

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1055 / 2023

Date	Order with signature of Judge
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| 1. | For hearing of CMA No.17555/2023 |
| 2. | For hearing of CMA No.9666/2023 |

Mr. Yousuf Makda, Advocate for the Plaintiff.
M/s. Malik Naeem Iqbal and Muhammad Nasir, Advocates for Defendants 3 & 5.
Mr. Junaid Alam, Advocate for KMC.
Mr. Ghulam Akbar Uqaili, AAG Sindh

Date of Hearing: 23.11.2023

Date of Order: 23.11.2023

ARSHAD HUSSIN KHAN, J.- The Application [CMA, No.9666/2023] under Order XXXIX Rules 1 & 2, CPC, is filed by the plaintiff seeking injunctive orders against the defendants, inter alia, denying the plaintiff from collection of Tax / Fee from Asso Goth Cattle Piri Malir U.C. 10 Malir Karachi till disposal of the suit.

2. Concisely, the facts essential for disposal of the above application are that the Plaintiff filed the present suit for Declaration, Injunction, Recovery and Damages stating therein that pursuant to the auction notice published by Defendants 2 to 4 in various Newspapers for the auction for collection of recovery rights of Tax / Fee from Asso Goth Cattle Piri Malir U.C. No.10, Malir Karachi [collection point] for the year 2022-2023, the Plaintiff participated in the said open auction and his bid being highest was accepted. After completing requisite formalities, letter of approval and deed of agreement dated 18.08.2022 were executed, whereby the contract of collection of recovery rights of tax / fees from the Collection Point for the period of 10 months and 14 days with effect from 18.08.2022 to 30.06.2023 against contract amount of Rs.2,71,20,000.00 was awarded by the competent authority. As per the terms and conditions of the contract, the contractual amount i.e. Rs.2,71,20,000.00 was to be paid in equal installments for 10 months. It is further stated that in the month of August, 2022, due to heavy rains infra-structure was completely destroyed and the Cattle Piri areas and the other link roads even the main highway were badly damaged and were unable to be used by the traffic. It is further stated that due to the aforesaid and force majeure situation the business of entry of animals has considerably been stopped and reduced as the collection points

were not functioning as has been functioned in the normal course. It is further stated that the Plaintiff has repeatedly approached the Defendants and even written applications have been submitted for grant of relief due to non-collection of fee / tax by the Plaintiff as per the contract. While the plaintiff's request was pending, Defendant No.2 has extended threats for cancellation of the contract even before its completion and without extending any exemption. The plaintiff having serious apprehensions of his dispossession from the collection point and cancellation of the agreement, filed the above suit and through instant application he has sought restraining orders against the Defendants pending disposal of the above suit.

3. Learned counsel for the Plaintiff while reiterating the contents of his injunction application has argued that the ad-interim order dated 23.06.2023, passed by this Court against the Defendants is operating in this case. He has argued that pursuant to the subject contract, the Plaintiff has acquired the collection of recovery rights of tax / fees from the Collection Point for the period of 10 months and 14 days with effect from 18.08.2022 to 30.06.2023. However, on account of natural calamities and diseases of the animals, problems were faced by the Plaintiff and the said grievance of the Plaintiff was communicated by the concerned officials of District Municipal Commissioner lately on 02.06.2023 and in the circumstances, the relaxation in the amount payable or extension of period as required on the part of the Plaintiff was to be decided by the Secretary Local Government while the Plaintiff is being forced to vacate the collection point. He has further argued that the fact of such a bad weather and bad situation has been published in the Newspapers and Print Media, which is a matter of record. Federal and Provincial Governments have also taken notice of it and the Notifications dated 12.08.2022 and 21.08.2022 were issued by the Government of Sindh declaring various areas including the Malir-Karachi areas as calamity affected areas. He has also cited ad-interim orders passed in suits 675/2022, 619/2022 and suit 1642/2022, in which the Contractors have prayed for extension of period of contract without payment of any amount on the ground that due to Covid-19, the business activities were held up / closed for various days and this Court in various other proceedings including the above referred three suits has been pleased to grant interim stay and finally those contractors got the reliefs as prayed. He has also argued that the Plaintiff has not made any default in payment of

the monthly installments after passing of the interim order in the matter and in this regard he has referred to payment sheet annexed with the Statement dated 03.10.2023 filed by him. Lastly, learned counsel has urged that the plaintiff in this matter is also entitled for extension of period of contract or in the alternate entitled to adjustment of the amount of contract for the period during which he could not collect the tax/fees.

