IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1377 OF 2026

Neeta Shrirang Kelkar … Petitioner

Versus

Sundar Sagar Vankore And Ors. … Respondents

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Mr. Simil Purohit, Senior Advocate (Through VC) a/w Adv. Rutwij Bapat i/by Mr. Sanadiip Mutaalik for the Petitioner.

Dr. Santosh A. Shah a/w Adv. Darshana Kalamkar, Adv. Poras Shah and Adv. Shivani Nerlekar for the Respondent Nos. 1 and 2.

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CORAM : M. M. SATHAYE, J.

DATE : 27th March, 2026.

P. C. :

1. Heard learned Counsel for the parties.

2. This Petition is filed under Article 226 & 227 of the Constitution of India, challenging the order dated 31.01.2026 passed below Exhibit-6 by the Civil Judge, Senior Division, Sangli, in Civil Miscellaneous Application (CMA) No. 224 of 2025. By the said impugned order, the Award dated 20.04.2025 is stayed on a condition of depositing Rs. 88,75,911/-. The impugned order also permits Respondent Nos. 1 and 2 (original Applicants in the arbitration proceeding) to withdraw the said amount without any condition.

3. The Petitioner, by filing (CMA) No. 224 of 2025 under section 34 of Arbitration and Conciliation Act, 1996 ('the said Act' for short) has challenged the Award dated 20.04.2025 passed by the learned Arbitrator, by

which the Petitioner is directed to hand over possession of subject matter plot nos. 15 & 16 and pay the said amount.

4. Learned Senior Advocate Mr. Purohit, appearing for the Petitioner, submitted as under. That the amount determined by the Arbitrator, which has been directed to be deposited as a condition precedent for interim stay, has been arrived at without any legal basis. He submitted that the Arbitrator himself has observed in paragraph 18.2 that although Respondent Nos. 1 and 2 claimed Rs. 2.5 lakhs per month per plot, as mesne profits, there was no supporting record or evidence of rent for similar premises in the same locality. He therefore contended that *ex-facie*, the amount determined by the Arbitrator is without basis. Consequently, such an amount cannot be directed to be deposited, much less permitted to be withdrawn by the other side. In the alternative, he submitted that the Petitioner is willing to furnish a bank guarantee for securing the Award; however, unconditional withdrawal of the amount cannot be sustained in any case. He relied upon the judgment of a learned Single Judge of this Court in **CFM Asset Reconstruction Pvt. Ltd. & Another. vs. SAR Parivahan Pvt. Ltd. & Ors. [2024 SCC OnLine Bom 1659]** and **Lifestyle Equities C.V. & Another. vs. Amazon Technologies Inc. [2025 SCC OnLine SC 2153]** to contend that 100% deposit is not necessary in every case for granting stay.

5. On the other hand, Mr. Shah, learned counsel for Respondent Nos. 1 and 2, submitted as under. That the Petitioner has admitted that the vicinity of the subject plots includes government offices and that the locality has become commercial since 2004. That the Petitioner has admitted that the plots are has frontage of 100-foot road and that she is running a successful business on the subject-plots with substantial commercial development in the

surrounding area. That therefore, it cannot be said that there is no basis for determining the amount. That the award impugned is like a money decree and therefore there can not be stay without deposit of amount. He further submitted that Respondent Nos. 1 and 2 are willing to furnish solvent surety for withdrawal of the amount. He relied upon the following judgments in support of his case.

(i) Balmer Lawrie & Co. Ltd. vs. Shilpi Engineering Pvt. Ltd. [2024 SCC OnLine Bom 758].

(ii) Mainsh vs. Godawari Marathwada Irrigation Development Corporation [Special Leave to Appeal (C) No(s). 11760-11761/2018, order dated 26.09.2018]

(iii) Power Mech Projects Ltd. vs. Sepco Electric Power Construction Corporation [2020 SCC OnLine Del 2049].

(iv) Director, Land Records & Surveys Govt. of Odisha & Anr. vs. Sylvesa Infotech Pvt. Ltd. [Judgment dated 10.10.2025 by High Court of Orissa At Cuttack passed in W.P. (C) No. 21111 of 2025].

6. I have considered the rival submissions and perused the record.

7. At the outset, it is necessary to note that under the first proviso to Section 36(3) of the said Act, it is clearly provided that while considering an application for grant of stay in the case of an arbitral award for payment of money, the Court must have due regard to the provisions governing stay of a money decree under the Code of Civil Procedure, 1908 (‘CPC’ for short). Therefore such prayer for interim stay depends on the facts of each case, and there can be no straight jacket formula about it. The consideration is akin to interim-stay under Order 41 Rule 5 of CPC.

