

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9557 OF 2025**

CPF India Pvt Ltd
(incorporated as CPF (India) Pvt Ltd)
Through its Section Manager-Legal Department
Mr. Anantha Vishnu
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Tamilnadu.

B. 841/4, Binnamanagala, First Stage,
100 Feet Road, Indira Nagar,
Bengaluru – 560338 (Karnataka)

..Petitioner

Versus

Yunus Ahmad Mulani
Proprietor M/s Mulani Agro Foods
Age: 55 years, Occu: Business,
R/at: At Post Ghodegaon,
Taluka Ambegaon,
District Pune.

...Respondent

Mr. Aditya Pimple, with Bhavesh Kadam, i/b Siddharth Salvi with
Ansh Karnawat, for the Petitioner.

Mr. Kishor Patil, with Akshada Nagrale, i/b Pratik Rahade, for the
Respondent.

ARUN
RAMCHANDRA
SANKPAL

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ARUN RAMCHANDRA
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Date: 2025.10.15
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CORAM: N. J. JAMADAR, J.
DATE : 13th OCTOBER 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of
the learned Counsel for the parties, heard finally.

2. The challenge in this Petition is to an order dated 6th June 2025 passed by the learned District Judge-2, Pune, on an Application for stay to the execution and operation of the Arbitral Award, during the pendency of the Application under Section 34 of the Arbitration and Conciliation Act, 1996 (“the Act, 1996”) for setting aside the Arbitral Award passed by the sole Arbitrator.

3. By the said order the learned District Judge, stayed the execution and operation of the Award subject to deposit of the entire Award amount, i.e., Rs.7,10,71,801/- in the Court within a period of 30 days thereof.

4. The Petition arises in the backdrop of the following facts.

4.1 The Petitioner company is a part of the CP Group Conglomerate. It is engaged in the business of feed manufacturing, broiler integration, hatchery and breeding operations. The Respondent is the proprietor of M/s Mulani Agro Foods.

4.2 A Memorandum of Understanding (“MoU”) was executed between the Petitioner and the Respondent on 10th March 2013 incorporating the terms to let out a newly built poultry farm on lease basis to the Petitioner.

4.3 Pursuant thereto on 1st October 2013, the parties executed an Agreement for Rent Breeder Farm (“Lease Agreement”). The

lease was to commence after completion of the construction of the poultry farm. The term of lease was 10 years. Under Clause 9 of the said Agreement, the parties were at liberty to terminate the said Agreement by giving 10 months advance written notice. The Lease Agreement also contained a clause for resolution of the dispute through arbitration.

4.4 On 19th December 2018, the Petitioner issued a termination notice. A follow up notice was issued on 12th February 2019.

4.5 Disputes arose between the Petitioner and the Respondent as the Respondent disputed the termination of the Lease Agreement and claimed various payments.

4.6 Eventually, arbitration was invoked and a former Judge of this Court came to be appointed as the sole Arbitrator. At the conclusion of the Arbitral Proceeding, the learned Arbitrator passed an Award dated 28th November 2022, directing the Petitioner to pay a sum of Rs. 7,10,71,801/- along with interest @ 2% higher than the current rate of interest prevalent as of the date of the Award, from the date of the Award till payment. Costs were quantified at Rs.10 Lakhs.

4.7 The learned Arbitrator was of the view that the Respondent was entitled to cost of machinery and electronics- Rs.1,86,67,104/-, cost of building and reconstruction-

Rs.5,10,04,927/- and arrears of rent from 1st January 2019 to 31st October 2019, i.e., 10 months notice period rent of Rs.90,19,500/- and legal charges of Rs.80,000/-. After deducting the security deposit of Rs.77 Lakhs, the Award in the sum of Rs.7,10,71,801/- alongwith interest, as indicated above, was passed.

4.8 Being aggrieved the Petitioner has filed Civil MA No. 1187 of 2024 before the District Court at Pune to set aside the said Award. In the said proceeding, the Petitioner filed an Application for stay to the execution and operation of the award passed by learned Arbitrator.

4.9 By the impugned order, the learned District Judge was persuaded to stay the execution and operation of the award subject to the deposit of the Award amount of Rs.7,10,71,801/-. The learned District Judge was of the view that the Petitioner was a multinational company and was in the process of winding up its operations in India; only two or three properties remained to be disposed. There was no dispute about the entitlement of the Respondent to the compensation on account of the premature termination of the Lease Agreement. The dispute was only regarding the quantum of the compensation. The compensation awarded by the Arbitrator was slightly more than half of the rent

due for the remainder of the term. Therefore, it was necessary to direct the Petitioner to deposit the entire award amount to secure the interest of the Respondent-Claimant.

