AGK

ATUL GANESH KULKARNI
Digitally signed by ATUL GANESH KULKARNI
Date: 2026.11.21 12:31:42 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

CONTEMPT PETITION (L) NO.30395 OF 2026
IN
COMM ARBITRATION PETITION NO.203 OF 2025
WITH
INTERIM APPLICATION (L) NO.35499 OF 2026

Tilak Nagar Sri Gurudutta Cooperative Housing Society Limited … **Petitioner**

Vs.

1. **Mishal Construction Pvt. Ltd.**
2. **Ajit Jain**
3. **Naveenkumar Jain** … **Respondents**

Mr. Kalpesh Joshi with Mr. Rushikesh Kekane and Mr. Amar Parab i/by Kalpesh Joshi Associates for the Petitioner.

Mr. Rohan Sawant with Mr. Chirag Sarawagi and Mr. Shubham Shah i/by Mr. Tushar Goradia for the Respondent.

Mr. Suresh Sabrad with Ms. Jessy Payne and Ms. Neha Parte i/by Payne & Associate for the Applicant in IAL/ 35499/2026.

CORAM : AMIT BORKAR, J.

RESERVED ON : NOVEMBER 18, 2026.

PRONOUNCED ON : NOVEMBER 21, 2026

JUDGMENT:

Background of the dispute:

1. The Petitioner is a Co-operative Housing Society. The Society had appointed Respondent No.1, Mishal Construction Pvt. Ltd., as

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

the Developer for redevelopment of its building. Respondent Nos.2 and 3 are the Directors of Respondent No.1. The parties had entered into a Development Agreement on 20 July 2010. Thereafter, they entered into a Supplementary Agreement on 10 November 2014. Under these agreements, Respondent No.1 was required to complete the redevelopment work and give permanent alternate accommodation to the existing members of the Society. However, the redevelopment work was not completed for a long time. There were disputes between the parties regarding payment of transit rent to the members. According to the Petitioner, Respondent No.1 stopped paying transit rent from October 2018. It failed to complete the redevelopment work within the agreed time. Therefore, the Petitioner issued a notice dated 12 September 2023, terminating the Development Agreement and the Power of Attorney. After that, the Petitioner filed a Petition before this Court under Section 9 of the Arbitration and Conciliation Act, 1996. While that Petition was pending before this Court, the parties held discussions and settled their disputes. For this purpose, they signed Consent Terms on 10 October 2024. These Consent Terms were placed before this Court on 17 October 2024.

2. By order dated 17 October 2024, this Court recorded that the parties had signed the Consent Terms voluntarily and without any pressure. The Court accepted the Consent Terms and disposed of the Commercial Arbitration Petition in terms of the settlement between the parties. The present contempt proceedings have been filed because, according to the Petitioner, the Respondents have failed to follow the Consent Terms. It is necessary to refer to some

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

of the clauses of those Consent Terms. Clause 4 of the Consent Terms reads as under:

> "These Consent Terms have been arrived at between the parties for the purpose of completing the redevelopment project of the Petitioner society in a time bound manner in the manner recorded in the Development Agreement (i.e. with full OC) and record the respective obligations of the parties as the undertakings given to the Hon'ble Court"

3. It can be seen from this clause that the parties have stated that their respective obligations under the Consent Terms are undertakings given to this Court.

4. Clause 7 provides that Respondent No.1 would complete the remaining construction work and obtain Full Occupancy Certificate within six months from the date on which MHADA revoked the stop-work notice. Respondent No.1 had agreed to give this undertaking to the Court. It was agreed that actual construction work would start within seven days from the filing of the Consent Terms, subject to the Petitioner Society and Respondent No.2 carrying out their respective obligations. The parties were required to approach MHADA and MahaRERA within seven days for obtaining the necessary permissions. They were required to make efforts to obtain these permissions within thirty days. Clause 8 provides that the Society and Respondent No.2 would open a new Project Bank Account. Both were required to operate this account jointly. Respondent No.2 was required to deposit Rs.2.20 Crores in this account. The remaining amount of Rs.91.53 Lakhs, which was receivable from the flat purchasers, was required to be deposited. After these amounts were used for completing the remaining work,

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

Respondent No.1 was required to bring money, if required, from its own sources and from the amounts receivable from other flat purchasers. Clause 11 provides that the money deposited in the Project Bank Account would be used for construction work and other expenses of the project. Before any payment was made, the bills raised by the contractors were required to be checked and certified by Respondent No.1.

