

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE DIVISION
COMMERCIAL DIVISION
ORIGINAL SIDE**

**APOT/27/2026
IA NO: GA-COM/1/2026**

**M/S SAMMAN CAPITAL LIMITED (FORMERLY
KNOWN AS INDIABULL HOUSING FINANCE LIMITED)
VS
JAGANNATH HEIGHTS PVT LTD**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellants : Mr. Avishek Guha, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Mr. Sourajit Dasgupta, Adv.
Ms. Sonal Agarwal, Adv.
Mr. Ankush Majumdar, Adv.

For the Respondents : Mr. Abhrajit Mitra, Sr. Adv.
Mr. Satadeep Bhattacharyya, Adv.
Mr. Samriddha Sen, Adv.
Mr. A. Kr. Roy, Adv.
Mr. Surajit Biswas, Adv.
Mr. Arijeet Bera, Adv.

HEARD ON : 09.03.2026
DELIVERED ON : 09.03.2026

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the defendant in a suit for damages and directed against the judgment and order dated January 9, 2026 passed in GA-COM/2/2025 in CS-COM/801/2024.
2. Learned Advocate appearing for the appellant submits that, the respondent herein as the plaintiff accepted that there was a contract between the parties which contained an arbitration clause. In this regard, he draws the attention of the Court to averments made in the plaint.
3. Learned Advocate appearing for the appellant submits that, the appellant applied under Section 8 of the Arbitration and Conciliation Act, 1996 by way of a Master's Summons which was dismissed by the impugned judgment and order. He submits that, although, the Master's Summons, did not contain any prayer for referring the disputes in the suit to arbitration, nonetheless, the averments in the affidavit in support of the Master's Summons stated that, the disputes were covered by the arbitration clause and the same were to be referred to arbitration in terms of the arbitration clause.
4. Learned Advocate appearing for the appellant relies upon **(2025) 8 SCC 299 (K. Mangayarkarasi and Another Vs. N.J. Sundaresan and Another)** in support of the proposition that, where the Court arrives at a finding that there is an arbitration clause, the issue before the Court is whether the Court loses jurisdiction in view of such arbitration agreement. He submits that, in the facts and

circumstances of the present case, since, it is admitted that there was an arbitration agreement in writing, between the parties to the suit and the disputes in the suit were required to be referred to arbitration.

5. Learned Advocate appearing for the appellant relies upon **2014 SCC Online Del 4015 (Sharad P. Jagtiani Vs. M/s. Edelweiss Securities Ltd.)** for the proposition that, the averments made in the written statement is sufficient compliance under Section 8 of the Act of 1996. He submits that, a fresh application under Section 8 of the Act of 1996 is not required. He points out that, in the facts and circumstances of the present case, the appellant filed written statement, post-filing of the application under consideration where, a point of reference under Section 8 of the Act of 1996 was taken.
6. Learned Senior Advocate appearing for the respondent/plaintiff submits that, the purported application under Section 8 of the Act of 1996 is not in compliance of the provisions of Section 8 of the Act of 1996. He draws the attention of the Court to the prayers made in the application. He submits that, under Section 8 (2) of the Act of 1996, the appellant was required to either annex the original of the arbitration agreement or a certified copy thereof or aver as to the location of such original arbitration agreement. In the facts and circumstances of the present case, the appellant did nothing of that sort. He submits that, the purported application

cannot be construed to be one within the meaning of Section 8 of the Act of 1996.

7. Relying upon a decision of the Co-ordinate Bench dated January 9, 2025 rendered in **FAT No. 308 of 2023 (Smt. Gitarani Maity Vs. 1A Mrs. Krishna Chakraborty and Others)**, learned Senior Advocate appearing for the plaintiff submits that, the application for rejection of plaint cannot be construed to be one under Section 8 of the Arbitration and Conciliation Act, 1996. In support of such contention, he relies upon **2022: APHC: 40172 (CA Goliakotwala & Co. Vs. Sri Kailasandha Cotton Syndicate Pvt. Ltd.) and 2022: APHC: 10109 (Chunduru Visalakshi Vs. Chunduru Rajendra Prasad and Ors.)**.
8. Relying upon **2020: DHC: 3745-DB (Alok Kumar Lodha and Ors. Vs. Asian Hotels (North) Limited and Ors.)**, learned Senior Advocate appearing for the plaintiff submits that, an oral application under Section 8 of the Act of 1996 cannot be entertained.
9. Plaintiff filed the suit claiming damages against the appellant. Averments made in the plaint demonstrate that, there was a contract between the appellant and the plaintiff by which, the appellant lent and advanced money to the plaintiff. Plaintiff claims it suffered loss and damages in such transaction. Significantly, the plaintiff averred in the plaint that, there was an arbitration clause in the contract between the parties. The relevant portion of the averments in paragraph 52 of the plaint is as follows:-

“52).... There is a purported arbitration clause in the contract which does not cover the cause of action forming subject matter of the present suit. The said arbitration clause is also null and void. As per the arbitration clause the defendant is to appoint an arbitrator who as a persona designate is the only person who as per agreement would adjudicate the disputes arising out of contract been the arbitrator. Such provision is also null and void being contrary to the provisions of the Arbitration & Conciliation Act, 1996 as amended on 23rd October, 2015.”

