Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION (L) NO.20508 OF 2026

1. **Aliasha Trading Private Limited**
2. **Keyur Hemant Shah** ... **Petitioners**

Vs.

Jigar Pratapray Vora ... **Respondent**

Mr. Gauraj Shah with V.A. Joshi, Harjot Singh, Yogesh Patel, Maaz Qureshi Ameen Raibakker & Vaishnavi Samant i/by Chitnis Vaithy & Co. for the petitioner.

Mr. Siddhesh Bhole with Yakshay Chheda i/by Ashwin Pimple for the respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : JULY 17, 2026.

PRONOUNCED ON : JULY 21, 2026

<u>JUDGMENT</u>:

1. By this Arbitration Petition, the Petitioner has asked the Court to direct the Respondent to deposit a sum of Rs.1,61,31,556/- with the Prothonotary and Senior Master of this Court within seven days. In the alternative, the Petitioner has prayed that the Respondent should furnish proper security for the said amount. The Petitioner has also claimed further interest at the rate of 18% per annum from 1 April 2026 till the entire amount is paid or recovered.

2. From the documents placed on record, the facts leading to this Petition appear to be these. Around October 2017, Petitioner No.1 gave a loan of Rs.37,50,000/- to the Respondent. Thereafter, on 28 February 2022, Petitioner No.1 and the Respondent signed a Memorandum of Understanding, which is referred to as the First MOU. In this MOU, the Respondent admitted that as on 31 March 2022, a sum of Rs.80,10,360/- was due and payable to Petitioner No.1. The First MOU also provided that interest would be payable at the rate of 18% per annum. It further stated that if any dispute arose between the parties, the same would be decided under the Arbitration and Conciliation Act, 1996. On 1 April 2022, the Respondent issued a security cheque of Rs.80,10,360/- in favour of Petitioner No.1 to cover the outstanding amount with interest. However, the Respondent requested Petitioner No.1 not to deposit the cheque and assured that the dues would be paid. Believing this assurance, Petitioner No.1 did not present the cheque for payment. Later, on 22 December 2022, Petitioner No.1 and the Respondent entered into another Memorandum of Understanding, referred to as the Second MOU. In this document also, the Respondent admitted that as on 31 December 2022, an amount of Rs.91,46,543/- was due and payable to Petitioner No.1. This MOU also provided for interest at the rate of 18% per annum. It further contained an arbitration clause stating that any dispute between the parties would be resolved under the Arbitration and Conciliation Act, 1996. On 31 December 2022, the Respondent issued another security cheque for Rs.91,46,543/- in favour of Petitioner No.1. Once again, the Respondent requested that the cheque should not be deposited and assured that payment would be made separately. Relying on this assurance, Petitioner No.1 did not present the cheque. The record shows that the Respondent continued to follow the same practice. New security cheques were issued in place of the earlier cheques, and every time the Respondent requested that they should not be presented while assuring that the outstanding amount would be paid. Thereafter, on 15 May 2024, the parties executed a Third MOU. Under this MOU also, the Respondent admitted that as on 30 June 2024, an amount of Rs.1,18,58,129/- was due and payable to Petitioner No.1. This MOU also provided for interest at the rate of 18% per annum and contained a clause that disputes would be resolved through arbitration under the Arbitration and Conciliation Act, 1996.

3. On 30 June 2024, the Respondent issued a third security cheque for Rs.1,18,58,129/- towards the outstanding principal and interest. Even then, the Respondent requested Petitioner No.1 not to deposit the cheque and again assured that the dues would be paid. However, instead of making the payment, the Respondent issued another security cheque dated 30 September 2025 for a sum of Rs.1,47,75,638/-. On 28 November 2025, Petitioner No.1 presented the fourth security cheque for payment. The cheque was dishonoured and returned unpaid with the remark "Funds Insufficient". Thereafter, on 20 December 2025, the Petitioner's Advocates issued a statutory notice to the Respondent under Section 138 of the Negotiable Instruments Act, 1881. The notice was also sent by e-mail, WhatsApp and Speed Post on the same day. According to the record, the Respondent received the notice on 22 December 2025.

4. In January 2026, the Petitioner filed a complaint against the Respondent under Section 138 of the Negotiable Instruments Act, 1881 before the learned Metropolitan Magistrate at Mazgaon, Mumbai. That complaint is still pending at the stage of issuance of process. According to the Petitioner, as on 31 March 2026, a total amount of Rs.1,61,31,556/-, including interest at the rate of 18% per annum calculated on a pro-rata basis, was due and payable by the Respondent. It is in these circumstances that the present Petition has been filed seeking interim protection to secure the Petitioner's claim till the arbitration proceedings are completed.

