



# LEGAL LENS: ANM EDITION

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## **SUPREME COURT UPHELD THAT ALTHOUGH AN AGREEMENT TO SELL DOES NOT CONFER TITLE, POSSESSORY RIGHT OF PROSPECTIVE PURCHASER IS PROTECTED UNDER S.53 OF TRANSFER OF PROPERTY ACT**

The Hon'ble Bench comprising of Hon'ble Justice Dipankar Datta and Hon'ble Justice Pankaj Mittal, while hearing an appeal entertained the question as to whether the power of attorney, will, the agreement to sell coupled with possession memo and the receipt of payment of sale consideration would confer any title upon the Plaintiff/Respondent so as to entitle him to decree of eviction and mesne profits. Taking note of the facts and circumstances of the present appeal, the Hon'ble Court noted that an "agreement to sell" is neither a title document nor a deed transferring property by sale. As a result, in accordance with Section 54 of the Transfer of Property Act of 1882, it does not grant the Plaintiff/Respondent absolute title to the Suit Property. However, factors such as entering into an Agreement to Sell, paying the entire sale consideration, and being placed in possession by the transferor i.e., the Defendant/Appellant, who was occupying the premises later only as a licensee demonstrates that the Plaintiff/Respondent had de facto possessory rights based on his partial performance of the agreement to sell. The said possessory rights of the prospective purchaser cannot be invaded by the transferor or any person claiming under him. Thus, the Plaintiff/Respondent has been rightly held to be entitled for a decree of eviction with mesne profits and that there was no error or illegality in such a decree being passed.

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## **DELHI HIGH COURT REFUSES TO STAY INVESTIGATION IN FIR AGAINST ASHNEER GROVER AND HIS WIFE WHO WERE ALLEGED FOR MISAPPROPRIATION OF FUNDS IN BHARATPE.**

The Delhi High Court has refused to stay the investigation into the FIR filed against the former BharatPe Managing Director Ashneer Grover and his wife Madhuri Jain Grover for alleged financial misappropriation, resulting in a loss of

approximately Rs. 80 Crores to the fintech company. Hon'ble Justice Anup Jairam Bhambhani issued a notice on the plea filed by Ashneer Grover and Madhuri Jain Grover seeking the quashing of the FIR registered by Delhi Police's Economic Offences Wing on BharatPe's complaint, as well as their application for a stay of the investigation. However, the Hon'ble Court noted that no case is made out at least at this stage for staying the investigation. In the alternative, the duo requested that the concerned IO provide them with advance written notice if their custody is required. The Hon'ble Court has granted them the right to pursue other remedies available to them under the applicable laws.

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## **DELHI HIGH COURT DIRECTED THE PARTIES TO REFER THEIR DISPUTE TO ARBITRATION; THE DISPUTE WAS RELATED TO RECOVERY OF SECURITY DEPOSIT MADE UNDER NOW EXPIRED RENT AGREEMENT**

The Hon'ble Delhi High Court while deciding the present First Appeal made after an application made under section 8 of the Arbitration & Conciliation Act ("**A&C**") came to be rejected by the Ld. Commercial Court. The facts of the case are such that the Appellant/ Defendant was the owner of property/warehouse ("**Demised Premises**") and had executed a Rent Agreement with the Respondent/Plaintiff for a period of one years, subject to further renewal on a yearly basis. The Respondent/Plaintiff continued to be in possession of the Demised Premises after the expiry of period of one year and continued to pay the rent as agreed and thereafter vacated the premises. The Respondent/Plaintiff called upon the Appellant/ Defendant to refund the security deposit. However, the said request was denied alleging that the Demised Premises have been damaged and repair would cost twice the amount of security deposit. The Respondent/Plaintiff instituted a suit seeking a decree for recovery plus pre-suit interest at 18% per annum. The Appellant/Defendant filed a section 8 application and stated that the dispute shall be referred to arbitration in terms of Clause 21 of the Rent Agreement. The Hon'ble bench while deciding the present appeal analysed several judgements determining the scope of interference by the Courts



while hearing applications filed under section 8 and 11 A&C. The Hon'ble Bench ruled that if the parties extended the period of agreement through written communications, the arbitration clause that was included in the agreement remains in effect. Further they distinguished between situations in which an arbitration clause expires with the novation of the main agreement and those in which the arbitration clause remains in effect when the original agreement is not superseded by any other agreement but is extended by the parties through written communications. Accordingly, the Hon'ble Bench held that since the Respondent/Plaintiff is seeking recovery of security deposit made in terms of the Rent Agreement. Clearly, the dispute whether the said security deposit can be withheld or forfeited by the Appellant/Defendant is a matter that arises in connection with the Rent Agreement and hence terminated the proceeding filed before the Ld. Commercial Court and referred the parties to arbitration.

