Sayali

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

ARBITRATION PETITION NO. 361 OF 2025

Tarun Soni ... **Petitioner**

Vs.

Smartpaddle Technology Pvt Ltd ...**Respondent**

Mr. Yuvraj Narvankar with Mr. Piyush Toshnival and Mr. Nilabh Toshnival i/b Mr. Ashish Pawar, for Petitioner.

Mr. Pranav Malhotra and Ms. Dhruvi Patni, for Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : JULY 17, 2026.

PRONOUNCED ON : JULY 21, 2026

<u>JUDGMENT</u>:

1. The petitioner has filed this petition challenging the Termination Order dated 9 July 2024. According to him, the respondent company wrongly terminated his services by alleging that he had violated the Company's policies, including the Code of Business Conduct known as the STPL Code. By this arbitration petition, the petitioner seeks different interim reliefs. He prays that the respondent should be directed to deposit Rs.35,85,000/- towards damages for the alleged illegal termination and loss of salary. He also seeks deposit of Rs.53,78,258/- towards three months' notice pay, Rs.19,42,618/- towards gratuity, Rs.7,12,814/- towards leave encashment, Rs.9,45,000/- towards legal expenses along with Rs.40,000/- towards arbitration costs, and Rs.12,50,000/- towards the alleged debt liability arising because of the termination. He has also prayed for such other reliefs as this Court may consider proper.

2. The case of the petitioner, which has led to filing of the present petition, is as follows. According to him, in December 2023 one of the key employees of the Company, Mr. Nainish Shah, was leaving the Company. During the usual handover process and routine checking of vendor records carried out by the Petitioner's subordinate, Mr. Shrenik Saboo, some differences were noticed in vendor invoices which had been approved under the Petitioner's authority. The petitioner states that on 15 December 2023, Mr. Shrenik Saboo informed him about these issues. After coming to know about the matter, the petitioner immediately informed the founders of the Company. He also arranged meetings with well known law firms at Delhi and Mumbai to discuss appointment of an outside agency for an independent inquiry. According to him, after discussions, the founders agreed to appoint Shardul Amarchand Mangaldas to conduct an independent inquiry into the suspicious transactions. The petitioner further states that on 9 May 2024 he was suddenly placed on administrative leave without any prior notice or explanation. His access to the Company's office, emails and other facilities was also stopped. Thereafter, on 7 July 2024, he attended a meeting with one of the founders, where he was informed that his services were being terminated on the ground that he had failed to properly supervise his subordinates and the finance team. According to the petitioner, during that meeting an attempt was made to force him to sign an agreement and an undertaking which would falsely show his involvement in the alleged financial misconduct. He also states that the proposed agreement contained a condition preventing him from disclosing any information regarding the Company's internal affairs to any third person.

3. On 9 July 2024, the respondent issued a Termination Letter bringing the Petitioner's employment to an end. The petitioner says that the termination was illegal and that he was made a scapegoat even though, according to him, the founders themselves were involved in the alleged illegal recovery process. On 25 July 2024, he replied to the Termination Letter. In that reply, he denied all the allegations against him and stated that the termination was illegal, arbitrary and by way of retaliation. According to him, action was taken against him because he had disclosed the alleged large scale financial misappropriation in the Company. In his reply dated 25 July 2024, the petitioner denied all the allegations and stated that they were unsupported by any material. He also explained the factual background according to him and repeated that his termination was illegal and wrongful. Thereafter, he sought appointment of a Sole Arbitrator through the Mumbai Centre for International Arbitration by invoking Section 11(5) of the Arbitration and Conciliation Act, 1996. According to him, the disputes are required to be decided by arbitration. It is in these circumstances that the present petition has been filed.

4. Mr. Yuvraj Narvankar, learned counsel appearing for the petitioner, submitted that the termination was part of a planned retaliatory action. According to him, the petitioner was made a scapegoat in the alleged financial fraud because he had acted as a whistle blower. Learned counsel submitted that the respondent terminated the Petitioner's services only to take revenge against him. According to him, the petitioner had brought the alleged large scale financial irregularities in the Company to the notice of the founders, including Mr. Sachin Agrawal, as well as the Board of Directors and the shareholders. Therefore, according to him, the termination was only a counter action against the petitioner. Learned counsel submitted that the balance of convenience is in favour of the petitioner. According to him, the respondent has illegally terminated the Petitioner's services and has also withheld his full and final settlement amount of Rs.7,12,841/-, together with interest. He further submitted that the respondent has also withheld the Petitioner's three months' notice pay under the Employment Agreement and gratuity of Rs.19,42,618/-. According to him, neither the Employment Agreement nor the Company's Code of Conduct permits the respondent to withhold these amounts, irrespective of whether the termination is with or without cause.

