

In the High Court at Calcutta
Commercial Division
Original Side

Judgment (2)

PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY

**IA NO. GA-COM/2/2025
In CS-COM/801/2024**

**JAGANNATH HEIGHTS PVT LTD
Vs
M/S SAMMAAN CAPITAL LIMITED
(INDIABULLS HOUSING FINANCE LTD)**

For the plaintiff : Mr. Abhrajit Mitra, Sr. Adv.
Mr. Satadeep Bhattacharyya, Adv.
Mr. Samriddha Sen, Adv.
Mr. Arijit Bera, Adv.

For the defendant : Mr. Avishek Guha, Adv
Mr. Shounak Mukhopadhyay,
Mr. Ankush Majumdar, Adv.
Ms. Sonal Agarwal, Adv.
Ms. Rayani Bhattacharyya, Adv.

Heard on : January 9, 2026

Judgment on : January 9, 2026
[In Court]

ANIRUDDHA ROY, J :

FACTS:

1. The defendant is the applicant herein.
2. Through the Master's Summons taken out by the defendant, the defendant has prayed for following reliefs:

(a) The present suit, being C.S. (COM) 801 of 2024 [Jagannath Heights Pvt. Ltd V. M/S. Samman Capital Limited (Formerly Known As Indiabulls Housing Finance Limited)] be dismissed in limine;

(b) Plaintiff in C.S. (COM) 801 of 2024 [Jagannath Heights Pvt. Ltd V. M/S. Samman Capital Limited (Formerly Known As Indiabulls Housing Finance Limited)] be rejected and/or returned;

(c) The present suit, being C.S. (COM) 801 of 2024 [Jagannath Heights Pvt. Ltd V. M/S. Samman Capital Limited (Formerly Known As Indiabulls Housing Finance Limited)], be stayed;

(d) Interim and ad interim order(s) in terms of prayers above;

(e) Such further or other Order or Orders be passed and/or direction or directions be given as this Hon'ble Court may deem fit and proper.

3. In support of the Master's Summons, the defendant has filed its affidavit, to which the plaintiff has filed its affidavit in opposition and the defendant again filed its affidavit in reply.
4. Both the plaintiff and the defendant admit the existence of the arbitration clause in the relevant contract between them arising whereof, the plaintiff has instituted the suit.
5. Though the prayers from the Master's Summons, it would appear that the defendant has firstly prayed for dismissal of the suit in limine, secondly, for rejection and/or return of plaintiff and thirdly, for stay of the civil suit but referring to the statements made in the supporting affidavit, principally in **paragraphs 5 and 8** thereunder, the defendant has argued that in view of operation of the provisions

under **Section 8** of the **Arbitration and Conciliation Act, 1996** (for short “**Arbitration Act**”), the subject matter of the suit should be referred to arbitration.

SUBMISSIONS:

6. Mr. Shounak Mukhopadhyay, learned Advocate appearing for the defendant/applicant submits that the provisions laid down under Section 8 of the Arbitration Act mandates the Court to refer the subject matter of the suit for arbitration once a party to the arbitration agreement applies for the same. Referring to the statements made in the supporting affidavit, principally in **paragraphs 5 and 8**, Mr. Mukhopadhyay, learned Advocate appearing for the defendant/applicant submits that though the prayers in the Master’s Summons might not have been couched in a manner asking the Court to refer the subject matter of the suit to arbitration but the statements in the supporting affidavit support such contention of the defendant and therefore, the application should be allowed referring the subject matter of the suit to arbitration.
7. Mr. Shounak Mukhopadhyay, learned Advocate submits that when a Court considers an application, it is the duty of the Court to consider the substantive substance of the application as a whole and not in piecemeal. If the instant application is considered in its true spirit, effect and substance, it is an application filed under

Section 8 of the Arbitration Act and immediately, the subject matter of the suit shall be referred to arbitration. In support, he has relied upon a decision of the Hon'ble Delhi High Court ***In the matter of: Madhu Sudan Sharma and Others Vs. Omaxe Ltd reported at 2023 SCC OnLine Del 7136.*** He has also cited a judgment of the Hon'ble Telangana High Court ***In the matter of: Naolin Infrastructure Private Limited Vs. Kalpana Industries reported at 2024 SCC OnLine TS 1618.***