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### **DELHI HIGH COURT RULED THAT DISCRETION TO CHOOSE HIGH COURT OR SESSIONS COURT FOR MOVING ANTICIPATORY BAIL CAN'T BE RESTRICTED BY NARROW INTERPRETATION OF SECTION 438 CRPC**

The Applicant in the present matter approached the Hon'ble Delhi High Court seeking anticipatory bail as he apprehended arrest by the Enforcement Directorate under section 3 and 5 of Prevention of Money Laundering Act ("PMLA") in reference to ECIR No. F. No. GNZO/10/2021 dated 15th June 2021. The Respondents inter alia contended that the Applicant should have approached the Court of Sessions before approaching the Hon'ble High Court. This view taken by the Respondents was rejected relying upon the bare reading of section 438 of CRPC. The Hon'ble Court stated that there is no bar to approaching the High Court directly for anticipatory bail and that both courts have concurrent jurisdiction to deal with such cases. The Applicant can approach either the High Court or the Court of Session. There is no obligation on the Applicant to approach this Court first. It is up to the Applicant to decide which Court to approach because both courts have concurrent jurisdiction, and this cannot be limited by narrowly interpreting Section 438 of the CRPC. Further the Respondent

contended that it was necessary to satisfy the twin test under section 45 of PMLA while granting anticipatory bail. It also stated that an "over-generous infusion of constraints and conditions" not found in Section 438 can render the provision "constitutionally vulnerable" because the right to personal freedom cannot be contingent on compliance with unreasonable restrictions considering in the present facts and circumstances of the matter the Applicant has not been named in the ECIR and that the Respondent has not yet been able to implicate the Applicant in any of the Scheduled Offences under the PMLA, as well as it is an admitted fact that Applicant in the present case has not even been summoned by the Respondent. Section 438 is a procedural provision that is concerned with the personal liberty of the individual envisaged under Article 21 of Constitution of India, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offense in respect of which he seeks bail, as held by the court.

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### **BOMBAY HIGH COURT: THE COURT SHOULD NOT INTERFERE WITH THE LOWER COURT'S DISCRETION UNDER SECTION 37 OF ARBITRATION & CONCILIATION ACT, 1996 UNLESS IT WAS EXERCISED ARBITRARILY, CAPRICIOUSLY, OR PERVERSELY**

In M/s Halliburton India Operations Private Limited vs Vision Projects Technologies Pvt. Ltd., the Appellant in an appeal under section 37 of the Arbitration & Conciliation Act, 1996 challenged the order passed in section 9 petition whereby the prayer made on behalf of the Appellant for seeking permission to remove its equipments from the Vessel Lewek Altair- the Vessel presently docked at Ratnagiri Port as an interim measure came to be refused. The Bombay High Court division bench of Justice A.S. Chandurkar and Justice Rajesh S. Patil held that the appellate jurisdiction under Section 37 of the Arbitration Act is limited to cases where the lower court's order was arbitrary, capricious, perverse, or ignored settled legal principles on interlocutory injunctions. According to established legal principles, the appellate court should not interfere with the lower court's discretion unless it was exercised arbitrarily, capriciously, or perversely,

or if the lower court violated established legal principles governing interlocutory injunctions. The High Court stated that the single judge's decision was reasonable and not perverse. Contract termination, force majeure, and financial liabilities were issues which are all subject to arbitration. The Hon'ble High Court determined that there was no exceptional reason to overturn the single judge's decision under Section 37(1)(b) of the Act. The single judge's observations were limited to the interim measure context and would not jeopardize the arbitration. The appeal was dismissed.

