

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
H.C.A. No.124 of 2024

Date

Order with signature of Judge

FRESH CASE:

1. For order on office objection a/w reply as at 'A'.
 2. For order on CMA No.766/2024 (Exemption).
 3. For hearing of main case.
 4. For order on CMA No.767/2024 (Stay).
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Dated: 29th March 2024

Mr. Kh. Shams-ul-Islam, Advocate for Appellant
alongwith Mr. Imran Taj, Advocate.

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1. Learned counsel for the appellant undertakes to comply with office objection before the next date of hearing.

2. Exemption granted subject to all just exceptions.

3&4. Through instant High Court Appeal, the appellant has impugned the short order dated 28.02.2024 followed by the reasons dated 15.03.2024 passed in Suit No.652 of 2023 by the learned Single Judge, on the original side, of this Court, whereby, according to learned counsel for the appellant, CMA Nos.(1) 10697/2023, (2) 7114/2023, (3) 7115/2023 and (4) 7116/2023, filed by the appellant have been dismissed while misreading and non-reading of the evidence and documents available on record and also by misinterpreting the law and ignoring the judgments of Superior Court on the subject relied upon on behalf of the appellant. According to learned counsel for the appellant, the appellant has filed a Suit bearing No.652/2023 seeking declaration, injunction, damages and recovery of amount towards KIBOR in respect of 954 tractors, which according to learned counsel, were required to be delivered to the appellant pursuant to a conclusive contract towards purchase of 1001 Millat tractors, Model "Massey Ferguson (MF) 240" from the

respondent No.1 through their authorized dealer/respondent No.3 on the basis of booking order issued on 21.06.2022 at the rate of Rs.12,51,600/- per each tractor prevailing at the relevant point of time, including 5% sales tax, whereas, the total amount of sale consideration in the sum of Rs.1,252,851,600/- was paid by the appellant through 91 pay orders issued by the Soneri Bank, DHA Phase-IV Branch, Karachi, which was also received and deposited in the bank account of respondent No.1 without any objection and still lying with respondent No.1 alongwith huge amount of profit accrued thereon. However, according to learned counsel, inspite of having received the entire sale consideration and availability of 1001 tractors, the delivery of only 47 tractors was made immediately, details of which have been annexed at pages 479 to 481 of instant petition), whereas, respondent No.1 was under legal obligations to make the delivery of remaining 954 tractors also within sixty (60) days from the date of booking i.e. on 21.06.2022, at the agreed price of Rs.12,51,600/- per tractor including 5% sales tax in terms of SRO 837(I)/2021 dated 30.06.2021 as well as their commitment through advertisements and correspondence with their authorized dealers. It has been further contended by the learned counsel that admittedly, the entire sale consideration was duly received in respect of 1001 Millat tractors of Model MF-240 booked by the appellant on behalf of their customers, whereas, computer generated details of such orders and the amount received against each tractor, totaling to 1001 tractors were issued by respondent No.1 (details of which are available at pages 431 to 481 of instant petition). However, per learned counsel, the delivery of only 47 tractors was made immediately, whereas, the delivery of remaining 954 tractors was withheld without any factual or lawful excuse inspite of repeated requests in writing by the appellant, whereas, instead of fulfilling their contractual and legal obligation, respondent No.1

