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R.N.MANJULA, J.

Heard the learned counsels for the applicants and respondents and perused the materials available on record.

2. On 05.09.2023, this Court has passed the following order:-

“The learned counsel for the petitioner submitted that despite an arbitration clause was present in the loan agreement entered into between the plaintiff and the first defendant, the plaintiffs have chosen to file a suit instead of referring the matter to arbitration.

2. It is seen under Clause 32 of the loan agreement that the parties have agreed for an alternate dispute resolution through an arbitrator. The binding nature of this arbitration clause has not been argued on behalf of the respondents today, and there is no representation for respondents 1 to 3 also.

3. This matter is ordered to be listed under the caption 'for orders' on 22.09.2023.”

3. When the matter was taken up today, the learned counsel for the respondents / plaintiffs submitted that if the applicants / defendants are not convinced with the existence of the arbitration clause, they ought to



have referred the dispute to the Arbitrator instead of seeking prayer to reject the plaint. It is further submitted that rejecting the plaint without ensuring any forum for working out the remedy upon the plaintiffs will grossly prejudice to the interest of the plaintiffs.

4. The learned counsel for the applicants / defendants submitted that the loan agreement does contain an arbitration Clause 32. In that context of the fact, the applicants / defendants ought to have filed an application under Section 8 of the Arbitration and Conciliation Act instead of filing the application to reject the plaint. However the relief can be modified, in view of the facts now presented before the Court.

5. It is learnt that the applicants / defendants have not filed their written statement and subjected themselves to the jurisdiction of the Civil Court and they have denied the existence of the arbitration Clause 32 in the loan agreement entered into between the defendants and the first respondent. In such case, interest of justice will be served if the parties referred the dispute to the Arbitrator instead of rejecting the plaint. For better appreciation, Clause 32 of the Loan Agreement, is as under:-



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“Clause 32. Arbitration - Any conflict, difference, controversies, or disputes arising between the parties shall be resolved amicably at the first instance. Unresolved disputes, if any, shall be submitted/referred to the arbitration of the Sole Arbitrator. The Sole Arbitrator shall be either the Director of Head Commercial Business of INTEC CAPITAL LIMITED or any other person nominated by him/them. The Arbitration shall be conducted in accordance with the provisions of Arbitration and Conciliation Act, 1996, Rules thereunder any amendments thereto and the language of the Arbitration shall be English. The decision/award of the Arbitrator shall be final/conclusive and binding on the parties. The seat of Arbitration shall be Delhi.”

6. In view of the same, the application in A.No.777 of 2023 is disposed by directing the parties to refer the dispute to Arbitration in accordance with the arbitration Clause 32 of the Loan Agreement.

22.09.2023

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in C.S.No.558 of 2019



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