4. Conversely, learned counsel for Defendant Nos. 3 and 5 contends that instant suit pertains to the contract awarded to the Plaintiff for collection of fee from Cattle Piri Asso Goth, which was expired on 30.06.2023. He further contends that instant suit as well as application for interim injunction are not maintainable as the plaintiff through instant proceedings seeks extension of the contract for four months, which is not permissible either under contract or under the law. In support of his stance, he has referred to the Rules 27 and 28 of Sindh Local Councils (Auctioning of Collection Rights), Rules 2016 and clause 17 of the subject contract. He further submits that even though under the law the plaintiff is not entitled for any extension of the contract, yet the period of four months, which is sought to be extended has also expired on 31.10.2023. Learned counsel has also argued that the Plaintiff has failed to deposit the monthly installment as per the contract and also as per the ad-interim order. Lastly, he has prayed that instant application filed by the plaintiff may be dismissed.

5. Learned AAG has supported the arguments of the learned counsel appearing for Defendants No.3 to 5.

6. I have heard the arguments, perused the record.

From perusal of the record, it appears that the plaintiff through instant suit has sought following reliefs:

- “a) Declaring and holding that the plaintiff is entitled for the allowance/adjustment of four months in contract period for collection Rights of recovery from Asso Goth Cattle Piri Malir U.C. No. 10, Malir Karachi (now Malir Town Committee) Karachi for the year 2022-2023;
- b) Declaring that the Defendants are bound to allow the Plaintiff to continue Collection of Tax/Fee from Asso Goth Cattle Piri Malir U.C. Karachi for a further period of Four Months w.e.f. 1st July 2023;
- c) Declaring that the plaintiff is entitled for adjustment of the aforesaid period and in the alternate the amount having been paid in excess with recovery, with markup may be refunded by the Defendants to the Plaintiff;

- d) Pass a decree in the sum of Rs.5,00,00,000/- (Rupee Five Crore) on account of damages/compensation against the Defendant jointly and severally with markup at the rate of 16% per annum from the date of filing of this suit till realization;
- e) Directing the Defendant No.1 to grant relief at least for the period of Four Months as requested by the plaintiff and decide the plaintiff's application forwarded by Defendant No.3 vide its letter dated 02.06.2023 (Annexure P/16) after providing opportunity of hearing to the plaintiff;
- f) Restraining the Defendants their officers, employees, representatives and person(s) acting for and/or on their behalf from taking any adverse action against the plaintiff pending disposal of the Plaintiff's request forwarded by Defendant No.3 vide its letter dated 02.06.2023 to Defendant No.1;
- g) Restraining the Defendants, their officers, employees, representatives and person(s) acting for and/or on their behalf from interfering, disturbing, dispossessing, denying the plaintiff and his employees in any manner from Collection of Tax/Fee from Asso Goth Cattle Piri Malir U.C. No. 10 Malir Karachi;
- h) Cost of the suit ;
- i) Any other relief (s) which this Hon'ble Court may deem fit and proper under the circumstances of this case, may please be granted."

[Emphasis supplied]

From perusal of the prayers clauses, it manifestly appears that the plaintiff primarily seeks extension of the contract period for four months w.e.f. 01.07.2023 and admittedly the plaintiff has availed the said period as the plaintiff filed this suit on 22.06.2023, eight (8) days prior to the expiry of the contract period, that is, 30.06.2023 and on account of ad-interim orders passed by this Court on 23.06.2023, he availed continuity of the contract, as such, four months period, which is sought to be extended, if computed from the date of expiry of the contract, has also come to an end on 31.10.2023.

