

MDP LEGAL UPDATES

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MDP HIGHLIGHTS

Bombay HC provides injunctive relief in favour of Andhra Bank represented by MDP by preventing the licensor Earnest Business Services from obstructing the access to the licensee

Andhra Bank was in lawful possession of premises at Earnest House, Nariman point on a leave and license basis from where they were running their Specialized Corporate Finance branch. Their licensors, Earnest Business Services Private Limited, in order to charge an exorbitant amount of baseless damages and alleged arrears of taxes, illegally disconnected supply of utility services to the branch and illegally erected an obstruction, preventing the licensee and its employees, agents, customers etc. access to and from the branch.

Andhra Bank and associates of M/s. MDP & Partners approached the Marine Drive police station on multiple occasions, seeking police support in restoration of utilities and removal of illegal obstruction at their premises. In spite of meeting the Deputy Commissioner of Police and Senior Inspector of Marine Drive police station and explaining the various illegal actions taken by Earnest Business Services Private Limited, the police were of no help.

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MDP & PARTNERS IN THE NEWS

- 1 M/s. MDP & Partners, representing Andhra Bank, SCF Branch, thereafter successfully initiated proceedings before the City Civil Court, Bombay, for restoration of utilities and injunction preventing the licensor, the said Earnest Business Services Private Limited from obstructing the access of the licensee to and from the branch premises. The Hon'ble Civil Court Judge held in favor of the plaintiff, Andhra Bank and ordered immediate restoration of utilities to the premises and enjoined the said Earnest Business Services Private Limited from obstructing access of the licensee to the premises.
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Whether Slum Dwellers under a rehabilitation Scheme can seek shelter under the Consumer Protection Act, 1986

MDP & Partners Managing Partner Mr.Nishit Dhruva, Partner Mr.Prakash Shinde along with associates Purvi Joshi and Chinmayee Ghag, represented a renowned builder against a group of 31 slum dwellers who by claiming to be consumers had obtained a favourable order from the District Consumer Forum at Bandra.

A group of 31 slum dwellers claiming right under a tripartite agreement which takes its colour from the statutory provisions and a statutory scheme of the Slum Rehabilitation Act, 1995

whereby a Builder is nominated by a majority of the slum dwellers who is then appointed by the Competent Authority to undertake the rehabilitation scheme.

The 31 slum dwellers filed a complaint before the District Forum claiming damages to the tune of Rs.10 lacs each for an alleged deficiency in provision of services by the Builder since they alleged a delay in providing the permanent accommodation under the Scheme.

The District Forum passed an Order dated 30th April, 2015 thereby partly allowing the complaints and awarding a compensation of Rs. 3 lacs 10 thousand to every Complainant.

MDP & Partners approached the Hon'ble Bombay High Court under its Writ Jurisdiction under Article 226 of the Constitution of India challenging the said Order of the District Forum and raising the question of jurisdiction of the Consumer Forum as there is no service which is provided by the Builder to the Slum Dwellers since there is no consideration paid by the Slum Dwellers to the Builder.

MDP & Partners further highlighted the statutory bar enacted by Section 42 of the Maharashtra Slum Areas Act, 1971 and placed reliance on the landmark judgment of Tulsiwadi Navnirman Cooperative Housing Society Limited vs. State of Maharashtra & Ors. which as a matter of coincidence was also contested by Mr. Nishit Dhruva and decided by a full bench comprising of the same Judge as were approached in the present Petition.

The Hon'ble High Court vide an Order dated 2nd September, 2015 disposed off the Writ Petition due to availability of alternate and equally efficacious remedy and directed the Petitioners to approach the State Consumer Redressal Commission.

MDP & Partners has pursuant to the said order filed 31 Appeals before the State Consumer Redressal Commission.

MDP successfully represents its client before the Bombay HC challenging the Order of Office of the Inspector General of Registration and Controller of Stamps, Maharashtra State, Pune

MDP & Partners, Advocates and Solicitors has successfully represented its Client in a Writ Petition filed before the Bombay High Court challenging the order passed by Office of the Inspector General of Registration and Controller of Stamps, Maharashtra State, Pune ('Authority').

