Sayali

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

COMM ARBITRATION PETITION NO.66 OF 2025

NKGSB Co-Operative Bank Limited ... Petitioner

Vs.

1. M/s. Universal Textile Waterproof Co. (India),
2. Apollo Tyres Limited ...Respondents

Mr. Sagar Wagle with Lisa Rasquinha i/b K & P Legal Combine LLP Advocate, for petitioner.

Mr. Karl Tamboly with Ms. Aparna Wagle, for Advocate for respondent no. 1.

CORAM : AMIT BORKAR, J.

RESERVED ON : JUNE 18, 2026.

PRONOUNCED ON : JUNE 24, 2026

JUDGMENT:

1. By filing the present arbitration petition, the petitioner has sought directions against respondent no. 2 to deposit the leave and licence fees received from the property which has been mortgaged with the petitioner. This relief is sought as an interim measure until an Arbitral Tribunal is constituted and the disputes between the

parties are finally decided by an arbitral award. The petitioner has also prayed for appointment of a Court Receiver in respect of the properties mortgaged in its favour so that the secured assets remain protected during the pendency of the arbitration proceedings.

2. The facts leading to the filing of the present petition, as stated by the petitioner, are that respondent no. 1 approached the petitioner on 06th November 2012 seeking financial assistance. The request was considered by the petitioner and a financial facility described as a "Rent Discounting Facility" was sanctioned in favour of respondent no. 1. Thereafter, on 08th November 2012, a Facility Agreement was executed between the petitioner and respondent no. 1 setting out the terms and conditions governing the said facility. After execution of the necessary loan documents, respondent no. 1 availed and utilized the sanctioned financial limits. On the same day, namely 08th November 2012, respondent no. 1 also executed a registered Mortgage Deed in favour of the petitioner, thereby creating security over the mortgaged premises for repayment of the facility granted by the petitioner. According to the petitioner, the loan account of respondent no. 1 started becoming irregular around June 2019. It is the case of the petitioner that, anticipating recovery proceedings by the petitioner, respondent no. 1 executed a Lease Deed on 27th June 2019 in favour of respondent no. 2 in respect of the mortgaged premises. The petitioner contends that such transaction was entered into contrary to the conditions governing the financial facility. It is further alleged that the lease rentals generated from the mortgaged

property were not deposited with the petitioner. Subsequently, on 06th September 2019, the account of respondent no. 1 was classified as a Non-Performing Asset (NPA). Thereafter, on 11th September 2019, the petitioner initiated proceedings under the SARFAESI Act by issuing a notice under Section 13(2) calling upon respondent no. 1 to clear its outstanding liabilities.

3. The record further shows that respondent no. 1 replied to the said notice on 11th November 2019. In its reply, respondent no. 1 expressed willingness to have the disputes resolved through arbitration and also requested that a meeting be held for settlement of the outstanding liability. Thereafter, on 17th December 2019, the petitioner issued a notice under Section 13(4) of the SARFAESI Act. Subsequently, on 24th December 2019, respondent no. 1 submitted a further response to the notice issued under Section 13(2) and, amongst other contentions, asserted that the mortgaged property was already subject to a tenancy and was therefore encumbered.

4. It appears that on 27th October 2023, the learned Chief Metropolitan Magistrate passed an order under Section 14 of the SARFAESI Act in aid of the recovery measures initiated by the petitioner. Thereafter, on 22nd February 2024, respondent no. 1 approached the Debts Recovery Tribunal by filing an application under Section 17 of the SARFAESI Act challenging the securitisation measures adopted by the petitioner and seeking interim protection. On 01st March 2024, the Debts Recovery Tribunal passed an interim order restraining the petitioner from taking further action under the SARFAESI Act until the proceedings

before it are finally decided.

5. The petitioner thereafter addressed a letter dated 09th May 2024 to respondent no. 2 by relying upon the terms contained in the registered Mortgage Deed. By the said communication, respondent no. 2 was called upon to deposit the lease rent directly with the petitioner. It was also stated that if respondent no. 2 failed to comply with the said demand, it would be required to vacate the premises in accordance with the conditions contained in the Mortgage Deed. According to the petitioner, respondent no. 2 did not comply with the said demand and continued to disregard the requisition made by the petitioner.

