addendum Agreement. Upon closure of the theatre's operations in April 2022, One97 Communications Ltd. terminated the agreement and sought refund of the deposit. When the amount remained unpaid, One97 Communications Ltd. filed a commercial suit which was decreed in their favour. The Trial Court found that R. Santosh failed to file a written statement, did not cross-examine the witness, and did not rebut the evidence placed on record by the One97 Communications Ltd., including the signed agreements and statement of account reflecting the transfer.

In the present appeal, R. Santosh argued that the money had not been paid to him but to an entity named, Mysore Talkies, allegedly operated by one Mr. Manjunath Gowda. He also claimed that the suit suffered from non-joinder of necessary parties and that the matter should have been referred to arbitration on account of an arbitration agreement between the parties,. The High Court dismissed these contentions, holding that Santosh never denied signing the agreements, which explicitly recorded the deposit. Moreover, the Hon'ble Court observed that the evidence, including the bank account name "Mysore Talkies," stood unchallenged due to lack of cross-examination of Plaintiff's witness. The Court further observed that a party who admits execution of documents but fails to challenge them during trial cannot later raise factual disputes.

On the issue of arbitration, the Court emphasized that once the timeline to file a written statement expires, a party cannot file an application under Section 8 of the Arbitration and Conciliation Act to compel arbitration. Citing precedent, the Hon'ble Court clarified that procedural lapses, such as failure to participate in the suit or delayed applications, cannot be used to bypass judicial proceedings. Ultimately, the Court dismissed the appeal, holding that the decree passed by the Trial Court was sound, and the law was correctly applied.

The judgment reinforces that failure to participate in proceedings, including non-filing of a written statement and non-cross-examination of witnesses, results in adverse inference and acceptance of the plaintiff's claims. Additionally, the application to refer the matter to arbitration as per section 8 of the Arbitration and Conciliation Act, 1996 Act must be timely filed and exercised, failing which the right is lost.

Greater Mohali Area Development Authority (GMADA) vs. Anupam Garg & Ors. (Civil Appeal Nos. 27847-27848 of 2019)



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Judgement

In the present case, the Supreme Court of India held that a housing authority cannot be made liable to pay the interest on the loan amount availed by the allottees over and above the contractually stipulated refund and interest, in cases of delayed possession.

The dispute arose from GMADA's housing scheme titled Purab Premium Apartments in Mohali, where the respondents were allotted flats under a draw of lots dated 19th March 2012, and Letters of Intent were issued on 21st May 2012. Possession was contractually due within 36 months (i.e., by 21st May 2015), but due to alleged delay and unilateral changes in amenities, the respondents sought to withdraw from the scheme. GMADA later issued possession letters on 29th June 2016. The respondents, having taken housing loans for payment, filed consumer complaints seeking refund of the deposited amount, interest, and reimbursement of loan interest.

The State Commission (SCDRC) and NCDRC directed GMADA to refund the deposited amounts with 8% compound interest, along with compensation for mental harassment and reimbursement of the interest paid on housing loans. Aggrieved, GMADA approached the Supreme Court, which restricted the scope to the issue of whether loan interest can be recovered from the authority in addition to the refund and agreed interest.

The Hon'ble Supreme Court held that once the refund with 8% interest is provided in line with the contractual terms, no further liability arises on GMADA. It ruled that the buyer's method of arranging funds—whether via loan or personal sources—is not the concern of the developer. The Commission's direction to reimburse the interest paid to banks was held to be legally unsustainable.

Further, the Court reiterated that consumer forums are competent to award compensation, but such compensation must not be duplicative or arbitrary, and must flow from established deficiency in service. Reliance placed by the Commissions on earlier rulings (such as Priyanka Nayyar) was deemed

misplaced, as those were fact-specific and did not endorse loan interest reimbursement as a general principle.

In conclusion, the Supreme Court allowed the appeal and set aside that portion of the orders granting loan interest reimbursement, while upholding the refund with 8% interest, mental agony compensation, and litigation costs. The Court clarified that no further deposit was required from GMADA and directed that the already deposited amount (excluding loan interest) be disbursed to the respondents.