5. Learned counsel invited my attention to the Employment Agreement dated 3 September 2019, particularly Clause 10.2 relating to termination. He submitted that the clause requires either party to give ninety days' prior written notice before terminating the agreement. In case the Company terminates the employment, it can instead pay the basic salary for the notice period. According to him, the Petitioner's services were terminated without giving ninety days' notice and without paying salary in place of such notice. Therefore, he submitted that the petitioner is entitled to receive Rs.53,78,258/- towards three months' notice pay along with interest. Referring to the Termination Letter, learned counsel submitted that Clause 2 states that certain invoices relating to fictitious goods and services supplied through some vendors were processed by the Petitioner's subordinate under his supervision without proper verification and due diligence.

6. Learned counsel submitted that the respondent has never disclosed the names of those subordinates, the details of the alleged goods or services, or the exact role said to have been played by the petitioner. He further submitted that paragraph 3 clauses (a) to (e) of the Termination Letter contain only general allegations regarding an illegal fund cycling arrangement without giving any particulars. He also submitted that an FIR was initially registered against the Company's founder, Mr. Agarwal, and the petitioner was shown only as a witness. According to him, the petitioner was later made an accused only to avoid payment of his lawful dues. Learned counsel then referred to the Petitioner's reply to the Termination Letter and submitted that the petitioner had specifically stated that his termination was because he had exposed the alleged financial irregularities in the Company. He further pointed out that the petitioner had explained the steps taken by him for protecting the Company's interests, including arranging meetings with law firms in Delhi and Mumbai and supplying WhatsApp messages and emails to the internal audit and forensic team. He, therefore, submitted that the petitioner is pressing only for interim reliefs relating to three months' notice pay, gratuity and leave encashment as claimed in prayer clauses (b), (c) and (d).

7. On the other hand, Mr. Pranav Malhotra, learned counsel appearing for the respondent, submitted that the disputes raised in the present petition cannot be decided in arbitration and, therefore, the petition itself is not maintainable. He submitted that the entire case arises out of the Petitioner's misconduct. He referred to the material forming part of the charge sheet, particularly page 253, and submitted that it contains details of the irregularities allegedly committed by the petitioner. According to him, while working as the Chief Financial Officer, the petitioner, in collusion with Accused No.1, processed 132 fabricated invoices although no services had actually been provided by the vendors. He submitted that the petitioner was fully aware that the invoices were fabricated and still processed them, thereby helping in release of the payments. So far as gratuity is concerned, learned counsel submitted that Section 4(6)(a) of the Payment of Gratuity Act, 1972 permits an employer to forfeit gratuity where the employee's services are terminated for any act, willful omission or negligence causing loss to the employer. According to him, the respondent was therefore entitled to forfeit the Petitioner's gratuity. He further submitted that the termination took place on 9 July 2024 and the present petition has remained pending for nearly two years. According to him, there is no urgency for grant of interim relief and the petitioner can pursue his claim before the arbitral tribunal. He also submitted that there is no material to show that the respondent is trying to transfer or dispose of its assets to defeat any future award. According to him, the respondent is financially sound and, therefore, no interim relief deserves to be granted.

8. Learned counsel relied upon the judgment of this Court in *Wadhwa Estates and Developers (India) Private Limited v. Moon Craft Apartments Co-operative Housing Society Limited,* in Commercial Arbitration Petition (L) No. 13424 of 2026 and particularly paragraph 57 thereof. He submitted that the Court cannot ignore the sequence of obligations agreed between the parties and cannot treat a later contractual obligation as immediately enforceable when an earlier obligation has not yet been completed. He also relied upon the judgment of the Supreme Court in *Sanghi Industries Limited v. Ravin Cables Ltd. and Another,* 2022 SCC OnLine SC 1329. He submitted that the Supreme Court has held that no protective order should be granted unless there are specific pleadings and convincing material showing that the respondent is trying to defeat the execution of a future decree by disposing of or transferring its assets. On this basis, he prayed that the present petition be dismissed.

