

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (227) No. 741 of 2018**

South Eastern Coalfields Ltd. Through its General Manager (Excv.) Gevra Project, Tahsil Dipka, District Korba (C.G.).....[Owner]

---- Petitioner

Versus

1. Smt. Sarita Banjare, W/o Late Lalit Narayan Banjare, aged about 22 years, Caste – Satnami, R/o Quarter NO. 83/1, Railway Station Colony, Korba, Tahsil and District Korba (C.G.).....[Claimant]
2. Ku. Bhumika Banjare, D/o Late Lalit Narayan Banjare, aged about 3 years, Caste – Satnami, R/o Quarter NO. 83/1, Railway Station Colony, Korba, Tahsil and District Korba (C.G.).....[Claimant]
3. Punau Ram Banjare, S/o Late Vishram Banjare, aged about 48 years, Caste – Satnami, R/o Quarter NO. 83/1, Railway Station Colony, Korba, Tahsil and District Korba (C.G.).....[Claimant]
4. Smt. Meena Banjare, W/o Shri Punau Ram Banjare, aged about 44 years, Caste – Satnami, R/o Quarter NO. 83/1, Railway Station Colony, Korba, Tahsil and District Korba (C.G.).....[Claimant]
5. Mahendra Sharma, S/o Shri Prayag Sharma, R/o Shakti Nagar, Dipka, District Korba (C.G.).....[Driver] --- Respondents

For Petitioner / Plaintiff	:	Mr. Vivek Chopda, Advocate.
For Respondents	:	None.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****28/08/18**

1. By the impugned order dated 20.11.2017, the application filed by the petitioner / owner of vehicle under Section 65 of the Indian Evidence Act, 1872 (for short, 'Act') has been rejected by the learned Claims Tribunal against which this writ petition has been preferred.
2. Learned counsel for the petitioner would submit that the impugned

order is unsustainable and bad in law and would rely upon the decision of the Supreme Court in the matter of **Rakesh Mohindra v. Anita Beri and Others**¹.

3. I have heard learned counsel for the petitioner.

4. The petitioner's application under Section 65 of the Act has been rejected by the learned Claims Tribunal finding that the pre-conditions for leading secondary evidence are not established.

5. The Supreme Court in the matter of *Rakesh Mohindra* (supra) has held in Para 15 as under :-

“**15.** The preconditions for leading secondary evidence are that such original documents could not be produced by the party relying upon such documents in spite of best efforts, unable to produce the same which is beyond their control. The party sought to produce secondary evidence must establish for the non-production of primary evidence. Unless, it is established that the original document is lost or destroyed or is being deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot be accepted.”

6. Reverting to the facts of the present case, it is apparent from the perusal of the application filed under Section 65 of the Act that petitioner has simply stated that original contract (document in question) between Coal India Limited and Unit Rig Division of Terex Corporation for the supply of Dumper is lying deposited with Headquarters of Coal India Limited, but despite attempts it could not be made available. It is not the pleading that

¹ (2016) 16 SCC 483

document in question is lost or destroyed and despite best efforts, unable to produce the same and is beyond their control. The pleading made in the application under Section 65 of the Act, pre-conditions for granting the application is not satisfied, as such the trial Court is justified in rejecting the application under Section 65 of the Act.

7. I do not find any merit in the writ petition. The claim petition filed on 03.09.2012 is pending without substantial progress. Learned Claims Tribunal, Korba is directed to consider and dispose of the claim application within three months from the date of receipt of copy of this order. No order as cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge