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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN IT'S COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO.33914 OF 2026
IN
COMM ARBITRATION PETITION NO.682 OF 2025

ATUL GANESH KULKARNI

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Date: 2026.10.27 12:11:16 +0530

Laxmi Madhukar Athawale ... Applicant

In the matter between

Laxmi Madhukar Athawale ... Petitioner

Vs.

1. SSD Escatics Private Limited
2. Vivek Tanna
3. Jayesh Tanna
4. Deep Tanna
5. Jeki Jitendra Mehta
6. Shweta Patel
7. Prashant Eshi
8. DBS Bank India Limited ... Respondents

Mr. Baharaiz Irani with Ms. Afrin Dalal, Mr. Anosh Irani, Mr. Amit Padwal, and Ms. Saniya Ahmed for the Petitioner/Applicant.

Mr. Rajiv Narula with Mr. Devansh Shah, Mr. Shrey Shah, and Mr. Aksha Huddar i/by Huddar & Associates for Respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 21, 2026.

PRONOUNCED ON : OCTOBER 27, 2026

JUDGMENT:

1. The present Interim Application (L) No. 33914 of 2026 has been filed by the Petitioner asking that she should be allowed to withdraw INR 1,25,00,000/-, which was deposited on behalf of Respondent No. 1 as per the order dated 24 July 2024, as modified on 8 August 2024, together with the interest earned on it. The main question to be considered is whether, looking at the facts of this case, the Petitioner can be permitted to take this amount before the disputes between the parties are finally decided in arbitration.

2. I have heard the learned Advocates appearing for both sides. I have considered their arguments, the documents placed on record and the earlier orders passed by this Court. The facts of this case need to be looked at carefully. The Petitioner is a 75-year-old widow who is taking dialysis treatment. She says that she spent all her life savings for purchasing Flat No. 301, situated on the 3rd Floor of Kapil Vastu CHS Ltd., Goregaon (West), Mumbai. According to her, Respondent No. 1 accepted her money even though the flat had been sold to Respondent Nos. 5 and 6 in December 2017 and was mortgaged with DBS Bank. After this, the Bank auctioned the flat for INR 1,15,00,000/-, and the Petitioner was dispossessed from the flat on 1 April 2025.

3. The Petitioner says that she was not told about the earlier sale and mortgage of the flat. According to her, Respondent Nos. 1 to 4 told her that Respondent No. 1 had a clear title and was entitled to sell the flat. Believing what they told her, she paid INR

85,10,000/- through cheques and RTGS and gave gold worth INR 40,00,000/-. Receipts mentioning Flat No. 301 were issued and signed by Respondent No. 2. The Petitioner relies on these receipts, the Memorandum of Understanding dated 13 January 2020, the correspondence with the Bank and the statements made by the Respondents themselves in different proceedings.

4. These facts have been considered by this Court earlier. The dispute was considered when this Court decided the interim reliefs in Commercial Arbitration Petition (L) No. 18631 of 2023 by order dated 24 July 2024. In that order, this Court considered the objections raised by Respondent Nos. 1 to 4 about the existence and genuineness of the Memorandum of Understanding. In paragraph 14, this Court observed that the preliminary objection was “entirely devoid of merit” and “downright dishonest”.

5. The Court had given reasons for making these observations. The receipts issued by Respondent No. 1 and signed by Respondent No. 2 were not denied. The payments mentioned in those receipts were not disputed. The receipts mentioned Flat No. 301, and the company seal appearing on the Memorandum of Understanding was not denied. Further, Respondent No. 2 had not said in his affidavit that the signature appearing on the Memorandum of Understanding was not his signature. Paragraph 15 of the same order this Court observed that Respondent Nos. 1 to 4 had not explained the fraud which, according to them, was committed by the Petitioner. On the other side, when all the facts were considered together, they prima facie showed that the fraud had been committed by Respondent Nos. 1 to 4. This Court further

observed that allowing them to use fraud as a defence in these circumstances "would amount to putting a premium on dishonesty". Their preliminary objection was therefore rejected. These observations were made while deciding the interim reliefs. This does not mean that all disputes between the parties have been finally decided. But now, when this Court is considering whether the amount deposited under its order should be released to the Petitioner, these earlier findings cannot be left out of consideration. The documents and other material on which those findings were made are still relevant for deciding the present application.

6. Paragraph 16 of the order dated 24 July 2024 records other circumstances considered by this Court. In paragraph 16(I), the Court noted that the learned Advocate appearing for Respondent Nos. 1 to 4 had not made any submission on the merits explaining why the reliefs sought by the Petitioner should not be granted. In paragraph 16(II), the Court noted that Respondent No. 1 had stated on oath that it was paying the loan instalments relating to the flat. In paragraph 16(III), the Court recorded that Respondent No. 1 had undertaken through its correspondence to repay the loan to DBS Bank. In paragraph 16(IV), the Court noted that Respondent No. 5 had stated in an affidavit that Respondent Nos. 1 to 4 had committed fraud in connection with the sale of the flat. In paragraph 16(V), the Court found the defence raised by Respondent Nos. 1 to 4 to be patently dishonest. After looking at these circumstances, this Court recorded in paragraph 17 of the earlier order that the Petitioner had made out a strong prima facie

case, that the balance of convenience was entirely in her favour and that irreparable harm would be caused to her if interim protection was not given. Respondent Nos. 1 to 4 were therefore directed to deposit INR 1,25,00,000/- with the Prothonotary and Senior Master within two weeks.