5. Mr. Shah, learned Advocate for the Petitioner, submitted that the facts on record clearly show the following. According to him, the Petitioner had given loans to the Respondent from time to time. As on 31 March 2026, the Respondent was liable to pay Rs.1,61,34,644/- to the Petitioner. He submitted that the Respondent had issued several cheques towards repayment of the outstanding amount. He further pointed out that the Respondent had signed three Memoranda of Understanding, in which he clearly admitted his liability and agreed to repay the dues. The last cheque dated 30 September 2025 for Rs.1,47,78,467/- was dishonoured. Even after the cheque was dishonoured and proceedings under the Negotiable Instruments Act, 1881 were started, the Respondent did not make payment. According to the Petitioner, at no stage had the Respondent denied his liability. It was also submitted that the Third MOU contains a valid arbitration agreement and the Petitioner has already started the process for appointment of an Arbitrator.

6. Mr. Shah submitted that the Respondent had repeatedly admitted his liability. Such admission is found in the First MOU, the Second MOU and the Third MOU. Apart from these documents, the Respondent also issued several cheques from time to time for the outstanding amount. According to the Petitioner, this also shows that the Respondent accepted his liability. He further submitted that the parties had agreed that the outstanding amount would carry interest at the rate of 18% per annum, and this agreement is clearly recorded in all the Memoranda of Understanding.

7. Mr. Shah further submitted that the Respondent has neither paid the admitted amount nor replied to the letters and communications sent by the Petitioner. According to him, the Petitioner has a genuine fear that the Respondent may sell, transfer or otherwise deal with his properties or bank accounts so that the Petitioner may not be able to recover its dues. It was submitted that this fear is not without reason. The cheque issued by the Respondent was returned unpaid because of "Funds Insufficient". According to the Petitioner, the conduct of the Respondent also supports this apprehension. Though the Respondent repeatedly admitted his liability, issued cheques and assured payment, he ultimately failed to pay the outstanding amount.

8. Mr. Shah further submitted that the last cheque issued by the Respondent was dishonoured on 1 December 2025. Thereafter, on

20 December 2025, the Petitioner issued a statutory notice demanding payment of the cheque amount. He submitted that the present Petition was filed on 6 May 2026 and, therefore, it cannot be said that the Petitioner was guilty of any delay or negligence in approaching this Court.

9. On the other hand, Mr. Bhole, learned Advocate for the Respondent, opposed the Petition. He submitted that the Petitioner's claim itself is seriously disputed. According to him, the calculation of the amount claimed, the manner in which interest has been charged on both the principal amount and the accumulated interest, the method adopted for arriving at the final figure, the successive Memoranda of Understanding and even the basic claim of the Petitioner are all disputed issues. He submitted that these questions can be decided only in arbitration. Therefore, directing the Respondent to deposit or secure the entire disputed amount at this stage would virtually amount to deciding these disputed issues before the arbitration begins, which is beyond the scope of Section 9 of the Arbitration and Conciliation Act, 1996. Mr. Bhole further submitted that the Petitioner has not made out any case for grant of interim relief. According to him, the Petitioner is not seeking a protective order but is trying to secure the entire money claim even before the disputes are decided by the Arbitral Tribunal. If such relief is granted, it would practically amount to granting the final relief itself, which cannot be done in proceedings under Section 9 of the Arbitration and Conciliation Act, 1996.

10. Mr. Bhole also submitted that the Petition wrongly proceeds on the basis that the amount claimed is an admitted and final liability. According to him, the amount has been calculated by repeatedly increasing the alleged liability, charging quarterly interest, adding accrued interest to the principal and executing fresh Memoranda of Understanding recording revised figures. He submitted that the correctness, legality and enforceability of these calculations are all seriously disputed and can be examined only in arbitration. It was further submitted that the successive Memoranda of Understanding were not signed voluntarily. According to the Respondent, whenever he sought more time to repay the loan, the Petitioner threatened to present the post dated security cheques already in its possession. The Petitioner knew that if those cheques were dishonoured, the Respondent would face prosecution under Section 138 of the Negotiable Instruments Act, 1881 and his business and reputation would suffer. According to the Respondent, because of these threats, he had no option but to sign the successive Memoranda of Understanding acknowledging higher amounts. It was, therefore, submitted that his consent was not free and the Memoranda of Understanding are voidable under Section 19 of the Indian Contract Act, 1872.

