*Shabnoor*

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

**ARBITRATION PETITION (L) NO.17691 OF 2026**

**Paras Hemant Shah**, through Constituted Power of Attorney holder Hemant K. Shah ... **Petitioner**

**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.

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| **CORAM** | **: AMIT BORKAR, J.** |
| **RESERVED ON** | **: JULY 17, 2026.** |
| **PRONOUNCED ON** | **: JULY 21, 2026** |

**JUDGMENT:**

**1.** By this Arbitration Petition, the Petitioner has prayed that the Respondent should be directed to deposit before the Prothonotary and Senior Master of this Court, or in the alternative give proper security, within seven days, for an amount of Rs.1,61,34,644/-. According to the Petitioner, this amount was due and payable as on 31 March 2026. The Petitioner has also claimed further interest at the rate of 18% per annum from 1 April 2026 till the amount is fully paid or realised.

**2.** The facts leading to the filing of the present Petition, as seen from the record, are these. Around the year 2017, the Respondent admitted that he was liable to repay a loan of Rs.37,50,000/- to the Petitioner. Thereafter, on 28 February 2022, both parties entered into a Memorandum of Understanding, which is referred to as the First MOU. Under this document, the Respondent again admitted that an amount of Rs.80,10,360/- was due and payable to the Petitioner as on 31 March 2022. It was also agreed that interest would be payable at the rate of 18% per annum. The First MOU further stated that any dispute between the parties would be decided in accordance with the provisions of the Arbitration and Conciliation Act, 1996. On 1 April 2022, the Respondent issued a security cheque for Rs.80,10,360/- in favour of the Petitioner towards the outstanding amount with interest. However, the Respondent requested the Petitioner not to deposit the cheque for payment and assured that the dues would be cleared. Believing this assurance, the Petitioner did not present the cheque for encashment. Later, on 22 December 2022, the parties executed another Memorandum of Understanding, referred to as the Second MOU. Under this document also, the Respondent admitted that an amount of Rs.91,46,543/- was due and payable as on 31 December 2022. The Second MOU also provided for interest at the rate of 18% per annum. It further provided 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 in place of the earlier cheque. Once again, he requested the Petitioner not to deposit the cheque and assured that the payment would be made. Relying on this assurance, the Petitioner did not present the cheque for encashment.

**3.** The record further shows that the Respondent continued to follow the same course. He kept issuing fresh security cheques in place of the earlier ones and every time requested the Petitioner not to deposit them, while assuring that the outstanding amount would be paid. The Petitioner accepted these assurances and therefore did not present those cheques for payment. Thereafter, on 15 May 2024, the parties entered into a Third Memorandum of Understanding. Under this Third MOU, the Respondent again admitted that an amount of Rs.1,18,54,803/- was due and payable as on 30 June 2024. This document also provided for payment of interest at the rate of 18% per annum. It further stated that any dispute between the parties would be resolved under the Arbitration and Conciliation Act, 1996. On 30 June 2024, the Respondent issued one more security cheque in place of the earlier cheque. Even at that stage, the Respondent requested the Petitioner not to present the cheque for payment and assured that the amount would be paid. Acting on this assurance, the Petitioner did not deposit the cheque. Thereafter, on 30 September 2025, the Respondent issued a fourth security cheque in place of the earlier one. On 28 November 2025, the Petitioner presented this cheque for encashment. However, the cheque was dishonoured and returned unpaid with the remark "Funds Insufficient". Because of this, the Petitioner's Advocates issued a statutory notice dated 20 December 2025 under Section 138 of the Negotiable Instruments Act, 1881. The notice was also sent to the Respondent through e-mail, WhatsApp and Speed Post on the same day. According to the record, the Respondent received the notice on 22 December 2025. In January 2026, the Petitioner filed a complaint 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, an amount of Rs.1,61,34,644/-, including interest calculated at the rate of 18% per annum on a pro-rata basis, is due and payable by the Respondent. It is in these circumstances that the present Petition under Section 9 of the Arbitration and Conciliation Act, 1996 has been filed seeking interim protection for securing the Petitioner's claim until the arbitral proceedings are concluded.

**4.** Mr. Shah, learned Advocate appearing for the Petitioner, submitted that the facts on record clearly show the following. According to him, the Petitioner had advanced loans to the Respondent from time to time. As on 31 March 2026, the Respondent is 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 parties had entered into three Memoranda of Understanding, namely the First MOU, Second MOU and Third MOU, in all of which the Respondent admitted his liability and agreed to repay the amount due. He submitted that 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 him, at no point of time has the Respondent denied his liability. He also submitted that the Third MOU contains a valid arbitration agreement and the Petitioner has already started taking steps for appointment of an Arbitrator.

**5.** Mr. Shah further submitted that the Respondent has repeatedly admitted his liability from time to time. According to him, these admissions are found in the First MOU, Second MOU and Third MOU executed between the parties. He also relied upon the fact that the Respondent issued several security cheques from time to time towards the outstanding dues. He submitted that the parties had also agreed that the outstanding amount would carry interest at the rate of 18% per annum and this understanding is clearly recorded in all the Memoranda of Understanding. It was further submitted that although the Respondent has admitted his liability, he has failed to make payment of the outstanding amount. According to the Petitioner, the Respondent has also not replied to the communications sent by the Petitioner. In these circumstances, the Petitioner apprehends that the Respondent may transfer, sell or otherwise deal with his assets or bank accounts so as to defeat the Petitioner's claim.