5. Clause 13 provides that Respondent No.1 would give two cheques to the Petitioner Society. The first cheque was for Rs.51 Lakhs. It was agreed that this cheque could be deposited only after MHADA granted permission to start construction and MahaRERA removed the project from abeyance and granted the necessary extension. The second cheque was for Rs.77 Lakhs towards the outstanding transit rent. It was agreed that this cheque could be deposited at or before handing over possession of the rehabilitation flats or within 180 days from the filing of the Consent Terms, whichever was earlier. This clause provides:

> "And in the event even one of the cheque is dishonoured the same will be treated as breach these Consent Terms."

6. Clause 26 provides that disputes and differences relating to the Development Agreement, Supplementary Agreement and other claims in law would be referred to arbitration after six months from the date of signing the Consent Terms. Clause 38 provides that if Respondent No.1 commits breach of any condition of the Consent Terms, the Petitioner Society would be entitled to bring back the earlier termination of the Development Agreement, Supplementary Agreement and Power of Attorney into effect. For

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

this purpose, the Society would have to issue a seven-day termination confirmation letter. The clause states:

> "This clause shall be treated as undertaking of Respondent No. 1 and its directors to the Hon'ble Court."

7. Clause 39 provides that after termination of the Development Agreement and Supplementary Agreement, the Petitioner Society and Respondent No.2 would be entitled to complete the remaining work themselves. It gives the Society the right to deal with three unregistered flats if the cheques of Rs.51 Lakhs and Rs.77 Lakhs are dishonoured. Clause 46 provides that none of the parties would create any obstruction or difficulty in completing the remaining work. All parties were required to cooperate with each other. It provides that if any default takes place, the Petitioner Society and Respondent No.2 would be entitled to start execution proceedings and contempt proceedings against Respondent No.1 and its Directors. This right is subject to the Petitioner Society and the members of Respondent No.2 first fulfilling their obligations under the Consent Terms. Clauses 56 and 57 provide that if there is any default, the Petitioner Society and Respondent No.2 would be entitled to complete the remaining work. If any difficulty or dispute comes up while carrying out that work, they can approach this Court and ask for directions.

<u>Submissions of the Petitioner:</u>

8. Mr. Kalpesh Joshi, learned Advocate appearing for the Petitioner submits that the Consent Terms cannot be treated as only a arrangement between the parties. According to the

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

Petitioner, these terms were placed before this Court and the original Petition filed under Section 9 of the Arbitration and Conciliation Act was disposed of in terms of those Consent Terms. It is submitted that Clause 4 says that the obligations of the parties are undertakings given to this Court. Clause 7 contains a undertaking by Respondent No.1 to complete the remaining construction work. Similarly, Clause 38 states that the undertaking under that clause is given by Respondent No.1 and its Directors to this Court. The Petitioner relies upon Clause 46 of the Consent Terms. According to the Petitioner, this clause gives it the right to start contempt proceedings against Respondent No.1 and its Directors if any default is committed. Therefore, the Respondents cannot now say that the Consent Terms are only a arrangement and that the Petitioner can take action only through arbitration. It is submitted that Respondent No.1 had voluntarily given the two cheques. It had agreed that dishonour of even one cheque would amount to breach of the Consent Terms. Both cheques have been returned unpaid because of insufficient funds. According to the Petitioner, this shows that Respondent No.1 has deliberately failed to honour the undertaking given to this Court. The Petitioner submits that the Respondents cannot escape their obligations by raising disputes about accounts and expenditure. According to the Petitioner, the Society and the association of flat purchasers have provided substantial amounts for completing the remaining work. However, the Respondents have not provided money and have failed to complete the project as agreed.

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

Submissions of the Respondents:

9. Mr. Rohan Sawant learned Advocate appearing for the Respondents opposes the contempt petition. It is submitted that all the Consent Terms must be read together. According to the Respondents, one clause cannot be read separately without considering the other conditions agreed between the parties. The Consent Terms provide what action can be taken if Respondent No.1 commits any default. Clauses 13, 38, 39 and 56 set out the remedies available to the Petitioner Society in such a situation. It is submitted that under Clause 26, the parties had agreed that disputes regarding transit rent and other outstanding amounts would be referred to arbitration. Therefore, according to the Respondents, the Petitioner cannot use contempt proceedings instead of arbitration or use them to recover amounts which are disputed between the parties. The Respondents submit that the cheque of Rs.51 Lakhs could be deposited only after MHADA granted permission to start construction and MahaRERA removed the project from abeyance. According to them, these conditions were not fulfilled. The Respondents rely upon the Petitioner's own letter dated 11 September 2025 and reminder dated 20 October 2025. According to them, these letters show that the project was still under abeyance and the necessary permissions had not been obtained. Therefore, the Petitioner was not entitled to deposit the cheque of Rs.51 Lakhs. Regarding the cheque of Rs.77 Lakhs, the Respondents submit that this amount is towards outstanding transit rent. According to them, the Society's claim for this amount is disputed and must be decided in arbitration. They point out that