11. Mr. Bhole also submitted that although the present Petition was filed on 6 May 2026, the Petitioner did not take steps to have it listed for hearing for almost two months. According to him, no explanation has been given for this delay. He submitted that if the Petitioner had really feared that the arbitration proceedings would be defeated or that immediate prejudice would be caused, it would have acted much more quickly in filing as well as pursuing the Petition. According to the Respondent, the Petitioner's own conduct shows that there was no real urgency. He therefore submitted that no case is made out for grant of discretionary relief under Section 9 of the Arbitration and Conciliation Act, 1996.

12. Mr. Bhole further submitted that if this Court records any finding regarding the Respondent's alleged admitted liability while deciding this Petition, it may seriously affect the Respondent's defence in the complaint filed by the Petitioner under Section 138 of the Negotiable Instruments Act, 1881, which arises from the same transaction. He therefore submitted that this Court should not record any finding on the merits of the Petitioner's claim while deciding the present application under Section 9.

13. Mr. Bhole also submitted that the Petitioner is a company and is governed by its Articles of Association. According to him, the Articles of Association do not permit the Petitioner to carry on the business of giving loans to private individuals. He submitted that, in the absence of such authority in its Articles, the Petitioner cannot maintain the present proceedings for recovery of the alleged loan amount.

14. Mr. Bhole then invited attention to the order passed by the Supreme Court in Miscellaneous Application No.1176 of 2026 in SLP (Crl.) No.5485 of 2024, decided on 6 April 2026. He submitted that the Supreme Court has taken note of the issue relating to unlicensed money lending and the prohibition contained in the State Money Lending law. According to him, where a transaction is hit by the provisions of the State Money Lending Act, the lender cannot legally recover such an amount. He submitted that the Petitioner's claim will have to be examined in the light of this statutory bar.

15. Mr. Bhole also relied upon the judgment of this Court in *Norvic Shipping Asia PTE Limited v. Zigma International*. He submitted that this Court has held that a direction to deposit the disputed amount or furnish security under Section 9 of the Arbitration and Conciliation Act, 1996 can be granted only when there is a strong prima facie case showing a real possibility that the respondent may dispose of or transfer his assets to defeat the arbitration proceedings. According to him, no such circumstances are present in the facts of the present case.

REASONS AND ANALYSIS:

16. I have carefully seen the pleadings, documents on record, the three Memoranda of Understanding, copies of the security cheques, bank return memo showing dishonour of the last cheque, statutory notice under Section 138 of the Negotiable Instruments Act, the complaint filed by the Petitioner and the submissions made by both learned Advocates. I have also gone through the judgments relied upon by both sides. At this stage, this Court is not deciding the final dispute between the parties. While considering powers under Section 9 of the Arbitration and Conciliation Act, 1996, this Court is only required to see whether the material placed before it shows a good prima facie case, whether some protection is necessary so that arbitration may not become without any use later, and whether balance of convenience is in favour of granting such interim relief.

17. From the material on record, one circumstance becomes very important. The Respondent has not merely borrowed money from the Petitioner. The documents show that on three different occasions he executed separate Memoranda of Understanding. Every time a fresh Memorandum came to be executed, he accepted the amount then shown as due and payable. These are not ordinary letters exchanged between parties. They are written agreements signed by both sides. Every Memorandum records the outstanding amount, agreed rate of interest and also contains an arbitration clause. After execution of every Memorandum, the Respondent also issued one fresh security cheque for the same amount. This conduct has continued for several years. Such repeated acts cannot be lightly ignored while considering a petition under Section 9.

18. It is true that one security cheque alone may not always finally prove liability. But the facts in the present matter are different. First, the Respondent signed one Memorandum admitting the outstanding amount. After that he issued one cheque. Again he executed another Memorandum showing revised dues. Again another cheque was issued. Thereafter he executed the third Memorandum and once more issued a fresh cheque. Lastly, he issued another cheque . One common feature is seen in all these transactions. Every later document proceeds on the basis that the earlier liability had not been cleared. Therefore, at least at this stage, the material indicates continuous acknowledgment of liability by the Respondent from time to time.

19. Learned Advocate for the Respondent submitted that the amount claimed is disputed because interest has been charged not only on the principal amount but also on the accrued interest, and therefore the entire calculation requires examination before the learned Arbitral Tribunal. There cannot be much dispute that the exact amount payable will ultimately be decided in arbitration. Even then, dispute regarding calculation alone cannot wipe out the effect of repeated written acknowledgements signed by the Respondent. It is also important that at no stage the Respondent executed any document saying that the earlier calculation was wrong. On the contrary, every later Memorandum accepted a revised figure. Prima facie, therefore, the material supports the Petitioner's case that the Respondent admitted substantial liability on different occasions.

