IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13164 OF 2019

Ashok Chitra Mandir ...Petitioner

Versus

The State of Maharashtra & Ors ...Respondents

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- Mr. A. D. Ostwal, Advocate for the Petitioner
- Mr. V. M. Chate, AGP for the Respondent Nos. 1 and 4/State
- Mr. S. A. Kulkarni, Advocate for the Respondent Nos. 2 and 3

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CORAM : R. M. JOSHI, J
DATE : OCTOBER 17, 2025

PER COURT :

1. This motion is moved for speaking to minutes of order dated 13.10.2025.

2. It is submitted that though this Court has expressed view permitting the Petitioner to withdraw the amount deposited in this Court with interest, the same is not reflected in the order.

3. Learned Counsel for the contesting Respondents does not dispute the said fact.

4. In view of this, motion for speaking to

minutes stands allowed. Paragraph 14 be added in the said order, which as follows:

> "14. Petitioner is permitted to withdraw the amount deposited along with interest accrued thereon."

(R. M. JOSHI, J)

(This order is corrected pursuant to speaking to minutes order dated 17.10.2025)

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CORAM : R. M. JOSHI, J
DATE : OCTOBER 13, 2025

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to the order/communication dated 09.08.2019 issued by Respondent No. 3/Joint Managing Director, Maharashtra Film Stage and Cultural Development Corporation Ltd whereby recovery was directed against the Petitioner in respect of unpaid loan along with interest at the rate 18% p.a.

3. The facts, which led to the filing of this Petition, can be narrated in brief as under:

Government of Maharashtra, Social Welfare Cultural Affairs by notification dated 12.06.1990 came up with a scheme of incentives to new cinema theaters in the State of Maharashtra. As per the said scheme, interest free loan was provided which according to the Petitioner was repayable on the expiry of five years from the date of release thereof. According to Petitioner, he has repaid entire interest free loan in 18 installments from 10.04.2000 to 30.06.2004 of Rs. 86,993/- and the first installments of Rs. 1,73,989/-. It is the grievance of the Petitioner that Respondents are demanding interest on the entire amount of Rs. 6,66,592/-. Petitioner has made reference to the previous proceeding including Writ Petition No. 5190/2019 and order passed therein. Pursuant to the order passed by this Court, Petitioner appeared before Respondent No. 3 and placed submissions on record, which were rejected by Respondent No. 3. This has resulted into passing of the order impugned/communication dated 09.08.2019. Hence, this Petition.

4. Learned Counsel for the Petitioner submits that admittedly agreement dated – October, 1994 came to be executed between the parties whereby the Petitioner was provided interest free loan of Rs. 17,39,863/-. It is his submission that in view of the terms of said agreement, said amount was required to be paid in quarterly installments of Rs. 86,993/- and as reflected in paragraph 13 of the Petition, amounts were paid from 10.04.2000 till 30.06.2004 and the same have been accepted by Respondents without any demur. It is his submission that the final installment was due and payable only in October, 2004 and admittedly, amount has been repaid before that i.e., 30.06.2004. It is his submission that once amount has been accepted by Respondents without prejudice or without making any grievance, it is not open for the Respondents to now make grievance with regard to the loan amount and charge interest thereon. He also makes grievance in view of the fact that the agreement sough to be relied upon by Respondent is altogether different than the one executed between parties. In this regard, reference is made to the document sought to be relied upon by the

Respondent (Page 79). It is his submission that altogether new terms are sought to be claimed by the Respondent, which were never agreed. In any case, it is his submission that once the amounts were accepted and there is doubt with regard to the liability, it was not open for the Respondent to take exception thereof and charge interest thereon and hence, the order impugned cannot sustain.

5. Learned Counsel for contesting Respondents supported the impugned order. It is his submission that clause no. 3 of the agreement relied upon by the Petitioner himself indicates that the installment of Rs. 86,993/- were to be paid on every quarter and first of such quarter commence on/and from 25.10.1999 at the same rate. It is his submission that this clause along with clause no. 4 clearly indicate that non payment thereof, would attract 18% interest thereon. It is his submission that the agreement in question since was contrary to the Notification dated 12.06.1990, it was proposed for the fresh execution of the contract, which was not accepted by the Petitioner. It is his submission that Respondents have already initiated

departmental enquiry against concerned officer and disciplinary action is taken in this regard. It is his submission that no concession could be given to the Petitioner for non payment of the amount in time.

