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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10717 OF 2012

Tata Capital Financial Services Ltd. .. Petitioner

Versus

Anil Shivram Nalavade .. Respondent

Mr. Yatin R. Shah a/w Ravi Gurupag for petitioner.
None for the respondent.

CORAM: ALOK ARADHE, CJ.

DATE: 24th JULY, 2025

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ORAL ORDER:

1. In this petition filed under Article 227 of the Constitution of India, the petitioner/defendant has assailed the validity of the order dated 28th June, 2012 passed by the trial court by which application under Order VII Rule 11 of the Civil Procedure Code, 1908 (CPC) has been rejected.

2. Facts giving rise to filing of the instant writ petition, in nutshell, are that a loan agreement was executed on 3rd September, 2007 between the petitioner and respondent. Upon default in repayment of the loan, the petitioner initiated arbitration proceeding and according to the petitioner an ex-parte award was passed in its favour. However, the respondent filed Regular Civil Suit No. 788 of 2010 seeking relief of injunction and for delivery of possession of the machinery. In the aforesaid civil suit, the petitioner filed an

application under Order VII Rule 11 of CPC, *inter alia*, on the ground that the agreement executed between the parties contains an arbitration clause and, therefore, the suit under Section 8 of the Arbitration and Conciliation Act, 1996 cannot proceed. Accordingly, the petitioner sought rejection of the plaint. The said application has been rejected by the trial court by the impugned order. Hence, this writ petition.

3. Learned counsel for the petitioner submits that once an agreement has been produced which contains an arbitration clause, the suit is liable to be dismissed. However, the aforesaid aspect of the matter has not been appreciated by the trial court while passing the impugned order.

4. I have heard the learned counsel for the petitioner and perused the record. None has appeared on behalf of the respondent.

5. In the instant petition, it is the case of the petitioner itself that under the agreement the dispute had arisen, which was referred to the arbitration and an ex-parte award has been passed in favour of the petitioner. Thus, the dispute according to the petitioner has already been concluded. The aforesaid fact required to be proved by adducing evidence and, therefore, the same could not have been decided by way of an application under Order VII Rule 11 of CPC until and unless the factum of passing of the ex-parte award was admitted by the respondent.

6. In the result, no interference in the impugned order is called for. However, the trial court is directed to frame an issue as to whether the agreement executed between the

parties contains an arbitration clause and whether an ex-parte award has been passed in favour of the petitioner and if so, what is the effect? The said issue shall be decided by the trial court in accordance with law.

7. The writ petition is accordingly disposed of.
8. Let a copy of this order be forwarded to the trial court.

(CHIEF JUSTICE)