



IN THE COURT OF DISTRICT MUNSIF, AUNDIPATTI.

PRESENT: Thiru. E. Suganthan, B.A., L.L.M.,

District Munsif, Aundipatti.

Wednesday, the 03rd day of September 2025

IA. No : 02/2022

in

OS. No : 113/2021

CNR. No.TNTH14-000163-2021

1. Branch Manager,

M/s. Shriram Transport Finance Co. Ltd.,

D.No:5.1.110A1, KS Tower,

Vijaya Bank Upstairs, Palanichettipatty,

Theni District.

2. M/s. Shriram Transport Finance Co. Ltd.,

Previously having its Registered office at

No.4, Mookambika Complex, Lady Desika Road,

Mylapore Chennai, Presently at Sri Towers, 14A, South Phase, Industrial Estate,

Guindy, Chennai.



(The above said Petitioners/Defendants were represented through the said Shriram Transport Finance Co., Ltd., authorized person and Power of Attorney Mr. A. P. Sargurunathan)

...Petitioners/Defendants

..Vs..

1. Muthusadaiyandi

2. Manjuladevi

...Respondents/Plaintiffs

This Order came up on 22.07.2025 before this court for final hearing in the presence of Mr. S. Muthuselvam, Advocate for the Petitioners/Defendants and Mr. O.Ayyar, Advocate for the Respondents/Plaintiffs . Upon hearing the arguments on both sides and having stood over till this day for my consideration, this court delivers the following...

ORDER

This petition has been filed to refer the parties in O.S.No.113 of 2021, to arbitration and to dismiss the suit.



1. CRUX OF THE PETITION WOULD RUN AS FOLLOWS:

(i) The petitioner herein is the defendant in the suit. The respondents/ plaintiffs have filed the suit for permanent injunction against the Petitioner/Defendant. It is submitted that the petitioner is public limited company and carrying on business of hire purchase, Lease and Loan cum Hypothecation in respect of LMV/MMV/Passenger /Heavy Goods Vehicles. The Respondent/Plaintiff approached the Defendant for financial assistance for the purchase of Vehicle Ashok Leyland – Al Comet Ct 1611 FBT, 2011 Model bearing Reg. No. TN 63AZ - 1022. The Defendant sanctioned and disbursed a sum of Rs.10,00,000/- to the Plaintiff under the Loan cum Hypothecation agreement dated 27.07.2018.

(ii) Thereafter, the 1st Respondent agreed to repay the amount borrowed in equated monthly instalment with interest agreed under the above agreement. However, he failed to discharge his debt as agreed by him. Further, on the request of the 1st Respondent, the Defendant also granted 6 months moratorium for the payment of the loan amount as per the notification issued by the Reserve Bank of India during Covid Pandemic.



(iii) Even after which, the Respondent/Plaintiff failed to discharge the debt amount. Further, as per Clause 22(a) of the agreement dated 27.07.2018, the 1st respondent has specifically agreed that all the dispute arising between the petitioner and the 1st respondent relating to the amount borrowed shall be decided by arbitration, by suppressing the same he has filed this suit. Hence, the parties have to be referred to arbitration as per the arbitration clause mentioned in the agreement and prayed to allow the petition.

2. Notice of hearing given to the counsel for the Plaintiff. Sufficient Opportunities granted for filing counter by the Respondents/Plaintiffs. They did not file their counter. Hence, they were set exparte on 13.08.2024.

3. POINT FOR DETERMINATION :

Whether any valid arbitration agreement exists between the parties in O.S.No.113 of 2021 and thus they ought to be referred to arbitration?



4. The learned counsel appearing for the petitioner contented 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 in the Loan Cum Hypothecation Agreement. To substantiate his contention he relied on the decision of our Hon'ble High Court in **IndusInd Bank Ltd., Bharathi Nagar v. K. Nachimuthu** reported in **AIR 2016 MADRAS 109** and states that, the language employed under section 8 of the arbitration act is peremptory, when there is an existence of 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.

5. Perusal of the Hypothecation agreement reveals that, the petitioner alone reserves the right to choose a sole arbitrator and his decision is agreed to be binding upon both parties. When explanation was sought from the learned counsel for the petitioner, as to the maintainability of this clause, he submitted that, as far as the present application is concerned which is filed under section 8 of the arbitration act, this court is going to decide only whether there is an arbitration clause or not. If there is an arbitration clause, the parties have to be



referred to arbitration. Appointment of an arbitrator is a separate issue which can be decided in the proceedings to initiate the arbitration or in an application filed for appointment of an arbitrator. The question of how an arbitrator to be appointed may be left open between the parties.

6. 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. However, the courts at the referral stage do not perform ministerial functions. They exercise and perform judicial functions when they decide objections in terms of Sections 8 of the Arbitration Act. Section 8 prescribes the courts to refer the parties to arbitration unless it finds that, prima facie there is no valid arbitration agreement exists between the parties. Hence this court cannot be tagged as a routine referral agency once the paper containing arbitration clause is placed before it. Thus the contentions put forth by the learned counsel for the petitioner as, this court is going to decide only whether there is an arbitration clause or not is untenable. This court is well within its scope to prima facie review the arbitration clause to weed out manifestly and exfacie non-existent and invalid arbitration agreements and non-arbitrable



disputes. The prima facie review at the reference stage is to cut the dead wood and trim off the side branches in straight forward cases where dismissal is barefaced and pellucid.

7. 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. The same principle has been decided by The Hon'ble Supreme Court in **Perkins Eastman Architects DPC & Anr. versus HSCC (India) Ltd.** Reported in (2020) AIR (SC) 59, wherein it was held that the person who has an interest in the out come of the decision of the dispute must not have the power to appoint a Sole Arbitrator. This decision of the supreme court is primarily an extension of the principle laid down in an earlier decision in the case of **TRF Limited vs. Energo Projects Ltd.** (2017) 8 SCC 377. Keeping the principle enumerated in the above said decisions of the Hon'ble Supreme Court, it is established that, the petitioner who is having an interest in the outcome of this dispute is not empowered to appoint a sole arbitrator as per the arbitration clause in Loan cum



Hypothetication Agreement. Therefore, this court is of the opinion that there is no valid arbitration clause exist to refer the parties to the arbitration.

`In the result, this petition is dismissed. No order as to cost.

Directly typed by me in my laptop, formatted by steno, corrected and pronounced by me in the open court, on this 03rd day of September 2025.

**District Munsif
Aundipatti.**

List of Petitioners/Defendants side witnesses and documents : Nil

List of Respondents/Plaintiffs side witnesses and documents : Nil

**District Munsif,
Aundipatti.**



**District Munsif Court,
Aundipatti.**

**IA. No : 02/2022
in**

**OS. No : 113/2021
Order**

Dated: 03.09.2025