

IN THE V ASSISTANT CITY CIVIL COURT, CHENNAI

Present : Tmt. R.Uma, B.A., M.L.,

V Assistant Judge

Wednesday, the 16th day of April, 2025

I.A.No.2 of 2025

in

O.S.No.1938 of 2024

CNR No.TNCH01-014420-2024

The Manager-Recoveries,
App Based Loan Division,
NAVI,
5th floor, LKS towers,
2nd Ave, AB Block,
Shanthi Colony,
Anna Nagar, Chennai – 600 040.

...Petitioner/defendant

// Versus //

S John Christopher

...Respondent/plaintiff

This petition came up before this court for final hearing on 15.04.2025 in the presence of M/s.Bhagavath Krishnan PMN, Anita Suresh, Akshayaa.M, Jyotsna Sivakumar Counsels for the petitioner/defendant and respondent being called absent and was set exparte and after hearing the petitioner side arguments and this application having stood over for consideration till this day and this court delivered the following:-

ORDER

This petition is filed by the petitioner/defendant under Section 8 of Arbitration and Conciliation Act, 1996 to dismiss the present suit and refer the matter for

arbitration and direct the respondent/plaintiff to get the matter settled by Arbitration in accordance with clause 8.3 of the User Loan agreement dated 19.01.2024.

01. The averments made in the petition in brief as follows:-

The respondent/plaintiff filed has instituted these proceedings in a brazen attempt to abuse the process of law. The respondent has suppressed material facts pertinent to the adjudication of this dispute. This dispute arises out of a loan transaction entered into between the applicant and the respondent. The respondent has suppressed material facts with a view to obtain a favourable decree from this court. The respondent has blatantly abused the mechanism of this court and has with malafide intent concealed the execution of the loan agreement. It is well settled position of law that when the parties to a contract have agreed to refer all the dispute to arbitration under an arbitration clause, it is not open to the parties to such arbitration clause to approach a civil court for relief. The appropriate course is to initiate arbitration proceedings. As per the loan agreement, this court has no jurisdiction to try this suit and may, therefore, be pleased to refer the parties to arbitration and dismiss the suit in terms thereof. Hence, this petition.

02. Point for consideration:

Whether this petition can be allowed or not?

03. Heard the petitioner side arguments and perused the records, Ex.P1 was marked. The present application has been filed seeking to refer the above suit to arbitration proceedings and to dismiss the suit. The respondent has failed to file his counter statement despite sufficient time granted by this court.

04. It seems that the respondent/plaintiff had availed a App based loan for a sum of Rs.2,00,000/-. However, the petitioner is claiming the amount and when the same was questioned, the petitioner/defendant through their collection agents threatened the respondent to repay the loan and thereafter, the petitioner's officials in the name of collection agent entered the respondent's peaceful life and trying to get the undue claim amount without due process of law. Hence, the respondent/plaintiff had filed this suit for permanent injunction restraining the defendant, its agents, servants or any other person in any manner from interfering with the peaceful life of the plaintiff's residing at Old No.56, New No.24, Labour Colony, 3rd Street, Guindy, Chennai – 600 032, under the guise of collecting money without due process of law and for costs.

05. But the petitioner/defendant has filed this application stating that the respondent/plaintiff has availed App based loan from the petitioner/defendant and executed the loan agreement. In the said agreement, the Arbitration clause 8.3 is available. Hence, the disputes raised by the respondent/plaintiff has to be referred to the arbitration is the contention of the petitioner herein. The petitioner/defendant has also produced the copy of loan agreement as Enumerated under Section 8 of the Arbitration and Conciliation Act.

06. In order to appreciate the contention of the petitioner/defendant, when this court perused the agreement filed by the petitioner/defendant, it is quiet evident that the respondent/plaintiff has entered the loan agreement with the petitioner/defendant

and availed the loan. Further, more on perusal of Loan agreement the **clause 8.3 of the agreement** reads as follows:

“Notwithstanding anything to the contrary contained herein, any dispute, controversy and/or claim arising out of an/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 and as chosen by the party initiating the arbitration when a dispute arises, by either one of the arbitration institutions.

