

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 524 OF 2017**

DEVIKA EXIM AND AGRO PRODUCTIONS
PVT. LTD., REP. BY ITS C.O., SHRI.
ULHAS MEHTA AND ANR.,

... Petitioners

Versus

EDC LTD. AND 3 ORS.,

... Respondents

Adv. S.Taleigaonkar for the Petitioners.
Adv. Ashwin D. Bhole for Respondent no.1.

Coram:- C. V. BHADANG, J.
Date:- 4th September 2017.

P.C.:

The petitioners had sought permission to lead secondary evidence in respect of the following documents:

- i) Letter dated 26/6/1998 issued by M/s. Silsheela Export Pvt. Ltd. to the Defendant no.1 along with tender form, chequebearing no.331104 drawn in favour of Dena bank for Rs.3,50,000/- and demand draft of Rs.750/-
- ii) Letter issued by the defendant no.1 to M/s. Silsheela Export Pvt. Ltd. dated 31/08/1998.
- iii) Tender form issued by the defendant no.1.
- iv) Letter dated 05/10/1998 issued by the defendant no.1 to M/s. Silsheela Export Pvt. Ltd.
- v) Letter dated 17/02/2005 addressed by the defendant no.2 to the defendant no.1.
- vi) Advocate notice dated 03/03/2005 addressed to the defendant no.1.
- vii) Reply dated 18/03/2005 by the defendant no.1 to the notice dated 03/03/2005.
- viii) Advocate notice dated 23/03/2005 addressed to

the defendant no.1.

ix) Reply dated 01/03/2005 by the defendant no.1 to the notice dated 23/03/2005.

2. In so far as the documents at serial no.1, 3, 5 and 8 are concerned, they are said to be the letters issued by the petitioners/plaintiffs to the defendant/respondent no.1 and as such the originals of the said documents were claimed to be in possession of respondent no.1. In so far as the documents at serial nos.2, 4, 7 and 9 are concerned, they are the letters issued by respondent no.1 to the petitioner. In so far as the second set of the documents is concerned, it was contended that the originals of the said documents were misplaced and as such could not be produced.

3. The learned trial court by the impugned order has dismissed the application inter alia on the ground that the factum of the documents having misplaced is not established, as the petitioner has not lodged any complaint with the police.

4. On hearing the learned counsel for the parties and the respondent no.1, who is the only contesting party, the petition can be disposed off on a short count.

5. The respondent no.1 has today filed a memo stating that the originals

of the documents at serial nos.5, 6 and 8 are available with respondent no.1, as also the respondent no.1 is possessing the office copies of the documents at serial no.7 and 9. The learned counsel for the petitioner points out that even so far as the rest of the documents are concerned, i.e. at serial no.1 to 4 there is reference to the same in the written statement of the respondent no.1. The learned counsel for the respondent no.1 in all fairness states that subject to the issue of the proof and the probative value of the documents being kept open, the issue of production of secondary evidence may be appropriately considered by this Court.

6. In such circumstances, the petition is disposed off in the following terms:

- (i) The impugned order is set aside.
- (ii) It will be open for the petitioners to issue a notice to produce the documents to the respondent no.1 in respect of the documents at serial no.1, 3, 5 and 8 or to obtain the certified copies of the same from the respondent no.1 which shall be then produced before the learned trial court.
- (iii) The petitioners are permitted to lead secondary evidence in respect of the rest of the documents.
- (iv) Needless to mention that this shall be subject to the proof of the documents in accordance with law and subject to just exception to the proof

and admissibility of the same.

(v) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

ap/-