IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

BEFORE:
THE HON'BLE JUSTICE OM NARAYAN RAI

CO 4388 of 2025

Srikanta Patra
vs.
Indusind Bank Ltd.

For the Petitioner	: Mr. Mr. Rajib Ray, Adv.
For the Opposite Party	: Ms. Soni Ojha, Adv. Ms. Sambrita B. Chatterjee, Adv.
Heard on	: 23.03.2026
Judgment on	: 23.03.2026

OM NARAYAN RAI, J.:-

1. This revisional application is directed against an order dated December 3, 2025 passed by the learned Judge, Bench – V, City Civil Court, Calcutta in Title Suit No.2121 of 2024 whereby the suit has been stayed and the parties have been referred to arbitration under section 8 of the Arbitration and Conciliation Act, 1996 (hereafter "the 1996 Act").

2. The aforesaid suit had been instituted by the petitioner praying for a decree for declaration that the petitioner is the owner of the goods carrier and for permanent injunction. Briefly put, the case pleaded by the petitioner before the learned Trial Court is that he had availed of credit facilities from the opposite party to purchase a goods carrier. Due to financial recession and

business losses, the petitioner defaulted on three installments. It is the petitioner's contention that although the said default, was brief and unintentional yet, the opposite party repossessed the petitioner's vehicle. The plaint also contains allegations to the effect that his signatures had been obtained on blank papers, unfilled printed forms and printed papers for the purpose of granting financial assistance and nothing as regards loan amount, rate of interest, amount repayable and period of repayment was informed to the petitioner.

3. The opposite party entered appearance in the suit and filed an application under Section 5 read with Section 8 of the 1996 Act asserting that the loan agreement contained an arbitration clause and in terms thereof, the parties should be referred to arbitration.

4. The learned Trial Court has, by the order impugned, allowed the said application under Section 5 read with Section 8 of the 1996 Act.

5. Mr. Ray, learned advocate appearing for the petitioner submits that the learned Trial Court has committed a serious error in referring the parties to arbitration without first coming to a *prima facie* finding that there is existence of an arbitration clause. It is further submitted that the vehicle had been repossessed by force; the same could not be made subject matter of adjudication before the arbitrator.

6. Relying on a judgment of the Hon'ble Supreme Court in the case of ***Vidya Drolia vs. Durga Trading Corpn.***[1], it has been submitted that prior to referring the parties to arbitration, it is the duty of the Court to come to a *prima facie* conclusion that a valid arbitration clause exists. It is further

[1] (2021) 2 SCC 1

submitted that the arbitration clause suggests that the lender itself will solely appoint the arbitrator, and as such, the arbitration clause is void.

7. Relying on a judgment of the Hon'ble High Court at Patna in the case of ***Dhananjay Seth vs. The Union of India***[2], it was submitted that forceful repossession of vehicle purchased through hire-purchase mechanism is illegal.

8. Ms. Ojha, learned advocate appearing for the opposite party/bank submits that the learned Trial Court has committed no error in referring the parties to arbitration in terms of the arbitration clause that is admittedly there in the loan agreement.

9. Relying on the judgment of the Hon'ble Supreme Court in the case of ***Magma Fincorp Ltd. vs. Rajesh Kumar Tiwari***[3], it is submitted that if the relevant loan agreement itself provides for repossession of the vehicle financed by the financier then repossession of vehicle in terms of such agreement cannot be said to be illegal. Reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of ***M/s. Sundaram Finance Ltd. & Anr. vs. T. Thankam***[4] for the proposition that bifurcation of subject matter between Civil Court and Arbitral Tribunal would defeat the purpose of speedy justice.

10. Heard learned advocates appearing for the respective parties and considered the material on record.

11. Section 5 of the 1996 Act underscores the legislative mandate of minimum judicial intervention in arbitration matters.

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[2] 2023 SCC Online Patna 1393
[3] (2020) 10 SCC 399
[4] (2015) 14 SCC 444

12. Section 8 of the 1996 Act, which reads in mandatory terms, leaves no option to the Court to but to refer the parties to arbitration if there is an arbitration clause in the agreement.

13. It is not in dispute that the application under Section 5 read with Section 8 of the 1996 Act had been filed by the opposite party not later than the date of submitting its first statement on the substance of the dispute and was accompanied by a certified copy of the loan agreement.