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### **THE TELANGANA HIGH COURT HELD THAT MERE FILING OF SECTION 9 IBC PETITION DOES NOT BAR ARBITRATION UNDER SECTION 11(6) OF ARBITRATION & CONCILIATION ACT, 1996**

In Valmar Projects LLP vs Isthara Parks Private Limited, the Hon'ble bench of Chief Justice Alok Aradhe of Telangana High Court, ruled that simply filing a petition under Section 9 of the IBC before the NCLT does not preclude the initiation of a proceeding under Section 11(6) of the Arbitration and Conciliation Act, 1996. The bench determined that there is no statutory provision prohibiting a party from initiating a proceeding under Section 11 of the Arbitration Act. The High Court referred to Section 21 of the Arbitration Act, noting that, unless otherwise agreed upon by the parties, arbitral proceedings concerning a specific dispute begin on the date the Respondent receives the request to refer that dispute to arbitration. It cited the Supreme Court's decision in State of Goa vs. Praveen Enterprises, which clarified that Section 21 mandates a party to outline the disputes in the notice but does not require the quantification of the amount in dispute. This means that the absence of a specific amount in the notice does not render the claim invalid or prevent it from being referred to arbitration.

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### **SUPREME COURT RULES AWES NOT "STATE" UNDER ARTICLE 12; PRIVATE EDUCATIONAL INSTITUTION'S EMPLOYEE DISPUTES FALL UNDER PRIVATE LAW**

In appeals against the Uttaranchal High Court's

judgment, which upheld that the Army Welfare Education Society (AWES), the Appellant is a "State" under Article 12 of the Constitution, the Supreme Court's Division Bench, in the case of Army Welfare Education Society (AWES) vs. Sunil Kumar Sharma 2024 SCC OnLine SC 1683 of Justices J.B. Pardiwala and Manoj Misra set aside the decision. The Court determined that the Appellant is not a "State" under Article 12 and that service disputes involving private educational institutions and their employees fall within private law and cannot be adjudicated through writ petitions under Article 226. The Respondents in the said matter were originally employees of unaided private minority public school by the name St. Gabriel's Academy, which is no longer in existence and the teaching and non-teaching staff of St. Gabriel's Academy was absorbed by the Appellant Society. It was contended by the Counsel for the Appellant that it was a wholly unaided private society which was established to provide educational facility to meet the needs of the children of the army personnel including the widows and ex-servicemen. It was also argued that the education of children is certainly a public function, but that is not the issue in the present matter. The only issue involved is the continuity of service and service conditions of employees of St. Gabriel's Academy, a private minority institution. The Respondent contended that the address of the Appellant is shown to be Adjutant General's Branch in the Integrated headquarters of the Ministry of Defence. Further that the Executive Committee and the Board of Governors are none other than the Lt. Generals, chief of the Army Staff etc., that, as per the Financial Management clause of the said Memorandum, "the corpus and grants for establishment of Army educational institution will be provided by the executive Committee from the welfare funds of the Adjutant General Branch, Army Headquarters" and that the Appellant is a government run institution i.e., by the Ministry of Defense and hence, a State under Article 12 of the Constitution of India. The Hon'ble Supreme Court however held and emphasized that Appellant is an unaided private society established to impart education to the children of army personnel, and its operations are not subject to public duty in employment matters. The relationship between the Appellant and its employees is contractual, not involving public law elements, thus making writ jurisdiction inapplicable. The Court referenced



several precedents to outline the doctrine of legitimate expectation, stating that it operates in public law and does not extend to private contracts between private parties. The Court concluded that the Appellant, in its employment relationships, does not function as a public or government authority. It further ruled that the doctrine of legitimate expectation does not apply to private contracts, and the respondents must continue to serve under Appellant's stipulated terms and conditions, without being discharged from service.

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## **SUPREME COURT REQUESTS UNION GOVERNMENT TO CONSIDER POLICY FOR MENSTRUAL LEAVE**

In a writ petition filed under Article 32 of the Constitution seeking menstrual leave policies under the Maternity Benefit Act, 1961, in the case of Shailendra Mani Tripathi vs. Union of India 2024 SCC OnLine SC 1694, the Three Judge Bench of Dr. DY Chandrachud, CJI, J.B. Pardiwala, and Manoj Misra, JJ., requested the Secretary in Union Ministry of Women and Child Development to examine the issue at a policy level. The Court had earlier allowed the petitioner to submit a representation to the Ministry and requested a review of the policy after consulting stakeholders at both Union and State levels. Despite the petitioner's submission on 19-05-2023, no response was received. The Court stated that the Union Government may consider whether it would be appropriate to frame a Model policy for consideration by all the stakeholders. The Hon'ble Supreme Court clarified that the said order will not stand in the way of the State Governments independently taking an appropriate decision.

