



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONT. PETITION NO. 166 OF 2023**

Gulam Abbas Hasanali Rassiwala

and Anr. ... Petitioners

Vs.

Haseeb Mohammed Yusuf Mulla

and Ors. ... Respondents

**WITH
INTERIM APPLICATION NO. 3489 OF 2025**

Mr. V. Y. Sanglikar a/w. Ms. Archana Gaware for the petitioners.

Mr. Atul Damle, Senior Advocate a/w. Mr. Sagheer Khan, Mr. Aqil Khan, Mr. Afsha Khan i/b. Judicare Law Associates for respondent nos. 3 to 5.

Mr. Hamid Mulla, AGP for the State/respondent no.6.

CORAM : GAURI GODSE, J.

DATE : 22nd JANUARY 2026

ORDER :

1. This petition is filed alleging breach of the undertakings given to this court as recorded in the consent terms dated 7th February 2020. The petitioners allege that the respondents are in breach of their obligation to pay Rs. 57.50 Lakh, which was due and payable under the consent terms. The petitioners, therefore, allege a breach of clauses f, h, and 8

of the consent terms.

2. It is further alleged by the petitioners that, although the entire amount as per the consent terms was not paid, the respondents created third-party rights without notifying the third parties of the petitioners' charge over the property, on the ground that the payment as per the consent terms was unpaid.

3. During the pendency of the petition, some amounts have been paid to the petitioners. By order dated 11th September 2024, the respondents' statement was recorded on behalf of the respondent no. 4, stating that an amount of Rs. 47.50 Lakh would be deposited within 30 days from 11th September 2024. This court, therefore, recorded that, if the amount is not deposited, this court may pass strictures and further orders/embargo on the respondents, as the respondents have carried on with the progress of development of the subject properties. Thereafter, on 14th October 2024, on a praecipe moved by respondent nos. 3, 4 and 5, this court permitted the said respondents to deposit the amount till 15th October 2024. The petitioners were granted liberty to withdraw the said amount.

4. There is no dispute that, as per the order dated 14th October 2024, an amount of Rs. 47.50 Lakhs was deposited and the same has been withdrawn by the petitioners. Thus, prima facie, it appears that the last payment was made on 15th October 2024.

5. It is contented that the time for payment as per the post-dated cheques recorded in the consent terms was mutually extended. Accordingly, fresh post-dated cheques were given. However, those cheques were dishonoured. The relevant averments with regard to the same are made by the petitioners in paragraphs 11 to 14 of the contempt petition.

6. It is further alleged that, for non-payment of the agreed amount, the respondents had undertaken to pay additional compensation at the rate of Rs. 2.5 Lakh per month for any part of the month until the full and final payment is cleared. Clause 7(f) of the consent terms provides that any delay in payment shall constitute non-compliance with the consent terms. Clause 7(h) of the consent terms further records that the till payment of Rs.18.5 Crores and additional compensation, if any, for the delayed payment, is made by the respondents, the petitioners' right for the unpaid amount

shall remain intact and they would have the right to enforce their charge on the said property for the unpaid amount of Rs. 18.5 Crores. Clause 7(i) of the consent terms provides for creating a charge on the property for the unpaid amount out of Rs. 18.5 Crores.

7. It is the petitioners contention that in view of clause (i) read with clause (h) of paragraph 7 of the consent terms, the respondents had undertaken to create charge over the property till the entire payment including the additional compensation was paid and if any third party rights are created, the respondents shall inform to the third parties about the petitioners' charge over the property. Hence, according to the petitioners, there is a breach of the undertaking given to this court as recorded in the consent terms in clauses (f), (h) and (i) of paragraph 7 of the consent terms.

8. Paragraph 11 of the consent terms records that the respondents undertake to this court to honour the undertakings given by them in the consent terms, and they further agreed that non-compliance with the consent terms and undertakings will make each of them and the directors of

respondent no.3 liable for contempt of court. It is, therefore, the petitioners' contention that dishonour of the cheques would also amount to committing a breach of the undertakings given to this court.

9. There is no dispute that the amount was not paid within the time as recorded in the consent terms. As per orders passed by this court, the amount of Rs. 47.5 lakh is paid on 15th October 2024. However, the respondents dispute that they were under any obligation to create a charge on the property for the non-payment of any additional compensation. According to the respondents, they had only undertaken to create the charge over the property for the unpaid amount out of Rs. 18.5 Crores. The respondents have tendered an additional affidavit dated 22nd January 2026 on behalf of respondents nos. 3, 4 and 5, and it is taken on record. As per the affidavit, an amount of Rs. 18.5 crores has been paid in full to the petitioners on 1st December 2023. The respondents have annexed the particulars of third-party rights created before 1st December 2023. The list is annexed as annexure-4 to the additional affidavit. In the additional affidavit, the respondents have stated that to show their bona

fides, they would deposit an amount of Rs. 55 lakhs in the registry of this court within eight weeks, subject to the rights of the petitioners being crystallised before the appropriate forum. In the alternative, respondents have stated that they are willing to hand over two flats worth approximately Rs. 50 to 60 lakhs each in wing-C of the project, i.e. Jewel of Panvel, which is due for completion on 30th June 2027.

