# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# BENCH AT AURANGABAD

## 11 CONT. PETITION NO. 221 OF 2025

Padmashree Dr. Vitthalrao Vikhe Patil Sahakari Sakhar Karkhana Ltd.
Through Its Managing Director
**VERSUS**
The Shri Ganesh Sahakari Sakhar Karkhana Ltd.,thru. Incharge,
Managing Dir. Nitin R. Bhosle And Ors
**WITH**

**CIVIL APPLICATION NO. 10472 OF 2026**
**IN CP-221-2025**

**AND**

## 12 CONT. PETITION NO. 793 OF 2025

Padmashree Dr. Vitthalrao Vikhe Patil Sahakari Sakhar Karkhana Ltd,
Trhu. Abhijit Arjunrao Dighe
**VERSUS**
The Ahmednagar District Central Co-op. Bank Ltd Thru. Chief Executive
Officer R. L. Varpe And Ors.
**WITH**

**CIVIL APPLICATION NO. 10471 OF 2026**
**IN CP-793-2025**

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Mr. V. D. Hon, Senior Counsel i/by Mr. P. D. Bachate, Advocate for the Petitioner in CP No.221 of 2025.
Mr. A. D. Ostwal for Petitioner in CP No.793 of 2025.
Mr. R. N. Dhorde, Senior Counsel i/by V. R. Dhorde & Mr. R. L. Kute, Advocate for Respondent Nos.1 and 2 to 25 in CP No.221 of 2025.
Mr. R. N. Dhorde, Senior Counsel i/by V. R. Dhorde & Mr. R. L. Kute, Advocate for Respondent Nos.1 and 2 to 20, 22 to 24 in CP No.793 of 2025.
Mr. M. L. Sangit, AGP for Respondent No.3 in CP No.221 of 2025.
Mr. S. K. Shirse, AGP for Respondent No.25 in CP No.793 of 2025.

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**CORAM : ROHIT W. JOSHI, J.**
**DATE : 21 SEPTEMBER 2026**

**PER COURT :**

1. Learned senior advocate, Mr. Hon tenders across the Bar an affidavit dated 20.9.2026. The affidavit is taken on record, although learned senior advocate Mr. Dhorde, has a strong objection to taking the said affidavit on record.

2. The petitioner has filed application for amendment of petition, being Civil Application No.10472 of 2026. Mr. Dhorde, learned Senior advocate for the respondent, stated that the contents of the said application can be taken into consideration while hearing of the Contempt Petitions.

3. The present contempt petitions are filed alleging willful and deliberate and non compliance of the order dated 2.9.2024 passed by the Arbitrator/Sugar Commissioner, Maharashtra State, Pune. The operative portion of the order dated 2.9.2024 reads thus:

> "a. The Application dated 01/09/2023 filed by the Claimant is partly allowed;
>
> b. The Respondent is restrained from creating third party interest / alienating the suit property mentioned in paragraph no. 24 of the Statement of Claim by way of Sale / Lease / Permanent Transfer of any kind of the suit property and also for the purpose of any capital investment in relation to expansion and / or modernization of the suit property / Respondent No. 2 Factory, from the date of this Order till the disposal of present arbitration proceedings.
>
> c. The Respondent is directed to furnish bank guarantee of any nationalized bank of Rs. 17.06 Crores before this Tribunal within a period of one month from date of this Order.
>
> d. The order be communicated to the parties of the present Arbitration proceedings.
>
> e. Matter be taken on 19th September 2024, at 11.30 am for further

consideration."