- 10.** Appellant applied for rejection of the plaint and/or its return by way of a Master’s Summons resulting in the impugned judgment and order. In the affidavit in support of the Master’s Summons, the appellant, in paragraph 5 stated that, the disputes raised in the suit, relate to the interpretation, implementation, validity and the alleged breach of the loan agreement and that, the subject matter of the suit is covered by the arbitration clause and that, the suit ought to be referred to arbitration.
- 11.** In the facts and circumstances of the present case, both the parties before us, accept that there was a contract which contains an arbitration clause. The arbitration clause is set out in the affidavit in support of the Master’s Summons filed by the appellant, resulting in the impugned judgment and order. Averments in the plaint as noted previously, also refer to the same arbitration clause. Existence of the arbitration clause is, therefore, admitted between the parties.

12. In view of such an admitted position with regard to the arbitration clause, we find that, there is a substantial compliance with Section 8 (2) of the Act of 1996 by the appellant.
13. Prayers in the Master's Summons are not happily drafted. In the Master's Summons, there are three substantial prayers. The first prayer seeks dismissal of the suit; the second seeks rejection or return of the plaint and the third seeks stay of the suit.
14. The request for referring the subject matter of the suit to arbitration, in view of the arbitration agreement between the parties, is not available for so many words in the prayer portion of the Master's Summons. However, prayer (c) of the Master's Summons, which seeks stay of the suit, can be construed to incorporate a request for reference, in view of the averments made in paragraph 5 of the affidavit in support of the Master's Summons. We hasten to add that, ideally, an application under Section 8, must comply with the statutory provisions thereof including a prayer made to refer the subject matter of the suit, being covered by the arbitration agreement, to arbitration.
15. **K. Mangayarkarasi (Supra)** considered an application under Section 8 of the Act of 1996 and the following issue;

“9. What would be the position in case a suit is filed by the plaintiff and in the said suit, the defendant files an application under Section 8 of the 1996 Act questioning the maintainability of the suit on the ground that the party had agreed to settle the disputes through the means of arbitration having regard to the

existence of an arbitration agreement between them?”

16. K. Mangayarkarasi (Supra) answered such issue as follows;

“21. Once an application in due compliance with Section 8 of the 1996 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.

22. 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 term or compliance with the procedure under special statute. The general law should yield to the special law – generalia 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.

23. Once there is an arbitration agreement between the parties, a judicial authority before whom an action is brought covering the subject-matter of the arbitration agreement is under a positive obligation to refer parties to arbitration by enforcing the terms of the contract. There is no element of discretion left in the court or

judicial authority to obviate the legislative mandate of compelling parties to seek recourse to arbitration.”

17. Applying the ratio laid out **K. Mangayarkarasi (Supra)** to the facts of the present case, there is an arbitration agreement which covers the subject matter of the disputes encompassed in the suit. Such disputes are to be decided by the chosen forum by the parties. Once the Court arrives at such a finding, then, it loses jurisdiction. The Court is required to refer such disputes to arbitration.
18. **Smt. Gitarani Maity (Supra)** was rendered prior to **K. Mangayarkarasi (Supra)**. In any event, in **Smt. Gitarani Maity (Supra)**, the learned Trial Judge simultaneously allowed an application under Section 8 of the Act of 1996 and dismissed the suit itself. In facts and circumstances of such case, the Court found that, Section 8 application was not filed before or even simultaneously with the written statement and therefore, the learned Trial Judge erred in allowing the application under Section 8 of the Act of 1996 and dismissing the suit. Fact scenario obtaining in the present case is different. As noted, the affidavit in support of the Master's Summons contained a request for reference of the disputes to arbitration. The application containing such request was filed prior to the filing of the written statement.
19. **Sharad P. Jagtiani (Supra)** is of the view that, if in the written statement filed, it is brought to the notice of the Court that there is an arbitration agreement between the parties which embraces the

subject matter of the suit then, it would be in compliance with the mandate of the law. Such view, in our estimation, is not sustained from the language in Section 8 of the Act of 1996 which requires an application, prior to filing of the first statement of defence in a suit. Section 8 of the Act of 1996, in our view, permits the defendant in a suit to raise the issue of the disputes being covered by the arbitration agreement prior to filing written statement. A defendant is entitled not to raise such objection of arbitrability of the disputes of the suit by not filing any application under Section 8 of the Act of 1996.

- 20.** In **Alok Kumar Lodha (Supra)**, an oral application under Section 8 of the Act of 1996 was not entertained. Fact scenario in the present case is different.
- 21.** In **2022: APHC: 10109 Chunduru Visalakshi (Supra)**, an application under Section 8 of the Act of 1996 was not filed as noted in paragraph 45 thereof. Fact scenario in the present case is different.
- 22.** In **2022: APHC: 40172 CA Goliakotwala & Co (Supra)**, the Court noted that, mere existence of an arbitration clause does not take away the jurisdiction of the Civil Court. In the facts and circumstances of that case, there was an application under Order VII Rule 11 of the Code of Civil Procedure, 1908. Again the fact scenario in the present case is different.
- 23.** In view of the fact that there is an existing arbitration agreement governing the subject matter of the suit, it would be appropriate to

refer the disputes to arbitration in terms of such arbitration agreement. Parties are at liberty to take appropriate steps in this regard.

24. Impugned judgment and order is set aside. Since the subject matter of the suit stands referred to arbitration, Department will treat CS(COM)/801/2024 as disposed of.

25. APOT/27/2026 is disposed of, without any order as to costs.

(DEBANGSU BASAK, J.)

26. I agree.

(MD. SHABBAR RASHIDI, J.)