demanded from the appellant increase/revise price in the sum of Rs.148,400/- on each tractor, in violation of law, including sections 4, 18, 19, 32, 33 and 34 of the Sales of Good Act, 1930. According to learned counsel for the appellant, once the entire sale consideration in respect of 1001 tractors on agreed price, without any consideration of its enhancement or revision was received by the respondents, whereafter, the part delivery of 47 tractors was also made, therefore, the contract between the parties became conclusive and the respondents were not justified to back off from such contractual obligations or demand any extra amount from the appellant on the pretext of revised price at a subsequent stage. It has been further contended by the learned counsel that without prejudice to hereinabove admitted factual and legal position, the letter dated 16.06.2022 issued by the respondent No.1 relating to revision in price of Millat Tractor of Model MF-240 itself, nullified the instance of the respondent No.1, as it has been specifically mentioned in such letter that in such cases where financial instrument dated 24.06.2022 or earlier against the orders booked with the company dated 24.06.2022 if received at MTL upto 30.06.2022, the previous price shall be applicable, (copy of letter dated 16.06.2022 has been annexed at page 487). Therefore, according to learned counsel, the revised price is otherwise not applicable in the case of appellant, and the previous price shall be applicable, hence non-delivery of the remaining 954 tractors and asking for enhanced price by the respondent No.1, besides being illegal and contrary to agreed terms of sale/purchase, is based on malafide. Per learned counsel, respondents neither made delivery of the remaining tractors, nor even acceded to the request of the appellant to refund the amount of 954 remaining tractors, on the contrary, insisted upon enhanced/revise price on the one hand, and also earned huge profits on the amount of the appellant at the rate of

22% profit from the bank. Per learned counsel, the appellant has a prima facie case for grant of interim relief, including delivery and/or attachment of the remaining 954 tractors, which were admittedly manufactured and ready to be delivered to the appellant as per booking orders, which included the names of customers, model, engine and chassis numbers of the tractors. Per learned counsel, such factual and legal position has been duly acknowledged by the respondent No.3, who is the authorized dealer of respondent No.1 in their various letters written to the respondent No.1 requiring them to deliver remaining tractors to the appellant on the price on which same were booked after having revised the entire sale consideration in advance. It has been further submitted that the learned Single Judge while dismissing the aforesaid four applications of the appellants in the above suit failed to appreciate the factual and legal position and the conclusive nature of the transaction, in terms of the aforesaid provisions of the Sales of Goods Act, 1930, as well as the judgment of Hon'ble Supreme Court of Pakistan and of this Court on the subject. Moreover, learned Single Judge placed reliance on some provisions of purported standard booking form, which is neither executed or signed between parties, nor applicable to the case in hand as the entire sale consideration at the rate applicable at the time of agreement was paid / received in advance and the tractors were duly manufactured and available for delivery. In support of his contention, learned counsel for the appellant has placed reliance on the cases of (1) **COMMISSIONER OF INCOME TAX, PESHAWAR ZONE, PESHAWAR v. MESSRS SIEMEN A.G. [PLD 1991 SC 368]**, (2) **PERFORMANCE AUTOMOTIVE (PVT) LTD. v. AKBAR ADAMJEE AND OTHERS [2021 SCMR 1257]**, (3) **PORSCHE MIDDLE EAST AND AFRICA FZE AND ANOTHER v. AKBAR ADAMJEE AND OTHERS [PLD 2020 SINDH 415]** and (4) **AGHA SAIFUDDIN KHAN**

**v. PAK SUZUKI MOTORS COMPANY LIMITED AND ANOTHER [1997
CLC 302].**

It has been prayed by the learned counsel for the appellant that the operation of impugned order may be suspended, as it has rendered the suit of the appellant as redundant, whereas, none of the factors for grant of interim relief have been discussed or considered in the instant case. Therefore, it has been prayed that respondents may be directed not to sell 954 tractors of Model MF-240 made by Millat Tractors Limited/respondent No.1 to any third party and deliver the same to the appellant, whereas, the appellant in all fairness, is willing to deposit differential amount i.e. Rs.148,400/- per each tractor through bank guarantee before the Nazir of this Court.

Let pre-admission notice be issued to the respondents as well as to the Deputy Attorney General, to be served through first three modes, for **16.04.2024**, when comments/reply, if any, shall be filed with advance copy to the learned counsel for appellant. In the meanwhile, subject to deposit the differential amount i.e. Rs.148,400/- per tractor through bank guarantee before the Nazir of this Court, respondent No.1 is restrained from selling 954 tractors of Model MF-240 to any third party till next date, and shall provide details of aforesaid tractors with model, chassis and engine numbers before the Court on the next date.

CHIEF JUSTICE

JUDGE

Farhan/PS
