

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA
CMPMO No. 689 of 2025
Decided on 28.11. 2025**

Kotak Mahindra Bank Ltd. & Anr.

...Petitioners

Versus

Jaimal Singh

...Respondent

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

¹Whether approved for reporting? Yes.

For the petitioners : Mr. Jai Dev Thakur, Advocate.

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioners have assailed order dated 23.12.2022, passed by the learned Trial Court and judgment dated 30.08.2025, passed by the learned Appellate Court in Civil Misc. Appeal Registration No.24/2024, in terms whereof, the application filed by the petitioners herein, who are the defendants in the proceedings before the learned Trial Court, for reference of the matter to the learned Arbitrator, stood dismissed, and the appeal filed against the said order of the learned Trial Court also stood dismissed by the learned Appellate Court.

2. Having heard the learned counsel for the petitioners, this Court does not find any merit in this petition.

3. A perusal of the impugned orders as well as the documents appended with the petition demonstrates that the respondent–plaintiff has filed a suit against the present petitioners for recovery of Rs.2,00,000/- with interest on account of damages for mental pain, agony and harassment for non-issuance of a “No Objection Certificate” against the loan clearance of a vehicle. In terms of the averments made in the plaint, the plaintiff availed the loan facility of Rs.2,00,000/- in the year 2009. He returned the loan amount with interest. The last installment qua the same was paid on 28.03.2011. Thereafter, he took a fresh loan Rs.2,00,000/- in the year 2011 against the same vehicle and said loan was also repaid with interest on 25.10.2013. Therefore, as the plaintiff intended to sell the vehicle, i.e., vehicle bearing registration No.HR-38H-3065, he made several requests to the defendants for issuance of a “No Objection Certificate”, but nothing was done and the matter was prolonged on one pretext or another. The plaintiffs filed a consumer complaint which was withdrawn on 04.11.2024 for

want of jurisdiction and thereafter, the matter was presented before the Permanent Lok Adalat (Public Utility Services, Ludhiana). The petition was decided under Section 22-C(1) of the Legal Services Authorities Act, 1987 on 18.09.2017. The defendants were directed to issue the “No Objection Certificate” within 15 days. Though, the order attained finality, yet the same was not complied with.

4. In this backdrop, the suit for damages of Rs.2,00,000/- was filed, while reserving the right of the plaintiff to pursue other remedies qua non-issuance of a “No Objection Certificate”.

5. In the suit, the application filed under Section 8(5) of the Arbitration and Conciliation Act for referring the matter to the learned Arbitrator by the present petitioners was rejected by the learned Trial Court vide order dated 23.12.2022, by returning the following findings:-

“5. The main contention of the applicant is that the plaintiff loan agreement with the entered into applicants/defendants and any issue arising out of the said agreement must be referred to the arbitrator as per the arbitration clause in the loan agreement and this court

does not have jurisdiction that the plaintiff has filed then present suit for recovery of rupees 2 lakhs for the damages for mental pain, Agoney and harassment for non-issuance of no objection certificate ate against the loan clearances of vehicle bearing no. HR-3B-H-3065 and the expenditure bore by the plaintiff to contest the claim any different court of law. From the perusal of the plaint it can be clearly seen that the present suit does not retain to any dispute arising out of the loan agreement rather it is further recovery on account of damages caused to the plaintiff. Since the present suit does not retain to any dispute arising out of loan agreement the section 5 of the arbitration and conciliation act is not attracted in the present case and thus, keeping in view the facts and circumstances of the present case and discussion made above the present application under section 8 read with 5 of the Arbitration and Conciliation Act, 1996 is hereby dismissed. Application s stand disposed of. It be tagged with main case file after due completion and registration.”

6. The appeal filed against the said order met the same fate, and the learned Appellate Court dismissed the appeal vide order dated 30.08.2025 (Annexure P-6) by affirming the order passed by the learned Trial Court.

7. This Court is of the considered view that in the peculiar facts of the case, the order under challenge calls for no interference. The suit filed for damages obviously has nothing to do with the contract initially entered into between the petitioners and the respondent–plaintiff, because the same

stood exhausted once the loan amount was repaid by the plaintiff. Herein, the damages have been claimed by the plaintiff in the civil suit on the grounds already elaborated by me in the above paragraph of this judgment.

8. The petitioners are relying upon the arbitration clause in the agreement which was entered into between the parties initially when the loan was taken, which stands quoted in the application filed before the learned Trial Court and reads as under:-

“4. The Loan Cum Guarantee Agreement contains various terms and conditions which interalia includes that the borrower shall not sell, transfer, part with the possession, sub-let, charge or encumber or create any lien on or endangers the product or dispose off the mortgaged/hypothecated property in any manner, whatsoever. It was also an important condition of the Loan Agreement that the borrower shall not transfer or assign any of his rights or obligations arising out of the said agreement. Another main condition was that the plaintiff shall keep the vehicle in sound working condition and at all reasonable time to allow the applicants/ defendants Bank or its authorized representatives to inspect the vehicle. It was also agreed that the vehicle shall remain be the property of the applicants/ defendants Bank, subject to the Loan Agreement, till the realization of the entire loan amount, interest thereon and all other expenses and that the plaintiff shall hold the vehicle in trust for applicant/defendant Bank. That according to the terms and

conditions of the said loan agreement all disputes, differences, claims and questions arising out of the agreement during its subsistence or thereafter shall be settled by the arbitration in accordance with the provisions of Arbitration and conciliation Act, That the said loan agreement is read as follows Said agreement is an Arbitration Agreement as it contains an arbitration clause in clause (11.16) which is being reproduced for the due consideration of this Hon'ble Court as below:

11.16: Unless the same falls within the jurisdiction of The Debts Recovery Tribunal established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, any and all claims and disputes arising out of or in connection with this Agreement or its performance shall be settled by Arbitration by a single Arbitrator to be appointed by the Bank. The arbitration shall be held, either in Delhi, Chennai, Kolkata, Ahmedabad, Indore, Bengaluru or Hyderabad at the sole and absolute discretion of the Bank."

9. Therefore, in light of the aforesaid condition in the agreement, in a dispute connected with the agreement or its performance, the arbitration was to be referred to a Sole Arbitrator to be appointed by the Bank. This condition is otherwise also hit by Section 12(5) of the Arbitration and Conciliation Act, as amended in the year 2016 and, therefore, the reliance upon this Clause by the petitioners cannot come to their rescue otherwise also.

10. Otherwise also in light of the fact that the civil suit has got nothing to do, per se, with the agreement and 'cause of action' pleaded therein stands in isolation from the contents of the agreement, as this Court does not find any ground for interference with the orders passed by the learned Courts below, the petition is dismissed. Pending miscellaneous applications, if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

November 28, 2025
(Shamsh Tabrez)