7. The present application has to be considered keeping these earlier findings in mind. Respondent Nos. 1 to 4 did not deposit the amount as a normal payment which they voluntarily made to the Petitioner. They deposited it because this Court had directed them to deposit it. The earlier order was passed after considering the material then available and finding that the Petitioner's claim required protection. The question now is whether the earlier circumstances, along with what has happened afterwards, justify allowing the Petitioner to withdraw the amount.

8. Mr. Narula, learned Advocate appearing for the Respondents, has opposed the request for withdrawal. He submitted that the communications relied upon by the Petitioner do not show that the Respondents admitted the entire amount of INR 1,25,00,000/-. According to him, the Respondents have admitted receiving about INR 85,00,000/-, but they have not admitted that they are liable to pay the higher amount claimed by the Petitioner. He further submitted that the communication dated 9 May 2023, sent by the Advocate for the Respondents to the police authority, was only a proposal for settling the dispute.

9. Mr. Narula pointed out that this communication states that settlement for withdrawing the FIR was going on and that the Respondents had handed over a pay order and cheques amounting

to INR 1,25,00,000/-. It says that the detailed terms of settlement would be finalised at the earliest. According to Mr. Narula, since these detailed terms were never finalised, the communication cannot be treated as an admission that the Respondents are required to pay INR 1,25,00,000/- to the Petitioner.

10. Mr. Narula further submitted that if the Petitioner is allowed to withdraw the amount, she would get the final relief at an interim stage. The disputes between the parties have not yet been finally decided in arbitration. The Section 11 Application has been filed. According to him, the proper course is to appoint an Arbitrator and allow both sides to prove their respective claims before the Arbitrator. He therefore submitted that the present application for withdrawal should be rejected. These submissions have to be considered. The Court cannot treat a disputed claim as finally proved only because an amount has been deposited in Court. At the same time, the Court must consider why the deposit was ordered, what has happened after that order and whether keeping the amount in Court any longer will serve the purpose for which interim protection was given earlier.

11. The first submission of Mr. Narula is that the Respondents have admitted only INR 85,00,000/- and have disputed the remaining amount. It is true that the final amount payable by the Respondents will have to be decided after considering the relevant agreements, payments, admissions and other evidence. The exact liability cannot be finally decided while considering the present application for withdrawal. The question of the gold allegedly given by the Petitioner, the amounts paid through cheques and

RTGS and the legal effect of the different communications may have to be considered in the arbitration proceedings. However, the present application cannot be decided by looking only at the alleged admission of INR 85,00,000/-. In the earlier order dated 24 July 2024, this Court considered the receipts, payments, signatures, company seal and correspondence between the parties. The Court considered the statements made by the Respondents about payment of the loan instalments and their undertaking to repay DBS Bank. After considering all these circumstances, this Court directed the deposit of INR 1,25,00,000/-. It has not been shown that this order was set aside. Therefore, the submission of the Respondents that this Court should now ignore the earlier findings and proceed as if the Petitioner's claim is supported only by an admission of INR 85,00,000/- cannot be accepted.

12. The communication dated 9 May 2023 must be considered in its proper background. The relevant portion states:

> "a settlement to that effect is ongoing for which we have handed over Pay order/cheques amounting to a sum of Rs. 1,25,00,000/-".

13. The communication further says that the detailed terms of settlement would be finalised at the earliest.

14. It is not possible to read this communication as if the Respondents had never offered to make any payment. The communication records that a pay order and cheques totalling INR 1,25,00,000/- had been handed over in connection with the proposed settlement. The record contains the statement made by Respondent No. 3 before the Sessions Court on 3 October 2023. In

that statement, he referred to the pay order dated 6 May 2023 and five cheques towards INR 1,25,00,000/-. In paragraph 8 of the earlier order, this Court recorded that this conduct amounted to "an offer to repay an amount of Rs. 1,25,00,000/- to the Petitioner". Therefore, the settlement did not become final merely because the payment instruments were handed over. But the offer made by the Respondents remains an important circumstance. The amount of INR 1,25,00,000/- was proposed by the Respondents themselves when the dispute was going on. They cannot ask this Court to ignore this fact only because the proposed settlement was not completed.

