

IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA No.323/2006

Judgment delivered on:28.09.2010

Govt. of U.P. through the Chief Secretary
Annexee Lucknow

..... Appellant

Through:Mr. M.A. Rahman, Advocate

Versus

S.A. Khan, Sole Proprietor of National Road Constructions

..... Respondent

Through: Mr. Lalit Gupta and Mr. Deepak
Aggarwal, Advocates

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

KAILASH GAMBHIR, J. Oral:

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1 . By this appeal filed under section 96 of the Code of Civil Procedure, 1908, the appellant seeks to set aside the judgment and

decree dated 23.08.2005 passed by the court of Additional District Judge, Delhi whereby the suit for recovery has been decreed in favour of the respondent and against the appellant.

2 . Brief facts relevant for deciding the present appeal are as that the respondent is engaged in the business of giving on hire road rollers and that he gave a quotation for giving on hire the road roller to the appellant which was accepted vide order no.121/Camp/50 dated 9.6.1999. That the payment towards hire charges was not made by the appellants and on serving a legal notice dated 18.4.2001, a sum of Rs.52, 000/- was paid to the respondent vide cheque dated 7.9.2001 but a balance amount of Rs. 3,94,375/- was still pending. Thereafter, the respondent filed a suit for recovery of the balance amount and the same vide judgment dated 23.8.2005 has been decreed in favour of the respondent and against the appellant. Feeling aggrieved with the same, the appellants have preferred the present appeal.

3. Counsel for the appellant submits that no agreement in writing took place between the parties for hiring the road roller and in the absence of any such contract the ld. Trial court has given a wrong finding to accept the version of the respondent. Counsel for the

appellant further submits that the alleged quotations dated 07.06.1999 and 09.06.1999 cannot be treated as an agreement or a contract between the parties. Counsel further submits that the respondent was paid the entire amount towards the hiring charges of the road roller i.e. an amount of Rs.52,000/- and no other amount was left to be paid by the appellant. Counsel for the appellant further submits that the respondent failed to prove the supply of road rollers to the appellant and in fact the payment made by the appellant was due to mistake and oversight for which the appellant is entitled to be reimbursed.

4. Refuting the said submissions of the counsel for the appellant, Mr. Lalit Gupta, counsel for the respondent, supports the impugned judgment passed by the Ld. Trial Court. Counsel submits that the respondent has proved on record the quotations and orders placed by the appellant towards the hire charges of the road rollers. Counsel further submits that the part payment of Rs.52,000/- was made by the appellant but the remaining amount of Rs.3,94,375/- was not paid by the appellant.

5. I have heard Ld.counsel for the parties.

6. It is not in dispute between the parties that a sum of Rs.52,000/- was paid by the appellant towards part payment for the supply of the road rollers on hire basis. The stand taken by the appellant that the said payment was wrongly made is not only misconceived but is false and vexatious. It is quite apparent that the appellant did not take any steps for recovery of the said amount from the respondent which is alleged to have been wrongly paid by the appellant. The Id. Trial Court did not give credence to the defence of the appellant as the defence of the appellant was found contradictory in nature. The Id. Trial Court observed that on the one hand it is the case of the appellant that no road roller was supplied to the appellant on hire and on the other hand the case of the appellant was that the payment was made to the respondent on the basis of work done. Perusal of Ex. PW- 1/19 which is a letter dated 21.09.2001 written by the appellant to the respondent clearly shows that payment of Rs.52,000/- was made by the appellant towards hire charges for the road roller and for the remaining amount the appellant stated that the matter is under consideration with the concerned department. Quotation dated 07.06.99 was also proved on record by the

respondent as Ex. PW- 1/1 and vide letter dated 11.06.1999 Ex. PW- 1/3 the appellant duly notified the respondent about the supply of one diesel road roller against the said order. The demand for the balance amount raised by the respondent vide letter dated 16.10.2001 is proved on record as Ex. PW- 1/20 and the said demand was also raised by the respondent through legal notice dated 18.04.2001 Ex. PW- 1/22. In the face of all these documents proved on record by the respondent, I do not find any illegality or perversity in the impugned order passed by the Ld. Trial Court. There is no merit in the present appeal, the same is hereby dismissed.

7. Vide order dated 27.07.2006, direction was given to the appellant to deposit an amount of Rs.3,94,375/- and the said amount is lying deposited in this court. The Registry is directed to release the said amount along with interest accrued thereupon in favour of the respondent and still if any amount is left to be paid by the appellant, the respondent will be at liberty to seek recovery of the same.

September 28, 2010
pkv

KAILASH GAMBHIR, J