20. Learned Advocate for the Respondent then argued that all the Memoranda of Understanding were executed because of coercion. According to him, the Petitioner threatened to present the post dated security cheques and because of that pressure the Respondent was forced to execute fresh documents. At this stage, I am unable to accept this submission. Except making such allegation in the reply, no independent material has been produced before this Court to show that the Respondent ever protested when those Memoranda were executed. No letter, e mail, legal notice or complaint made at that time alleging coercion has been placed on record. Even after execution of the First Memorandum, the Respondent executed the Second Memorandum. Thereafter, he again executed the Third Memorandum and thereafter also issued another cheque. If really all these documents had been signed under unlawful pressure, some protest at that time could normally be expected. Absence of such contemporaneous material makes this defence weak, at least for present purpose.

21. The submission based upon Section 19 of the Indian Contract Act also does not presently assist the Respondent. Whether consent was free or not is certainly an issue which can be examined by the learned Arbitral Tribunal after evidence is led by the parties. At present, there is no reliable material from which this Court can reasonably hold, even prima facie, that the documents were executed because of coercion. Mere allegation, without supporting material or surrounding circumstances, is not enough to displace three written agreements executed over different periods.

22. Learned Advocate for the Respondent further submitted that directing deposit or furnishing security would amount to granting the final relief itself. I am unable to accept this submission in the facts of the present case. Section 9 itself gives power to the Court to grant interim measures for securing the amount in dispute where the facts require such protection. Such an order does not finally decide the rights of the parties. It also does not finally determine the exact amount payable. It only protects the subject matter of arbitration so that the arbitral award, if ultimately passed, does not become incapable of execution. If the facts require such protection, this Court can certainly direct deposit or furnishing of security.

23. In the present matter, sufficient circumstances are available requiring such protection. The Respondent repeatedly admitted his liability. He repeatedly assured that payment would be made. He repeatedly replaced earlier security cheques by issuing fresh cheques. Ultimately, the last cheque was dishonoured with the endorsement "Funds Insufficient". Dishonour of that cheque is not disputed. A cheque returned because of insufficient funds is an important circumstance while considering whether there exists a reasonable apprehension regarding recovery of the claim. By itself it may not establish dishonest intention. Even then, it certainly shows inability or failure to honour financial commitments already accepted. This circumstance cannot be ignored while exercising powers under Section 9.

24. Learned Advocate for the Respondent argued that there is no material showing that the Respondent intends to sell or transfer his assets. It is true that no direct evidence of any proposed transfer of any particular property has been placed on record. However, such direct evidence is not always available. The Court has to see the overall conduct of the parties. In the present matter there are repeated written acknowledgements, repeated assurances of payment, repeated issue of substitute cheques, dishonour of the last cheque, continued failure to make payment thereafter and failure to clear even the admitted liability despite initiation of proceedings under the Negotiable Instruments Act. When all these circumstances are considered together, they create a reasonable apprehension that unless interim protection is granted, the arbitral proceedings may ultimately become ineffective.

25. Learned Advocate for the Respondent also relied upon the delay in prosecuting the Petition after it was filed. I do not find this submission sufficient to refuse relief. The Petition came to be filed after issuance of the statutory notice and after initiation of proceedings under the Negotiable Instruments Act. The period pointed out by the Respondent is not so long that it completely destroys the Petitioner's apprehension. More importantly, urgency cannot be judged only by counting a few weeks. The Court has to consider the entire conduct of the parties over a long period. Seen in that background, the alleged delay in getting the Petition listed loses much of its importance.

26. Learned Advocate for the Respondent also submitted that any finding recorded in the present proceedings may prejudice the Respondent in the complaint under Section 138 of the Negotiable Instruments Act. This submission has some substance only to the limited extent that observations made in this order should not bind the criminal Court. Therefore, the findings recorded herein are only prima facie and only for deciding the present Petition under Section 9. The learned Magistrate as well as the learned Arbitral Tribunal shall decide their respective proceedings independently on the evidence that may be placed before them.

27. It was then argued that the Petitioner company is not authorised under its Articles of Association to advance loans and therefore cannot maintain the present proceedings. At this stage, I am unable to accept this contention. The Respondent himself executed three written Memoranda acknowledging the outstanding liability. He accepted the transaction for several years and also issued successive cheques towards repayment. Whether there is any restriction under the Articles of Association and what legal consequence may follow are matters requiring detailed examination. At present, such contention cannot outweigh the repeated written acknowledgements executed by the Respondent himself.