6. At the outset, it needs to be recorded that the document sought to be relied upon by the Petitioner and the agreement said to have been executed by the Respondents are different documents. Clause no. 3 of the agreement claims to have been executed, reads thus:

> *3. The Owner agrees and undertakes to repay the said loan of Rs. Seventeen Lakhs Thirty nine thousand eight hundred sixty three after completion of first five years and the said loan amount shall be paid during the period of subsequent five years in quarterly installment of Rs. 86,993/- every quarter, the first of such quarter commencing on and from 25th October, 1999 at the same rate.*

Whereas, Respondents claim that agreement entered into between parties indicate following clause no. 3:

> *3. The Owner agrees and undertakes to repay the said loan of Rs. 17,39,863 (Rs. Seventeen Lakhs thirty nine thousand eight hundred sixty three only) on or before completion of first five years from the date of release of payment.*

7. There is further dispute with regard to the

fact that as to whether the agreement is in consonance with the Notification issued by the Government. Record indicates that in this regard communication was made by Respondents to Petitioner for novation of contract, which has in fact never taken place.

8. As a matter of fact, clause no. 3 claimed by both sides clearly indicate different clauses altogether. Clause no. 3 in the agreement which bears signatures of both sides shows that the owner agrees and undertakes to repay the said loan of Rs. 17,39,863 on or before completion of first five years. In the next breath, it is said that said amount shall be paid during the period of subsequent five years in the quarterly installment of Rs. 86,993/-. It further records that first of such quarter commences from 25.10.1999. It is thus clear that the said clause is so ambiguous that it creates three different contingencies for the repayment of loan amount.

9. As against this, clause no. 3, as claimed by Respondents to have been agreed between parties, indicates that the owner agrees and undertakes to repay amount before completion of first five years from the

date of release of payment. It does not indicate any installment to be paid and the time of payment of such installment. Moreover, it is not in dispute that the finial payment was to be made on or before 24th October, 2004 and the entire amount of loan has been paid on 30.06.2004.

10. In the light of these facts, what becomes relevant is undisputed fact about the payments made by Petitioner with effect from 10.04.2000 till 06.10.2003. There is no denial of the fact that these amounts were received by Respondents without making any grievance and not without prejudice. In this backdrop, after accepting the installments from April, 2000 to 06.10.2003, communication came to be addressed on 29.04.2003 claiming that the agreement have been wrongly entered into and is not in tune with the letter and spirit of Notification dated 12.06.1990. There is further no dispute about the fact that no fresh agreement was entered into between the parties. At this stage, it would be necessary to take note of the fact that even if action is sought to be taken by Respondents against officers, this is not a case

wherein Petitioner could be held responsible for the execution of agreement inconsistent with Government Resolution. This is not a case where anything could be attributed to the Petitioner and only conclusion would be that he would only be bound by the agreement/terms of contract, which he accepted by making endorsement thereon.

11. In the light of these facts, on 07.03.2004 for the first time it was claimed that the entire amount was to be repaid at one go and since the same has not ben paid, it would be recovered as land revenue. This letter/communication addressed by Respondent is contrary to the agreed terms between parties. The terms sought to be relied upon by Respondents are admittedly not signed/counter signed by the Petitioner in order to bind him for its compliance. As against this communication, there was earlier communication dated 23.06.2003 stating that there is outstanding principal amount of Rs. 6,95,947/- and after receipt of the said amount, proposal would be sent to the State Government for waiver of the same. If not paid within seven days from receipt of this letter, then it will carry 18%

interest. There communication entered into by the Respondent indicate inconsistent stands being taken by Respondents at all point of time.

12. Most importantly, for period of over 2 years the Respondent accepted the quarterly installments. Perusal of the order dated 09.08.2019 indicates that interest has been charged on delayed payments. It was sought to be argued on behalf of Respondent that amounts were due on particular date. A specific query was raised whether any such date was fixed in the agreement, Counsel was unable to show anything in this regard. It is relevant to take note that the repayment was to be done as per the quarterly payment, notice issued by Respondent stating that it was to be lump sum recovered is falsified. Apart from this, even if it is accepted that the amounts were to be paid in each quarter, in absence of any date being fixed therefor, payments made in quarter ought to have been accepted and no interest could have been charged.

13. All these facts indicate that this is not the case wherein it could be said with certainty as to the date on which amounts were due and payable to hold that

there is breach of conditions of agreement on the part of the Petitioner in order to impose penalty of 18% interest on these amounts. As a result of this, Petition succeeds. Accordingly, Petition stands allowed in terms of prayer clause '**b**'.

14. Petitioner is permitted to withdraw the amount deposited along with interest accrued thereon.

(R. M. JOSHI, J.)