6. Mr. Sagar Wagle, learned Advocate appearing for the petitioner, submitted that the petitioner had granted a Rent Discounting Facility to respondent no. 1 and that the sanction terms were duly accepted by the partners of respondent no. 1. According to him, neither the execution of the Sanction Letter nor its contents are disputed in the present proceedings. He invited attention to Clause 4 of the Specific Conditions contained in the Sanction Letter and submitted that the said clause clearly required respondent no. 1 to ensure that all rent and lease receivables from the mortgaged property were deposited in a designated bank account maintained with the petitioner. He further submitted that respondent no. 1 failed to obtain any confirmation from respondent no. 2 as required under the sanction conditions. He also contended that respondent no. 2 did not deposit the lease rentals arising from the Lease Deed dated 27th June 2019 into the designated account maintained with the petitioner, thereby acting

contrary to the agreed terms governing the facility.

7. Learned counsel for the petitioner further submitted that under the registered Mortgage Deed, the petitioner becomes entitled to receive the rent generated from the mortgaged property in the event of default by respondent no. 1. According to him, the fact that respondent no. 1 committed default is evident from the classification of its account as an NPA. He therefore argued that the petitioner is entitled to enforce its rights under the Mortgage Deed and directly recover the rent from respondent no. 2. Particular emphasis was placed on the fact that the facility granted to respondent no. 1 was specifically structured as a Rent Discounting Facility and was dependent upon the rental income arising from the mortgaged property. It was submitted that despite issuance of a formal notice, respondent no. 2 has failed to comply with the demand made by the petitioner and has not remitted the rent amounts as required.

8. On the other hand, Mr. Karl Tamboly, learned Advocate appearing for respondent no. 1, invited attention to the date of institution of the present petition and submitted that although the petition was filed on 01st July 2024, no effective steps were taken thereafter for appointment of an Arbitrator. According to him, the conduct of the petitioner itself demonstrates that there was no genuine intention to commence arbitration proceedings. He further submitted that respondent no. 1 is not a member of the petitioner bank and, therefore, the arbitration mechanism contemplated under Section 84 of the Multi State Co-operative Societies Act cannot be invoked against the respondent.

9. Developing the above contention further, learned counsel for respondent no. 1 relied upon Section 25(3) of the Multi State Co-operative Societies Act and submitted that the petitioner has failed to place any material on record showing that respondent no. 1 was ever enrolled as a member of the petitioner bank. He pointed out that respondent no. 1 has already instituted a civil suit against the petitioner in relation to the same loan transaction and has sought various reliefs therein concerning its alleged status and rights. He also relied upon the decision of this Court in *Goldstar Metal Solutions Pvt. Ltd. Vs. Dattaram Gajanan Kavtankar and Others, reported in 2013 SCC OnLine Bom 448*, and contended that in view of the principles laid down therein, the petitioner is not entitled to the interim reliefs sought in the present proceedings.

10. In rejoinder, learned counsel for the petitioner invited attention to the letter dated 20th January 2025 addressed to the Central Registrar, Co-operative Societies, seeking appointment of an Arbitrator. According to him, the said communication clearly establishes that arbitration has already been invoked by the petitioner. He further relied upon the reply dated 11th November 2019 submitted by respondent no. 1 to the notice issued under the SARFAESI Act, wherein respondent no. 1 itself had stated that disputes relating to the loan transaction should be resolved through arbitration. It was therefore contended that respondent no. 1 cannot now oppose the grant of interim measures under Section 9 of the Arbitration and Conciliation Act. Learned counsel also invited attention to the pleadings in the petition wherein

respondent no. 1 has been described as a member of the petitioner bank. According to him, there is no specific denial of the said assertion in the reply filed by the respondent. On the basis of these circumstances, he submitted that the petitioner has established a sufficient case for grant of interim protection and is entitled to the reliefs sought, particularly those contained in prayer clauses (b) and (c) of the petition.

11. I have heard the learned Advocates appearing for both sides at length and have gone through the record. On reading the record as a whole, it seems that sometime in November 2012 the petitioner had extended a rent discounting facility to respondent no.1. For securing repayment of the said facility, the property in question was mortgaged in favour of the petitioner. Thereafter, the account of respondent no.1 appears to have become irregular and came to be classified as NPA. It further appears that after the account had reached such stage, a lease deed dated 27th June 2019 was executed in favour of respondent no.2. According to the petitioner, the rent income which was expected to support repayment of the facility and strengthen the security available to the petitioner was thereafter not flowing and was diverted elsewhere. The petitioner therefore contends that its security interest and recovery mechanism have suffered prejudice on that account.

12. At this stage, however, the Court is not expected to finally decide whether the petitioner is entitled to succeed in the dispute. Such determination can be made after the disputes are examined in arbitration. The scope of consideration at present is limited. The

Court is required to see whether the material available discloses a need for interim protection so that the subject matter of the dispute remains available till constitution of the Arbitral Tribunal and determination of rights. While exercising jurisdiction of this nature, the Court cannot proceed because a claim is asserted. It is required to consider whether a prima facie case exists, whether balance of convenience lies in favour of protection and whether refusal of relief may result in prejudice which may not be easily repaired later. Where the relief sought partakes the character of a mandatory direction or attachment before judgment, the scrutiny becomes strict. Therefore, immediate protection can be granted only where circumstances justify such intervention.

