

IN THE XIV ASSISTANT CITY CIVIL COURT AT CHENNAI

Present : Thiru. S. Sivasubramanian, B.Com., B.L.,

XIV Assistant Judge

Wednesday, this the 12th day of February, 2025

I. A.No. 1 of 2025

in

OS. No. 3923/2023

CNR NO.TNCH01-021881-2023

Navi Finserv Pvt. Ltd.,
Rep. By its Manager Recoveries,
5th – A Block, No.555 Amarasri Building,
Anna Salai, Teynampet,
Chennai-600 018.

....Petitioner/Defendant

/Vs/

Saravana Muthukumaran A M ,
S/o. A E Murugesan,
21/14, Ramamurthy Street,
VTC Kodambakkam,
Chennai-600 024.

....Respondent/Plaintiff

This interlocutory application came up on 10.02.2025 for final hearing before me in the presence of M/s. Bhagavath Krishnan PMN, Anitha Suresh M.Akshayaa and Mrunalini Srinivasan, Counsels for Petitioner/Defendant and of M/s. P. Dilli Babu, Z. Rizwan Hussain and B. Gowtham, Counsels for Respondent/plaintiff, and heard the enquiry of petitioner side and in spite of sufficient time afforded, the Respondent/Plaintiff side did not come forward to put forth his side enquiry and upon having stood over for consideration till this day and this court the delivered the following:

ORDER

This interlocutory application has been filed by the Petitioner/defendant u/s 8 of Arbitration and Conciliation Act, 1996 to dismiss the matter and refer the matter for Arbitration and direct the Respondent/Plaintiff to get the matter settled by Arbitration in accordance with Clause No.8.3 of the User Loan Agreement dated 06 December 2022 and consequently dismiss the suit in O.S.No.3923 of 2023 filed by the respondent/plaintiff.

2. The Petitioner is the defendant and the Respondent is the Plaintiff in the suit. For sake of convenience, henceforth, in this order, the parties will be referred to according to their litigative status in the suit.

3. The crux of the Interlocutory Application averments would run thus:-

In the affidavit filed in support of the interlocutory application, it is stated that the plaintiff had availed personal loan a sum of Rs.35,000/- vide Loan Agreement No.010000295411. The said agreement contains arbitration clause in Clause No.8.3 by which all disputes, differences and claims have to be settled by reference to arbitration only. The parties to the above agreement had specifically agreed that all the disputes, difference and / or claims by and between the parties would only be resolved by way of arbitration, administered electronically by 360, an independent institution, in accordance with its Dispute Resolution Rules(“Rule”). Further, the plaintiff was informed the terms of the loan on his acceptance of the same, on 06.12.2022 the defendant disbursed an amount of Rs.35,000/- to the plaintiff’ account. At the time of accepting the terms of the loan, the plaintiff also agreed to be bound by the terms of the user loan agreement. The plaintiff executed the user loan agreement at the time of availing the loan in question and acting upon the said agreement, has admitted the existence of the said agreement with arbitration clause and the adjudication of the disputes through arbitration only. By suppressing the

material facts, the plaintiff has filed the present suit for seeking the relief against the defendant. Therefore the suit is not maintainable. Hence, this Interlocutory Application.

4. In spite of sufficient opportunities afforded to the plaintiff, he did not file his counter and hence, the plaintiff treated as no counter.

5. The Point for determination is whether this interlocutory application is liable to be allowed or not?

6. Heard defendant side enquiry and Ex.P1 and Ex.P2 marked on the side of the defendant. In spite of sufficient opportunities afforded, the plaintiff did not file his counter and hence the plaintiff treated as no counter and also not come forward to put forth their side enquiry. Hence, this court is decided to pass order on merits. No documents marked on the side of Plaintiff. Carefully perused the entire material records.

7. Answer to the Point:

The plaintiff has filed the suit against the defendant for permanent injunction restraining the defendant and their men from unlawfully interfering with the plaintiff's peaceful life, under the guise of recovery of money in respect of Personal Loan vide No.010000295411, without due process of law and for costs. A careful perusal of the plaint it shows that Plaintiff had admitted that he availed the personal loan of Rs.35,000/- from the defendant vide loan agreement No.010000295411 and further stated that he regularly repaying the loan amount and the defendant demanded unduly a sum of Rs.10,000/- for loan balance and other charges and the dispute arose with regard to the repayment of the said loan amount. At this juncture this court do not deal with repayment made by the plaintiff regarding the said loan amount. The plaintiff has not chosen to file counter to deny the averments made in

the affidavit and with respect to the Key Terms of the Agreement which has been marked as Ex.P1 and Ex-P2 the Loan Statement.