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

the cheque was deposited in December 2025, whereas Clause 13 provides for depositing the cheque within 180 days from the filing of the Consent Terms. The Respondents submit that the Society and the Flat Purchasers' Association were required to open and operate the Project Bank Account jointly. They were required to give details of the amounts spent from that account. Respondent No.1 was required to check and certify the construction bills before payment was made. According to the Respondents, the Society and the Association are operating the Project Bank Account. However, they have not given the bank statements, bills and other necessary details to Respondent No.1. In support of this submission, the Respondents rely upon their reply dated 7 November 2025. By that reply, they had asked the Society to provide details of the actual expenditure, amounts deposited by the flat purchasers, bank statements and bills relating to the remaining work.

10. The Respondents submit that the Society has taken over the project and has received substantial amounts from the flat purchasers. However, the accounts showing how these amounts have been spent have not been given to Respondent No.1. Therefore, according to the Respondents, Respondent No.1 cannot be held responsible for every delay or every amount spent on the project. The Respondents rely upon the proceedings relating to three unregistered flats, namely A-203, A-304 and B-1003. It is submitted that MahaRERA and other authorities have passed orders in proceedings filed by different flat purchasers. According to the Respondents, these proceedings have affected the rights of the parties and have created difficulties in dealing with these flats.

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

The Respondents submit that there is no deliberate failure to follow any specific undertaking given to this Court. In support of this submission, they rely upon *Bharat Shah v. Ramesh Shah & Ors., Contempt Petition (L) No.33780 of 2024*, *Starlift Services Pvt. Ltd. v. Alba Asia Pvt. Ltd., 2024 SCC OnLine Bom 1170*, and *Nirmal Urban Co-operative Bank Ltd. v. Mamta Kennedy Naidu, 2019 SCC OnLine Bom 5636*. According to the Respondents, when the Consent Terms provide what action can be taken in case of default, contempt proceedings should not be used to enforce contractual obligations which are disputed between the parties.

Questions for consideration:

11. At this stage, this Court is not required to finally decide whether the Respondents have committed contempt. The question now is whether the material placed before this Court is enough to show a prima facie case against the Respondents. In other words, whether there is sufficient material to call upon them to explain what they have done and why. After considering the submissions made by both sides, the following questions arise for consideration:

(i) Whether the Consent Terms dated 10 October 2024 contain undertakings given to this Court?

(ii) Whether the allegations and documents placed on record show a prima facie case of wilful breach of any continuing undertaking by the Respondents?

(iii) Whether the Respondents can avoid contempt proceedings only because the Consent Terms provide other remedies, including

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

termination of the agreements and arbitration?

(iv) Whether notice can be issued against the three Respondents under the Bombay High Court (Original Side) Rules?

Legal position regarding issue of contempt notice:

12. Section 2(b) of the Contempt of Courts Act, 1971 explains what is civil contempt. It includes a deliberate failure to follow any judgment, decree, direction, order, writ or other process of a Court. It includes a deliberate breach of an undertaking given to a Court. Therefore, the failure must be wilful and deliberate. Every failure to carry out an obligation under a contract cannot be treated as contempt. The Court must first see whether the obligation was given to the Court or was made part of an order passed by the Court. There must be some material to show that the failure was deliberate and was not due to some genuine difficulty or reason. The Supreme Court in *Rama Narang v. Ramesh Narang, (2006) 11 SCC 114*, has held that only because a consent order can be enforced through execution proceedings, it does not mean that the Court loses its power to take action for contempt. If the terms of a consent order contain directions of the Court or undertakings given to the Court, a wilful breach of those terms can be examined in contempt proceedings. At the same time, there must be a clear undertaking given to the Court. A promise made by one party to another party does not become an undertaking to the Court only because it is written in a consent document. This difference was explained by the Supreme Court in *Babu Ram Gupta v. Sudhir Bhasin,* (1980) 3 SCC 47, and was considered in Rama Narang.

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

13. The procedure for dealing with contempt proceedings is provided in Chapter LVIII of the Bombay High Court (Original Side) Rules, 1980. Rule 1035(1) provides that the contempt petition must be placed before the Court for preliminary hearing. If the Court finds that a prima facie case is made out, it may issue notice to the person against whom contempt is alleged. If the Court does not find such a case, it can dismiss the petition. Rule 1036 provides that the notice must be issued in Form I. Unless the Court gives some different direction, the person against whom contempt is alleged must remain personally present before the Court. A copy of the contempt petition, along with its annexures and affidavits, must be served upon that person. Rule 1037 permits the person against whom notice is issued to file an affidavit in reply within fourteen days from the date on which the notice is served. Thus, Rule 1035 deals with whether notice should be issued or not. Rule 1036 provides the form and manner in which the notice is to be issued and served.

