

## South Eastern Coalfields Ltd. Vs Sarita Banjare And Ors

**Court:** Chhattisgarh High Court

**Date of Decision:** Aug. 28, 2018

**Acts Referred:** Evidence Act, 1872 â€” Section 65

**Hon'ble Judges:** Sanjay K. Agrawal, J

**Bench:** Single Bench

**Advocate:** Vivek Chopda

**Final Decision:** Disposed Of

### Judgement

Sanjay K. Agrawal, J

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 (2016) 16 SCC 483.

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

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).