8. Referring to the last prayer made in the Master's Summons, learned Counsel submits that relief can be moulded and granted in favour of the applicant.
9. Mr. Abhrajit Mitra, learned Senior Advocate being ably assisted by Mr. Satadeep Bhattacharyya and Mr. Samriddha Sen, learned Advocates appearing for the plaintiff submits, at the threshold, that this is not an application under Section 8 of the Arbitration Act. The prayers are for rejection and dismissal of plaint, which are not the reliefs can be granted under Section 8 of the Arbitration Act.
10. Mr. Abhrajit Mitra, learned Senior Advocate then submits that existence of arbitration clause does not impose an absolute bar in maintaining a civil suit. Only when a party to the arbitration agreement specifically applies for reference of the subject matter of the suit to arbitration, in strict compliance with the provisions laid down under Section 8 of the Arbitration Act, then it becomes obligatory on the part of the Court to refer the subject matter of the

suit to arbitration if the Court is satisfied that the arbitration agreement exists between the parties and the subject matter of the suit is covered under the arbitration agreement.

11. Mr. Abhrajit Mitra, learned Senior Advocate further submits that when a specific provisions is laid down under a statute, as Section 8 in the instant case, a specific application is to be filed without which, the provisions of Section 8 cannot be invoked. In support, he has relied upon the following decisions:

- i) In the matter of: Smt. Gitarani Maity Vs. 1A. Mrs. Krishna Chakraborty and Others dated January 9, 2025 passed by the Hon'ble Division Bench of this Court in FAT No. 308 of 2023;*
- ii) In the matter of: Pramod Kumar Tewari & Anr. Vs. Trimurti Complex Pvt. Ltd. reported at (2024) 2 Cal LT 168 (HC);*
- iii) In the matter of: Lindsay International Private Limited and Others Vs. Laxmi Niwas Mittal and Others reported at 2020 SCC OnLine Cal 1658 : AIR 2021 Cal 24.*

12. In the light of the above submissions, Mr. Mitra, learned Senior Advocate has prayed for dismissal of the application filed by the defendant.

DECISION:

13. After considering the rival contentions of the parties and on perusal of the materials on record, at the threshold, it appears to this Court that parties have admitted the existence of the arbitration clause.
14. On a careful scrutiny of the prayers from the Master's Summons, as quoted above, it appears to this Court that, the defendant/applicant has prayed for dismissal of the suit, rejection and return of the plaint and then stay of the suit.
15. Section 8 of the Arbitration Act is quoted below:-

“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.]

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

1/[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying

for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.]

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

16. On a harmonious and meaningful consideration of the provisions under Section 8 of the Arbitration Act, it appears to this Court that there are few criterion which are essentially to be fulfilled as a precondition for applying under Section 8 of the Arbitration Act, those are:
 - (a) When a suit is filed between the parties on a subject matter, a valid and existing arbitration clause must be present governing the subject matter of the suit;
 - (b) One of the parties to the arbitration agreement or any person claiming through or under him has to apply under the said provision and
 - (c) The application must be filed not later than the date of submitting the first statement on the substance of the dispute.

17. The above provisions clearly, therefore, show specific criterion are to be fulfilled as a condition precedent for applying under Section 8 of the Arbitration Act, as the application has to be filed under a specific provision of a specific statute.
18. Considering the prayers made in the Master's Summons, it appears to this Court that dismissal or rejection of plaint, as prayed for, would not amount to reference of subject matter of the suit to arbitration. A plaint can be dismissed or rejected under a separate and independent statutory provision principally under **Rule 11 to Order VII** of the **Code of Civil Procedure, 1908**. Similarly, a plaint can be returned under another different and independent provision of the Code being **Rule 10 to Order VII** of **CPC**. The suit can be stayed either as an interim order or under a specific and independent provision of **Section 10 of CPC**. Therefore, none of the prayers made in the Master's Summons falls within the purview, scope or meaning of Section 8 of the Arbitration Act. The submissions made in the supporting affidavit principally in **paragraphs 5 and 8** thereof might have expressed the understanding of the defendant/applicant but the moment prayers are considered from the Master's Summons, it appears to this Court that reliefs are claimed under different provisions of law and not under Section 8 of the Arbitration Act.
19. The age old settled legal principle is that when a statute prescribes to do certain thing in a certain manner, the thing has to be done in

the same manner or not at all. All other modes are expressly forbidden.

