

04. 12.06.2025
Court No.37
(Tanmoy)

FMA/251/2025
IA No: CAN/1/2025

**M/S. CHOLAMANDALAM INVESTMENT AND FINANCE
COMPANY LIMITED**
-Versus-
SUJAN SEIKH

Mr. Ranjit Singh, Adv.
Mr. Amar Singh, Adv.
Ms. Tutul Das, Adv.
Mr. Ratul Deb Banerjee, Adv.
Ms. Sanchita Bera, Adv.

...for the appellant.

Mr. Md. Shamim Halder, Adv.

...for the respondent.

Dictated by Arijit Banerjee, J.

1. By consent of the parties, the appeal and the connected application are taken up together for hearing.

2. This appeal is directed against a judgment and order dated January 3, 2025, passed by the learned Judge, Bench-VI, City Civil Court at Calcutta, in Title Suit No. 1487 of 2023, whereby the application of the present appellant under Sections 5 and 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act'), was dismissed.

3. Briefly stated, the relevant facts are that the respondent entered into a loan-cum-hypothecation agreement with the appellant company in respect of a truck. The respondent started plying the truck

commercially. Instalments having fallen due, the appellant demanded payment from the respondent. The respondent filed Title Suit No.1487 of 2023, *inter alia*, to restrain the appellant herein from repossessing the truck or interfering with the plying of the truck by the respondent.

4. The agreement between the parties contains an arbitration clause which reads as follows:-

“ARBITRATION: All disputes, differences and/or claims arising out of this Agreement whether during its subsistence or there after 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 Sole Arbitration of an Arbitrator nominated by the Company. The award given by such Arbitrator shall be final and binding on all parties to this Agreement. In the event of an appointed arbitrator dying or being unable or unwilling to act as arbitrator for any reason, the Company, on such death of the arbitrator or his inability or unwillingness to act as arbitrator, shall appoint another person to act as arbitrator. Such person shall be entitled to proceed with the reference from the stage left by his predecessor. The venue of arbitration proceedings shall be at Chennai or such other place/location/city which the Company at its discretion may decide from time to time.”

5. In view of the said clause, the appellant herein applied before the learned Trial Court under Sections 5 and 8 of the 1996 Act, for reference of the disputes forming the subject-matter of the suit to arbitration in accordance with the aforesaid arbitration clause.

6. By the order impugned, the appellant's application was dismissed. The learned Judge noticed that earlier an arbitral Award had been passed in favour of the appellant but the same was subsequently set aside by a competent Court. Thereafter, *interlocutory* proceedings are pending in the suit. Noting the same, the learned Judge was of the view that it will not be appropriate to refer the parties to arbitration. Being aggrieved, the finance company has come up by way of this appeal.

7. The order under appeal must be set aside. When there is clearly an arbitration clause in the agreement between the parties and disputes have arisen in connection with such agreement, the Trial Court had no option but to refer the parties to arbitration. The question of it being appropriate or inappropriate does not arise in view of the language of Section 8(1) of the 1996 Act, which is mandatory. Section 8(1) of the 1996 Act is set out hereunder:-

“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.”

8. It would appear from the language of Section 8(1) that unless the Court or the concerned judicial authority finds that *prima facie* no valid arbitration agreement exists, the judicial authority/Court would have no choice but to relegate the parties to arbitration.

9. In the present case, we have set out the arbitration clause above. It is nobody's case that the said clause is not an arbitration clause. The disputes forming the subject-matter of the suit filed by the respondent herein are squarely covered by the arbitration clause. In that view of the matter, the appellant's application under Sections 5 and 8 of the 1996 Act must be allowed and we allow that application upon setting aside the order impugned in this appeal.

10. When this appeal was first entertained by a co-ordinate Bench, the Bench, by an order dated March 6, 2025, had directed the respondent to pay a sum of Rs.1.75 lakhs within three weeks from date without prejudice to the rights and contentions of the respondent, noting that instalments had fallen in arrears. Thereafter, from time to time, the matter was taken up for hearing.

11. On April 22, 2025, when the matter was called on, nobody appeared for the respondent. A

co-ordinate Bench directed service of notice on the respondent.

12. By an order dated April 29, 2025, a co-ordinate Bench had directed the Officer-in-Charge of the jurisdictional Police Station to secure the presence of the respondent before the Bench on the next date i.e. May 13, 2025.

13. However, on May 13, 2025, the Bench was not available. When the matter was again taken up for hearing on May 14, 2025, learned Advocate for the respondent apprised the Bench that the respondent had appeared in-person on May 13, 2025, but the matter was not called on. He submitted that the respondent is serious about paying the dues of the finance company and sought for some more time. To test the *bona fides* of the respondent, the co-ordinate Bench had granted him one more opportunity and had adjourned the matter till June 11, 2025. It was directed that on the adjourned date, the respondent shall bring a Demand Draft/Banker's Cheque for Rs. 1,75,000/- drawn in favour of the appellant. The respondent was also restrained from disposing of or alienating or creating third-party interest in respect of the vehicle in question till further order. The *interim* order that was passed on March 6, 2025, was also directed to continue until further orders.

14. Today, learned Advocate for the respondent says that the respondent has not complied with the order for payment of the sum of Rs.1.75 lakhs to the appellant. Learned Advocate fairly submits that appropriate orders may be passed by the Court.

15. We confirm the *interim* order of injunction passed on May 14, 2025. The appellant will be at liberty to take possession of the concerned vehicle. The Officer-in-Charge of the jurisdictional Police Station is directed to render all assistance and extend all co-operation to the appellant's officers to repossess the vehicle in question. The appellant will naturally be at liberty to take steps in accordance with law for recovery of its dues from the respondent.

16. The appeal being FMA/251/2025 along with the connected application being IA No: CAN/1/2025 stand disposed of.

17. Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Rai Chattopadhyay, J.)