5. Being aggrieved the Petitioner has invoked the writ jurisdiction.

6. I have heard Mr Aditya Pimple, the learned Counsel for the Petitioner, and Mr. Kishor Patil, the learned Counsel for the Respondent-Claimant at some length. With the assistance of the learned Counsel for the parties I have perused the material on record.

7. Mr. Pimple would urge that the learned District Judge did not keep in view the test to be applied while exercising the discretion to stay the execution and operation of the Award, under Section 36 of the Act, 1996. Without disputing that the Petitioner is a multinational company, Mr Pimple would urge, to secure the interest of the Claimant, the Petitioner had undertaken not to dispose of or alienate one of the properties of the Petitioner that would adequately secure the interest of the Claimant, and, therefore, the learned District Judge ought not to have directed the deposit of the entire award amount.

8. On the merits of the matter, Mr Pimple would urge the learned District Judge lost sight of the apparent inconsistencies in the reasoning of the learned Arbitrator. Though the fact that under Clause 9 of the Lease Agreement, any of the parties was entitled to terminate Lease Agreement by giving 10 months advance notice was acknowledged, yet,

the learned Arbitrator proceeded on the premise that it was not proper for the Petitioner to terminate the Lease Agreement. The liability of the Petitioner would in no case exceed the payment of lease rent for the notice period of 10 months, even if it was assumed that there was no cause for the termination of the lease.

9. To buttress this submission, Mr Pimple placed reliance on a judgment of the Supreme Court in the case of **Indian Oil Corporation Ltd Vs Amritsar Gas Service And Ors.**¹

10. Mr. Pimple would thus urge there was no justifiable reason for the learned Arbitrator to award the compensation under the head of cost of machinery and electronics, and building and construction allegedly incurred by the Respondent for the said poultry farm. This factor was completely ignored by the learned District Judge.

11. Mr. Pimple would urge it is not obligatory for the Court exercising power under Section 36 of the Act, 1996 to impose conditions to stay the execution and operation of the Award. In a given case, if it could be demonstrated that the Award is unsustainable and vulnerable to challenge, the Court is empowered to grant an unconditional stay to the execution and operation of the Award. Reliance was placed on a judgment of this Court in the case of **Kishor Shah and Ors Vs Urban Infrastructures Trustees Ltd & Ors.**²

1 (1991) 1 SCC 533.

2 2020 SCC OnLine Bom 4098.

12. Mr Pimple would lastly urge that, at best, the Petitioner could have been put to terms of depositing lease rent for the notice period.

13. In opposition to this, Mr. Patil submitted that the Respondent-Claimant had altered his position on the basis of the representations made by the Petitioner that the subject poultry farm would be taken on lease for a period of 10 years. The Petitioner did not provide the finance for the construction of the new poultry farm, as agreed. The Respondent was made to avail loan at a high rate of interest to make the poultry farm ready for the Petitioner. The abrupt termination of the lease without any justifiable cause, left the Petitioner in the lurch. Mr. Patil would urge that, keeping in view the aforesaid factors, the legality and propriety of the impugned order is required to be tested. No infirmity can be found in the impugned order as the direction for deposit of principal Award amount, when the challenge is essentially to a Money Decree, cannot be faulted at.

14. Reliance was placed on a decision of this Court in the case of **Balmer Lawire & Co Ltd Vs Shilpi Engineering Pvt Ltd**,³ wherein after referring to the decisions of the Supreme Court in the cases of **Srei Infrastructures Finance Limited Vs Candor Gurgaon Two Developers and Projects Pvt Ltd**⁴ and **Manish Vs Godawari Marathwada Irrigation**

3 2024 SCC Online Bom 758.

4 SLP (C) No(s). 20895-20897/2018.

Development Corporation,⁵ wherein the Supreme Court had directed the 100% of the deposit of the Award amount, the learned Single Judge of this Court observed that, the Court in an Application under Section 36(3) of the Act, 1996, exercises its discretion in granting a stay of the impugned Award. Whether to impose conditions and to what extent, is dependent upon the facts and circumstances of each case. The Supreme Court has taken a consistent stand that where the Award is in the nature of money decree, there is a requirement for deposit of 100% of the Award amount for grant of stay. The Court does not find any distinction in Applications for stay under Section 36 (3) and under Section 37 for different parameters to be applied in exercise of discretion by the Court in imposing conditions for grant stay. A liberal view is not contemplated under Section 36(3) of the Act, 1996, whilst imposing the conditions for stay of the Award.

15. I have given anxious consideration to the rival submissions canvassed across the bar. There is not much controversy over the basic facts. A new poultry farm was to be constructed and let out to the Petitioner for a term of 10 years. Clause 9 of the Lease Agreement provided for termination of the lease in two contingencies, first, in case of default by one of the parties, and, second, termination by giving written notice of 10 months. The Petitioner claimed to have terminated

5 Special Leave to Appeal (C) Nos. 11760-11761-2018, order dtd 16.07.2018.

the Lease Agreement by notice dated 19th December 2018. It was followed by a further communication dated 12th February 2019, wherein specific reference was made to Clause 9 of the Lease Agreement.

