

**BEFORE THE JUDGE, LABOUR COURT-2 AT AURANGABAD****( Presided over by Smt. V. S. Deshmukh )****Ref. IDA No.45/2018****CNR No.MHLC200003252018****The General Manager,  
Maharashtra Gramin Bank.****..First Party****V/s.****Pandit Totaram Vispute,****..Second Party****Appearance :**

Shri. P. L. Shahane, Advocate for First Party

Shri. B. R. Kaware, Advocate for Second party.

**Order below Exh.U-49**(Passed on this 9<sup>th</sup> day of August, 2021)

1. Second party workman has filed this application for direction to the first party to produce the documents listed in Annexure A & B of the application. According to second party the listed documents are in the exclusive custody of first party and are necessary for deciding the matter and hence first party be directed to produce the same.
2. First party has given say to this application at Exh.C-28 and objected the same. According to first party second party has not challenged the order dated 28.02.2020 for Notice of documents below Exh.U-8 before the Hon'ble High Court and as such the said order has attained finality. Therefore, filing of the present notice of documents below Exh.U-49 calling for most of the documents mentioned in earlier Notice of Documents below Exh.U-8 is not maintainable and is liable to be rejected on the said ground. This application is filed at belated stage of evidence. Hence it is not tenable. The documents listed in the Notice of

Documents are not of First party Bank except few alleged internal communications which are not available in the Banks record. The documents called by First party are not available in the Banks record because previously the first party bank was established by Central Notification and by way of amalgamation of earlier RRB's i.e. Maharashtra Godavari Gramin Bank and Marathwada Gramin Bank on 20.07.2009. The record called upon to produce was searched by the Bank authorities during last 2 months but said record of second party is not with the first party bank. Therefore, prayed for rejection of application.

3. Heard Ld.Advocate Kaware for second party workmen and Ld.Advocate Shahane for first party bank. Second party has relied upon following case laws :-

1. Ravindra Bal Niketan Samiti Vs. Smt.Sushila Srivastava in S.B.Civil Revision Petition No.657/1985 dated 23.07.1987.

4. First party has relied upon case following laws :-

1. 20<sup>th</sup> Century Fox Corporation Ltd., Vs. F.H.Lala & ors.,1975 LAB.IC.517.

2. Commissioner of Income Tax Vs. Thana Electricity Supply Ltd., 1993 (112) CTR (Bom.) 356

5. It is revealed from the contentions in the application that the documents sought to be produced are in the exclusive custody of first party bank and they are necessary for deciding the matter. According Ld.Advocate Shahane the application is filed with attempt to resort to a fishing and roving enquiry. On giving thoughtful consideration to the nature of the present reference, necessity for the production of the documents as well as the nature of the documents, disclosure of the nature of the

documents in the list by second party I do not think that the application is for fishing or roving inquiry. Therefore, I do not think that the ratio laid down by the Hon'ble High Court in the case law reported in **20<sup>th</sup> Century Fox Corporation Ltd., Vs. F.H.Lala & ors.,1975 LAB.IC.517** is applicable to case in hand.

6. According to the first party this application is filed at the belated stage of evidence. Hence, not tenable. Ld.Advocate Kaware for second party has invited my attention to ratio laid down by the Hon'ble Rajasthan High Court in **Ravindra Bal Niketan Samiti V/s. Smt. Sushila Shrivastava in S.B. Civil Revision Petition No.657/1987** wherein the Hon'ble Rajasthan High Court has laid down that "*Order XI Rule 14 of the Civil Procedure Code provides that it shall be lawful for the Court at any time during pendency of the suit, to order the production by any party thereto upon oath of such document in his possession or power.*" According to Ld.Advocate Shahane judgments of other High Courts are not binding upon this Court. He relied upon case law reported in **Commissioner of Income Tax V/s. Thana Electricity Supply Ltd., 1993(112) CTR (Bom.) 356.** The Hon'ble High Court has clearly laid down that "*The decision of one High Court is not binding on the subordinate Court or Tribunals within the jurisdiction of other High Courts. At the best it has only persuasive effect.*" As such the ratio laid down by the Hon'ble Rajasthan High Court though not binding upon this Court it has persuasive effect. As held by the Hon'ble Rajasthan High Court the Court has power as envisaged under order XI Rule 14 of the Civil Procedure Code to order production of the documents in possession of the opposite party at any stage during pendency of the suit. It means production of those documents which are in

possession of opposite party can be ordered. In case in hand the first party has denied possession of the documents sought to be produced. Hence ordering production of those documents means '*fetching water from dry well*'. It would be futile exercise. Further second party has previously filed same kind of application which was rejected for the same reason. No doubt this application is for production of some other documents. But it contains the documents which were also sought to be produced in previous application. Those are at Sr.No.64(8), 68(1), 69(1), 70(1), 72(1), 74(1), 75(1), 77(1), 78(1), 79(1), 80(1), 83(1), 84(1), 85(1), 87(1), 88(2), 91(1) of Annexure 'B' given with this application. These documents are again sought to be produced. But their production was previously denied. Hence present application pertaining to these documents is barred by the principle of Res-judicata and hence not tenable.

7. Thus first party bank has flatly denied the custody and possession of the documents sought to be produced by second party workmen. Therefore, it is futile exercise to direct first party bank to produce the documents listed in this application which according to first party bank are not in it's custody. Hence, I pass following order.

**Order**

Application stands rejected.

Sd/-

( Smt. V. S. Deshmukh )

Presiding Officer,

Labour Court-II, Aurangabad

Dated : 09-08-2021

Order transcribed on : 09-08-2021

Checked & Signed on : 09-08-2021 GMP/-