

**IN THE HIGH COURT OF SINDH AT
KARACHI**

SUIT NO.652 OF 2023

Plaintiff : Shahzad Riaz, through Khawaja
Sham-Ul-Islam, Advocate.

Defendant No.1 : Millat Tractors Limited, through
Imtiaz Siddiqui, Advocate.

Defendant No.2 : Bolan Castings Limited, through
Aftab Anwar Shaikh, Advocate.

Dates of hearing : 13.02.2024 and 28.02.2024

ORDER

YOUSUF ALI SAYEED, J. – The Suit relates to a contractual claim in respect of 954 Massey Ferguson Model-240 tractors, with the Plaintiff seeking a remedy by way of specific performance while alternatively seeking recovery of the sum said to have been paid in that regard, with certain additional amounts also being claimed as further compensation.

2. The case set up by the Plaintiff is predicated on the assertion that he contracted to purchase 1001 Model MF-240 tractors from the Defendant No.1 on basis of a booking made on 21.06.2022 through its dealer at Larkana, the Defendant No.3, at the rate of Rs.1,251,600/- per unit prevailing at the time, including 5% sales tax, with payment of a sum of Rs.1,252,851,600/- having been made in that regard through 91 pay orders dated 21.06.2022 issued by Soneri Bank, through its DHA Phase-IV Branch at Karachi, and it being said that such amount represent the total sum due and payable in respect of those tractors.

3. Apparently, 47 tractors were delivered during the month of June 2022, whereas delivery of the remaining 954 tractors came to be held in abeyance, on demand for payment of a further sum of Rs. 148,400/- per tractor, cumulatively amounting to a sum of Rs.141,573,600/-.
4. The letter dated 18.07.2022 addressed by the Plaintiff to the Defendant No.1, as filed along with the plaint, reflects the aforementioned factual matrix, with the substantive part thereof reading as follows:

“That on 21-06-2022 we booked 1001 units of Massey Ferguson tractors MF240 Model through your dealer KK Tractor Tando Allah Yar, That at the time of booking we were informed, which information we also confirmed from the market that if 100% full payment of the subject tractors are made prior to 24-06-2022 the rate of tractors including all shall be Rs.1,251,600/-. Under booking numbers as follows.

- 1) Booking Nos. 740798 to 741097 for 300 Units Tractor Model MF-240
- 2) Booking Nos. 741147 to 741446 for 300 Units Tractor Model MF-240
- 3) Booking Nos. 741518 to 741528 for 11 Units Tractor Model MF-240
- 4) Booking Nos. 741847 to 742236 for 390 Units Tractor Model MF-240

That above booking is of 21-06-2022, The Pay-orders are of 21-06-2022, total 91 Pay-orders of 13,767,600/- each for total value amounting to Rs. 1,252,851,600/- for 1001 units, Less 58,825,200/- (for already delivered 47 units of Tractors), copies of 91 Pay-orders Nos. BC06161872 to BC06161962 is Annexed. That out of the above 1001 Tractors, we have received only 47 Tractors amounting to Rs. 58,825,200/- and the remaining amount of 954 Tractors Units is Rs 1,194,026,400/-.

That today your dealer has informed us and demanded extra amount of Rs. 148,400/- per tractor. That above extra demand is not acceptable to us, as the same is also against the Law.

That the increased demand of Rs. 148,400/- per tractor is against our feasibility and we cannot go for the subject tractors at the increased price.

That we request you to immediately refund our payment of Rs. 1,194,026,400/- in our Name being payment/ price of 954 remaining units within 3 days or in the Alternative give us the delivery of 954 units of MF240 Tractor model to us at the agreed price of Rs. 1,251,600/- against which we have made the 100% full payment to your company.”