4. The interim order dated 2.9.2024 was subsequently modified on 19.9.2024. The modified order reads thus:

> "a. The Application dated 01/09/2023 filed by the Claimant is partly allowed;
>
> b. The Respondent is restrained from creating third party interest / alienating the suit property mentioned in paragraph no. 24 of the Statement of Claim by way of Sale / Lease / Permanent Transfer of any kind of the suit property and also for the purpose of any capital investment in relation to expansion and / or modernization of the suit property / Respondent No. 2 Factory, from the date of this Order till the disposal of present arbitration proceedings or till compliance of order clause 'c' hereinbelow, whichever is earlier.
>
> c. The Respondent is directed to furnish bank guarantee of any nationalized bank of Rs. 17.06 Crores before this Tribunal within a period of one month from date of this Order.
>
> d. The order be communicated to the parties of the present Arbitration proceedings.
>
> e. Matter be taken on 19th September 2024 at 11.30 am for further consideration."

5. The present petitions were earlier dismissed by this Court vide judgment dated 19.12.2025. The said judgment dismissing the contempt petitions was assailed by the petitioner before the Hon'ble Supreme Court vide Civil Appeal Nos.9846 of 2026 and 9847 of 2026. The said appeals came to be allowed by the Hon'ble Supreme Court vide order dated 31.7.2026, and both the Contempt Petitions were remitted to this Court for deciding the same expeditiously.

6. The contention of Mr. Hon, learned senior advocate for the petitioner in Contempt Petition No.221 of 2025, is that despite being aware of the order dated 2.9.2024 passed by the learned Arbitrator, the

respondent – Sugar Factory has created third-party interests over the properties enumerated at item No.24 of the statement of claim by way of registered mortgages dated 2.9.2024, 28.1.2025, 1.9.2025, 17.1.2026 and 17.03.2026. The contention is that the respondent has not furnished bank guarantee in the sum of Rs.17.06 crores as directed by the Arbitrator and yet, by executing the aforesaid registered deeds of mortgage, third-party interest in favour of the lender bank have been created over the properties, which amounts to willful and deliberate of non-compliance of the interim order dated 2.9.2024, as modified on 19.9.2024.

7. Mr. Hon, learned senior advocate argues that by creating mortgage with respective to properties specified in Item 24, the respondent – Sugar Factory has in fact transferred the said property. He argues that mortgage is also a transfer of property and therefore the act of mortgage by the respondent – Sugar Factory amounts to breach of the interim order passed by the learned Arbitrator.

8. In reply, the contention of Mr. Dhorde, learned senior advocate, is that the interim order passed by the learned Arbitrator merely restrains the respondents from creating third-party interest over the suit property or alienating the same, either by sale or lease or by any other mode of permanent transfer and that too only for the purpose of expansion or modernization of the sugar factory. His contention is that the interim order does not prohibit creation of third-party interest or alienation for

any purpose other than expansion or modernization of sugar factory. The learned senior advocate vehemently argues that by creating mortgage over the suit property, the respondent has neither sold nor leased nor permanently transferred the properties in question. He further argues that loan is not obtained by mortgaging the properties for expansion or modernization of the sugar factory and therefore mortgage of the properties for securing the loan does not result in violation of the interim order passed by the Arbitrator. The learned senior advocate would contend that since the petitioner is attributing the contempt against the respondent, the interim order will have to be interpreted strictly to mean that injunction is granted only against creation of third party interest or alienation for the purpose of seeking investment in relation to expansion and/or modernization and that mortgage for any other purpose is not prohibited.

9. The learned senior advocate argues that the first mortgage dated 2.9.2024 was executed and registered between 10.30 a.m. to 6.00 p.m. and the interim order dated 2.9.2024 was communicated at around 10.30 p.m. on 2.9.2024. The learned senior advocate therefore argues that as regards the first mortgage, there cannot be any question of contempt since the mortgage was executed and registered prior to communication of the injunction order.

10. With respect to the other four mortgages dated 28.1.2025, 1.9.2025, 17.1.2026 and 17.03.2026, the contention of the learned senior

advocate is that all these mortgages have been executed and registered pursuant to permission granted by the Commissioner of Sugar acting in his administrative Capacity. The learned senior advocate points out that the Arbitration proceedings are conducted by the Commissioner of Sugar himself.