14. The learned Trial Court has taken note of the arbitration clause and allowed the application filed by the opposite party observing as follows:-

> *"Admittedly, the Plaintiff availed a loan facility from the Defendnat for purchase of a vehicle (Registration No. WB-97-9897) in terms of an Agreement for Loan Agreement (Agreement No. WCY00386D containing arbitration clause and the suit was instituted with the prayer for a decree for declaration and permanent injunction along with other reliefs.*
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> *Defendant has filed this application on the ground that said loan agreement contains an arbitration agreement in Clause 11 of the said agreement and prayed for necessary direction u/S 8 of the Arbitration & Conciliation Act.*
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> *Since the Loan Agreement itself contains an arbitration clause this Court has no jurisdiction to try the suit and let the parties be referred to the arbitration for resolution of all disputes."*

15. The loan agreement indeed contains an arbitration clause. The same reads thus:-

> *"All disputes (includes default committed by the Borrower as per this Agreement), differences and/or claim arising out of or touching upon this Agreement whether daring 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 Sole Arbitrator nominated by the Lender. The award given by such an Arbitrator shall be final and binding on all the Parties to the Agreement. It is a term of the Agreement that in the event of such an Arbitrator to whom the matter has been originally referred, resigns or dies or being unable to act for any reason, the Lender, at the time of such death of the arbitrator or of his inability to*

act as arbitrator, shall appoint another person to act as arbitrator and such a person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. The seat, place and venue of Arbitration proceedings shall be at Chennai and the language shall be in English.

ii) Any notices, replies, rejoinders, letters and documents sent to the registered e-mail ID or mobile number (enabled with WhatsApp or other similar application) of the Arbitrator shall be valid and binding on the parties and the Arbitrator, subject to its genuineness may consider the same for adjudicating the dispute. Further it is agreed between the parties that the arbitrator may send the notices, claim statement, documents, replies, counters, adjournment letters etc., of the arbitration proceeding to his/her/their registered e-mail ID or mobile number of the Borrowers and the same shall be considered as proper service on the parties. If the parties agree, the Arbitrator may record oral evidence through video calling facility also."

16. In such view of the matter, there is nothing wrong in what the learned Trial Court has done. The petitioner's allegations that - his signatures have been obtained on blank papers and that copies of documents were not supplied to him - would not be relevant for the learned Trial Court once the certified copy of the loan agreement containing arbitration clause is produced before it. At such stage the learned Trial Court is only required to be *prima facie* satisfied, upon inspection of the relevant agreement in terms of section 8 of the 1996 Act, that there is an arbitration clause. It is not required to conduct a trial or even a mini trial to assess the worth and legality of the loan agreement or even the arbitration clause. Such assessment would lie in the exclusive domain of the arbitrator.

17. In such context the following paragraphs from the judgment of the Hon'ble Supreme Court in the case ***Vidya Drolia*** (supra) may be noticed:-

*"**134.** Prima facie examination is not full review but a primary first review to weed out manifestly and ex facie non-existent and invalid arbitration agreements and non-arbitrable disputes. The prima facie review at the reference stage is to cut the deadwood and trim off the side branches in straightforward cases where dismissal is*

barefaced and pellucid and when on the facts and law the litigation must stop at the first stage. Only when the court is certain that no valid arbitration agreement exists or the disputes/subject-matter are not arbitrable, the application under Section 8 would be rejected. At this stage, the court should not get lost in thickets and decide debatable questions of facts. Referral proceedings are preliminary and summary and not a mini trial. This necessarily reflects on the nature of the jurisdiction exercised by the court and in this context, the observations of B.N. Srikrishna, J. of "plainly arguable" case in Shin-Etsu Chemical Co. Ltd. [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234] are of importance and relevance. Similar views are expressed by this Court in Vimal Kishor Shah [Vimal Kishor Shah v. Jayesh Dinesh Shah, (2016) 8 SCC 788 : (2016) 4 SCC (Civ) 303] wherein the test applied at the pre-arbitration stage was whether there is a "good arguable case" for the existence of an arbitration agreement.

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244.3. *The court, under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie (summary findings) case of non-existence of valid arbitration agreement, by summarily portraying a strong case that he is entitled to such a finding."*

[Emphasis supplied]

18. In the case at hand, apart from mere pleadings there is nothing on record to suggest that the arbitration agreement was invalid.

