

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Arb P No.37/2022

Vasfiya Fayaz and anr.

...Petitioner(s).

Through: Mr. F. A. Wani, Advocate.

Vs.

Manappuram Finance Limited God Loan

....Respondent(s)

Through: None.

**CORAM:
HON'BLE THE CHIEF JUSTICE**

**ORDER
13.10.2023**

1. Despite notice and giving ample opportunity to the respondents to appear before this court, they failed to appear and, accordingly, this court proceeds to decide the matter in exparte as against them.

2. The plea of the petitioners is that they had obtained loan against the pledge of their gold subject to the terms and conditions envisaged in the Pawn Tickets. In connection with the same, the parties had entered into an agreement which contains an arbitration clause providing that all disputes, difference and/or claims arising out of or touching upon this loan, whether during its subsistence or thereafter, shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof and shall be referred to the Arbitration of a Sole Arbitrator to be appointed by the Company and the award given by such Sole Arbitrator shall be final and binding on the Loan Applicant/ Borrower and the Company.

3. The petitioners, however, after obtaining the loan of Rs.40,69,356/- by depositing the gold valued at Rs.98 lakhs, could not pay the monthly installments regularly because of the unrest which

broke out in the Valley and accordingly, made a request to the respondents to accommodate them, for repayment of the remaining loan amount. In the meantime, the petitioners came to know that respondents have wound up their office in the Kashmir Valley due to the unrest and subjected some of the lot numbers viz; 43074, 43048, 43065, 43061 and 43066 issued to the petitioners to auction through respondent no.3. Being aggrieved of the aforesaid act of auctioning the gold without trying to settle the dispute between the parties, the petitioners approached the court of 1st Additional District Judge, Srinagar, by filing a suit for declaration and injunction. During the pendency of the said suit, an application under Section 8 of the Arbitration and Conciliation Act, 1996 came to be filed by the respondents-defendants in the suit contending therein that since there exists an agreement between the parties which contains an arbitration clause, the petitioners/plaintiffs cannot invoke the jurisdiction of the civil court. The learned court of 1st Additional District Judge, Srinagar, vide its order dated 02.07.2022, disposed of the said application as also the suit filed by the petitioners by referring the parties to the arbitration in terms of arbitration clause 21 of the agreement entered into between the parties.

4. After disposal of the suit, the petitioners wrote to the respondents on 6th August, 2022, invoking the arbitration clause for referring the dispute to an arbitrator. However, there has been no response from the authorities and accordingly, being left with no alternate option, the petitioners have approached this Court for appointment of an arbitrator in terms of Section 11 of the Arbitration and Conciliation Act, 1996.

5. Clause 21 being the arbitration in the agreement entered into between the parties contained in Annexure-P1, reads as follows:

“21. All disputes, difference and/or claims arising out of or touching upon this loan, whether during its subsistence or thereafter, shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act,

1996, or any statutory amendments thereof and shall be referred to the Arbitration of a Sole Arbitrator to be appointed by the Company and the award given by such Sole Arbitrator shall be final and binding on the Loan Applicant/ Borrower and the Company.”

6. Thus, the court is satisfied that there is an arbitration clause in the agreement entered into between the parties. However, to invoke the provisions of the Arbitration and Conciliation Act, 1996, dispute must have arisen between the parties.

7. It is submitted by learned counsel for the petitioner that before auctioning the said gold, it was obligatory on the part of the respondents to inform the petitioner in terms of Clause 10 of the agreement which provides that if full repayment of the loan, along with interest and charges is not made within the period of the loan or within such period as demanded by the Company, the Company shall have the right to sell or otherwise dispose of the Gold through public auction at the risk and cost of the borrower, at any time after two weeks from the date of notice to the borrower. It is contended that no such notice was issued to the petitioners by the respondents for repayment of the loan amount within the specified period and also informing the petitioners that the company is resorting to public auction. It is, therefore, submitted that this having not been done by the bank, the public auction undertaken by the bank is not in accordance with the agreement and, as such, clearly a dispute has arisen.

8. It has also been submitted by learned counsel for the petitioners that when the respondents approached the court of 1st Additional District Judge, Srinagar, by filing an application under Section 8 of the Arbitration and Conciliation Act, 1996, the stand taken by them as is reflected in the order dated 02.07.2022, was that since there is an arbitration agreement between the parties, the petitioners have no right to file the suit.

9. In the aforesaid background of the case, this Court is satisfied that a dispute has arisen between the parties and the agreement entered into between the parties contains an arbitration clause.

10. Accordingly, this court proceeds to appoint Mr. M. A. Makhdoomi, Advocate, High Court of J&K, Srinagar, to act as an Arbitrator and to resolve the dispute which has arisen between the parties. The arbitrator shall, accordingly, proceed in the matter in accordance with law after charging the prescribed fee along with incidental expenses to be shared by the parties.

11. The petition is, accordingly, disposed of and the learned arbitrator be informed accordingly.

(N. KOTISWAR SINGH)
CHIEF JUSTICE

Srinagar

13.10.2023

Abdul Qayoom, Secy.