REASONS AND ANALYSIS:

9. I have carefully gone through the pleadings, documents placed on record, Employment Agreement dated 3 September 2019, Termination Letter dated 9 July 2024, reply dated 25 July

2024 and the submissions advanced by both learned advocates. I have considered the judgments relied upon by both sides. At this stage, this Court is not deciding finally whether the termination is legal or illegal. That question has to be decided in arbitration after evidence is brought on record. Even then, while deciding a petition under Section 9 of the Arbitration and Conciliation Act, this Court cannot completely overlook the dispute between the parties and the material placed before it. The Court has to see whether the petitioner has made out some prima facie case, whether balance of convenience is in his favour and whether refusal of interim relief may cause such loss which may not be properly repaired later.

10. The petitioner contends that he was not removed because he committed any misconduct. According to him, he lost his employment because he informed the management about alleged financial irregularities inside the Company. He says that after one of his subordinates noticed doubtful invoices, he immediately informed the founders and also took steps for appointing an outside law firm for an independent inquiry. According to him, instead of supporting those efforts, the Company later terminated his services and placed the whole blame of the alleged financial irregularities upon him. On the other hand, the respondent says that the petitioner has not been victimised at all. According to the respondent, the petitioner himself was involved in processing fabricated invoices and therefore his services came to be terminated because of his own conduct. Thus, both sides have put before this Court two completely different versions.

11. At this stage, this Court cannot finally hold whether the petitioner was acting as a whistle blower or whether he had any role in the alleged fraud. Both these questions can be answered only after proper evidence is recorded. Oral evidence as well as documentary material may have to be examined by the arbitral tribunal. Mere allegations made by one party against the other cannot finally decide these disputed issues. Therefore, this Court is not in a position to accept either version as fully proved. At the same time, it also cannot be ignored that the petitioner has produced some contemporaneous material showing that he had informed the founders regarding suspected irregularities and had taken steps for an outside inquiry. Whether those circumstances remove him from the allegations is another matter altogether. That issue requires fuller examination in arbitration.

12. The respondent has relied upon the criminal proceedings and the charge sheet. According to the respondent, the charge sheet specifically alleges that while working as Chief Financial Officer, the petitioner processed 132 fabricated invoices together with another accused. Such allegation is undoubtedly serious. Even so, filing of a charge sheet cannot become final proof that misconduct stands established. Criminal proceedings still have to proceed according to law. Until evidence is recorded and guilt is proved, every allegation continues as an accusation. Therefore, though the charge sheet cannot be ignored, this Court also cannot treat statement contained therein as proved for refusing interim relief.

13. The respondent argued that because such allegations are made, the petitioner is not entitled to claim any equitable relief. I am unable to accept such a wide submission. Mere allegation of misconduct does not take away every right flowing from the employment agreement. Whether the petitioner has committed misconduct is under serious dispute. Until that issue is decided by the competent forum, every consequence said to arise because of such misconduct also cannot be treated as established.

14. The petitioner has relied upon Clause 10.2 of the Employment Agreement. According to him, the agreement provides that before terminating employment, ninety days' written notice should be given or salary in lieu of such notice should be paid. The respondent has not disputed the existence of this clause. However, according to the respondent, once misconduct is found, such benefit is not available. Even this submission cannot be accepted in full. Whether the termination falls in a category permitting immediate dismissal without notice depends upon proof of misconduct. That issue is under challenge before the arbitral tribunal. Therefore, at this stage, the contractual clause cannot be ignored merely because allegations have been made by the employer.

15. The respondent has not pointed out any provision in the Employment Agreement showing that mere accusation or pendency of investigation takes away the employee's right to notice pay. The entire argument of the respondent proceeds on the assumption that misconduct stands proved. At this stage, such assumption cannot be accepted. Therefore, so far as the claim regarding the notice period is concerned, the petitioner has shown a prima facie contractual basis which deserves consideration during arbitration.

16. So far as gratuity is concerned, the respondent has relied upon Section 4(6)(a) of the Payment of Gratuity Act. There is no dispute that the said provision permits forfeiture of gratuity where termination is because of any act, willful omission or negligence causing damage or loss to the employer. However, mere reference to that provision is not sufficient. Before gratuity can be forfeited, the employer has to satisfy the conditions prescribed under the statute. Whether the conduct attributed to the petitioner satisfies those conditions disputed. At present there is no final adjudication regarding either the misconduct or the loss allegedly suffered by the respondent. Therefore, applicability of Section 4(6)(a) also requires evidence. In these circumstances, this Court is unable to record any prima facie finding that forfeiture of gratuity has become justified.