8. The Ex-P1 is the Key Terms of the Agreement contains Arbitration Clause 8.3. A careful perusal of Ex-P1 Key Terms of the Agreement Clause 8.3 would shows that *“Notwithstanding anything to the contrary contained herein, any dispute, controversy and/or claim arising out of and/or relating to this Agreement, including but not limited to its performance, construction, interpretation, meaning scope, operation, effect and/or validity thereof (“Dispute”), shall be resolved by arbitration, administered electronically by Presolv 360, an independent institution, in accordance with its Dispute Resolution Rules (“Rule”). The Parties agree that the arbitration shall be before a sole arbitration appointed under the Rules. The judicial seat of arbitration shall be Bengaluru, India. The language of arbitration shall be in English. The law governing the arbitration proceedings shall be Indian law. The language of arbitration proceedings shall be English. Each party shall bear its own expenses and costs in relation to the arbitral proceedings, unless otherwise stated in the award. The decision of the arbitrator shall be final and binding on the Parties. Subject to the above, the competent court at the seat shall have exclusive jurisdiction and this Agreement and any action relating thereto will be governed by the laws of Bengaluru, Karnataka. It is clarified that any disputes between the Parties in relation to or arising out of this Agreement shall not affect the Borrower’s obligation to repay any amounts due under this Agreement.”*

9. From the reading of the above Arbitration Clause 8.3 it is crystal clear that any dispute arise between the parties in pursuance of the Key Terms of the Agreement Ex-P1, to be resolved through Arbitration Proceedings.

10. It is useful to reproduce the Section 8 of the Arbitration and Conciliation Act, 1996 which runs as follows:

“8. Power to refer parties to arbitration where there is an arbitration agreement.—

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the supreme court or any court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists”.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

11. The above said provision suggests limitation of Judicial intervention in the arbitration process. It is clear that there is valid arbitration clause and parties to the dispute notifies judicial authority regarding the same, then nobody can stop the party from taking their matter to arbitration. The intention of the legislature is to encourage parties to resolve their dispute through arbitration.

12. Loan Agreement contains the Arbitration Clause 8.3. It is not the case of the plaintiff is that the Loan Agreement is illegal agreement. Further the defendant is not waived his right to invoke the provision Under Section 8 of the Arbitration and Conciliation Act, 1996 before submission of Statement regarding dispute. When the case is posted for written statement, the defendant filed the present interlocutory application to refer the dispute to the Arbitration. In this case there is a loan

agreement, which contains Arbitration Clause 8.3. The plaintiff filed the case against the defendant regarding the dispute arose between the parties in pursuant to the Key Terms of the Agreement Ex.P1. Further it appears that though the plaintiff filed the suit for permanent injunction against the defendant, the dispute arose between the parties in pursuant to the repayment of amount pertaining to the Loan agreement which is subject matter of the case and that of the arbitration agreement are one and the same.

13. At this juncture this court obliged to refer the decision of the Hon'ble Supreme Court of India in the case of **Sundaram Finance Limited and Another vs T.Thankam**, reported in **(2015) STPL 3924 SC**, it is held that,

“10. Once there is an agreement between the parties to refer the disputes or differences arising out of the agreement to arbitration, and in case either party, ignoring the terms of the agreement, approaches the civil court and the other party, in terms of the Section 8 of the Arbitration Act, moves the court for referring the parties to arbitration before the first statement on the substance of the dispute is filed, in view of the peremptory language of Section 8 of the Arbitration Act, it is obligatory for the court to refer the parties to arbitration in terms of the agreement, as held by this Court in P.Anand Gajapathi Raju and others v. P.V.G.Raju (Dead) and others [(2000) 4 SCC 539] ”.

14. It is crystal clear from the above decision of Hon'ble Supreme Court of India that if the parties having an arbitration agreement, then the duty is cast upon the court to refer their disputes to the Arbitrator. The stated supra decision squarely applicable to this case. As per the above decision, this court holds that the present suit is not maintainable before this court as the plaintiff himself agreed to settle his

dispute through the arbitration proceedings. Further the defendant has complied the conditions imposed in the Section 8 of the Arbitration and conciliation Act 1996, i.e they filed this petition before filing of their first statement. There is an arbitration clause in the loan agreement and the plaintiff had agreed and accepted the terms and conditions of the Ex.P1 Key Terms of the Agreement on 06.12.2022 by clicking the “Get Cash” at the bottom of this agreement Ex.P1 and the plaintiff will immediately be bound the terms of the agreement Ex.P1 and the plaintiff has not denied the Loan Agreement (Ex-P1) and also not denied the Loan Transaction. In the loan agreement it has been mentioned and also sanctioned loan amount of Rs.35,000/- which has been admitted by the plaintiff in his plaint. The defendant had proved its case that the matter should be referred to Arbitration as per the Arbitration clause. In view of decision of the Hon’ble Supreme Court of India in the case of ‘Perkins Eastman Architects DPC & Anr. Vs. HSCC (India) Ltd, reported in (2020) 20 SCC 760, no doubt arbitrator should be appointed in consonance with the provision of Section 12 of the Arbitration and Conciliation Act. After the amendment made in the Arbitration and Conciliation Act 1996 which came into effect from 23.10.2015, the arbitrator cannot be appointed unilaterally by the defendant without following the proviso clause to Section 12(5) of the Act. Hence, this court is inclined to allow the interlocutory application. Accordingly the point is answered.

In the result, the interlocutory application is allowed. No costs.

Dictated to the Steno-typist typed by her directly in the computer corrected and pronounced by me in the open court on this 12th day of February, 2025.

XIV Assistant Judge,
City Civil Court, Chennai.

Petitioner side Witnesses: Nil

Petitioner side Exhibits:

1. Ex.P1 06-12-2022 Copy of Key Terms of the Agreement
2. Ex.P2 10-12-2024 Loan Statement

Respondent side Witnesses and Exhibits: Nil

XIV Assistant Judge,
City Civil Court, Chennai.