



ARBITRATION AND CONCILIATION

Section 8 Application Filed After 11 Months of First Appearance Held Time-Barred: Calcutta High Court

IDFC First Bank Ltd. and Anr. v. Shyamsundar Distributor and Anr. | Calcutta High Court | Decided: May 18, 2026 | Justice Debangsu Basak and Justice Md. Shabbar Rashidi Summary A Division Bench of the Calcutta High Court dismissed an appeal against the rejection of an application filed under Sections 5 and 8 of the [...]

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Summary

A Division Bench of the Calcutta High Court dismissed an appeal against the rejection of an application filed under Sections 5 and 8 of the Arbitration and Conciliation Act, 1996, holding that the application was filed well beyond the prescribed period for submitting a written statement and therefore amounted to a waiver of the right to seek reference to arbitration.

Table of contents

- [Background](#)
- [Submissions](#)
- [Court's Analysis](#)

Background

The respondent and another partner had obtained a business loan of Rs. 20,40,000/- from a pre-merger entity of the appellant on April 3, 2018, repayable in 36 monthly instalments. The respondent later claimed to have paid Rs. 12,84,813.98/- towards full and final settlement on January 16, 2019, but the appellant issued a foreclosure letter on February 13, 2019 demanding a higher sum of Rs. 14,38,469.39/-. The respondent's representation against this went unheeded, leading to the filing of Title Suit No. 2334 of 2023 before the City Civil Court, Calcutta, seeking declaration and permanent injunction.

The appellant appeared in the suit on April 10, 2024. The trial court extended time for filing the written statement on three occasions, by orders dated April 10, 2024, June 14, 2024 and August 21, 2024. Despite these opportunities, the written statement was never filed. The suit was subsequently placed for ex parte hearing. It was later taken off the ex parte board at the instance of the appellant on March 6, 2025, at which point the appellant filed an application under Sections 5 and 8 of the Act seeking reference of the disputes to arbitration, relying on an arbitration clause in the loan agreement dated March 31, 2018.

The trial court rejected the application, holding that it was filed approximately 11 months after the appellant's first appearance in the suit, far beyond the period prescribed for filing a written statement under Order VIII Rule 1 of the Civil Procedure Code, 1908. The court also struck off the defence of the appellant for non-filing of the written statement, subject to the right to cross-examine the respondent's witnesses.

Submissions

The appellant contended that the application under Section 8 was filed before the submission of any first statement on the substance of the dispute, since no written statement had been filed. It was argued that the trial court's orders extending time to file the written statement effectively extended the window for filing the Section 8 application as well. Reliance was placed, among others, on the Madras High Court decision in *GTL Infrastructure Limited v. Amaladoss* (2023 SCC OnLine Mad 1684), and the Supreme Court's decision in *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.* (2011) 5 SCC 532.

The respondent countered that the failure to file the written statement within the prescribed period amounted to waiver of the right under Section 8, and that the opportunity to file a written statement after the matter was restored from the ex parte board was a special opportunity and could not be construed as a fresh statutory period.

Court's Analysis

The Court examined the text of Section 8(1) of the Act, which requires an application for reference to arbitration to be made 'not later than the date of submitting his first statement on the substance of the dispute.' The Court noted that the question was whether the prescribed period for filing a written statement had elapsed without the written statement being filed, and whether this amounted to waiver.

On the *Booz Allen* precedent, the Court noted that the Supreme Court there had held that mere passage of time between entering appearance and filing a Section 8 application does not amount to submission to jurisdiction, provided no supplemental proceedings were involved. However, the Court distinguished that case, noting that in the present case there were no supplemental proceedings causing the delay. The appellant had simply not appeared in the suit and had taken 11 months to file

the Section 8 application without filing any written statement.

The Court also noted that Booz Allen itself ultimately upheld the rejection of the Section 8 application on the ground that the subject matter of the suit, involving enforcement of a mortgage, was not arbitrable. Similarly, the Court found the present suit, being in respect of a loan agreement involving questions of declaration and injunction, to raise issues analogous to those in Booz Allen.

The Court placed reliance on the Delhi High Court's decision in *SSIPL Lifestyle Pvt. Ltd. v. Vama Apparels (India) Pvt. Ltd.* (2020 SCC OnLine Del 1667), which held that the limitation for filing a Section 8 application is co-extensive with the period prescribed for filing the written statement, being 90 days for ordinary civil suits and 120 days for commercial suits. It also relied on the Bombay High Court in *State Bank of India v. Surya Pharmaceuticals Ltd.* (2025 SCC OnLine Bom 1133), which held that the expiry of the period for filing the written statement amounts to a deemed waiver of the arbitration clause. The Karnataka High Court's decision in *Sri Thangavelu. R v. Shri Santosh. J* (2024 NCKHC 51347) was also cited to the effect that a Section 8 application filed long after the outer limit of 120 days from service of summons could not be treated as one filed at the earliest.

The Court found no exceptional circumstances of the kind recognised in *PIC Departmentals Pvt. Ltd. v. Sreeleathers Pvt. Ltd.* (2024 SCC OnLine SC 4082), where the Supreme Court had upheld the extension of time on account of an erroneous entry on the High Court's official website that misled the defendant into believing the suit had been disposed of. No such cause was made out by the appellant.

Ruling

The appeal was dismissed and the impugned order of the trial court was affirmed. The Court found no reason to interfere with the rejection of the Section 8 application or the striking off of the appellant's defence.

Coram: Justice Debangsu Basak and Justice Md. Shabbar Rashidi | Counsel for Appellant: Mr. Ranjit Singh and others | Counsel for Respondent: Mr. Ejaz Khan and others

Related Practice Areas

Arbitration