19. The petitioner's contention that the arbitration clause is invalid since the same provides for unilateral appointment of arbitrator by the lender does not appeal. In the considered view of this Court, such a condition would render the unilateral process of appointment of arbitrator invalid but not the arbitration agreement itself.

20. Insofar as the petitioner's argument as regards repossession of the vehicle is concerned, the same is unpersuasive in view of the judgment of the Hon'ble Supreme Court in the case of ***Magma Fincorp Ltd.*** (supra). The following paragraphs of the said judgment may be noted:-

"79. *The financier continues to remain the owner of a vehicle, covered by a hire-purchase agreement till all the hire instalments are paid and the hirer exercises the option to purchase. Thus, when the financier takes repossession of a vehicle under hire, upon default by the hirer in payment of hire instalments, the financier takes repossession of the financier's own vehicle.*

80. *When the agreement between the financier and the hirer permits the financier to take possession of a vehicle financed by the financier, there is no legal impediment to the financier taking possession of the vehicle. When possession of the vehicle is taken, the financier cannot be said to have committed theft.*

81. *Whether the transaction between a financier and a purchaser/hirer is a hire purchase transaction, or a loan transaction, might be determined from the terms of the agreement, considered in the light of surrounding circumstances. However, even a loan transaction, secured by right of seizure of a financed vehicle, confers licence to the financier to seize the vehicle.*

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88. *Whether the service of proper notice on the hirer would be necessary for repossession of a vehicle, which is the subject-matter of a hire-purchase agreement, would depend on the terms and conditions of the hire-purchase agreement, some of which may stand modified by the course of conduct of the parties. If the hire-purchase agreement provides for notice on the hirer before repossession, such notice would be mandatory. Notice may also be necessary, if a requirement to give notice is implicit in the agreement from the course of conduct of the parties.*

89. *If the hirer commits breaches of the conditions of a hire-purchase agreement which expressly provides for immediate repossession of a vehicle without further notice to the hirer, in case of default in payment of hire charges and/or hire instalments repossession would not be vitiated for want of notice. In this case, however a duty to give notice to the complainant before repossession, was implicit in the hire-purchase agreement. The hire-purchase agreement was a stereotype agreement in a standard form, prepared by the financier. The same kind of agreements, containing, identical terms, except for minor modifications are executed by all hirers of vehicles, equipment, machinery and other goods, who enter into hire-purchase agreements with the financier. The financier who set down the terms and conditions of the hire purchase, construed the hire-purchase agreement to contain an implied term for service of notice and accordingly dispatched a notice, but did not address it to the correct address of the complainant as given in the hire-purchase agreement."*

21. ***M/s. Sundaram Finance Ltd.*** (supra), has deprecated the practice of bifurcation of cause of actions. In this connection, the following paragraphs of the said judgment may be noticed:-

> ***"11.*** *The attempt of the trial court and the approach made by the High Court in bifurcating the cause of action, is fallacious. It would only lead to delaying and complicating the process. The said issue is also no more res integra. In Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya [(2003) 5 SCC 531 : AIR 2003 SC 2252] at paras 16 and 17, it was held as follows: (SCC p. 536)*
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> *"16. The next question which requires consideration is—even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under Section 8 of the Act. In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action, that is to say, the subject-matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject-matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject-matter of an action brought before a judicial authority is not allowed.*
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> *17. Secondly, such bifurcation of suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the civil court would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums."*
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> ***13.*** *Once an application in due compliance with Section 8 of the Arbitration 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. 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 terms or compliance with the procedure under the 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."

22. In any case, the legality of repossession of the vehicle by the financier can always be made the subject matter before the arbitrator or even in proceedings under Section 9 of the 1996 Act for the purpose of interim orders. The petitioner has thus not been left remediless. The petitioner can still get appropriate interim orders provided it fulfills the condition required for obtaining such orders by taking out appropriate proceedings in terms of the relevant provisions of the 1996 Act before the appropriate forum including the arbitrator.

23. For all the aforesaid reasons, this Court is not inclined to interfere with the order impugned dated December 3, 2025 passed by the learned Judge, Bench – V, City Civil Court, Calcutta referring the parties to arbitration.

24. It is made clear that this order shall not preclude the petitioner from approaching the opposite party/bank with any prayer for settlement or any prayer for restructuring of the petitioner's loan account, in accordance with law.

25. CO 4388 of 2025 stands disposed of without any order as to costs.

26. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)