**6.** Mr. Shah submitted that such apprehension is reasonable and is supported by the conduct of the Respondent. He pointed out that the cheque issued by the Respondent was dishonoured with the endorsement "Funds Insufficient". According to him, despite repeatedly admitting the liability, issuing fresh cheques and assuring repayment, the Respondent has not paid the outstanding amount. Therefore, the Petitioner's apprehension cannot be said to be without basis.

**7.** Mr. Shah further submitted that the last cheque issued by the Respondent was dishonoured on 1 December 2025. Thereafter, a statutory notice demanding payment of the cheque amount was issued on 20 December 2025. He submitted that the present Petition was filed on 6 May 2026 and, in these circumstances, it cannot be said that the Petition suffers from delay or laches.

**8.** On the other hand, Mr. Bhole, learned Advocate appearing for the Respondent, submitted that the Petitioner's claim itself is seriously disputed. According to him, the manner in which the outstanding amount has been calculated, the charging of interest on the principal as well as on the accrued interest, the method adopted for arriving at the final figure, the successive Memoranda of Understanding and even the very basis of the Petitioner's claim are all disputed questions which can be decided only in arbitration. He submitted that directing the Respondent to deposit or secure the entire disputed amount at this stage would amount to deciding disputed issues in proceedings under Section 9 of the Arbitration and Conciliation Act, 1996, which is not permissible.

**9.** Mr. Bhole further submitted that the Petitioner has not made out any case for grant of interim relief. According to him, the relief sought is not merely for protection of the claim but is an attempt to secure the entire monetary claim even before the disputes are decided by the Arbitral Tribunal. He submitted that granting such relief 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 proceeds on the assumption that the amount claimed is an admitted liability, which according to him is incorrect. He submitted that the amount claimed is based upon repeated enhancement of the alleged liability, charging of quarterly interest, addition of accrued interest to the principal and execution of successive Memoranda of Understanding showing revised figures. According to him, the correctness and legality of such calculations are themselves disputed and can be decided only in arbitration. It was further submitted that the successive Memoranda of Understanding were not executed voluntarily. According to the Respondent, whenever he requested for more time to repay the amount, the Petitioner threatened to deposit the post dated security cheques already in its possession. It was submitted that the Petitioner knew that dishonour of those cheques would expose the Respondent to prosecution under Section 138 of the Negotiable Instruments Act, 1881 and would affect his business and reputation. According to the Respondent, it was only because of these threats that he was compelled to execute the successive Memoranda of Understanding acknowledging higher amounts. Therefore, it was 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 further submitted that although the Petition was filed on 6 May 2026, the Petitioner did not take any steps to have the matter listed for hearing for almost two months. According to him, no explanation has been given for this delay. He submitted that if there was any real apprehension that the arbitral proceedings would be frustrated or that immediate prejudice would be caused, the Petitioner would have acted without delay both in filing the Petition and in pursuing it. According to him, the Petitioner's own conduct shows that there was no urgency. Therefore, the Petitioner is not entitled to any discretionary relief under Section 9 of the Arbitration and Conciliation Act, 1996.

**12.** Mr. Bhole further submitted that paragraph 20 of the Petition states that the last cause of action arose on 30 September 2025, when the cheque was presented for encashment. However, the present Petition has been filed only in the year 2026. According to him, the Petition suffers from delay and laches and, therefore, the Petitioner is not entitled to any discretionary relief under Section 9 of the Arbitration and Conciliation Act, 1996.

**13.** Mr. Bhole also submitted that if this Court records any finding regarding the Respondent's alleged admitted liability while deciding the present Petition, it may seriously affect the Respondent's defence in the proceedings filed by the Petitioner under Section 138 of the Negotiable Instruments Act, 1881, which arise out of 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.

**14.** In reply, Mr. Shah submitted that the last cheque issued by the Respondent was dishonoured on 1 December 2025 and the statutory notice demanding payment was issued on 20 December

2025. According to him, the present Petition filed on 6 May 2026 cannot be said to suffer from any delay.

**15.** On the other hand, Mr. Bhole reiterated that paragraph 20 of the Petition itself states that the last cause of action arose on 30 September 2025, when the cheque was presented for encashment. Since the Petition has been filed only in the year 2026, he submitted that it suffers from delay and laches. Therefore, according to him, the Petitioner is not entitled to any discretionary relief under Section 9 of the Arbitration and Conciliation Act, 1996. Mr. Bhole lastly submitted that any observation made by this Court regarding the Respondent's alleged admitted liability while deciding the present Petition may prejudice the Respondent's defence in the pending proceedings under Section 138 of the Negotiable Instruments Act, 1881 arising out of the same transaction. He therefore requested that this Court should not record any finding on the merits of the Petitioner's claim while deciding the present application under Section 9.

**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.** 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.

**28.** 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.

**29.** 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.

**30.** 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.

**31.** 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.

**32.** 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.1,61,34,644/-, 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.)**