11. The learned senior advocate draws attention to the prayer clauses of interim application, which reads as under:

> "A. The property mentioned in scheduled annexed herewith and mentioned in para no. 24 may kindly be subjected to attachment before judgment.
>
> B. Respondent be restrained from creating any encumbrance / alienation in the nature of charge of any kind on the property mentioned in Exhibit A.
>
> C. Respondent District Central Co-operative bank be further injuncted from disbursing any loan amount or creating any mortgage in respect of suit property owned by the respondent.
>
> D. Any other suitable and equitable relief may kindly be passed in favour of the present claimant in the interest of justice."

12. Referring to prayer clauses (b) and (c), the learned senior advocate would contend that although restraining orders against creating any encumbrance or alienation in the nature of charge and also mortgage were made in the interim application, the said prayers are not granted. Particularly, by drawing the attention to prayer clause (c), it is contended that restraining orders were also sought against District Central Cooperative Bank from disbursing any loan to the respondent – sugar factory which is not granted. It is argued that any relief which is claimed

and not granted is deemed to be refused. He argues that although blanket injunction against creation of encumbrance or alienation was prayed, the arbitrator has granted limited injunction that third-party interest should not be created or property should not be alienated for the purpose of expansion or modernization of the sugar factory. The learned senior advocate therefore contends that there is no injunction against creation of mortgage for availing a loan for any purpose other than the purpose of expansion and/or modernization of sugar factory.

13. The learned senior advocate draws attention to the affidavit-in-reply, particularly paragraphs 5 to 9 thereof, to contend that the loan is not sought either for expansion or modernization of the plant. Particularly attention is drawn to paragraph 6 of the affidavit to argue that loan of Rs.74 crores was obtained for upgradation of the plant and machinery on the basis of guarantee furnished by the State Government and that property of respondent – sugar factory was not mortgage for the said purpose.

14. In reply, Mr. Hon, learned senior advocate appearing in Contempt Petition No.221 of 2025, and Mr. Ostwal, learned advocate appearing for the petitioner in Contempt Petition No.793 of 2025, contend that although the documents of mortgage do not indicate that the loan is obtained for expansion or modernization of the plant, the amounts are actually utilized for the said purpose. It is therefore contended that action against the respondent – Sugar Factory should be taken under the

relevant provisions of the Contempt of Courts Act. In support of the contention, the learned senior advocate as also learned advocate Mr. Ostwal draw attention to the 65th Annual Report of the respondent – Sugar Factory for the year 2025-26. It is stated that in the said financial year, an amount of Rs.9,95,66,543.89 was expended towards, 'installation of new factory machinery' and Rs.16,65,10,847.94/- towards, 'machinery under erection'. It is therefore contended that the the amount received from the bank was, in fact, spent for expansion and modernization of the plant. Mr. Ostwal also draws attention to the statements in the affidavit dated 16.9.2026, filed by the petitioner to contend that amount is actually spent towards modernization and expansion of the plant.

15. At the outset, it must be stated that although prayer for mortgage or encumbrance by way of charge is not specifically granted, the operative order restrains the respondent – Sugar Factory from creating third-party interest or alienating the property in question by way of sale, lease or permanent transfer of any kind for the purpose of capital investment in relation to expansion and/or modernization of the sugar factory. Mortgage is also a mode of transfer of property and amounts to creation of third-party interest. However, mortgage by itself is not prohibited under the interim order. Mortgaged is prohibited only for the purpose of obtaining investment for expansion and/or modernization of the sugar factory.

16. The loan sanction letters issued by the respondent - bank do not state that the loans are granted for modernization or expansion of the plant. Perusal of the loan sanction letters will indicate that the loans are granted for making payments to contractors, for repairs and maintenance of the machinery, salaries of employees, administrative expenses and other expenses.