7. Besides above, this Court on 23.06.2023 while passing the ad-interim order directed defendant No.1 to pass the order on the representation of the Plaintiff in the first place before being called upon to vacate the subject premises. Record also reflects that Defendant No.3 has filed a Statement dated 18.08.2023 along with copy of the letter dated 20.07.2023, whereby the request of the plaintiff for extension of the contract was turned down and he was directed to handover the vacant possession of the Cattle Piri. Relevant portions of the said letter for the sake of convenience is reproduced as follows :

“Moreover, as per Rule 23(1), you were bound to abide by the terms and condition of the contract and Rule 27,28 and clause 17 of the contract agreement specifically prohibit grant of rebate

and / or extension of contract on any ground whatsoever. Furthermore, you have failed to make payment of the monthly installments, which may expose you to penal consequences, including but not limited to blacklisting in accordance with law.

In view of the foregoing, your request cannot be acceded to and you are directed to handover vacant possession of the cattle piri.”

8. Before going into further discussion, it would be conducive to reproduce Rules 27 and 28 of Sindh Local Councils (Auctioning of Collection Rights), Rules 2016, and clause 17 of the subject contract, herein below:

Rules 27 and 28 of Sindh Local Councils (Auctioning of Collection Rights), Rules 2016:

“27. The contractor shall not be entitled to rebate on any ground whatsoever.

28. No extension in a contract shall be granted on any ground whatsoever.”

Clause 17 of the Contract:

“17. That as per Rule 27 & 28 of the Sindh Local Councils (Auctioning of Collection Rights), Rules 2016, the contractor shall not be entitled to rebate on any ground whatsoever, no any extension in the contract shall be granted on any ground whatsoever.”

Rules 27 and 28 of Sindh Local Councils Rules 2016 very clearly speaks that there will be no rebate or extension in a contract on any ground whatsoever. Likewise, Clause 17 of the Contract also specifies that as per Rules 27 and 28 of the said Rules the contractor shall not be entitled to rebate on any ground whatsoever and no extension in the contract shall be granted on any ground whatsoever.

9. Moreover, the ad-interim order dated 23.06.2023, passed by this Court, was subject to depositing the payable amount with the Nazir of this Court, which, apparently, the Plaintiff has failed to pay the same regularly as the payment sheet annexed with the Statement dated 03.10.2023 filed by the Plaintiff shows that only two months’ installments viz: August and September 2023 have been paid whereas payments for the month of June and July 2023 have not been shown. It is a well settled principle that the plaintiff who seeks equitable and discretionary relief from court in the form of an injunction, under Order XXXIX Rules 1 and 2, C.P.C., has not only to establish that he has a prima facie case, but he has also to show that he has balance of convenience on his side and that he would suffer irreparable injury/loss unless he is protected during the pendency of suit. The court is

required to take into consideration whether the question of balance of inconvenience or irreparable loss to the party seeking such relief co-exist or not¹. Furthermore, since the Plaintiff himself quantified the damages it may suffer, hence, the plea of irreparable loss is also not available to Plaintiff².

10 The upshot of the above discussion is that no case of any injunctive order has been made out. The plaintiff has failed to make out a prima facie case; so also balance of inconvenience does not lie in his favour and further the plaintiff will not suffer any irreparable losses in case of injunction is declined. Hence, the injunction application [CMA 9666/2023] merits no consideration and is liable to be dismissed.

These are the reasons for my short order dated 23.11.2023 whereby the application [CMA No. 9666/2023] was dismissed.

It is clarified that the observations made in the above order are tentative in nature and may not influence the final determination of the case.

JUDGE

Karachi;

Dated:

*Jamil***

¹ Puri Terminal Ltd. v. Government of Pakistan [2004 SCMR 1092] AND Marghub Siddiqui v. Hamid Ahmed Khan and 2 others [1974 SCMR 519].

² Muhammad Kashan v. Coca Cola Export Corporation Through Chief Executive and 3 others [2015 CLD 1513].