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## **COURT SEEKS RESPONSE ON IMPLEMENTATION OF RESERVATION POLICIES FOR TRANSGENDER PERSONS**

In a contempt petition regarding the lack of an effective reservation policy for transgender individuals, in the case of Kamlesh & Ors. Vs. Niten Chandra & Ors. 2024 SCC OnLine SC 1742 the Three Judge Bench of Dr. DY Chandrachud, CJI, J.B. Pardiwala, and Manoj Misra, JJ., directed three

States and five Union Territories to respond. This follows the National Legal Services Authority v. Union of India (2014) ruling, which mandated legal recognition of transgender identities and their inclusion as 'Socially and Educationally Backward Classes' for reservations in education and public appointments. The Court noted that several States and Union Territories had not yet complied and set a deadline of 31-08-2024 for their responses.

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## **DELHI HIGH COURT UPHELD IMPLEADMENT OF NON-SIGNATORIES AS PARTIES TO ARBITRAL PROCEEDINGS DESPITE OF NON-IMPLEADEMENT BEFORE REFERRAL COURT**

The case involves multiple parties, including ASF Buildtech Private Limited, ASF Insignia Sez Pvt. Ltd., and Black Canyon Sez Private Limited, Vs. Shapoorji Pallonji and Company Private Limited and others 2024 SCC OnLine Del 453. The arbitration agreement in question was contested regarding its applicability to certain non-signatory parties, raising questions about the enforceability of the agreement under the 'group of companies' doctrine. The Sole Arbitrator had to determine whether non-signatories could be impleaded in the arbitration proceedings based on their involvement in the corporate group and the underlying agreements. The main issue was whether the Arbitral Tribunal had the authority to include non-signatories in the arbitration agreement. The Supreme Court's ruling in Cox and Kings was crucial, establishing that the Tribunal could consider non-signatories under the 'group of companies' doctrine. Another key issue was the extent of the Referral Court's authority in determining the existence and validity of the arbitration agreement. The judgment clarified that while the Referral Court assesses these aspects, it does not prevent the Arbitral Tribunal from addressing the inclusion of non-signatories, even if the issue was not raised before the Referral Court. The judgment also examined the Sole Arbitrator's approach in conflating the group of companies doctrine with the alter ego doctrine, emphasizing the importance of keeping these doctrines distinct to respect the separate legal identities of the companies involved. It highlighted the need to resolve disputes comprehensively within arbitration to avoid multiple litigations, supported by

amendments to the Arbitration and Conciliation Act that allow the Tribunal to adjudicate counterclaims and set-offs. Referencing various judicial precedents, the judgment reinforced that the Arbitral Tribunal has the discretion to determine the binding nature of arbitration agreements on non-signatories based on the specific facts of each case. In conclusion, the judgment clarified the authority of the Arbitral Tribunal regarding the inclusion of non-signatories, the role of the Referral Court, and the application of corporate doctrines, thereby reinforcing the autonomy of arbitration proceedings in complex corporate disputes.

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### **DELHI HIGH COURT DISMISSES PETITION FILED UNDER SECTION 34 OF THE ARBITRATION & CONCILIATION ACT, 1996 CHALLENGING AN EX-PARTE ARBITRAL AWARD**

In the case of Krishan Kumar v. Shakuntla Agency Pvt. Ltd., 2024 SCC OnLine Del 5081, Justice C. Hari Shankar of the Delhi High Court dismissed a petition under Section 34 of the Arbitration and Conciliation Act, 1996, which challenged an arbitral award directing the petitioner to execute a sale deed for a disputed property in favor of the respondent. The Court held that the petitioners should have raised their contentions before the Arbitral Tribunal and that reappreciation of facts is not permitted under Section 34. The Respondents in the said petition had sought specific performance of an agreement to sell a plot of land in New Delhi. The Petitioners argued they were unaware of the arbitral proceedings and contended that the sale agreement was invalid due to a non-transfer covenant in the original allotment letter. They also claimed the agreement predated the allotment. The Court concluded that Petitioner 1 was present at the initial hearing and his signature was also affixed thus he was aware of the proceedings but chose not to participate further. Since the petitioners neither filed a statement of defense nor led any evidence, the claims in the statement of claim were deemed admitted. The Court dismissed the petition, noting that Section 34 does not allow for reappreciation of facts and that the objections should have been raised during arbitration.

