



A.No.3514 of 2023
in C.S.No.216 of 2020

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R.N.MANJULA, J.

This application has been filed to reject the plaint filed by the respondent / plaintiff in the above suit on the ground that the suit is not maintainable in view of the arbitration clause agreed between the parties in the dealership agreement dated 11.08.2014.

2. The above suit has been filed for recovery of a sum of Rs.3,86,79,962.02/- along with interest at the rate of 9% per annum. The learned counsel for the applicant / defendant submitted that the existence of the arbitration clause was not disputed by the respondent / plaintiff and even during cross-examination of P.W.1 he had admitted about the arbitration clause; the applicant / defendant had already filed a suit in Commercial Suit C.O.S. No. 21/2020 before the Commercial Court, Krishna District, Vijayawada seeking for a preliminary decree to render accounts and for recovery of money along with the relief of permanent injunction; the Commercial suit filed by the applicant / defendant was in respect of the another agreement which did not contain any arbitration clause and the same was dismissed and the application for restoration has been filed and pending. The core contention of the applicant / defendant is



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that the suit has been filed by suppressing the existence of arbitration clause and the same is not maintainable.

3. The learned counsel for the respondent / plaintiff submitted that this application is an abuse of process of law; the arbitration clause in the dealership agreement dated 11.08.2014 had expired prior to the filing of the suit; even though the dealership agreement was renewed on 01.11.2019, for a period between 11.08.2017 and 31.03.2020, the said agreement was not renewed thereafter; the applicant himself had filed a suit in respect of the same agreement before the Commercial Court, Krishna District, Vijayawada and hence he is estopped from invoking the arbitration clause in this suit; the dealership agreement was not renewed after 31.03.2020 and subsequent to that the applicant and the respondent continued to do business on a principal-to-principal to basis; the plaintiff's witness has been cross-examined and now the matter stands posted for the evidence of defendant; at this stage, the application itself is not maintainable; the applicant has not chosen to file any application under Section 8 of the Arbitration and Conciliation Act; only after obtaining the evidence during cross-examination of P.W.1, this application has been filed and hence it is not maintainable; the applicant himself has availed a



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civil remedy without invoking arbitration clause and hence he cannot pick and chose the arbitration clause as a matter of right. Having omitted to file any application under Section 8 of the Arbitration and Conciliation Act, the applicant / defendant has filed this application and it is should be dismissed.

4. It is true that the dealership agreement dated 11.08.2014 contains an arbitration clause. If a suit has been filed on the basis of the agreement and if there is an arbitration clause in the agreement, the defendant has to file an application by invoking the arbitration clause. But the applicant waited till the trial to commence and he has now filed this application to reject the plaint.

5. The applicant / defendant allowed himself to be tried by the trial Court. Having chosen to waive the arbitral agreement by virtue of acts and deeds of the applicant herein, the applicant cannot exercise his option in a piece meal manner. Since the applicant / defendant who had allowed the suit to be tried before the trial Court, now cannot turn around and say that there is an arbitration clause and that the Arbitration Tribunal only has got the jurisdiction.



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6. Though it is true for the defendant to state that there was an arbitration clause in the arbitration agreement filed by the plaintiff, he lost the opportunity due to the expiry of the time limit for the agreement and also due to the expiry of time fixed to bring an application under the Arbitration Act. Having subjected himself to the jurisdiction of the Civil Court without raising any objection at the earliest point of time, the plaintiff has come forward with this application and which in my opinion, is not maintainable.

7. Hence, for the foregoing reasons, this application is dismissed.

10.08.2023

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