IN THE CITY CIVIL COURT AT CHENNAI
Present: S. BASKARAN, M.A., B .L.,

XXII Assistant Judge

Thursday ,the 09th day of January 2025

I.A.NO.2/24

in

O.S.No.59 of 2024

(CNR.NO.TNCH01-052067-2023)

Navi Finserv,
The Manager Recoveries- APP
Based Loan Division,
5th Floor, LKS Towers,
2nd Avenue, AB Block,
Shanthi Colony, Anna Nagar
Chennai- 600 040

….Petitioner/Defendant

//Vs//

Mr. P. Manikandan,
S/o. Mr. Palaiyan,
No.2/298, Vayakattuthoppu,
Thambikottai, Vadakadu,
Thambikottai, Thanjavur,
Pattukottai- 614 704 … Respondent/ Plaintiff

This petition came on 03.01.25 before me for the final hearing in the presence of M/s. Sasank Iyer and Anuraag Rajagopalan Learned Counsels for the Petitioner/defendant , and M/s. J.J.R Edwin, C.Seemon and C. Obed John Learned Counsels for the Respondent/plaintiff and respondent remained exparte in this petition and upon perusing the materials available on the records and having stood over for consideration till this day and this Court delivered the following

ORDER

Petition filed by the Petitioner/defendant U/s.8 of the Arbitration and Conciliation Act, 1996 to refer the parties to the dispute mentioned in the above said O.S.No.59 of 2024 to arbitration, as per Section 8 of the Arbitration and Conciliation Act, 1996 and in accordance with clause No.8.3 of loan agreement.

The Petition averments in short as follows:

1. The petitioner is authorised signatory of the company, The petitioner is filing the present petition under section 8 of the arbitration and conciliation Act 1996 seeking reference of the dispute between the parties to arbitration. This application is being filed without prejudice to the petitioner's stand on the merits of the subject matter of the dispute in this suit.

2. The petitioner was incorporated in year 2012 and is part of the Navi group of companies. The Navi group of companies was founded by the erstwhile owner of the E-commerce giant Flipkart, Sachin Bansal. The Navi group operates in the financial service space. The petitioner is in the business of disbursing personal loans. It obtained its NBFC license in the year 2016 and successfully became a public company in the year 2022. The petitioner disburses cash loans, home loans, etc, through its flagship application available in the Google play store, app store, etc. The petitioner strives to meet the borrowing needs of low-income and middle income families and aims to be pan India Finance Services Company. It goes without saying that the petitioner is a highly regarded law-abiding, enterprise that is well-known in the financial service space.

3. The respondent is a customer of the petitioner who availed himself of a personal loan to the tune of INR 2,00,000/- from the petitioner on 26.03.2022 from the Navi App. The terms of the loan including interest rate, term, tenure, repayment schedule, dispute resolution, etc. were as per the loan agreement dated 26.03.2022 executed between the parties. The loan agreement is produced. Pursuant of the loan, agreement, the respondent made some repayment. However, on 09.07.2023, he defaulted on paying his EMI as stipulated in the payment schedule in the loan agreement. Ever since, the respondent has completely reneged on his obligation to repay the loan. To recover monies due to it, the petitioner attempted several measures to contact the respondent. However, no response has been received from the respondent to date.

4. While the petitioner was acting in a bonafide manner, the petitioner was shocked to receive the summons in the present suit which is based on completely false and frivolous allegations. From a bare examination of the plaint, it is amply clear that the suit has been filed mischievously by the respondent to conceal his own default. The respondent has very cleverly attempted to camouflage his non-payment of dues by filing, the present suit. The suit has been instituted in complete contradiction to the loan agreement, and in particular clause 8.3 of the loan agreement which provides for any dispute to be resolved by arbitration administered electronically by presol360 an independent arbitration institution. It is pertinent to mention with evolving technologies, the nature and how agreements are executed between parties have also undergone a significant change. Accordingly, since the petitioner's business is handled through its Navi App and upon successful verification of persons, the parties execute is an online agreement in which the user signifies his or her acceptance by clicking a button or checking a box signaling acceptance of the terms of the contract. Thus, the Loan agreement executed between the parties is like a click-wrap agreement.