20. The facts in the instant case is that the instant Master's Summons has been taken out prior in point time when the defendant has filed its written statement. Therefore, this Court is of the view that by applying through this application, the defendant has not waived its right to file the instant application, at the time of filing the instant application.
21. The judgment relied upon on behalf of the defendant/applicant ***In the matter of: Madhu Sudan Sharma (supra)*** delivered by a Coordinate Bench of Hon'ble Delhi High Court has been considered by the Hon'ble Division Bench of this Court ***In the matter of: Smt. Gitarani Maity (supra)***. The Hon'ble Division Bench in ***Smt. Gitarani Maity (supra)*** has observed as under:

“19. Moreover, on the other aspect as to whether an objection in the written statement as to jurisdiction of the Court can be construed to be an application under Section 8 of the 1996 Act, we also are unable to agree with the arguments of the respondent.

20. There is a gulf of difference between an objection that the learned Civil Court does not have jurisdiction to entertain a suit at all and that the suit should be dismissed on such ground, and an objection that the subject matter of a civil suit, being also the subject matter of an arbitration agreement, ought to be referred to arbitration.

21. Section 8 of the 1996 Act contemplates a reference to arbitration of a dispute regarding which there is an arbitration clause and does not operate as a bar to the civil court's jurisdiction as such. Even if a reference is made to the arbitrator, the civil court does not lose the subject jurisdiction.

22. ...

23. ...

24. In the event no application for reference to arbitration under Section 8 of the 1996 Act is made by either party, the civil court may very well entertain the suit and proceed with the adjudication of the same on merits in accordance with law.

25. Hence, we do not find that the existence of an arbitration clause in the concerned agreement between the parties operates *per se* as a bar to the jurisdiction of the civil court. Thus, the objection taken in paragraph no. 12 of the written statement in the present case, regarding the civil court not having jurisdiction even to entertain the suit and seeking dismissal of the suit on such ground, cannot be at par with an application seeking reference to arbitration under Section 8 of the 1996 Act. The two operate at different levels.

26. Hence, we cannot, under any stretch of imagination, equate such an objection taken in the written statement as to jurisdiction, seeking dismissal of the suit, with an application to refer the matter to arbitration.

27. Thus, on the said point, we humbly express our disagreement with the view taken by the learned Single Judge of the Delhi High in the cited judgment.

28. ...

29. Accordingly, FAT 308 of 2023 is allowed on contest, thereby setting aside the impugned judgment and decree dated April 21, 2023 passed by the learned Civil Judge (Senior Division), Third Court at Alipore, District – South 24 Parganas in Title Suit No. 1110 of 2017 (Sl. No. 84/2017) and remanding the matter, directing the learned trial Judge to take up and decide the suit on merits upon a full-fledged trial in accordance with law.”

22. In so far as the contention of the defendant/applicant that in **paragraph 4** of the written statement it has taken squarely the point of existence of arbitration agreement and to refer the dispute to arbitration, in view of the provisions laid down under Section 8 of the Arbitration Act, is not sustainable in the considered view of this Court. Provision under Section 8 being a specific statutory provision has to be applied strictly by way of a separate application with specific prayer and it would be of no relevance whether in the written statement, the defendant has raised the issue or not.

23. ***In the matter of: Lindsay International Private Limited (supra),*** a Co-ordinate Bench of this Court had observed as under:

“42. The next issue to be determined is the use of the expression “Without prejudice to the Arbitration Clause” by the Defendant No.3 in its written statement, and whether the Defendant must have deemed to have made an application under Section 8 as a consequence thereof. It is now settled by judicial dicta set out hereinabove, and a plain reading of Section 8, that what is contemplated is making of a formal, clear and unequivocal application seeking reference to

Arbitration. A clear, specific and overt Act in the form of an independent, stand alone application is required to be made. The Defendant has not done this. The Defendant has referred to the Arbitration agreement in his written statement but has not prayed or pleaded that it seeks reference of the Disputes to Arbitration. With respect, this Court is unable to accept the decisions of the Delhi High Court in the cases of Parasramka Holdings Pvt Ltd 30 (Supra) and Sharad P Jagtiani (Supra) as referred to in the case of SSIPL Lifestyles Ltd Vama Apparels (India) Pvt Lt and Anr being order dated 19th February 2020 passed in CS (COMM) 735/2018, I.As. 15576/2018, 2756/2019, 2757/2019 & 2758/2019, that an even such a pleading in the written statement would amount to an application under Section 8.

