

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
(Through Virtual Mode Srinagar)**

**CM (M) No. 8/2023
CM No. 304/2023**

Pronounced on : 31.03.2023

M/s Ajay Auto Mobiles

..... Appellant(s)/Petitioner(s)

Through :- Mr. Amandeep Singh, Advocate.

Vs

TVS Motor Company Ltd. and
others

.....Respondent(s)

Through :- Mr. Anil Kaushik, Advocate with
Mr. Rajat Rana, Advocate and
Mr. Nigam P. Saroop, Advocate
for respondent Nos. 1 & 2.
Mr. Deepak Mahajan, Advocate
for respondent No.3.

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The suit was filed by the petitioner-plaintiff before the court of learned Additional Special Mobile Magistrate, Samba for permanent prohibitory injunction against the defendants, whereby the plaintiff sought to restrain defendant Nos. 1 & 2 from appointing defendant No.3 as authorized main dealer with respect to sale, service, repair and spare parts of TVS Company Limited in Vijaypur. The defendants moved an application under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the dispute for arbitration as the case of the plaintiff is covered under the arbitration clause of the Arbitration Agreement dated 20.02.2022 executed between the plaintiff and the defendants. The trial court vide order, impugned in the present petition, held that the case of the plaintiff is covered by an arbitration clause and held that the court lacks jurisdiction to try and decide the suit and refer the parties to arbitration. The appeal filed by the plaintiff against the order of the trial

court was dismissed by the appellate court vide order dated 21.01.2023.

The plaintiff has preferred the petition under Article 227 of the Constitution of India against the order passed by the trial court as well as the appellate court.

2. The objections to the petition have also been filed by the respondent Nos. 1 & 2 and are adopted by respondent No.3.
3. The present petition is mainly filed on the ground that the courts below have misread the arbitration agreement executed between the parties and the arbitration clause which is contained in the said agreement on the basis of which the case has been decided by the courts.
4. It is also pleaded that the trial court should have framed the issue of maintainability of the suit instead of disposing of the main suit itself on the application filed by the defendants in terms of Section 8 of the Arbitration and Conciliation Act.
5. The finding given by the courts below are perverse and cannot sustain in the eyes of law is what is pleaded by the learned counsel appearing for the plaintiff-petitioner herein.
6. Learned counsel for the respondents has submitted that the present petition is not maintainable as the jurisdiction of the court under Article 227 cannot be invoked in the light of controversy that has arisen between the parties. It is also submitted that the dispute agitated in the suit filed by the petitioner stands covered under the Agreement dated 20.02.2022 and the arbitration clause that find its place in the agreement.
7. The perusal of the present petition reveals that this court has been called upon to interpret the agreement dated 20.02.2022 which has been

invoked by the respondents before the trial court. The case of the petitioners is not covered by this agreement and, therefore, the trial court has fallen in error in rejecting the case of the petitioner at the threshold.

8. This court in exercise of power vested under Article 227 of the Constitution cannot normally interpret the clauses of the agreement and the applicability of the same qua the dispute which has been raised by the party in the suit. The petitioners have availed remedy against the order passed by the trial court as the plaintiff has invoked the jurisdiction of the learned District court by filing the appeal though it is different matter that the petitioner failed to get any relief before the appellate court as the appellate court on consideration of the matter dismissed the same being not competent against the order impugned before it. The party cannot invoke the jurisdiction of this court under Article 227 of the Constitution of India only for the reason that the courts have interpreted some document in a manner which is not considered to be suitable by the party to the proceedings initiated before the court. The erroneous finding by the courts below on facts and law cannot justify for approaching this court under Article 227 unless manifest miscarriage of justice has occurred due to the order passed by the courts below.
9. The circumstances in which the jurisdiction of this court under Article 227 can be invoked is well settled and find echo in the judgment of the Hon'ble Apex Court reported in **SLP(C) No.25828 of 2013 titled Radhey Shyam and another Vs. Chabbi Nath and others decided on 26.02.2015**. The petitioner herein if has grievance with regard to the

orders passed by the courts below as is the case herein he should explore the remedy which may be available to the plaintiff under law and not rush to this court under Article 227 of the Constitution of India.

10. The learned counsels for the parties have tried to interpret the agreement in their own way in order to convince the court about the applicability/inapplicability of the agreement which led to the passing of the order by the trial court.
11. As stated above, the court is not to interpret the applicability of the agreement in the petition in hand.
12. The jurisdiction of the court cannot be invoked under Article 227 of the Constitution of India in the present facts and circumstances of the case.
13. The judgment cited by the petitioner reported as 2018 Legal Eagle (SC) 160 titled “Kerala State Electricity Board and anr. V. Kurien E. Kalathil and anr.” and the judgment produced by the respondents reported as (2020) 15 SCC 706 titled “Deep Industries Limited vs. Oil and Natural Gas Corporation Limited and another” are not applicable to the controversy raised in the present petition.
14. The present petition is misconceived and is, accordingly, dismissed. The petitioner is at liberty to avail the remedy which may be available to him under law.

(PUNEET GUPTA)
JUDGE

Jammu:
31.03.2023
Shammi

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No