Citation: FAO (COMM) 170/2023



In the instant case, the Hon'ble Delhi High Court reaffirmed the principles of impartiality and procedural fairness in arbitration holding that a party cannot invoke the protection of Section 12(5) of the Arbitration and Conciliation Act, 1996, ("Act") if it has unilaterally appointed an arbitrator without securing an express written waiver of the other party after the dispute has rise

The dispute arose between M/s. Mahavir Prasad Gupta & Sons ("Appellant") and Govt. of NCT of Delhi ("Respondent") arising out of a contract for strengthening of Road No. 58 (Maharaja Surajmal Marg) from Vivek Vihar to Junction on Road No. 72. The Appellant was the successful bidder of the tender and a Work Order was issued for a total consideration of Rs. 5,16,82,612/- (Rupees Five Crore Sixteen Lakhs Eighty-Two Thousand Six Hundred and Twelve). The work was supposed to be completed within a period of three (3) months. However, the same was completed within a period of six (6) months. In accordance with the terms of the agreement, the Quality Assurance Unit of GNCTD conducted an inspection of the work site and found out that some of the layers was significantly below the thickness of 165 mm. Thereafter, the Appellant submitted a final bill on 16.11.2015. However, the Respondent being dissatisfied with the work withheld payments. As such, a third party quality audit was conducted by a team comprising officials from IIT Roorkee and Public Works Department. The said team carried out an inspection and submitted its report dated 28.03.2016 wherein it was recorded that the work executed by the Appellant was acceptable, being within the permissible tolerances.

The Respondent being dissatisfied with the work did not make the final payments to the Appellant. Consequently, Appellant invoked the arbitration clause vide letter dated 18.10.2018, and pursuant to the said invocation, Respondent appointed Shri. A. K. Singhal, former Director General (Works), CPWD, as a Sole Arbitrator to adjudicate disputes between the parties.

The Ld. Sole Arbitrator held that the report submitted by the third party quality audit team was fair, unbiased and extensive and the same was of the opinion that the work accomplished by the Appellant should be acknowledged and accepted and passed an Award dated 12.10.2020 ("Award"). Being aggrieved, the Respondent file a Petition under Section 34 of the Act before Shahdara, District Courts Karkardooma, Delhi ("Ld. Commercial Court") and challenged the Award passed by the Ld. Sole Arbitrator on the ground that the appointment of the Sole Arbitrator was in violation of Section 12(5) of Act and therefore the Award was null and void. By order dated 23.05.2023, Ld. Commercial Court allowed the Petition filed by the Respondent and set aside the Award. Being aggrieved by the order passed by the Ld. Commercial Court, the Appellant filed the captioned Appeal under Section 37 of the Act.

The Hon'ble Delhi High Court dismissed the Appeal filed by the Appellant and held that the ineligibility under Section 12(5) of the Act is a jurisdictional defect and cannot be cured by conduct or participation. Such objections remain valid even if raised by the appointing party. The Hon'ble Delhi High Court reiterated that the unilateral appointment of a sole arbitrator is impermissible under the Indian arbitration law. The Hon'ble Delhi High Court relied upon the judgment in the matter of TRF Ltd. V. Energo Engineering Projects Ltd and held that once a person is rendered ineligible under Section 12(5) of the Act, it cannot even nominate another arbitrator. The same reasoning was extended by the Hon'ble Supreme Court in Perkins Eastman Architects DPC V. HSCC (India) Limited which clarified that exclusive power with one party to appoint the sole arbitrator is itself invalid.



Judgement

The Supreme Court in *Amlesh Kumar v. State of Bihar* (2025 SCC OnLine SC 1326, decided on June 9, 2025) addressed the constitutional validity of conducting narco-analysis tests on an accused during an ongoing criminal investigation, particularly without their consent.

The case arose from an FIR registered in August 2022, alleging dowry harassment and the disappearance of the complainant's sister, who was married to the appellant, Amlesh Kumar. During the bail hearing before the Patna High Court, the investigating officer proposed conducting narco-analysis tests on all accused and witnesses.

Order, Amlesh Kumar approached the Supreme Court, arguing that the direction violated his fundamental rights under Articles 20(3) and 21 of the Constitution.