14. There is a difference between the stage of issuing notice and the stage of finally deciding the contempt petition. When the Court considers whether notice should be issued, it is not required to decide the entire dispute or give a final finding that the person is guilty of contempt. At that stage, the Court has only to see whether there is sufficient material which requires an explanation from the person against whom contempt is alleged. This approach has been followed by this Court in *Anchor Point Developer Limited v. PMT Machines Limited, Contempt Petition (L) No.32546 of 2026, decided on 27 October 2026*. This Court has explained that notice

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

should not be issued mechanically in every case. At the same time, before issuing notice, the Court is not required to finally decide whether the persons against whom contempt is alleged are guilty. If the material placed before the Court requires an explanation, they can be called upon to give that explanation.

Whether the Consent Terms contain undertakings to this Court:

15. I find substance in the submission made on behalf of the Petitioner that the Consent Terms cannot be treated as only a arrangement between the parties. Clause 4 states that the obligations of the parties are recorded as undertakings given to this Court. This is an important condition in the Consent Terms. These terms were not merely exchanged or signed between the parties. They were placed before this Court and accepted on record. The original Petition under Section 9 of the Arbitration and Conciliation Act was disposed of in terms of these Consent Terms. Clause 7 makes the position clear. Under this clause, Respondent No.1 has agreed and given an undertaking to this Court that it would complete the remaining work and obtain the Full Occupancy Certificate within the period mentioned in that clause. Clause 38 states that the obligation relating to termination of the Development Agreement and revocation of the Power of Attorney would be treated as an undertaking given by Respondent No.1 and its Directors to this Court. Clause 46 records that the parties would not create any obstruction or difficulty in completing the remaining work and would cooperate with each other. More importantly, this clause keeps open the right of the Petitioner Society and Respondent No.2 to start execution proceedings and

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

contempt proceedings against Respondent No.1 and its Directors if there is any default. This right is subject to the other parties first carrying out their respective obligations under the Consent Terms. In view of these clauses, the submission of the Respondents that the entire Consent Terms are only a contract and that contempt proceedings can never be started for breach of these terms cannot be accepted.

16. In *Nirmal Urban Co-operative Bank Ltd.*, this Court considered a case where the Consent Terms contained an undertaking to repay the outstanding loan amount. However, the same Consent Terms provided that the bank could sell the mortgaged property if the amount was not paid within the agreed period. It was held that the entire arrangement had to be read together. On the facts of that case, the undertaking was mainly given to the bank and not to the Court, because the parties had decided what would happen if the amount was not paid.

17. Similarly, in *Starlift Services Pvt. Ltd.*, this Court considered an order which provided for an automatic consequence if the amount was not deposited within the fixed time. If the amount was not deposited, the Respondents lost their right to file a statement of defence or counter-claim in the arbitration proceedings. The Court considered this condition while deciding whether contempt proceedings should be started.

18. The present case is different in an important way. Clause 4 records that the obligations of the parties are undertakings given to this Court. Clause 38 describes the undertaking of Respondent

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

No.1 and its Directors as an undertaking given to this Court. Clause 46 keeps open the right to start contempt proceedings. Clauses 38 and 39 provide certain consequences if there is breach of the Consent Terms. However, only because these consequences are provided, it cannot be said that this Court has no power to examine a separate breach of an undertaking given to it. In fact, Clause 46 keeps open the right to start contempt proceedings. Therefore, only because the Petitioner has a right to terminate the Development Agreement, deal with the three unregistered flats or refer disputes to arbitration, it cannot be said that this Court is prevented from examining whether there has been a wilful breach of an undertaking given to it. At the same time, it must be kept in mind that every failure to follow the Development Agreement cannot be treated as contempt. The Court has to examine whether there is a clear breach of an undertaking given to it.

19. The Petitioner has placed considerable reliance upon the dishonour of the two cheques issued by Respondent No.1 under Clause 13 of the Consent Terms. According to the Petitioner, both cheques were returned unpaid on 5 December 2025 with the endorsement "Funds Insufficient". The Petitioner submits that this amounts to a clear breach of the undertaking given to this Court. The Respondents submit that the conditions for depositing the cheques were not fulfilled and, therefore, contempt cannot be alleged on this ground.

