

In the Court of District Munsif, Mudukulathur

Present : Ms.J.C.Aparna, B.A, L.L.B.,

District Munsif,

Mudukulathur.

Monday the 2nd day of June 2025

I.A.No.50/2022

in

O.S.No.63/2021

M/s.Shriram Transport Finance
Company Ltd.,
Rep. by its Power of Attorney
Mr.R.Anantha Kumar

..... Petitioners/defendants 1 and 2

/VS/

Sornavalli

..... Respondent/Plaintiff

This petition came on 23.04.2025 before this court for a final hearing in the presence of Thiru.S.Chandrasekaran, Learned Counsel for the petitioners/defendants and Thiru.H.Muralidharan, Learned Counsel for the respondent/plaintiff and upon hearing both sides arguments and upon perusing the material records and having stood over till this day for consideration, this court delivered the following:

ORDER

This petition has been filed under Order 7 Rule 11 of Civil Procedure Code to reject the plaint.

2. The contention of the Petitioners/defendants in brief:-

The petitioner herein is the authorized signatory to the

petitioners/defendants company limited. The respondent/plaintiff has filed the suit for permanent injunction against this petitioners/Defendants. It is submitted that the petitioner is carrying business under the name and style of M/s.Shriram Transport Finance Company Limited. On 23.10.2017, the respondent/plaintiff had borrowed a sum of Rs.3,70,000/- from the petitioners as a Vehicle Loan for the Vehicle bearing registration No. TN65U7245. Thereafter, the respondent agreed to repay the amount borrowed in 60 equated monthly installments and had agreed to pay delayed charges @ 36% on delayed payments. However, he failed to discharge the debt. In the said Agreement the respondent has specifically agreed that all the dispute arising between the petitioners and the respondent relating to the rights and liabilities of the parties shall be decided by arbitration and any proceedings to be initiated in the court of law in pursuance of the arbitration to be instituted only in court at Madurai. The respondent/plaintiff has also admitted the existence of the said agreement in his plaint. Hence states that all disputes can be settled only through mediation and the civil court has no jurisdiction. Hence prays to allow the petition and reject the plaint.

3. Brief averments of the Respondent/plaintiff in brief:

3.1. The respondent/plaintiff submits that the petitioner had filed this petition as a representative of the 1, 2 defendants. But no documents supporting the claim have been filed. It is admitted that the respondent had executed an agreement in respect of the suit property that is for the purchase of the vehicle, in furtherance of which he received sum of Rs.4,00,000/- only, on 30.06.2015, but in this petition the petitioners/defendants have mentioned as this respondent had received Rs.3,70,000/- on 23.10.2017 as a loan from the petitioners/defendants, which is totally a false and fraud played by the petitioners/defendants. Further the respondent had regularly paid the EMI without any fail and the loan has been closed.

3.2. It is also stated that the petitioner in his affidavit has stated that the civil court has no jurisdiction to try the case as all disputes regarding the transaction has to be dealt through arbitration, which is false because there is no existing loan between the parties and the petitioners are putting forward a fraudulent claim and the civil court has jurisdiction to try the same. It is also stated that only through trial it can come to a conclusion that whether the civil court will have jurisdiction or not and also it is stated that the article 22 of the arbitration clause in the loan agreement will not apply to this cause of action as this is not a dispute between the parties but a fraudulent claim put forward by the petitioner claiming a non existing loan transaction. Hence prays to dismiss the petition.

4. Point for consideration:-

Whether the petition be allowed and the plaint be rejected?

No documents filed on either side. Heard both sides.

5. Answer to the Point:-

5.1. Heard the submissions made by the learned counsel for the petitioner and respondent. The learned counsel appearing for the petitioner contended that, the parties in this suit has to be referred to appear before the arbitrator to resolve the dispute between themselves as per the terms of arbitration clause but only an extract of the agreement that is the Article 22 is reproduced in the petition. But taking into view that the respondent/plaintiff also admits to the existence of the agreement and arbitration clause, the same is taken as in existence. It is also well settled law that when there is an existence of an arbitration clause in the loan agreement between the parties, the dispute ought to be referred to the arbitrator, thus the civil court has no jurisdiction to adjudicate the dispute. But on the perusal of Article 22 as allegedly in the Loan Agreement which is extracted as follows,

“ All disputes, differences and / or claims, arising out of these presents or as to the construction, meaning or effect here of or as to the rights and liabilities of the parties here under shall be settled by arbitration to be held in Madurai in accordance with the provisions of the arbitration and conciliation Act 1996, or any statutory amendments thereof or any statute enacted for replacement thereof and shall be referred to the sole arbitration of a person to be nominated/appointed by Shriram. In the event of death, refusal, neglect, inability or incapability of the persons so appointed to act as an arbitrator, shriram may appoint a new arbitrator. The award including the interim award/s of the arbitrator shall be final and binding on all parties concerned. The arbitrator may lay down from time to time the procedure to be followed by him in conducting arbitration proceedings and shall conduct arbitration proceedings in such manner as he considers appropriate. Any proceedings to be initiated in any court of law in pursuance of this arbitration shall be instituted and held in the court at Madurai only.”

5.2. It is well entrenched that the judicial authority is bound to refer the matter to arbitration once the existence of a valid arbitration clause is established as it ousts the jurisdiction of the civil court. By filing an application under Order 7 Rule 11, the presence of an arbitration clause has been brought to the notice of the court. Since the Court was brought into the notice of the existence of an arbitration agreement, it is necessary to decide whether this court has jurisdiction to try this case or not, or whether this arbitration agreement is valid as to oust the jurisdiction of this court. The court is well within its scope to prima facie review the arbitration clause to weed out manifestly and ex facie non-existent and invalid arbitration agreements and non- arbitrable disputes. The application referred to in sub-section (1) of section 8 of Arbitration and Conciliation Act shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof, in the present case either

of which is not presented before the court. It is also seen from the extracted portion of the Agreement in the petition i.e the Article 22, it can be seen that the petitioners alone reserves the right to choose a sole arbitrator and his decision is agreed is final and is binding upon both parties.

5.3. After considering the materials placed by the petitioner and submissions put forth by the learned counsel for the petitioner this court is of the opinion that the right to appoint a sole arbitrator only by the petitioner doesn't create a valid arbitration agreement between the parties assuming there is an arbitration clause. The same principle has been decided by the Hon'ble Supreme Court, wherein it was held that the person who has an interest in the outcome of the decision of the dispute must not have the power to appoint a Sole Arbitrator. Therefore, this court is of the opinion that there is no valid arbitration clause to oust the jurisdiction of this court.

As a result, this petition is dismissed. No order as to cost.

Directly typed by me in my official laptop and formatted by Steno Typist, corrected and pronounced by me in open court on this 2nd day of June 2025.

**District Munsif,
Mudukulathur.**

Both sides witnesses and documents : Nil

**District Munsif,
Mudukulathur.**