In paragraph no. 134(VIII) of **Lifestyle equities (supra),** the Hon'ble supreme Court has observed as under :

> "(VIII) For the grant of benefit of an unconditional stay of execution of a decree, an exceptional case has to be made out before the appellate court. This discretion of the appellate court to grant an unconditional stay of execution of decree must not be exercised arbitrarily. It must be exercised sparingly and only if an exceptional case is made out for such stay in view of the peculiar facts and attending circumstances of the case before it."
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> (emphasis supplied)

8. The judgments relied upon by parties have been rendered in the facts of those cases. For example in the case of **CFM Asset Reconstruction Pvt. Ltd. & Another (supra),** the learned Single Judge of this Court came to a positive conclusion, on facts therein, that the entire claim which was granted by the Arbitrator in that case, was on the basis of a valuation report which was not proved before the Arbitrator. In that case, it was found that no oral evidence whatsoever has been given for proving the valuation report and nobody had deposed about correctness of the contents of the said valuation report. In such peculiar facts, the learned Single Judge concluded that the award was perverse and granted an unconditional stay. It is thus evident that the discretion was exercised in the context of those peculiar facts.

9. The present case is clearly distinguishable. From the impugned order, it appears that the Arbitrator was faced with a peculiar situation wherein, although Respondent Nos. 1 and 2 made a monetary claim for mesne profits, no documentary evidence in the form of comparable lease instances was produced to indicate the rental potential of similar properties. The Arbitrator was therefore constrained to decide on the basis of the material available on record.

10. Perusal of paragraph 18.3(v) of the award indicates that the Arbitrator considered the ready reckoner used by the Sub-Registrar's Office and concluded that the value of the two plots was approximately Rs. 44 Lakh. The Arbitrator took judicial notice of the fact that the market value would be higher. The Arbitrator then applied 7% return, akin to nationalized bank interest rates, and arrived at a figure of Rs. 25,000/- per month per plot as awardable compensation. The Arbitrator further considered 15% yearly increase in compensation as reasonable and applied interest @ 7% p.a. to the amount due from April 2019.

11. Mr. Purohit, learned Senior Advocate for the Petitioner submitted that the immovable property do not fetch 7% interest return and therefore that part, if at all to be considered as basis, is illegal. This Court cannot lose sight of the fact that it is exercising writ jurisdiction over an interim order and as such cannot usurp the jurisdiction under Section 34, which is already invoked and CMA 224/25 is pending. Therefore, that Court (hearing application under Section 34) can consider this argument about proper rate of return, if advanced.

12. Upon perusal of the impugned order, it is evident that the learned Trial Judge considered that the Petitioner has been running a petrol pump on the subject plots for the past 21 years and that several workers depend on it for their livelihood. The learned Judge therefore held that interim stay to order of possession was necessary. However, considering that the arbitral award is in the nature of a money decree, the Court imposed a condition of full deposit.

13. In view of above, it cannot be said that the impugned order is without basis, as contended by the Petitioner. Nor can it be accepted that the subject plots, measuring more than 900 square meters (according to award) or about 998.5 square meters (according to Respondent Nos. 1 & 2) and situated on road-front in a commercial area, are incapable of generating any income at all. Its occupation of Petitioner requires suitable compensation. Therefore, the monetary award cannot be termed so perverse, as to warrant an unconditional stay. No exceptional case is made out for grant of unconditional stay.

14. In these circumstances and for the reasons indicated above, I do not find it fit to interfere in the conditional stay granted under clause 1 & 2 of the impugned order.

15. However, as regards Clause 3 of the impugned order permitting Respondent Nos. 1 and 2 to unconditionally withdraw the entire amount is concerned, the impugned order does not disclose any reasoning and therefore perverse to that extent. Clause 3 is therefore unsustainable and warrants interference. Accordingly, the Writ Petition is disposed of by passing following order :

(a) Clause-3 of the impugned order dated 31.01.2026 is quashed and set aside. Respondent Nos. 1 and 2 are at liberty to file an application before the Court (hearing Section 34 application) seeking permission to withdraw the deposited amount, if deposited. If such an application is filed, it shall be decided on its own merits in accordance with law. Rival contentions of all parties, in that regard, are kept open.

(b) Clauses 1 and 2 of the impugned order are confirmed. As per the affidavit of Respondent Nos. 1 and 2 on record, the amount directed to be deposited under the impugned order is modified to Rs. 87,14,438/-.

(c) It is clarified that the observations made in this order are limited to the disposal of the present petition and shall not prejudice any party in the proceedings under Section 34, on merits.

(d) No costs.

16. At this stage, learned counsel for the parties jointly request that if the conditional stay is confirmed, a time limit be fixed for deposit of the amount. Considering the facts and circumstances of the case, the Petitioner is granted eight weeks' time from today, to deposit the amount under clause 1 & 2 of the impugned order.

17. Writ Petition is disposed of in the above terms.

18. All concerned to act on duly authenticated or digitally signed copy of this order.

[M. M. SATHAYE, J.]

TALLE SHUBHAM ASHOKRAO

Digitally signed by TALLE SHUBHAM ASHOKRAO Date: 2026.03.30 14:13:40 +0530