20. I have considered the submissions made by both sides and the relevant part of Clause 13. Under this clause, Respondent No.1 agreed to give two cheques to the Petitioner Society. The first

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

cheque was for Rs.51 Lakhs and the second cheque was for Rs.77 Lakhs. The first cheque was connected with obtaining permission from MHADA to start construction and removal of the project from abeyance by MahaRERA. The second cheque was towards outstanding transit rent. It was payable at or before handing over possession of the rehabilitation flats or within 180 days from filing of the Consent Terms, whichever was earlier. Clause 13 provides that:

> "And in the event even one of the cheque is dishonoured the same will be treated as breach these Consent Terms."

21. Thus, the parties have decided what would happen if even one cheque is dishonoured. The Petitioner is not asking this Court to introduce any new consequence which was not agreed between the parties. The consequence of dishonour is written in the Consent Terms.

22. It is not disputed that Respondent No.1 issued both cheques. It is not disputed, at least at this stage, that both cheques were returned unpaid with the endorsement "Funds Insufficient". The Respondents have not denied that the cheques were dishonoured. Their defence is that the cheques could not have been deposited because the conditions mentioned in Clause 13 were not fulfilled. So far as the cheque of Rs.51 Lakhs is concerned, the Respondents rely upon the Petitioner's letters dated 11 September 2025 and 20 October 2025. According to them, these letters show that the project had not been removed from abeyance by MahaRERA and that the necessary permissions had not been obtained. Therefore, they submit that the Petitioner was not entitled to deposit this

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

cheque.

23. I find that this submission raises a question which will have to be examined. The condition regarding permission from MHADA and removal of the project from abeyance by MahaRERA cannot be ignored. However, it is a fact that Respondent No.1 had issued this cheque as part of the settlement. It had agreed that dishonour of even one cheque would amount to breach of the Consent Terms. Whether the conditions for depositing the cheque were fulfilled, whether the Petitioner was entitled to deposit it and whether any failure by the other parties prevented Respondent No.1 from carrying out its obligation are matters which the Respondents can explain after notice is issued.

24. The position regarding the cheque of Rs.77 Lakhs needs to be considered. This cheque was issued towards outstanding transit rent payable to the members of the Petitioner Society. Clause 13 provides that the amount was payable at or before handing over possession of the rehabilitation flats or within 180 days from filing of the Consent Terms, whichever was earlier. The Consent Terms were filed on 17 October 2024. Therefore, if possession had not been handed over earlier, the period of 180 days came to an end in April 2025. The Respondents have not shown that the outstanding amount of Rs.77 Lakhs was paid within the period mentioned in Clause 13. Instead, the cheque issued towards this amount was returned unpaid because of insufficient funds. The fact that the cheque was presented in December 2025, after the period of 180 days had ended, does not answer the Petitioner's allegation that the amount had remained unpaid even after the agreed date. The

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

Respondents will have to explain why the amount was not paid within the agreed period and why the cheque issued towards that amount was not honoured.

25. The Respondents rely upon Clause 26. They submit that the outstanding transit rent is a disputed claim and must be decided in arbitration. I am unable to accept that this submission is enough to reject the allegation of contempt at this stage. The Petitioner is not relying only upon an independent claim for recovery of transit rent. It is relying upon the undertaking recorded in Clause 13 and the agreement that dishonour of even one cheque would amount to breach of the Consent Terms. The existence of an arbitration clause does not take away the power of this Court to examine an alleged breach of an undertaking given to it.

26. The Respondents submit that Clause 39 gives a remedy to the Petitioner Society if the cheques are dishonoured. This includes the right to deal with the three unregistered flats. According to the Respondents, once such a remedy is provided, the Petitioner cannot start contempt proceedings. This submission cannot be accepted at this preliminary stage. Clause 39 provides a consequence under the Consent Terms if the cheques are dishonoured. It does not say that the undertaking recorded in Clause 13 will come to an end or that this Court will have no power to examine its breach. On the contrary, Clause 46 keeps open the right to start contempt proceedings in case of default, subject to the parties fulfilling their respective obligations.