28. Learned Advocate for the Respondent also relied upon the provisions of the State Money Lending legislation. According to him, if the transaction is covered by the said law, the claim itself cannot be enforced. At present, however, no material has been placed before this Court to show that the present transaction is conclusively covered by the applicable Money Lending law. Whether the Petitioner answers the definition of a money lender, whether licence was necessary and what legal consequence follows are matters requiring proper evidence and detailed adjudication. At this stage, there is no sufficient material for recording even a prima facie finding that the Petitioner's claim is barred by law.

29. Reliance was also placed upon the decision in *Norvic Shipping Asia PTE Limited*. There can be no dispute with the legal principle laid down therein that the Court should not, as a matter of routine, direct deposit or furnishing of security merely because a monetary claim is made. However, every matter depends upon its own facts. In the present matter there are repeated written acknowledgements, three Memoranda of Understanding executed over different periods, repeated issue of security cheques and dishonour of the last cheque. These facts make the present case different. Looking to the cumulative effect of all these circumstances, I am satisfied that a strong prima facie case exists requiring protection under Section 9.

30. After considering the entire record, I am satisfied that the Petitioner has made out a strong prima facie case. The Respondent repeatedly acknowledged his liability through written documents executed from time to time. The defence of coercion is not supported by any contemporaneous material. The dispute regarding calculation of the amount may require examination in arbitration, but that by itself does not take away the repeated admissions contained in the Memoranda of Understanding. Dishonour of the last cheque because of insufficient funds, coupled with continued failure to repay despite repeated assurances, creates a reasonable apprehension that unless interim protection is granted, the Petitioner's claim may remain unsecured.

31. The balance of convenience also lies in favour of the Petitioner. If interim protection is refused and the Respondent ultimately fails to satisfy the arbitral award, the entire arbitral proceedings may become ineffective. On the other hand, directing deposit of the amount or furnishing security does not finally determine the rights of the parties. The amount shall remain protected subject to the final decision in arbitration. Therefore, no irreparable prejudice is likely to be caused to the Respondent by grant of such interim relief.

32. In view of the above discussion, I am of the opinion that this is a fit case for exercise of powers under Section 9 of the Arbitration and Conciliation Act, 1996. The Petitioner has made out sufficient grounds for protecting its claim pending arbitration. Therefore, prayer clauses (a), (b) and (c) deserve to be granted. The Respondent shall deposit the amount claimed in the Petition with the Prothonotary and Senior Master of this Court or, in the alternative, furnish adequate security to the satisfaction of this Court within the time directed. The Respondent shall also disclose all his movable and immovable assets, bank accounts, investments and encumbrances thereon and shall further disclose his Income Tax Returns for the last three financial years within the time granted. These directions are only interim in nature and shall remain subject to the final adjudication of the learned Arbitral Tribunal.

33. In view of the foregoing discussion, the following order is passed:

(i) Prayer clause (a) is granted which reads as under:

"Pending the commencement and culmination of the arbitral proceedings, the Respondent shall, within six weeks from the date of this order, deposit with the Prothonotary and Senior Master of this Court an amount of Rs.1,61,31,556/-, together with further interest at the rate of 18% per annum from 1 April 2026 till the date of deposit.";

(ii) Prayer clause (b) is granted which reads as under:

"Pending the commencement and culmination of the arbitral proceedings, the Respondent shall, within two weeks from the date of this order, file on oath a full and complete affidavit disclosing all his assets. Such disclosure shall include details of all bank accounts with present balances and encumbrances, all movable and immovable properties with encumbrances, and all investments including demat accounts, shares, stocks, mutual funds, bonds, cryptocurrency, liquid funds and any other financial assets together with details of encumbrances, if any.";

(iii) Prayer clause (c) is granted which reads as under:

"Pending the commencement and culmination of the arbitral proceedings, the Respondent shall, within two weeks from the date of this order, produce and disclose copies of his Income Tax Returns for the last three financial years.";

(iv) It is clarified that the observations made in this order are only prima facie in nature and have been recorded for deciding the present Petition under Section 9 of the Arbitration and Conciliation Act, 1996. The learned Arbitral Tribunal shall decide all disputes independently on their own merits without being influenced by any observations contained in this order;

(v) The Arbitration Petition is accordingly allowed in the above terms.

(vi) There shall be no order as to costs.

(AMIT BORKAR, J.)