

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 4788 OF 2017

Green Agro Products Ltd. & ors.

.Petitioners

Vs.

Security And Exchange Board of India & anr.

.Respondents

Mr. R. Upadhyay i/b. Law Competere Consultus, Advocate, for the
Petitioners

Ms A. Rastogi, Advocate, for the Respondent No.1

Mr. S. V. Walve, APP, for the Respondent No. 2 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 11.01.2018

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioners have impugned the Order dated 04.10.2017 passed by the learned Special Judge, SEBI Special Court, City Civil & Sessions Court, Greater Bombay below Exh. 36, by which the learned Judge was pleased to partly allow the Application preferred by the SEBI, by permitting them to lead secondary evidence in respect of the copies of documents mentioned in para 3(b) to (e) of the Application.

3. Learned counsel for the Petitioners submitted that the learned Judge had erred in law by allowing the said Application, as there was non-compliance of Section 65(a) of the Indian Evidence Act. He submitted that SEBI had not brought on record any material to show that the said documents mentioned in para 3(b) to (e) of their Application were sent to the Petitioners. He submitted that no acknowledgment was brought on record by SEBI, to show that the said documents were received by the Applicants and that the said documents were in the Applicants' possession.

4. Learned counsel for the Respondent No. 1 opposed the Petition and submitted that no interference was warranted in the impugned order.

5. Perused the papers as well as the impugned Order. During trial, an Application was filed by the Respondent No. 1 – SEBI (Original Complainant) seeking permission to lead secondary evidence in respect of certain documents mentioned in para 3(a) to (e) of their Application. According to the Respondent No. 1 – SEBI, the documents addressed to the Applicants were sent to the Applicants at the relevant time. The said Application was resisted by the Applicants. The learned

Judge, after hearing the parties was pleased to partly allow the Application, inasmuch, the Respondent No. 1 – SEBI was permitted to lead secondary evidence of documents mentioned in para 3(a) to (e) of the Application. According to the learned counsel, the said documents were never served upon the Applicants and hence, there was no question of the Applicants' having custody of the original documents, as alleged by the SEBI. The documents of which secondary evidence was sought has been mentioned in para 3 of the Application (Exh. 36). The para 3 of the said Application is reproduced as under :-

“3. The Complainant states that the following documents are not in original :

- a. Copy of public notice dated December 10, 1999 issued by the Complainant.
- b. Copy of notice dated December 29, 1999 issued by Complainant to Accused.
- c. Copy of show-cause notice dated May 12, 2000 issued by Complainant to Accused.
- d. Copy of direction / order dated December 07, 2000 issued by Complainant to Accused.
- e. Copy of letter dated July 31, 2000 issued by the Complainant to Accused.”

A perusal of the documents at (b) to (e) shows that the same have been addressed to the Applicant – Green Agro Products Ltd.. Having regard to the provisions of Section 65(a) of the Indian Evidence

Act, the learned Judge has rightly allowed the said Application. No interference is warranted in the impugned order, in writ jurisdiction.

6. Accordingly, the Application is rejected.

(REVATI MOHITE DERE, J.)