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

27. I am aware that every breach of a consent term does not amount to contempt. The Court must be satisfied that there is an undertaking given to it and that there appears to be a wilful breach of that undertaking. In the present case, Clause 4 records that the obligations of the parties are undertakings given to this Court. Clause 13 provides for the two cheques and says that dishonour of even one cheque would be treated as breach of the Consent Terms. The cheques were issued by Respondent No.1 and were returned unpaid because of insufficient funds. When all these facts are considered together, there is sufficient material to ask the Respondents to explain their conduct. At this stage, it would not be proper to finally decide whether the conditions for depositing the cheque of Rs.51 Lakhs were fulfilled or whether the Respondents have any valid explanation for not paying the amount of Rs.77 Lakhs. These matters can be considered after the Respondents file their affidavits. However, the condition regarding dishonour of even one cheque, together with the fact that both cheques were returned unpaid for insufficient funds, is enough to issue notice. I am satisfied that the Petitioner has made out a prima facie case of breach of the undertaking recorded in Clause 13 of the Consent Terms. The Respondents must be called upon to explain why this breach should not be treated as wilful disobedience of an undertaking given to this Court.

Whether there is a prima facie breach of the construction and cooperation obligations:

28. Another allegation of the Petitioner is that Respondent No.1 did not cooperate in obtaining the necessary permissions and did

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

not take proper steps to start and complete the remaining construction work.

29. Clause 7 requires the parties to approach MHADA and MahaRERA for obtaining the necessary permissions. It requires Respondent No.1, with the cooperation of the Society and Respondent No.2, to take steps for completing the project. Clause 15 requires all parties to cooperate with each other for obtaining the necessary permissions from MHADA, MCGM and MahaRERA. Clause 46 provides that the parties should not create any obstruction or difficulty and should cooperate with each other for completing the remaining work. These clauses relate to the actual progress of the redevelopment project. They do not deal only with payment of money. They require all parties to cooperate with each other so that the remaining construction work can be completed.

30. The Petitioner has placed on record its letter dated 11 September 2025. In that letter, the Society stated that about eleven months had passed after filing of the Consent Terms. However, MahaRERA had still not removed the project from abeyance. The Society stated that a major part of the remaining work had been completed by using the amounts provided by the New Buyers' Association. However, substantial work was still left to be done. The Society gave details of the work and expenses which were still pending. These included fire NOC, lifts, property tax, painting, paver blocks, entrance gates and other work. The Society requested Respondent No.1 to provide the money required for completing this work. Thereafter, the Society sent another letter dated 20 October 2025. By this letter, it again requested

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

Respondent No.1 to take steps for removing the project from abeyance and arrange the money required for completing the remaining work.

31. Respondent No.1 replied to the Society on 7 November 2025. In its reply, it stated that the Society had not given details of the construction work, actual expenses incurred, amounts deposited by the flat purchasers and statements of the Project Bank Account. Respondent No.1 asked for inspection of the bank statements, bills and receipts. According to Respondent No.1, without these details, it was not possible to know whether money was required and whether the amounts provided had been used.

32. This defence raised by the Respondents cannot be ignored. Clauses 8 and 11 of the Consent Terms require the Project Bank Account to be operated in the agreed manner. They require the construction bills to be checked and certified by Respondent No.1 before payment is made. The Respondents point out that the Society and the Association have received Rs.2.20 Crores, Rs.91.53 Lakhs and other amounts from the flat purchasers. According to them, the Society has not explained how these amounts have been spent. The Petitioner submits that these amounts have been used for carrying out the remaining work and that Respondent No.1 has failed to provide money. At this stage, it is difficult to decide which side is correct regarding the accounts. The actual expenditure, the amount still available in the account, the bills submitted for checking and the date on which Respondent No.1 was required to provide money are matters which need to be explained. However, there is another aspect which needs to be considered. Respondent

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

No.1 has raised objections regarding the accounts. But its reply dated 7 November 2025 does not show what steps it had actually taken with MHADA and MahaRERA during the earlier period for obtaining the necessary permissions. It does not fully answer the Petitioner's allegation that Respondent No.1 had not made proper efforts to take the redevelopment work forward.

33. The Respondents may have proper reasons for their conduct. They may show that the Society or Respondent No.2 failed to perform their obligations and that the delay took place for reasons which were not within their control. These matters will have to be considered after they file their affidavits. However, the letter dated 11 September 2025, the reminder dated 20 October 2025 and the reply dated 7 November 2025 show that there is a serious dispute between the parties regarding cooperation in obtaining permissions and completing the remaining work. At this stage, the question is only whether the Respondents should be asked to explain their conduct. In my view, the correspondence between the parties and the undertakings recorded in Clauses 7, 15 and 46 provide sufficient material to issue notice on this allegation.

Effect of termination and other remedies:

34. The Respondents submit that the Society has terminated the Development Agreement and revoked the Power of Attorney under Clause 38. According to them, after taking this step under the contract, the Society cannot again ask for contempt proceedings on the basis of the same default.

