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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(Through video-conferencing)

**RSA No.1366 of 2021 (O&M)
Date of Decision: 28.01.2022**

M/S R.S.CONTRACTORS

.....Appellant

Vs

M/S AGGCON EQUIPMENTS INTERNATIONAL (P) LTD

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Vaibhav Jain, Advocate
for the appellant.

RAJ MOHAN SINGH, J.(Oral)

CM-5469-C-2019

The deficiency in court fee has been made good by way
of affixing total court fee of Rs.4344/-.

The application stands disposed of.

RSA-1366-2021 (O&M)

Defendant-appellant is in second appeal against the
concurrent judgments and decrees passed by the Courts below
in a suit for recovery filed by the plaintiff.

Plaintiff is a private limited concern and has been
engaged in the business of supply of different kinds of machines
like road roller, vibratory soil compactor etc. for the purpose of

digging of soil in the process of construction of roads and lifting of soil etc. on daily/monthly rental basis.

As per pleaded case, there was a business transaction between the plaintiff and the defendant for which the plaintiff had supplied two Motor Grader and two Soil Compactor on monthly rental basis. The machines were lifted by the defendant from Faridabad to the site of Yamuna Expressway Project from 10.11.2008 to 23.01.2009. Plaintiff had raised bills for payment. The plaintiff claimed outstanding amount of Rs.2,02,929/- against defendant as on 31.10.2009 i.e. an amount of Rs.1,83,646/- towards net balance and interest @ 18% per annum from 01.04.2009 to 31.10.2009 amount to Rs.19.283/-.

The suit came to be filed after issuance of legal notice dated 15.10.2009 in the aforesaid context. The trial Court decreed the suit on the premise that after remand of the appeal by the District Judge, the opportunities were granted to the parties to lead evidence. Plaintiff had examined PW-3 and PW-4 in additional evidence. The aforesaid witnesses had deposed in the context of relationship between the parties. PW-3 had deposed in respect of four cheques (Ex.P-18 to Ex.P-21) having been issued by his Branch. The witnesses had also deposed that these cheques had the seal of the defendant (M/s R.S. Contractors). The witnesses had admitted that the cheques were issued by the defendant. Entries of cheque No.813145

were also admitted. Execution of documents (PW-3/A and Ex.PW4/A) was proved showing the same to have been issued by the defendant.

On the basis of evidence on record, the trial Court held that there was dealing between the plaintiff and the defendant. The documents Ex.P-4 to Ex.P-11 i.e. Bills were issued by the plaintiff. On the basis of ratio in **M/s KLG Systel Ltd. vs. M/s Fujitsu ICIM Ltd, AIR 2001 Delhi page 357** and **M/s Punjab Pen House vs. Samrat Bicycle Ltd., AIR 1992 Delhi page 1,** the trial Court appreciated the controversy that the bills are the written contracts, envisaging that there was an agreement between the parties in respect of terms and conditions and the same can be treated to be acknowledgement of concluded contract. The trial Court decreed the suit and the decision was upheld by the lower Appellate Court.

Learned counsel for the appellant with reference to the record could not dispute the existence of relationship between the parties and execution of bills. The defendant could not lead any such evidence to counter the evidence of the plaintiff based on the testimonies of PW-3 and PW-4 as well as issuance of bills Ex.PW-3 and PW-4.

No law point worth cognizance is involved in the present appeal. Re-appreciation of evidence on record in

regular second appeal cannot be done, particularly when the judgments and decrees passed by the Courts below are not based on misreading of evidence in any manner. Consequently, the appeal stands dismissed.

Since the main appeal is dismissed, therefore, all pending misc. applications are accordingly disposed of.

January 28, 2022

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No