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### **HIGH COURT DISMISSES PETITION BY DELL INTERNATIONAL SERVICES DUE TO PROCEDURAL DELAYS AND UNCERTIFIED EVIDENCE**

Dell International Services Private Limited challenged the Delhi State Consumer Dispute Redressal Commission's decision, which upheld the District Commission's refusal to accept Dell's late written statement. In the case of Dell International Services Private Limited v. Adeel Feroze, 2024 SCC OnLine Del 4576 Justice Subramonium Prasad ruled that the District Commission's decision was not erroneous since Dell failed to provide complete documents on time and lacked proper certification for WhatsApp conversations presented as evidence. The High Court, acting under Articles 226 and 227, emphasized its role in examining jurisdictional errors and natural justice breaches rather than substituting its judgment for that of lower authorities. The Court noted that WhatsApp conversations without proper certification under Section 65B of the Evidence Act, 1872, are inadmissible. Dell's failure to provide this certification and the absence of these conversations in the State Commission's proceedings led to the dismissal of the petition. The Court upheld the decisions of the lower commissions, finding that the procedural delays and uncertified evidence were sufficient grounds for dismissal.

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## Bombay High Court Grants Ex - Parte Ad - Interim Injunction in favor of Pidilite Industries Limited Against Trademark Infringement

ANM Global represented Pidilite Industries Limited who filed a suit before Bombay High Court against Santec Chemical Private Limited & Ors for infringement of trademark;

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## ANM Global represented Wockhardt Limited before Bombay High Court

ANM Global represented Wockhardt Limited and its group company Merind Limited, who filed a suit before Bombay High Court against Merind Healthcare & Ors for infringement of trademark combined with a cause of action for passing off pertaining to its 'MERIND' mark.

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## ANM Global Secures Ex-Parte Ad-Interim Injunction in Sun Pharma vs. Arbour Biotec Trademark Infringement Case

ANM Global represented SUN PHARMA Laboratories Limited who filed a suit before Bombay High Court against Arbour Biotec Private Limited and Anr. for infringement of trademark combined with a cause of action for passing off pertaining to its 'QUTIPIN' mark.

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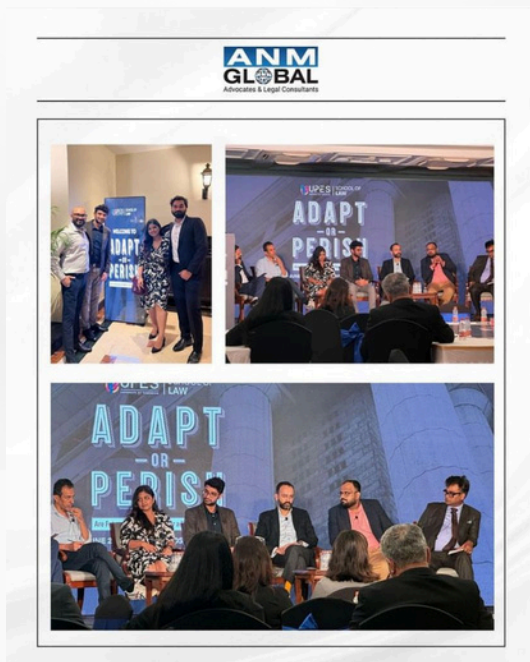
## ANM Global Secures Ex-Parte Injunction and Conducts Successful Raid Against Trademark Infringement for Bisleri International

ANM Global represented Bisleri International Pvt Ltd who filed a suit before Bombay High Court against Mr. Ankit Garg & Anr. for infringement of trademark; infringement of copyright; and passing off pertaining to its well-known mark BISLERI and its label/package/trade dress.

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# FIRM HIGHLIGHTS



## Innovating for the Future: ANM Global's Team Engages at 'Adapt or Perish' Tech-Led Legal Conference

Arpit Chaudhary, Partner; and Senior Associates Tanya Gupta, Adarsh Himatsinghka, and Samyak Surana attended the exclusive event titled "Adapt or Perish - Are Future Lawyers Ready for a Tech-led World?" organized by UPES School of Law, School of Law at Taj Lands End, Mumbai, on June 29th.

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## Representation - July 2024



"36 Days," an Indian television crime thriller series, is set to premiere on SonyLIV on July 12, 2024. Produced by Applause Entertainment and BBC Studios India, the series is an adaptation of original programme "35 Days" which was created by Boom Cymru.

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