5. The Suit has been brought in that backdrop against the aforementioned Defendants while also impleading the Federation of Pakistan, the Securities and Exchange Commission of Pakistan, the Pakistan Stock Exchange Limited and certain private commercial banks, with it being prayed *inter alia* that this Court be pleased to declare that the Defendants No.1 and 3 are obligated to deliver the remaining 954 tractors within 60 days from the date of booking (i.e. 21.6.2022) and have no right to demand the extra cost of Rs.148,400/- per tractor for that remaining quantity so as to allow specific performance and direct said Defendants to deliver those tractors against the consideration of Rs.1,194,026,400/-, as already paid. However, in the alternative, it has also been prayed that the Defendant No.1 be directed to return/refund the amount of Rs.1,194,026,400/- and make payment of certain other sums by way of compensation. Furthermore, a claim for damages has also been advanced.
6. Various interlocutory applications came to be filed within that framework, several of which proceeded in tandem, being:
- (a) CMA No. 7114/2023, under Order 39 Rules 1 & 2 CPC, whereby the Plaintiff has sought suspension of a circular/letter dated 18.07.2022 issued by the Defendant No.1, whereby the price of tractors was increased by Rs.1,48,400/-, as well as that the Defendant No.1 be directed to deliver the 954 tractors, pending which it be restrained from selling the tractors to any other party;
- (b) CMA No. 7115/2023, under Order 18, Rule 18 CPC, seeking that the factory premises of the Defendant No.1 situated at Shaikhupura Road, Shahdara, Lahore be inspected and a report submitted in respect of the 954 tractors;

(c) CMA No. 7116/2023, under Order 38 Rule 5 read with Order 39 Rule 10 read with Section 151 CPC, seeking that the Defendant No.1 be directed to furnish security in the sum of Rs.1,865,016,196/- or alternative, that the Nazir or other officer of this Court be directed to collect the 954 tractors said to be lying at the factory of the Defendant No.1 at Lahore; and

(d) CMA No. 10697/2023, under Order XXXIX, Rule 2(3) CPC read with Article 204 of the Constitution read with Sections 3 to 6 of the Contempt of Court Ordinance, seeking that the action be initiated for violation of the Order made in the Suit on 15.05.2022, whereby the Defendant Nos.1 and 3 were restrained from selling the 954 tractors of the Plaintiff.

7. Learned counsel for the Plaintiff contended that a binding contract for the purchase of the total number of tractors stood concluded as on 21.06.2022, with the Defendant No.1 being obliged to deliver the remaining 954 tractors in view of the sum of Rs.1,194,026,400/- had and received in that regard, and that the demand for further payment in respect thereof was against the agreed terms, hence unlawful.

8. He argued that the matter was governed under and was to be adjudicated in accordance with Sections 32 to 36 of the Sale of Goods Act 1930.

9. On the other hand, while accepting that the Plaintiff had made payment of a sum of Rs.1,252,851,600/- vide the 91 pay orders towards booking 1001 tractors, learned counsel for the Defendant No.1 denied that any particular contract(s) had come into force that had the effect of binding the Defendant No.1 to a particular price.

10. He pointed out that the Plaintiff had not filed the Booking Forms, if any, submitted by him in respect of those tractors, but invited attention to the document said to be the standard format of that document, as filed by the Defendant No.1 along with its counter-affidavit, bearing the caption "Application for Provisional Booking of Agricultural Tractor", and submitted that the price was tentative and remained fluid so as to account for escalations up to the time of delivery of each unit. He submitted that during the month of June 2022, 47 tractors were delivered at the prevailing price with applicable sales tax, to the Authorized Dealer (i.e. the Defendant No.3) for onward supply, whereas a price revision circular was then issued on 18.07.2022 as part of the normal course of business, whereby all dealers were informed of a price escalation, with the Plaintiff being intimated accordingly by the Defendant No.3 vide a letter dated 19.07.2022, and requested to transmit the differential amount. He pointed out that the Plaintiff had refused to make payment vide his letter dated 18.07.2022 (as reproduced hereinabove), and had sought a refund of the amount paid in respect of the 954 tractors. He submitted that the Defendant No.1 was willing to deliver those tractors provided the differential amount at the prevalent price was paid or, alternatively, to return/refund the amount of Rs.1,194,026,400/- if the Plaintiff would be satisfied on that basis.