15. There is other material which shows why the Petitioner's claim requires protection. The registered Agreement for Sale in favour of Respondent Nos. 5 and 6 was executed on 20 December 2017. A home loan was taken from DBS Bank against the same flat. Respondent No. 1 informed the Bank about the sale and undertook not to cancel the sale without the Bank's consent. In June 2020, Respondent No. 1 asked Respondent No. 5 to seek a moratorium and assured him that the loan instalments would be paid regularly. The letter dated 20 March 2023 records the commitment of Respondent No. 1 to clear the outstanding loan amount. Respondent No. 1 stated in its affidavit that it was paying the loan instalments and was in physical possession of the flat. These circumstances were considered by this Court in the earlier order. They are important because the Petitioner's case is not based only on her present statement that the Respondents owe her money. There are documents and statements made by the

Respondents themselves which this Court had found sufficient, at the interim stage, to give protection to her claim.

16. Another important fact is that the full amount directed to be deposited has now been deposited. By order dated 24 July 2024, the Respondents were directed to deposit the amount within two weeks. However, INR 60,00,000/- was deposited only on 4 August 2026 and the remaining INR 65,00,000/- was deposited on 11 September 2026. Thus, the full amount was deposited almost two years after the direction and only after contempt proceedings and further directions of this Court. The Petitioner was not responsible for this delay. She had to start contempt proceedings to get compliance with an order which had been passed in her favour. During this period, she lost possession of the flat. The amount was deposited only after the flat had been auctioned and the Petitioner had been dispossessed.

17. This later development is important. When the earlier order was passed, interim protection was given keeping in view the loan, the charge over the flat and the need to protect the Petitioner's interest until arbitration. However, DBS Bank has since auctioned the flat, and the Petitioner has lost possession. The situation has therefore changed in an important way. This Court must now consider whether the amount lying with the Court can be used to protect the Petitioner in the situation which exists today.

18. The present application must be considered on its own facts and in the light of the earlier order passed by this Court. The Petitioner is not relying on a final arbitral award. She is asking for release of money deposited under an interim order in a dispute

where this Court has found a strong prima facie case in her favour. Further, the circumstances have changed after the earlier order. The flat has been auctioned, the Petitioner has lost possession and the Respondents deposited the money only after a long delay and after contempt proceedings were started.

19. The submission that withdrawal would amount to final relief must be considered along with the earlier order. By order dated 24 July 2024, this Court found that the Petitioner had a strong prima facie case and directed the Respondents to deposit a particular amount. The Court did not finally decide the Petitioner's claim for damages or decide every amount payable to her. The deposit was ordered to give protection. It did not become a final award of compensation. The present application asks for permission to change the way the amount is kept and used. If withdrawal is allowed, the Petitioner will get immediate access to the money. Therefore, it cannot be said that such an order will have no practical effect on the parties. But this fact alone cannot decide the application. The Court must consider the hardship which may be caused to both sides and whether conditions can be imposed to protect the Respondents if the final decision goes in their favour.

20. The Respondents will still have the right to dispute the Petitioner's claims before the Arbitrator. The present order need not be treated as a final finding that INR 1,25,00,000/- is definitely payable to the Petitioner. On the other hand, the Petitioner is an aged widow who is undergoing dialysis. She has lost possession of the flat and has to arrange for her accommodation and medical treatment. The money lying in Court

comes from the very transaction relating to her purchase of the flat. Keeping the entire amount in Court for an unlimited period, even after the circumstances have changed, would cause continuing hardship to her.

21. The conduct of the Respondents needs to be considered. The amount was directed to be deposited within two weeks, but the deposit was completed only in August and September 2026. The Petitioner had to pursue contempt proceedings to get compliance. By the time the full amount was deposited, the flat had been auctioned and the Petitioner had lost possession. The Respondents cannot take advantage of their delay in complying with the order of this Court, particularly when because of the delay the Petitioner remained without the protection which the Court had directed.

22. The Respondents knew about the order, and the amount has now been deposited. The Petitioner had to wait until the order was complied with before asking to withdraw the money. She filed the present Interim Application within about two weeks after the deposit was completed. Her request must therefore be considered along with the steps taken by her to get compliance and the loss which she has suffered.

23. In the facts of this case, such a condition is proper. The Petitioner should not be kept without access to the amount merely because the final decision may take time, particularly when this Court had directed the deposit after finding a strong prima facie case and the Petitioner has lost the flat. At the same time, the Respondents must retain their right to dispute the claim and seek proper relief at the final stage.

24. In the circumstances, the following order is passed.

(a) Interim Application (L) No. 33914 of 2026 is allowed;

(b) The Petitioner is permitted to withdraw INR 1,25,00,000/-, together with the interest accrued thereon, from the amount deposited with the Prothonotary and Senior Master pursuant to the order dated 24 July 2024, as modified on 8 August 2024;

(c) Before withdrawal, the Petitioner shall file an undertaking before this Court that the amount withdrawn shall remain subject to the final decision in the arbitration proceedings and that she shall comply with any direction for repayment or restitution passed by a competent court;

(d) The withdrawal permitted by this order shall not prevent the Respondents from raising their defences before the Arbitrator;

(e) The Prothonotary and Senior Master shall permit withdrawal of the amount, together with accrued interest, upon compliance with the above condition;

25. There shall be no order as to costs.

(AMIT BORKAR, J.)