43. The language of Section 8 before and after the amendments is explicit and clear. It requires a formal, independent, specific application before and or at the time of the filing of the written statement for seeking reference to Arbitration. This has clearly not been done by the 3rd Defendant. The expression "without prejudice to the Arbitration agreement" cannot, therefore, come to the rescue of the Defendant. The said application is required to be made at the earliest stage in proceeding and or with the written statement. The Defendant's conduct to the contrary is further confirmation of the waiver and abandonment of the Arbitration Clause.

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50. This Court is of the clear view that the filing of a written statement without prejudice to the Arbitration Clause is not the equivalent to an application under Section 8 and thereby consequences of waiver of arbitration cannot be avoided. It is now a well settled proposition, that where a statute prescribes that something ought to be done in a particular manner it has to be done only in that way. Rights cannot be "kept in the sleeve" for being used as per the whim and fancy of a party. Rights cannot be claimed, contrary to and militating against, 36 the prescribing statute. Given the complete primacy given to an Arbitration agreement under the 1996 Act, a Defendant cannot be allowed to blow hot and cold or be a fence sitter. He has to exercise a clear and prompt option as statutorily available. This Court is thus of the clear view that the Defendant No.3 has waived the Arbitration agreement and hence the same does not exist. The third Defendant has by its conduct, unequivocally submitted to the jurisdiction of this Court."

24. The judgment ***In the matter of: Naolin Infrastructure Private Limited (supra)***, delivered by a Co-ordinate Bench in **paragraph 10** thereunder held that an application filed under **Rule 11 to Order VII** of **CPC** would suffice to treat it as an application under Section 8 of the Arbitration Act and on the basis of such application, the subject matter of the suit can be referred to arbitration. For the discussions already made hereinabove, this Court is in respectful disagreement with the said view.

25. In so far as the submissions of the defendant/applicant is concerned that the Hon'ble Division Bench while laying down the law ***In the matter of: Smt. Gitarani Maity (supra)*** had decided the issue on the fact the defendant took out an application under Section 8 of the Arbitration Act after filing the written statement, is not a relevant consideration in the facts of the instant case, in the considered view of this Court. In the facts of this case, admittedly, the Master's Summons has been taken out prior in point time than the written statement was filed by the defendant. On consideration of the relevant provisions of law, as already discussed above, this Court is of the view that the instant application cannot be accepted or construed as an application filed under Section 8 of the Arbitration Act. In any event, the law laid down by the Hon'ble Division Bench in ***Smt. Gitarani Maity (supra)*** on construction of the legal provision under Section 8 is binding upon this Court.
26. The provisions laid down under Section 8 of the Arbitration Act, on a meaningful reading of it, requires a strict construction and interpretation. Liberal construction or interpretation is not permitted. Any liberal construction or interpretation of the said provisions, would defeat the legislative intent behind enactment of the provisions. After satisfying the tests laid down under Section 8 of the Arbitration Act, if a party to the arbitration agreement applies before a Court, such an applicant has a right to claim the subject-

matter of the suit to refer to arbitration. The obligation for reference is also mandatory upon the Court, then.

27. Upon considering the relevant provisions of law, this Court is of the firm view that the instant application has been taken out praying for dismissal, rejection and return of plaint, which are not in compliance of the provisions under Section 8 of the Arbitration Act.
28. In view of the foregoing reasons and discussions, this Court is of the firm and considered view that the instant application cannot be construed and accepted as an application filed under Section 8 of the Arbitration Act.
29. Resultantly, the instant application being **IA No. GA-COM/2/2025** stands **dismissed**, without any order as to costs.

(ANIRUDDHA ROY, J.)

Sbghosh/RS