11. In view of the pleadings and the arguments advanced as well as the material presently on record, it merits consideration that while the existence of one or more bookings may be inferred from the pay orders and acknowledgement of the sum received, no booking forms or written agreement(s) of any other nature, have been placed on record, with it yet to be determined whether one of more binding contracts came into effect, and if so, on what terms, as well as whether the same admit to specific performance and whether the Plaintiff is entitled to that remedy.

12. Needless to say, all those aspects would fall to be determined on the basis of the evidence, as is to be lead. However, when the standard Booking Form filed by the Defendant No.1 is examined, Clauses 3 to 7 of the Terms and Conditions set out therein appear germane to the controversy at hand, providing as follows:

NO.	Original Urdu Text	Translation
03.	کمپنی بغیر نوٹس اپنی مرضی سے ٹریکٹر کا نمونہ - تعمیر، فنی تصریحات، رنگ، قیمت اور حوالگی شیڈول کو تبدیل کرنے کا حق محفوظ رکھتی ہے۔ کمپنی اپنا یہ حق بھی محفوظ رکھتی ہے کہ وہ بکنگ بغیر کوئی وجہ بتائے یا پیشگی اطلاع دینے بغیر کسی اور ڈیلر کو منتقل کرے۔ اور ٹریکٹر کسی بھی ردو بدل کے ساتھ یا بغیر اسکے کسی مقرر کردہ ڈیلر کے ذریعے سپلائی کرے۔	The Company reserves the right to change the model, construction, technical specifications, color, price and delivery schedule of the tractor at its own discretion without notice. The Company also reserves the right to transfer the booking to any other dealer without assigning any reason or prior notice and supply the tractor through any designated dealer with or without any modification.
04.	جو قیمت ظاہر/مشہر کی گئی ہے۔ وہ عارضی ہے۔ اور فیکٹری کی مقرر کردہ خوردہ قیمت ہے۔ یہ قیمت بغیر نوٹس تبدیل کی جا سکتی ہے۔ جہاں بھی ضرورت ہوگی وہاں اضافی طور پر حکومت کی طرف سے لاگو کردہ ٹیکس وصول کئے جائیں گے۔	The price displayed/advertised is provisional and is the factory fixed retail price, this price is subject to change without notice and will be subject to additional government levied taxes wherever required.
05.	وہ قیمت لاگو ہوگی جو کمپنی کی طرف سے بوقت حوالگی ٹریکٹر رائج یا مقرر کی ہوگی۔ حوالگی کے وقت دیگر اخراجات جیسا کہ انشورنس، لوڈنگ اور ان لوڈنگ، ٹرانسپورٹیشن، رجسٹریشن وغیرہ تمام اخراجات گاہک/درخواست دہندہ برداشت کرے گا۔ ٹریکٹر انشورنس رقم حوالگی سے قبل ادا کرنا ہوگی۔	The price applicable shall be as applicable or fixed by the Company at the time of delivery of the tractor. All other expenses like insurance, loading and unloading, transportation, registration etc. at the time of delivery shall be borne by the customer/applicant. Tractor insurance amount should be paid before delivery.
06.	قیمت کی ادائیگی (کلی، جزوی) صرف اور صرف ڈیمانڈ ڈرافٹ / بے آرڈر کی صورت میں قبول کی جائے گی۔ جو کہ بنام ملت ٹریکٹرز لمیٹڈ ہوگا اور صرف لاہور میں ادائیگی ہوگی۔ کمپنی کسی صورت میں اس ادائیگی کی ذمہ دار نہ ہوگی۔ جو کہ کیش یا کسی اور صورت میں کسی با اختیار ڈیلر کو کی گئی ہو۔	Payment of the price (in whole or in part) will be accepted only in the form of demand-draft/Pay-Order drawn in favor of Millat Tractor Limited and payable at Lahore only. The Company shall in no event be liable for any payment made in cash or otherwise to an Authorized Dealer.
07.	قیمت کا فرق ہو جو کہ بکنگ کے وقت اور ٹریکٹر حوالگی کے وقت ہوگا وہ ٹریکٹر کی حوالگی سے پہلے ادا کرنا ہوگا۔	Any price difference between the time of booking and the time of delivery of the tractor shall be paid before delivery of the tractor.