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

35. I am unable to accept this submission as an absolute rule. Clause 46 keeps open the right of the Society and Respondent No.2 to start execution and contempt proceedings in case of default. Therefore, only because the Society has issued a termination notice, it cannot be said that this Court has lost its power to examine whether contempt has been committed. At the same time, the termination notice dated 9 January 2026 has to be considered in the light of the Consent Terms. Under Clause 38, termination is required to be carried out in the manner stated in that clause. The Respondents submit that they have accepted the termination and have not challenged it. Whether the Society can now deal with the three unregistered flats, whether the termination affects the rights of the flat purchasers and whether the Respondents still have any rights in the project are matters which cannot be decided in these preliminary contempt proceedings.

36. The Respondents rely upon Clause 26. This clause provides that disputes relating to the Development Agreement, Supplementary Agreement and other claims in law would be referred to arbitration. I agree that disputed claims regarding transit rent, accounts, additional construction expenses and amounts payable by the respective parties will have to be decided through the proper contractual or arbitral proceedings. However, only because there is an arbitration clause, it does not mean that this Court cannot examine an alleged breach of an undertaking given to it. There is a difference between deciding a disputed claim for money and examining whether a party has deliberately failed to follow an express undertaking given to the Court. Therefore, the

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

contempt notice in the present case will cover the alleged failure to cooperate in obtaining the necessary permissions and completing the remaining work. It will cover the alleged breach relating to dishonour of the two cheques.

Limitation under Section 20 of the Contempt of Courts Act:

37. The question of limitation needs to be considered. Section 20 of the Contempt of Courts Act provides that no Court can start contempt proceedings after one year from the date on which the alleged contempt was committed. In *Pallav Sheth v. Custodian,* (2001) 7 SCC 549, the Supreme Court held that where a contempt petition is filed by a party, the date on which the application is filed is important for deciding whether the contempt proceedings have been started within time. The Supreme Court in *S. Tirupathi Rao v. M. Lingamaiah,* 2024 INSC 544, held that every continuing effect of an earlier breach cannot be treated as continuing contempt. There must be an obligation which continues and there must be a continuing failure to follow that obligation. An act which was completed earlier does not become a continuing wrong only because its effect continues.

38. In the present case, the parties were required to approach the authorities within seven days and make efforts to obtain permissions within thirty days after the Consent Terms were filed in October 2024. These steps were required to be taken within fixed periods. If the allegation is only that these steps were not taken within those particular periods, such failure cannot be treated as a fresh breach on every following day only because the

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

permissions continued to remain pending. Similarly, the period of six months for completing the remaining work under Clause 7 depends upon the date on which MHADA revoked the stop-work notice. The Petitioner has not shown that date from the material presently placed before this Court. Therefore, at this stage, notice is not being issued on the specific allegation that the six-month period for completing the work has expired. However, the Petitioner has alleged that the Respondents continued to fail to cooperate and take effective steps for the project during September 2025, October 2025 and thereafter. Clause 46 contains an obligation which continues. It requires the parties not to obstruct or create difficulties in completing the remaining work and to cooperate with each other.

39. The letters dated 11 September 2025 and 20 October 2025, the reply dated 7 November 2025 and the termination notice dated 9 January 2026 are relevant for examining this allegation of continuing non-cooperation. These events have taken place within one year before the filing of the present contempt petition in 2026. Therefore, the allegation regarding continuing failure to cooperate requires an explanation from the Respondents. However, the notice will not cover the separate failure to meet the original seven-day or thirty-day deadlines in October and November 2024. It will not cover the six-month completion period unless the date on which MHADA revoked the stop-work notice is established.

Whether notice can be issued against the Directors:

40. Respondent Nos.2 and 3 are the Directors of Respondent

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

No.1. They have signed the Consent Terms on behalf of Respondent No.1. Clause 38 records that the undertaking under that clause is given by Respondent No.1 and its Directors to this Court. Clause 46 refers to the right of the Petitioner to start contempt proceedings against Respondent No.1 and its Directors. Therefore, at this preliminary stage, there is sufficient material to call upon Respondent Nos.2 and 3 to explain what role they had in the alleged failure to follow the continuing obligations recorded in the Consent Terms. However, this does not mean that every Director of a company becomes guilty of contempt only because the company has committed some default. The responsibility of each Director will have to be considered separately under Section 12(4) and Section 12(5) of the Contempt of Courts Act and on the basis of the material placed before this Court. At this stage, I am not recording any final finding about the personal responsibility of Respondent Nos.2 and 3.

Conclusion:

41. After considering the entire material placed before this Court, I find that the Consent Terms dated 10 October 2024 contain clear undertakings given to this Court. By order dated 17 October 2024, the original Petition filed under Section 9 of the Arbitration and Conciliation Act was disposed of in terms of those Consent Terms.