The Petitioner has filed application for refund of stamp duty before the Authority under the provisions of Section 48(2) of the Maharashtra Stamp Act, 1958 (the Act) which states that in cases when for unavoidable circumstances any instrument for which another instrument has been substituted cannot be cancelled, the application may be made within six months after the date of execution of the substituted instrument. Accordingly, the Applications were made within six months after the execution of the new Agreement for sale.

The said application for refund of stamp duty was rejected vide order dated 2nd December, 2014 by the Authority on the grounds that the same was not made within a period of six months and thereby wrongly invoking the provisions of Section 48(3) of the Maharashtra Stamp Act, 1958 (the Act).

The said order of the Authority on our advice was challenged in a Writ Petition. The Hon'ble High Court vide order dated 16th September, 2015 quashed and set aside the order of the Authority with a direction to consider the Application afresh on its own merits and should pass a fresh order within a period of two months and the Authority should also grant a personal hearing on the said applications.

Mr. Nishit Dhruva (Managing Partner), Mr. Prakash Shinde (Partner) along with Mr. Chirag Bhavsar (Associate) of MDP & Partners were representing the Company in a Writ Petition before the Hon'ble High Court at Bombay.

The language of Section 8 is peremptory and it is obligatory for the Court to refer the parties to arbitration in terms of Arbitration Agreement

Concerned Associates: Ambreen Saheed and Purvi Joshi along with Mr. Prakash Shinde (Partner)

In a recent proceeding before the Hon'ble High Court of Bombay MDP Partners successfully challenged an Order of the City Civil Court whereunder the City Civil Court in a suit filed by BLR Logistics (India) Ltd. against Sesa Sterlite Limited allegedly for recovery of dues whereunder despite the parties having entered into a Contract which provided that disputes if any would be referred to arbitration, the Trial Court erroneously brushed aside the Contract, since the Written Statement had already been filed prior to an application for referring the parties to Arbitration as provided under Section 8 of the Arbitration and Conciliation Act 1996.

MDP & Partners on behalf of Sesa Sterlite Limited emphasized to the Court that if during the pendency of the proceedings in court, the parties have entered into an arbitration agreement, then they have to proceed with the matter in accordance with the provisions of the Arbitration and Conciliation Act 1996. As long as a party to the proceeding before a judicial authority „invokes arbitration, not later than when submitting his first statement on the substance of the dispute, that is enough to bring the bar of Section 8 into play and the judicial authority/court then ceases to have jurisdiction.

The Hon'ble High Court of Bombay confirmed the submissions made by MDP & Partners and whilst quashing aside the Order of the Trial Court passed an order referring the parties to Arbitration.

In the matter of arbitration between M/s. Vinayak Arts vs IndusInd Bank Limited represented by MDP

MDP & Partners represents IndusInd Bank Limited (“IndusInd”) against M/s. Vinayak Arts (“VA”) who filed their Statement of Claim for a claim amounting to Rs. 14,71,693 plus interest @ 21 % in accordance with the Rules of the Court of Arbitration of Indian Merchant Chamber (“IMC”) 2013 in lieu of an order dated 7th October 2014 by the Hon'ble High Court of Rajasthan and Clause 15 of the Agreement for Forward Exchange Transaction dated 26th February 2013 between IndusInd and VA (“Agreement”). VA is seeking a relief that the termination of the Agreement by IndusInd is illegal. IMC has now directed IndusInd to file its Defence Statement and further directed both the parties to appoint a sole arbitrator from the Panel of Arbitrators of IMC

MDP IN THE NEWS

Times of India on 14th September, 2015

Developer Hubtown Limited is being represented by Mr. Nishit Dhruva (Managing Partner, MDP) in a matter poised to be a landmark judgement before the Bombay HC wherein the HC has raised questions about the maintainability of slum dwellers grievances before a consumer forum



This legal update is not intended to be a form of solicitation or advertising. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate thereafter. No person should act on such information without appropriate professional advice based on the circumstances of a particular situation. This update is intended for private circulation only.

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