13. Suffice it to say that subject to any evidence as may be forthcoming to the contrary, for the time being the aforementioned terms and conditions appear to bolster the case of the Defendant No.1, especially as provisions of the Sale of Goods Act on which reliance was placed on behalf of the Plaintiff are subject to and controlled by several preceding provisions, including but not limited to Sections 4, 18 and 19 thereof.

14. Furthermore, it is axiomatic that there may be multiple bookings received by the Defendant No.1 at any given point in time for a particular model of tractor through its various authorised dealers and it cannot be claimed by a party making a booking that property passes at that time in a specific tractor unit. As such, it cannot be said that any number of the tractors of the particular description that may be available in stock with the Defendant No.1 belong to or are the property of the Plaintiff, especially when there is no identification of specific units through any distinctive serial number(s) of the engine(s) or chassis. Hence the necessity of an inspection or prospect of attachment or proceedings for contempt does not arise, and it also cannot be said that the case, as set out on affidavits, presents a matter that *prima facie* ought to be regulated through the grant of an injunction so as to either compel delivery at this stage or restrain the Defendant No.1 from selling tractors in the interregnum, nor is the *balance of convenience* in favour of the Plaintiff in that regard. On the contrary, the pendulum tilts in favour of the Defendant No.1. As for the prospect of *irreparable loss*, it merits consideration that the Plaintiff has himself advanced an alternative prayer for recovery of a quantified sum. As such, the requisite ingredients for the grant of injunctive relief are found to be lacking.

15. It is also pertinent to note that Section 64-A of the Sales of Goods Act, 1930, provides as follows:

"64-A. In contracts of sale amount of increased or decreased duty or tax to be added, or deducted.--In the event of any duty of customs or excise or tax on any goods being imposed, increased, decreased or remitted after the making of any contract for the sale of such goods without stipulation as to the payment of duty or tax where duty or tax was not chargeable at the time of the making of the contract, or for the sale of such goods duty-paid or tax-paid where duty or tax was chargeable at the time.

(a) If such imposition or increase so takes effect that the duty or tax or increased duty or tax, as the case may be, or any part thereof, is paid, the seller may add so much to the contract price as will be equivalent to the amount paid in respect of such duty or tax or increase of duty or tax, and he shall be entitled to be paid and to sue for and recover such addition, and

(b) If such decrease or remission so takes effect that the decreased duty or tax only or no duty or tax, as the case may be, is paid, the buyer may deduct so much from the contract price as will be equivalent to the decrease of duty or tax or remitted duty or tax, and he shall not be liable to pay, or be sued for or in respect of, such deduction."

16. It is for the foregoing reasons that all of the Applications mentioned in Paragraph 6 above were dismissed vide a short Order made in Court upon culmination of the hearing on 28.02.2024, while recording the undertaking of learned counsel appearing on behalf of the Defendant No.1 that the amount of Rs.1,194,026,400/- would be deposited with the Nazir within a period of 7 days, to be invested in a Government profit bearing scheme. However, it has been observed that the aforementioned Order inadvertently records that such undertaking was made on behalf of the Defendant No.2. That typographical error may be rectified by the Office in red ink, so that the reference to the Defendant No.2 in the operative part of the Order be changed to the Defendant No.1.

JUDGE