



Original Side Appeal (CAD) No.166 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2024

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR JUSTICE R.SAKTHIVEL

Original Side Appeal (CAD) No.166 of 2023

and CMP No.28470 of 2023

Nageshwar Rao,
Sole Proprietor,
M/s.Vijaya Vasava Motors,
GNT Road, Eluru,
West Godavari District,
Andhra Pradesh 534 001.

... Appellant

Versus

M/s. Tractors and Farm Equipment Ltd.,
77, Nungambakkam High Road,
Chennai 600 034, Rep by its
Authorized Signatory, Mr.C.P.Sounderarajan

.... Respondent

PRAYER: Original Side Appeal (CAD) filed under Section 13 of the
Commercial Courts Act, Original Side Rules read with Clause 15 of the



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Letters Patent, to set aside the order passed in Application No.3514 of 2023 in C.S.No.216 of 2020 dated 10.08.2023.

For Appellant : Mr. Ravi Raja Bappu

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The Appeal is directed against the order passed in Application No.3514 of 2023 in CS No.216 of 2020 dismissing the same filed seeking rejection of the plaint on the ground that there is an Arbitration Clause in the Distribution Agreement on which the suit is based.

2. The respondent sued for recovery of a sum of Rs.3,86,79,962.02 claiming that the said sum is due and payable to the respondent/plaintiff for the value of the Tractors and other Farm Equipments including spare parts, supplied by it to the appellant, who functioned as a dealer of the respondent.



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3. The suit was filed in the year 2020 and a written statement came to be filed on 18.03.2021 raising a plea that the suit is not maintainable in view of the fact that the agreement contains an Arbitration Clause. However, no application was filed under Section 8 of the Arbitration and Conciliation Act, 1996, seeking a reference to Arbitration. The suit was proceeded with and it was when evidence was being recorded, to be precise on 26.06.2023, after the evidence of P.W.1 was over, the instant application in Application No.3514 of 2023 came to be filed seeking rejection of the plaint as aforesaid.

4. This was opposed on the ground that the Application ought to have been filed before filing the written statement and now that the suit is in a part-heard stage and the plaintiff's evidence is almost over, the application is not maintainable. The learned Single Judge, who heard the application accepted the defence and dismissed the application as belated. Hence this Appeal.



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5. We have heard Mr.Ravi Raja Bappu, learned counsel appearing for the appellant.

6. The learned counsel would contend that though the application is one for rejection of the plaint, it is essentially one under Section 8 of the Arbitration and Conciliation Act 1996, since the defendant had taken the objection as to the maintainability of the suit, even in the written statement this application filed after the recording of evidence had commenced cannot be said to be belated. In support of his contention, the learned counsel would rely upon a judgment of the learned Single Judge of the Delhi High Court in RFA No.823 of 2019 pronounced on 06.11.2023, wherein it was held that if an objection has been taken based on Section 8 at the very early stage of the suit, the fact that an application was filed later will not entail automatic dismissal of the application on the ground that it has been filed after filing of the first defence on facts.



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dismissed the application, though on different grounds. Even assuming that there is a valid Arbitration Agreement, a plaint cannot be rejected.

9. Therefore, in our opinion, the very application that was filed before the learned Single Judge was misconceived. Hence, we do not see any reason to interfere with the order of the learned Single Judge. The Appeal fails and it is accordingly dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

10. During the course of the hearing of the Appeal, we found that the suit has been numbered as an ordinary suit and has been proceeded with as an ordinary suit. As we have already set out, the suit is one for recovery of money due under a Distribution Agreement, which is specifically classified as a commercial dispute under Section 2(c)(ix) and 2(c)(xviii) of the Commercial Courts Act 2015. The value of the suit is Rs.4,36,79,962.02. The numbering of the suit as an ordinary suit and proceeding with it as it is a regular suit is therefore, incorrect.



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11. We direct the Registry to renumber the suit as a commercial suit and list it before the Commercial Division of this Court for further proceedings. The Commercial Division will proceed from where the proceedings were stopped before the filing of this Application by the defendant. It is not open to the defendant to apply under Section 8 of the Arbitration and Conciliation Act, in future, as this Court has always held a consistent view that such application should precede the first statement on facts.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)

06.02.2024

jv

Index : No

Internet : Yes

Neutral Citation : No

Speaking Order

To

The Section Officer,

Original Side,

High Court of Madras

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