17. Perusal of paragraph 6 of the affidavit-in-reply dated 30.8.2026 filed by respondent – Sugar Factory will indicate that a specific statement is made that loan of R.74 Crores was availed for upgradation of the sugarcane crushing machinery and that the said loan was availed on a guarantee furnished by the State Government. It is stated that in the said affidavit that no property of the respondent – Sugar Factory was mortgaged as security for the said loan of Rs.74 Crores. This statement made in paragraph 6 of the reply affidavit has not been specifically controverted by the petitioners in their counter-affidavit/s. Therefore even if one accepts that amount of Rs.16,65,10,847.94/- and Rs.9,95,66,543.89/- is spent towards installation of new machines and further event if the contention of the petitioner that the said expenditure amounts to upgradation and/or modernization of the sugar factory is accepted, it cannot be said that the amount received by mortgage was utilized for the purpose of modernization and expansion.

18. It must also be stated that the Commissioner of Sugar, who has passed the injunction order acting as arbitrator has granted no objection

for obtaining loans from the respondent – bank by creating mortgage over properties of the respondent – sugar factory. Mr. Hon learned Senior advocate points out that the third mortgage dated 1.9.2025 is created although permission for obtaining loan by mortgaging the properties was refused by the Commissioner. Mr. Dhorde, learned senior counsel, counters the contention by stating that permission was initially refused since the Contempt Petition was pending and that after the petition was initially dismissed, permission for obtaining loan against mortgage was granted vide letter dated 30.12.2025 for the entire crushing season for the year 2025-26. The issue in the present contempt petition is not as to whether mortgage is created with or without permission of the Commissioner. What is relevant is that the Commissioner who has acted as Arbitrator has granted permission for obtaining loan against mortgage being aware about the interim order passed by him in the capacity of Arbitrator. This facts assumes significant for the purpose of the interpretation of the order. The author of the order has also interpreted the order as not imposing absolute prohibition against mortgage of property for obtaining loan.

19. It is a well settled legal principle that unless a clear and explicit case of willful and deliberate non-compliance is made out, action under Contempt of Courts Act should not be taken. In case of two possible interpretation of the order, an action under contempt should not be initiated if the action is in accordance with a possible interpretation of

the order, of which non-compliance is alleged.

20. In the present case, I find that the restriction against creation of third-party interest and/or alienation of the property by way of sale, lease or permanent transfer of any kind is only prohibited for the purpose of expansion and/or modernization. The injunction granted is not against creating any third-party interest or alienating the property for any purpose other than the purpose of expansion and/or modernization. The material on record does not indicate that the mortgages are created for obtaining loan either for modernization or for expansion of the sugar factory. The petitioner has failed to establish the same on the contrary perusal of mortgage deeds, sanction letters and no objection by Commissioner will indicate that properties were mortgaged to obtain loan for meeting expenses for running of the sugar factory which is not prohibited. In that view of the matter, the creation of mortgages for obtaining loans does not result in breach or violation of the interim order dated 2.9.2024 passed by the Arbitrator.

21. No case for taking action for contempt is made out. The Contempt Petitions are therefore dismissed with no order as to costs.

22. At this stage, Mr. Ostwal, learned advocate for the petitioner in Contempt Petition No.793 of 2025, makes a request to continue the interim order passed by the Hon'ble Supreme Court for a period of two weeks. Mr. Dhorde, has a strong objection to the request. He contends that since the Contempt Petition is dismissed on merits, the question of

continuation of the interim order does not arise. It is argued that in the first round of litigation, the Contempt Petition was dismissed on the ground of maintainability and not on merits and therefore the Hon'ble Supreme Court deemed it appropriate to pass the aforesaid interim order while remitting the matter to this Court for deciding the Contempt Petition afresh. He further argues that granting an interim order in a Contempt Petition and that too after dismissal of the same on merits, would be beyond the jurisdiction of this Court.

23. In the considered opinion of this Court, an injunction cannot be granted in a Contempt Petition after dismissing the same on merits.

24. In view of the aforesaid, the prayer being extension of interim relief granted by the Hon'ble Supreme Court is rejected.

**[ ROHIT W. JOSHI, J. ]**