16. The learned Arbitrator proceeded on the premise that the alleged breaches attributed to the Respondent-Claimant were not established. The first notice of termination dated 19th December 2018 was not clear in its terms. The erection of the poultry farm was to the specifications of the Petitioner. The Petitioner had designed unique specialised machinery for hatchery business. The Respondent-Claimant was thus made to incur expenses to suit the requirements of the Petitioner and, for that purpose, raise loan from the bank. Holding thus, the learned Arbitrator proceeded to pass the Award impugned before the learned District Judge.

17. At this stage and in this proceeding, it would not be permissible to delve deep into the merits of the Award passed by the learned Arbitrator as the challenge thereto is sub-judice before the learned District Judge. A reference to the observations of the learned Arbitrator was necessitated as a submission was canvassed by Mr. Pimple that under the terms of the Lease Agreement, the liability was restricted to only 10 months notice period lease rent. Whether the learned Arbitrator was justified in delving into the antecedent facts and developments and

fastening the liability on the Petitioner to pay the compensation for the expenses incurred by the Respondent-Claimant would be a matter for determination by the District Court.

18. It is true, in a given case, while the proceeding for setting aside the Award awaits adjudication, the Court may grant an unconditional stay to the execution and operation of the Award. The first proviso to Section 36(3) of the Act, 1996, however, enjoins the Court to have due regard to the provisions for grant of stay to a money decree under the provisions of the Code of Civil Procedure, 1908.

19. Ordinarily, a party seeking stay to the execution and operation of a money decree is put to terms, either to deposit the decretal amount or secure the same. If an exceptional case is made out, the Court under Section 36(3) of the Act, 1996, may be justified in granting an unconditional stay. The norm, however, would be to put the Judgment Debtor to terms.

20. Reverting to the facts of the case at hand, it is necessary to note the factors that may have a bearing on the decision to impose the conditions and extent thereof.

21. Firstly, the fact that the Petitioner is a multinational company and was allegedly in the process of winding up its operations in India, weighed with the learned District Judge. That cannot be said to be an irrelevant consideration. An unconditional stay to the execution and

operation of the Award would indeed leave the Respondent-Claimant in the lurch, with remote possibility of recovery of the Award amount if the Petitioner winds up its operations and no property is left in India, against which the Respondent-Claimant could proceed.

22. The second factor which assumes importance is the remainder of the lease term, i.e., near about Six Years. The Respondent-Claimant had incurred expenses to erect the facility which suited the requirements of the Petitioner. The co-relation between the expenditure incurred by the Respondent-Claimant to make the facility suit the requirements of the Petitioner and the term for which the Petitioner, in fact, occupied the said facility and paid the lease rent for the same, out of the agreed term, appears to be germane, if the measure of damages is considered to be actual loss suffered by the Respondent-Claimant.

23. Thirdly, the assessment of compensation by the learned Arbitrator was on the basis of the cost incurred by the Respondent-Claimant. The element of the time value of money was not considered as the interest has been awarded.

24. Lastly, the impediments that may arise in the execution of the Award, in the event the challenge to the award is negated by the District Court, in view of the fact that the Petitioner is a multinational company and was in the process of winding up its operations in India, was also required to be kept in view.

25. All these factors were required to be weighed in balance with the principal submission of Mr. Pimple that in view of the stipulation in Clause 9 of the Lease Agreement, the existence and justifiability of the grounds for the Petitioner to terminate the Lease Agreement are of no significance and the Petitioner was entitled to terminate the Lease Agreement upon payment of 10 months notice period lease rent notwithstanding any default on the part of the Respondent-Claimant.

26. In the light of the aforesaid factors and prime challenge to the Award of the learned Arbitrator, premised on the covenants in the Lease Agreement, in my view, a direction for deposit of 100% of the Award amount, without interest, erred on the side of excessiveness. The appropriate quantum of deposit to be made by the Petitioner for stay to the execution and operation of the Award would be 50% of the principal amount awarded by the learned Arbitrator. I am, therefore, inclined to interfere with the impugned order to the extent of the quantum of the deposit to be made by the Petitioner.

27. Hence the following order:

: O R D E R :

- (i) Petition stands partly allowed..
- (ii) The impugned order stands modified to the effect that the Petitioner shall deposit 50% of the principal Award amount before the

District Court within a period of four weeks from the date of this order, as a condition for stay to the execution and operation of the Award passed by the learned Arbitrator, during the pendency of the Application under Section 34 of the Act, 1996.

(iii) Rule made absolute to the aforesaid extent.

No costs.

[N. J. JAMADAR, J.]