- 1. Presolv360 (Presolv), an online dispute resolution platform or*
- 2. Centre for Online Resolution of Disputes (CORD), an online dispute resolution platform;”.*

07. On careful perusal of the loan agreement, in so many words it has been stated that, if any dispute is below the pecuniary jurisdiction limit of the Debts Recovery Tribunals established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 then such dispute shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

08. As per Section 5 & 8 of the Arbitration and Conciliation Act 1996, the judicial intervention of Court are restricted. In the event of Arbitration Agreement pursuant to a specific dispute discussed in the agreement shall be resolved by referring the pending suit to the arbitration, as per the terms of Arbitration Agreement. The relevant portion of the Section 8(1) Arbitration and Conciliation Act

1996 are runs as,

Section 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). (3)******

09. On careful reading of Section 5 & 8, it has been categorically stated that all the disputes arise under the loan agreement shall be decided by the Arbitrator only. In this case also, the loan agreement contains the arbitration clause and the respondent/plaintiff also admitted the fact that he has availed the App based loan and only disputing the further amount to be paid. This facts exhibits the fact that the respondent/plaintiff has raised a dispute with regard to the payment claimed by the petitioner/defendant by virtue of the loan agreement. In that event as the Arbitration clause is available, then by Virtue of Section 8 of the Arbitration and Conciliation Act then this court has no jurisdiction to adjudicate the dispute.

10. This court rely upon the decision reported in *CDJ 2015 SC 145 M/s.Sundaram Finance Limited and Another /versus/T.Thankam* were in The Honble Supreme court in para 15 has held that:

15. Once an application in due compliance of Section 8 of the Arbitration Act is filed, the approach of the Civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance of the procedure under the special statute. The general law should yield to the special law “generalialia specialibus non derogant”. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court.

On perusal of the above said Judgment of the Hon’ble Supreme court, it has been categorically held that once it is brought to the notice of the court that an arbitration clause is available then the civil court have no jurisdiction to entertain the suit.

11. Further, the learned counsel for the petitioner/defendant relied upon the decisions reported in *Agri Gold Exims Ltd Vs. Sri Lakshmi Knits & Wovens and others (2007) 3 Supreme Court Cases 686, P.Anand Gajapathi Raju and others Vs. P.V.G.Raju (Dead) and Others (2000) 4 Supreme court cases 539, Rashtriya Ispat Nigam Ltd and Anothers Vs. Verma Trasnport Co. (2006) 7 Supreme Court cases*

275.

12. In the above decisions also, it has been categorically held that once it is brought to the notice of the court that an arbitration clause is available then the civil court have no jurisdiction to entertain the suit. By applying the said principle in the given case as well, in the loan agreement entered between the petitioner and respondent as the Arbitration clause is available then as per the Section 8 of the Arbitration Act, this court have no jurisdiction to entertain the suit and the parties are Re delegated to approach the Arbitration to resolve their dispute.

13. In such circumstances, this court is inclined to hold that in view of the Arbitration clause, the suit is not maintainable. Hence, the petition filed by the petitioner is allowed in consequent, the suit is liable to be dismissed by directing the parties to refer the disputes to the arbitration proceedings in accordance with loan agreement.

In the result, this petition is allowed. The parties are directed to approach the Arbitrator to adjudicate the disputes. No costs.

Directly Dictated to Steno-typist directly and computerized by her, corrected and pronounced by me in the open court, this the 16th day of April, 2025.

**V Assistant Judge
City Civil Court, Chennai.**

1. Witness on behalf of Petitioner : NIL

2. Exhibits on behalf of Petitioner:

EX. P1 - Loan agreement (Copy)

3. Witness and Exhibits on behalf of Respondent : NIL

**V Assistant Judge
City Civil Court, Chennai.**

Draft/Fair Order

I.A.No.2 of 2025

in

O.S.No.1938 of 2024

Dated:16.04.2025

V Assistant Court