42. The submission of the Respondents that contempt proceedings cannot be started because the parties have provided other contractual remedies cannot be accepted. Clause 46 keeps

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

open the right to start execution proceedings and contempt proceedings in case of default.

43. I am unable to accept the submission of the Respondents that dishonour of the two cheques is only a contractual dispute which must necessarily be referred to arbitration. Clause 13 provides that dishonour of even one cheque would be treated as breach of the Consent Terms. The parties had agreed to this condition while settling the pending proceedings before this Court. Both cheques issued by Respondent No.1 have been returned unpaid because of insufficient funds. This fact, when read with the clear words used in Clause 13, is sufficient to make out a prima facie case and call upon the Respondents to explain their conduct. The defence that the conditions for depositing the cheque of Rs.51 Lakhs were not fulfilled requires consideration. Similarly, the Respondents will have to explain why the amount of Rs.77 Lakhs was not paid within the period mentioned in Clause 13. However, these defences cannot be treated as finally proved at this preliminary stage. The Respondents will have to place the facts on which they rely before this Court. It would not be proper to reject the contempt petition without first asking them to explain why the cheques were dishonoured. The fact that Clause 39 gives a right to deal with the three unregistered flats and Clause 26 provides for arbitration does not take away the power of this Court to examine an alleged breach of an undertaking given to it. The parties have kept open the right to start contempt proceedings under Clause 46. Therefore, the contractual remedies and the power of this Court to examine contempt can operate in their respective areas. I am

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

satisfied that dishonour of the two cheques, particularly the failure to honour the cheque of Rs.77 Lakhs towards outstanding transit rent within the agreed period, together with the express condition in Clause 13, makes out a prima facie case for issuing contempt notice. The allegations regarding failure to cooperate in obtaining statutory permissions and taking forward the remaining construction work require an explanation. Clauses 7, 15 and 46 contain obligations regarding cooperation and completion of the redevelopment project. The letters exchanged between the parties during September to November 2025 show that there were serious differences regarding performance of these obligations. The Respondents have raised questions regarding the Project Bank Account, expenditure and the obligations of the Society and Respondent No.2. These matters will have to be examined after the affidavits are filed.

44. Considering the clear undertakings recorded in the Consent Terms, dishonour of the cheques and the allegations regarding continuing failure to cooperate in completing the project, I am satisfied that a prima facie case is made out for issuing notice under Rule 1035(1), read with Rule 1036 of the Bombay High Court (Original Side) Rules, 1980. The notice will cover the alleged breach of Clause 13 and the alleged continuing breach of Clauses 7, 15 and 46, read with Clause 4 of the Consent Terms.

45. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

(i) Show-cause notice under Rule 1035(1), read with Rule 1036 of the Bombay High Court (Original Side) Rules, 1980, shall be issued to Respondent Nos.1, 2 and 3. They shall show cause why proceedings for civil contempt under Section 12 read with Section 2(b) of the Contempt of Courts Act, 1971 should not be initiated against them for the alleged wilful breach of the undertakings recorded in Clauses 7, 13, 15 and 46, read with Clause 4 of the Consent Terms dated 10 October 2024;

(ii) The notice shall include the allegation regarding dishonour of Cheque No.000955 for Rs.51 Lakhs and Cheque No.000956 for Rs.77 Lakhs. Both cheques were returned unpaid because of insufficient funds. The Respondents shall explain how the cheques came to be dishonoured, whether the conditions for depositing the cheques were fulfilled and why the amount of Rs.77 Lakhs was not paid within the period mentioned in Clause 13;

(iii) The notice shall include the allegation that the Respondents failed to cooperate in obtaining the necessary permissions and in taking forward the remaining redevelopment work, as required under Clauses 7, 15 and 46 of the Consent Terms;

(iv) The Petitioner has already served the complete contempt petition, along with all annexures and affidavits, upon the Respondents in accordance with Rule 1036 of the Original Side Rules;

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48

(v) Respondent Nos.1 to 3 shall file their affidavits in reply within fourteen days from today, as provided under Rule 1037 of the Original Side Rules. A copy of the reply shall be served upon the learned Advocate for the Petitioner at least forty-eight hours before the next date of hearing. In the event the Respondents fail to file their reply within the time granted above, their right to file the reply shall stand forfeited;

(vi) Respondent Nos.2 and 3 shall remain personally present before this Court on the returnable date, unless their personal appearance is dispensed with by an order of this Court.

46. List the petition on **16 December 2026**.

(AMIT BORKAR, J.)

Uploaded on - 21/11/2026 Downloaded on - 21/11/2026 12:35:48