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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 50/2025**
SMFG INDIA HOME FINANCE CO. LTD (FORMERLY KNOWN
AS FULLERTON INDIA)Appellant
Through: Ms. Sandhya Chawla, Advocate

versus

HARJINDER KAUR & ANR.Respondents
Through: Mr. Manish Kumar, Advocate for
respondent No.2

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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08.04.2026

1. The present appeal filed under Section 37(1)(a) of the Arbitration and Conciliation Act, 1996 (hereafter referred to as the 'A&C Act') read with Section 104 and Order XLIII of the Code of Civil Procedure, 1908 (CPC) is directed against the order dated 18.12.2024 passed by the Trial Court in Civil Suit no. 1079/2022. Vide the impugned order, the Trial Court had dismissed the application filed by the appellant/defendant under Section 8 read with Section 5 of the A&C Act seeking direction to refer the parties of the suit to arbitration.
2. It was claimed that the suit was filed in the context of a loan agreement, Article 23 whereof provided that disputes between the parties were to be referred to arbitration under the A&C Act.
3. Learned counsel for the appellant contends that the Trial Court erred in dismissing the subject application by not appreciating that no limitation period is provided under Section 8 of the A&C Act. It is submitted that the



time period for filing a written statement is 90 days and, even otherwise, the application was filed on the 61st day from the date of service of summons, i.e., 27.03.2023. It is further submitted that on the next date i.e., 25.04.2023, the appellant had requested the Trial Court to supply a legible copy of the plaint, as recorded in the order of that date. Thus, if counted from 25.04.2023, the subject application came to be filed on 32nd day.

4. Learned counsel for the respondents, while opposing the present appeal, submits that the application under Section 8 of the A&C Act was not accompanied by any application seeking condonation of delay.

5. A perusal of the record would reveal that, indisputably, the appellant was served with summons to settle the issues on 27.03.2023. Thereafter, the appellant appeared on the next date i.e., 25.04.2023, whereafter, on 27.05.2023, it was noted that since no written statement had been filed, the right to file the same was struck off. It was after the passing of the said order, the subject application under Section 8 of the A&C Act came to be filed. The contention that no limitation is prescribed for filing application under Section 8 of the A&C Act is fallacious, inasmuch as a Division Bench of this Court in SPML Infra Ltd. vs. Trisquare Switchgears Pvt. Ltd.¹ while considering the provision of Section 8 held as under:

“18. It is clear from the scheme of the Act that once the proceedings before the court or judicial authority progress beyond the initial stage, it would no longer be permissible for a party to then turn around and seek recourse to arbitration. A mere delay in making an application under Section 8 of the A&C Act may not be fatal to a party’s right; but once the proceedings have progressed beyond the stage of completion of pleadings, such an application would not lie. This is because at that stage, the parties are sufficiently invested in the said proceedings, and it would not be permissible for any party to turn around and apply under Section 8 of the A&C Act.”

¹ 2022 SCC OnLine Del 1914



6. Subsequently, another Division Bench in M/s Hitachi Payments Services Pvt. Ltd. & Anr. vs. Sh. Shreyans Jain & Anr.² while reiterating the observations in SPML Infra Ltd. (supra), also referred to the decision of a coordinate Bench in Ranjana Bhasin vs. Surender Singh³, wherein it was held that an application under Section 8 of the A&C Act is not maintainable if filed beyond the period prescribed for filing of the written statement.
7. In the present case, the application under Section 8 having been filed after the appellant's right to file written statement was struck off, was not maintainable. Furthermore, the appellant did not challenge the order striking off its right to file the written statement, which has thus attained finality.
8. The appellant, therefore, cannot be permitted to circumvent the consequences of its own default by invoking the arbitration clause at a belated stage.
9. There is no infirmity in the impugned order. The same is upheld.
10. The appeal is dismissed.

MANOJ KUMAR OHRI, J

APRIL 8, 2026/pmc

² 2025 SCC OnLine Del 1042

³ 2024 SCC OnLine Del 465