5. Due to the nature of the loan agreement, only an online generated copy of the same can be produced by the petitioner and the same may be treated as the duly certified copy of the agreement. It is prayed accordingly. The loan agreement is produced along with this application. The petitioner has also filed an affidavit under the provisions of the Evidence Act with respect to the loan agreement and incorporates the contents of the same herein. The petitioner also reserves it right to elaborate upon the nature of click-wrap agreement if need be or if called upon to do so by this court. In view of the express scheme of section 8 of the arbitration act, this Hon'ble Courts jurisdiction is barred in view of the arbitration agreement contained in the loan agreement executed between the parties.

6. In the event that the parties to this suit are not referred for arbitration, then grave harm and prejudice will be caused to the petitioner especially considering the fact that the parties have by express agreement, consented to the reference of any and all disputes arising between them to arbitration. However, no harm will be caused to the respondent/respondent if the parties . In the light of the above facts and circumstances, it is most respectfully prayed that this court may be pleased to refer the parties to arbitration in accordance with clause. 8.3. of the Loan agreement dated 26.03.2022 which is binding on the parties and thus render justice.

7. Inspite of sufficient chances given to the respondent/plaintiff, to file her counter they had not turned up before this court and file their counter. Hence they had been set exparte on 11.12.2024 in this petition.

8. The only point for consideration is whether the petition is to be allowed or not ?

Point:

9. Petition filed by the petitioner/defendant U/s.8 of the Arbitration and Conciliation Act 1996 to refer the parties to Arbitration and dismiss O.S.No.59 of 2024 with cost.

10. Inspite of sufficient chances given to the respondent/plaintiff for appearance and to file his counter from 5.12.2024, 7.12.2024 either the respondent or his counsel had not opted to file the counter and hence on 11.12.2024 due to absence of respondent side, the respondent was set exparte in this petition.

11.Petitioner side not appeared on 3.1.2025. This petition is reserved for orders with the liberty given to the petitioner to file their written argument on or before 08.01.2025. The petitioner not turned to file their argument. This court delivr this order on perusal of document filed by the petitioner. An online agreement dated 26.03.2022 was filed along with Section 65 B evidence Act affidavit. Today This court Marked the agreement as EX.C1. For to decide the petition. As per the loan agreement Ex.C1, if any dispute arise between the parties, as per clause 8.3 of the agreement the dispute shall be referred to Arbitration. Since there is an Arbitration Clause in the agreement, the jurisdiction of Civil Court is barred and hence the parties shall be directed to the Arbitration proceeding.

12. Perused the records. It is evident that the respondent/plaintiff had obtained loan from the petitioner/defendant. There arose a dispute between the petitioner and respondent with regard to repayment of loan amount. Hence the respondent/plaintiff had filed the suit for permanent injunction restraining the defendant, its agents, servants or any other person on behalf of the defendant in any manner from interfering with the peaceful life of the plaintiff, under the guise of collecting money without due process of law and for cost

13. The petition has been filed by the petitioner/defendant Under section 8 of Arbitration and Conciliation Act 1996 and thereby request this court to refer the matter to Arbitration since there is an Arbitration Clause No.8.3 in the loan agreement. Upon perusing the loan agreement which was marked as Ex.C1 there exist an Arbitration clause under Clause No.8.3 in which it is clearly mentioned that any dispute which was arised between the parties shall be referred to and settled by Arbitration and Conciliation Act 1996. So, as per the Arbitration clause the dispute

shall be resolved only through Arbitration by the parties to the loan agreement. To refute the case of the petitioner/defendant, the respondent/plaintiff had not opted to file his counter. So, the petitioner/defendant had proved his case that the matter should be referred for arbitration as per the arbitration clause. Hence, this court is inclined to allow the petition.

In the result the petition is hereby allowed. No cost.

Dictated to the Steno-typist, transcribed, typed by him, corrected and pronounced by me in open court on this 09th day of January 2025.

BASKARAN S Digitally signed by BASKARAN S

XXII Assistant Judge,
City Civil Court, Chennai

Petitioner side Witness :Nil

Petitioner side Exhibits:

S.No.	Particulars of Document
Ex.C1	Copy of Loan agreement

Respondent's side Witness and Exhibits: Nil

BASKARAN S Digitally signed by BASKARAN S

XXII Assistant Judge,
City Civil Court, Chennai

Fair/Draft Order in
I.A. No.2/2024
in
O.S.No.59 of 2024
Date: 09.01.2025
XXII Assistant Court