13. In the present matter, the petitioner has pointed out circumstances which cannot be overlooked. The sanction documents and the case made out in the petition indicate that the transaction was based a rent discounting arrangement. Consequently, the rent receivable from respondent no.2 appears to have formed a part of the security. The material indicates that after respondent no.1 committed default and the account was declared NPA, notices under the SARFAESI Act came to be issued and further measures including proceedings under Section 14 were also undertaken. It further appears that on 9th May 2024 the petitioner addressed a communication to respondent no.2 calling upon it to deposit rent with the petitioner and calling upon it to vacate in accordance with the mortgage conditions. These events do show that the petitioner was attempting to enforce rights which arise from the security documents.

14. The objection raised by respondent no.1 relates to maintainability of the present proceedings. Learned counsel submits that although the petition has remained pending for a long period, no effective steps were taken for constitution of an arbitral forum. According to respondent no.1, this demonstrates absence of any intention on the part of the petitioner to pursue arbitration. It is argued that Section 9 is intended only to aid arbitration. There can be no quarrel with the proposition that interim relief under Section 9 is intended to support arbitral proceedings. Therefore, whenever such an objection is raised, the Court is required to examine whether arbitration is contemplated or whether interim orders alone are being pursued.

15. However, after considering the material available on record, I am unable to accept the submission of respondent no.1. The record indicates that respondent no., while replying to the statutory notice issued by the petitioner, had stated that disputes between the parties could be resolved through arbitration. This circumstance may not conclude all jurisdictional issues, but it has relevance while assessing the conduct of the parties. Apart from this, material has also been produced showing that a request was made to the Central Registrar seeking appointment of an Arbitrator. These circumstances indicate that arbitration has moved beyond theoretical possibility. It is possible that procedural objections may still survive. It is possible that respondent no.1 may continue to raise objections regarding maintainability. Nevertheless, the material does not justify a conclusion that arbitration was never

intended. Therefore, the objection founded on absence of intention to arbitrate does not commend acceptance.

16. The second limb of challenge raised by the respondents concerns the issue of membership. According to respondent no.1, no documentary material has been produced to establish that respondent no.1 is a member of the petitioner bank and therefore the arbitration under the Multi State Co-operative Societies Act is unavailable. The petitioner disputes this contention and relies upon pleadings and particulars contained in the petition. The petitioner points out that respondent no.1 has been described as a member and details concerning such membership have also been referred to in the record. In my view, the controversy relating to membership requires a deeper examination. Such issue may involve scrutiny of records maintained by the petitioner, statutory requirements regarding admission of members. Such exercise is not undertaken while considering interim measures. At present, this Court is not required to finally determine whether respondent no.1 is or is not a member. The question before the Court is whether the property and monetary benefits forming the subject matter of dispute require preservation pending final adjudication. Seen from that perspective, the membership dispute does not defeat the claim for interim protection.

17. Another circumstance which assumes significance is the disclosure directed by this Court during pendency of the proceedings. Earlier directions were issued requiring the respondents to disclose the exact amount of licence fees received under the Leave and Licence arrangement together with particulars

regarding utilization of such amounts. Such directions were issued because the rental stream lies at the centre of the controversy. Unless the Court is apprised of the amount received and the manner in which such amount has been dealt with, it becomes difficult to assess whether interim protection is necessary.

18. During the course of hearing, learned counsel for the petitioner pointed out alleged discrepancy. The affidavit filed by the respondents discloses receipt of approximately Rs.54 lakhs. However, according to the petitioner, even a plain calculation on the basis of lease documents and the period of occupation would indicate receipts in the region of approximately Rs.2.27 crores. On that basis, the petitioner contends that the disclosure is incomplete and does not reflect the actual receipts. It is also submitted that particulars regarding utilization of such amounts are absent. These submissions assume significance because if rental amounts have been received and dealt with without disclosure, the subject matter of the dispute may become unavailable before final adjudication.

19. At this stage, this Court cannot accept either of the figures as established. The figure of Rs.2.27 crores is based upon calculations put forward by the petitioner and would require verification. Equally, the Court cannot proceed on the footing that the figure of Rs.54 lakhs represents the factual position. What is important is the existence of a substantial difference between the two figures. Such variation is sufficiently large to raise legitimate questions regarding the actual quantum of rentals received. Further, absence of particulars regarding utilization leaves several relevant issues unanswered. When disclosure regarding receipts and utilization is

sought, the purpose is to ascertain whether the disputed funds remain available or whether they have already been exhausted. In absence of complete disclosure, such exercise becomes difficult.