17. At the same time, the petitioner also cannot say that gratuity must be released because he has denied the allegations. The defence raised by the respondent under the statute cannot be called without substance. It raises issues requiring proper adjudication. Therefore, the entitlement regarding gratuity must await the decision of the arbitral tribunal.

18. Similar position exists regarding leave encashment. The respondent has not pointed out any clause permitting withholding of leave encashment merely because disciplinary allegations have been made. At the same time, the petitioner has also not shown any admitted liability accepted by the respondent. Therefore, this claim also remains requires adjudication before the arbitral tribunal.

19. Learned counsel for the petitioner submitted that the petitioner has been made a scapegoat while the founders were involved in the alleged financial irregularities. This submission may succeed or it may fail. At present, there is no material before this Court to reach any conclusion in either direction. Merely because allegations are made against the founders does not clear the petitioner. Likewise, allegations against the petitioner do not establish that the founders were innocent. These remain disputed questions of fact which cannot be decided in proceedings under Section 9.

20. Much reliance was placed upon the petitioner's reply dated 25 July 2024. In that reply, the petitioner denied all allegations in detail and referred to meetings arranged with outside law firms, communications exchanged with internal auditors and several steps allegedly taken by him for protecting the interests of the Company. These assertions do give some support to the petitioner's case that his defence is not an afterthought. Even then, these materials do not finally establish his innocence. They only indicate that there exists a genuine dispute which requires adjudication.

21. The respondent argued that there is no urgency because almost two years have passed after the termination. Delay by itself cannot become the only reason for refusing every interim relief.

The nature of the relief claimed, and the surrounding circumstances must be considered. Even so, passage of time becomes one relevant circumstance while examining whether interim protection is necessary.

22. The respondent has submitted that there is no material showing that it is transferring its assets or trying to defeat any future award. This submission deserves acceptance. A direction to deposit money cannot be passed merely because a monetary claim has been made. Such an order affects the rights of the opposite party even before liability is determined. Therefore, before passing such a direction, the Court must be satisfied that there is a real apprehension that any future award may become difficult to execute.

23. In the present case, except making a general apprehension, the petitioner has not produced any material showing that the respondent is transferring its properties, diverting funds, becoming insolvent or taking any step which may frustrate execution of arbitral award. On the contrary, the respondent has stated that it is financially sound. This statement has not been effectively disputed by producing any material. Therefore, the apprehension expressed by the petitioner remains only a possibility.

24. The principles governing grant of interim relief under Section 9 are now well settled. Mere raising of monetary claims does not entitle a party to an order directing deposit of money. Such a direction secures the final relief before adjudication and therefore requires a stronger foundation than mere existence of disputed claims. The Court must find material showing necessity for such protection. Such material is absent in the present case.

25. After considering the entire material, I am satisfied that the petitioner has raised disputes regarding legality of termination, notice pay, gratuity and leave encashment which require adjudication before the arbitral tribunal. These claims cannot presently be called frivolous. At the same time, they also cannot be accepted as finally proved. They require complete adjudication after evidence is led by both sides.

26. Therefore, after considering the rival submissions, the documents placed on record and the applicable principles as a whole, I am of the view that although the petitioner has shown existence of disputes requiring adjudication in arbitration, he has failed to make out a case for grant of the interim reliefs seeking deposit of the disputed amounts.

27. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

(i) The Arbitration Petition is dismissed;

(ii) The interim reliefs prayed for in prayer clauses (a) to (f) of the petition are refused;

(iii) It is clarified that the observations made in this order are only prima facie in nature and have been recorded for the limited purpose of deciding the present petition under Section 9 of the Arbitration and Conciliation Act, 1996;

(iv) The Arbitral Tribunal shall decide all questions relating to the legality of the Petitioner's termination, his entitlement to notice pay, gratuity, leave encashment, damages, legal costs and all other consequential claims independently and on their own merits, without being influenced by any prima facie observations contained in this order;

(v) All rights and contentions of the parties in the arbitral proceedings are expressly kept open;

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

(vii) In view of disposal of the Arbitration Petition, all pending Interim Applications, if any, do not survive and stand disposed of.

(AMIT BORKAR, J.)