The Supreme Court referred to the landmark decision in *Selvi v. State of Karnataka* (2010) 7 SCC 263, which categorically held that techniques like narco-analysis, polygraph tests, and brain-mapping cannot be conducted without the person's free and informed consent. The Court reaffirmed that such tests are unconstitutional when done involuntarily.

The Bench emphasized that a bail hearing is not the appropriate stage to direct such investigative techniques. It noted that compelling an accused to undergo intrusive scientific procedures violates personal liberty and the right against self-incrimination under Article 20(3).

Further, the Court clarified that even voluntary narco-analysis cannot independently establish guilt. It cited recent judgments, including *Vinobhai v. State of Kerala* (2025 SCC OnLine SC 178) and *Manoj Kumar Soni v. State of M.P.* (2023 SCC OnLine SC 984), to state that only disclosures corroborated under Section 27 of the Indian Evidence Act may have limited evidentiary value.

The Court also clarified that while an accused may volunteer for such a test at the stage of defence evidence under Section 233 CrPC, there is no absolute right to demand narco-analysis. The court must examine the voluntariness, presence of safeguards, and overall context before granting permission.

The High Court's interim direction was declared unconstitutional, and the matter was remanded for reconsideration of bail purely on legal grounds. The Supreme Court reiterated that investigative convenience cannot override constitutional protections.

Case Summary



SICPA India Pvt. Ltd. v. Union of India (Sikkim HC, WHITE & BRIEF WP(C) No. 54/2023, decided on 10.06.2025)

ADVOCATES AND SOLICITORS

Facts

SICPA India Pvt. Ltd., engaged in manufacturing security inks, had GST registration in Sikkim. In January 2019, it decided to discontinue its business in Sikkim and sold its machinery and facilities between April 2019 and March 2020. Upon closing operations, the company had an unutilized Input Tax Credit (ITC) balance of ₹4.37 crores in its Electronic Credit Ledger. A refund claim was filed under Section 49(6) read with Section 54 of the CGST Act, 2017, which was rejected by the Assistant Commissioner, CGST, Gangtok. The rejection was upheld in appeal by the Additional Commissioner, CGST, Siliguri, prompting the present writ.

Contentions of the Petitioner and the Respondents

In the present case, the petitioner, SICPA India Pvt. Ltd., contended that Section 49(6) recognizes a substantive right to seek refund of ITC balance lying in the electronic credit ledger upon business closure and that Section 54 only prescribes the procedure for such refund. It was argued that Section 54(3), being an exception, cannot override the general right to refund under Section 49(6), and that accumulated ITC is a vested right that cannot be forfeited in absence of an express statutory bar. The respondent authorities, however, argued that refund under Section 49(6) is not available independently and must conform to the limited grounds permitted under Section 54(3), which does not include business closure; further, they emphasized that Section 29(5) permits only reversal of ITC upon cancellation of registration, not refund.

Findings of the Hon'ble Court

The Court, after examining the statutory provisions and relying on precedents including Slovak India Trading Co. Pvt. Ltd. MANU/KA/0709/2006, held that there is no express prohibition in Section 49(6) read with Section 54 from granting refund of ITC in cases of closure of business, and that retention of tax amounts without express authority of law would be unjustified. It also rejected the objection on maintainability, reiterating that a writ petition is maintainable despite the availability of alternate statutory remedy when a pure question of law is involved. Consequently, the High Court set aside the appellate authority's order and directed that refund of the unutilized ITC be granted to the petitioner.

W&B Comments

- Clarifies the interrelationship between Section 49(6) and Section 54(3) of the CGST Act, 2017.
- Holds that Section 49(6) enables refund of balance in electronic credit ledger, subject to procedure under Section 54.
- Observes that Section 54(3) outlines specific scenarios for refund of unutilized ITC but does not expressly prohibit refund upon business closure.
- Notes absence of any statutory bar on refund of ITC in case of cancellation of registration or discontinuance of business.
- Refers to precedent under Slovak India Trading Co. Pvt. Ltd. for allowing refund of unutilized credit on closure of business under earlier tax regime.
- Rejects preliminary objection on maintainability, holding that writ petition is maintainable despite availability of alternate remedy where pure question of law is involved.
- Sets aside the appellate authority's order and directs refund of unutilized ITC to the petitioner.



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