10. I have perused the consent terms. Paragraphs 3 and 4 of the consent terms record the particulars of the petitions filed by the petitioners. The petitioners had also filed Contempt Petition No. 307 of 2018, which was pending. In view of the subsequent orders passed by the Wakf Tribunal. The petitioners had filed separate petitions in this court.

11. The petitioners' main grievance was the refusal to extend the lease in their favour for the property in dispute. In view of the pending litigations between the parties, they agreed to amicably settle the dispute and accordingly filed the consent terms. As recorded in paragraph 7(a) of the consent terms, the respondents agreed to pay compensation of Rs. 18.5 Crores to the petitioners in lieu of surrendering their rights, title and interest in the property. In addition to the

sum of Rs. 18.5 Crores, the respondents had also agreed to pay Rs. 1 Crore towards the closing of the partnership firm's business of the petitioners. Thus, as recorded in the consent terms, the agreed amount of Rs. 18.5 Crores was in lieu of surrender of the petitioners' right, title and interest in the disputed property. Time was provided for making payments of the agreed amount. Accordingly, the particulars of the post-dated cheques were recorded in the consent terms.

12. There is no dispute that the time for making payment under the post-dated cheques was mutually extended, and the respondents had issued fresh post-dated cheques. There is also no dispute that the post-dated cheques were dishonoured. In view of the dispute between the parties and the purpose of making payment in lieu of surrendering the right, title, and interest, the further clauses in the consent terms become significant. Hence, the assurance and undertaking of the respondents recorded in clause 7(f) indicate that they agreed to pay an additional amount of Rs. 2.5 Lakhs till the full and final payment is cleared, which was in lieu of the petitioners' surrendering their right title and interest in the disputed property. Thus, if clause (i) of

paragraph 7 is read with clauses (f) and (h) of paragraph 7, prima facie it is clear that the respondents had undertaken to keep a charge on the property till the entire amount of Rs. 18.5 Crores is paid, which would include the payment towards additional compensation for the delay in completing the payment of Rs. 18.5 Crores. Clause (i) of paragraph 7 clearly records that the respondents shall inform the third party in writing about the petitioners' charge over the property for the unpaid amount of Rs. 18.5 Crores. Thus, prima facie clause (i) of paragraph 7 would also apply with regard to the additional payment as per clause (f) of paragraph 7.

13. There is a dispute between the parties regarding the amount of additional compensation and the date from which it is payable. There is a letter dated 24th May 2021 issued by the respondents requesting an extension of time from the petitioners. Pursuant to the request, the petitioners agreed to an extension, and accordingly, fresh post-dated cheques were given. There is no dispute that the post-dated cheques given after the agreed extension were also dishonoured.

14. By order dated 18th February 2020, the consent terms were taken on record, and the undertakings given by the

parties were accepted as undertakings given to this court. Though the petitioners agreed to the request of respondents for extension of time to make payment, admittedly, the respondents never applied before this court seeking extension of time for compliance with the undertakings given to this court as recorded in the order dated 18th February 2020.

15. The calculations prepared by both parties are included in the additional affidavit tendered today. Prima facie, from the calculations submitted on record, it is clear that there is a delay in making payments under the consent terms. Subsequently, as permitted by this court, the respondents deposited Rs. 47.50 lakhs, which was subsequently withdrawn by the petitioners. However, upon reading the consent terms and the calculations submitted on behalf of the petitioners, there is no dispute that a delay in payment has occurred. Prima facie, the calculations submitted on behalf of the petitioners are in accordance with the terms and conditions recorded in the consent terms. The respondents have never applied to this court for an extension of time to comply with the undertakings given to this court. Admittedly,

the respondents have created third-party interests without notifying them about the charge on the property. Hence, prima facie, I am of convinced that the respondents committed a breach of the undertakings given to this court as recorded in the order dated 18th February 2020.

16. Office, shall therefore issue notice to respondent nos. 4 and 5, as contemplated under Rule 9 of the Contempt of Courts (Bombay High Court) Rules, 1994. The notice is made returnable on 26th February 2026.

17. Office is directed to prepare the notice and hand it over to the learned advocate appearing for the respondent nos. 4 and 5. The notice shall be collected by the learned advocate for the respondent nos. 4 and 5 within two weeks from today and supply it to respondent nos. 4 and 5 to enable them to file their response before the returnable date.

[GAURI GODSE, J.]