20. It is also necessary to remember that the purpose of interim protection is preservation of the subject matter. If the disputed property, disputed income or disputed fund disappears during pendency of proceedings, the final adjudication may become academic. Therefore, where the material gives rise to a genuine apprehension that the subject matter may be depleted or dissipated, the Court would be justified in passing protective orders until rival rights are determined.

21. The respondents have also relied upon the pendency of proceedings before the Debts Recovery Tribunal and actions initiated under the SARFAESI Act. According to them, once such proceedings are pending, separate protection ought not to be granted. However, on careful examination, it appears that the present proceedings are not directed towards enforcement of security in the manner contemplated under the SARFAESI Act. The petitioner presently seeks preservation of rental receivables and protection of the mortgaged asset pending arbitral adjudication. The purpose of the reliefs are therefore different. Although the proceedings may arise from the same transaction, the remedies sought are not identical. Hence, mere pendency of proceedings before another forum does not bar grant of interim protection if facts otherwise justify such relief.

22. Upon overall consideration of the matter, this Court finds that

the petitioner has succeeded in establishing a prima facie case requiring protection. The balance of convenience also appears to favour preservation of rental receivables rather than permitting appropriation thereof. If ultimately the petitioner succeeds and it is found that substantial rentals ought to have been preserved, recovery at a later stage may become difficult if such funds have already been spent or otherwise exhausted. Conversely, directions regarding disclosure and preservation do not decide rights of the parties. They maintain the existing position until the disputes are adjudicated by the competent forum.

23. For all these reasons, this Court is of the opinion that interests of justice would be better served if the rental receivables and the mortgaged asset are preserved till constitution of the Arbitral Tribunal. Complete disclosure regarding receipts and utilization is also necessary so that transparency is maintained. Further, appointment of a Court Receiver with limited powers would ensure that the security is not prejudiced during pendency of the proceedings.

24. In view of the foregoing discussion, and upon overall assessment of the submissions, the following order is passed:

(i) The Respondents shall, within a period of two weeks from today, file a further affidavit of disclosure setting out complete particulars of all lease rentals, licence fees, compensation or any other amounts received in respect of the premises covered under the Leave and Licence Agreement dated 27 June 2019 from the date of execution thereof till

the date of filing of the affidavit. The affidavit shall also disclose the manner of utilization of each such receipt, supported by relevant bank statements and documentary material.

(ii) Pending constitution of the Arbitral Tribunal and until further orders, Respondent No.2 shall deposit all future lease rentals, licence fees and other occupation charges payable in respect of the said premises in a separate no lien account to be opened with the Petitioner Bank within a period of ten days from today. The amounts so deposited shall not be appropriated by any party without leave of the Court or orders of the Arbitral Tribunal.

(iii) The Court Receiver, High Court, Bombay, is appointed Receiver of the mortgaged premises described in Exhibit "C" to the Petition. The appointment shall be symbolic in nature. The Court Receiver shall not disturb possession of Respondent No.2 so long as Respondent No.2 continues to deposit future licence fees and occupation charges in terms of this order.

(iv) Respondent Nos.1 and 2 are restrained from creating any third party rights, transferring, assigning, parting with possession of, encumbering or otherwise dealing with the mortgaged premises or the receivables arising therefrom in any manner prejudicial to the rights claimed by the Petitioner, without prior leave of this Court or the Arbitral Tribunal upon its constitution.

(v) In the event the disclosure affidavit already filed discloses receipt of only approximately Rs.54,00,000/-, while the documents relied upon by the Petitioner indicate receipts substantially in excess thereof, it shall be open to the Petitioner to place on record its computation and supporting material. The Respondents shall specifically deal with such computation in the further affidavit directed above.

(vi) The Petitioner shall take effective steps for commencement of arbitral proceedings, if not already commenced, within a period of four weeks from today.

(vii) Upon constitution of the Arbitral Tribunal, the parties shall be at liberty to seek variation or vacation of the interim measures granted by this order before the Arbitral Tribunal.

(viii) The observations contained in this order are prima facie and confined to consideration of interim relief. The Arbitral Tribunal shall decide all questions independently and on their own merits, uninfluenced by any observations made herein.

(ix) The Petition is accordingly partly allowed in the aforesaid terms.

(x) No order as to costs.

25. At this stage, learned Advocate for the respondent seeks stay of this judgment and order. However, for the reasons recorded herein above, the said request for stay is rejected.

(AMIT BORKAR, J.)