

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL SUMMARY SUIT NO.6 OF 2002

**Prasar Bharti (Broad-casting Corporation
of India))...Plaintiff**

V/s.

**Western Co-op. Bank Ltd through
its Liquidator. The District Deputy
Registrar Co-operative Societies and Others)...Defendants**

Ms. Roshni R.Naik i/b Mr. Anil Agarwal, Advocate for the Plaintiff.
Mr. Himanshu B. Takke, AGP for State of Maharashtra (for District
Deputy Registrar).

**CORAM : ABHAY AHUJA, J.
DATE : 24th APRIL, 2024**

P.C. :

1. Pursuant to the order dated 27th February, 2024, today the matter has been listed for further marking of Plaintiff's documents. The documents at Serial Nos. 4 to 16 are sought to be marked today.
2. Mr. Rajesh Dalvi, PW-1, is present in Court and is administered oath by the learned Associate.
3. Ms. Naik, learned Counsel for the Plaintiff submits that the document at Serial No. 4 is an office copy of communication dated 28th April, 2000, addressed to the Defendant-bank by the Plaintiff.

4. Mr. Takke, learned AGP for the State representing the District Deputy Registrar, custodian for the Defendant, draws the attention of this Court to the statement of admission and denial filed on behalf of the Defendant and denies the said document, submitting that there has been no acknowledgment on behalf of the Defendant or the liquidator or the Custodian.

5. Since the Custodian would also get an opportunity to cross-examine the Plaintiff's witness, the said document is marked as **Exhibit P-9**, subject to proof of truth of its existence and contents.

6. With respect to the document at Serial No. 5, which is an office copy of another letter dated 28th April, 2000, from the Plaintiff to the Defendant-bank, the same has also been denied on behalf of the Defendant submitting that there has been no acknowledgment on behalf of the Defendant or the Liquidator. Since the Custodian would also get an opportunity to cross-examine the Plaintiff's witness, the said document is marked as **Exhibit P-10**, subject to proof of truth of existence and its contents.

7. The document at Serial No.6 is the original of a communication

dated 1st June, 2000, from the Defendant-bank to the Plaintiff. However, the same has been denied on behalf of the Defendants submitting that neither Defendants nor the Custodian has authored the said document. Since the Custodian would also get an opportunity to cross-examine the Plaintiff's witness, the said document is marked as **Exhibit P-11**, subject to proof of truth of its existence and contents.

8. The document at Serial No. 7 is the office copy of the communication dated 12th September, 2000, from the Plaintiff to the Defendant-bank. However, the same has been denied on behalf of the Defendant submitting that there is no acknowledgment of the Defendant or the liquidator. Since the Custodian would also get an opportunity to cross-examine the Plaintiff's witness, the said document is marked as **Exhibit P-12**, subject to proof of truth of its existence and contents.

9. The document at Serial No. 8 is the office copy of another communication dated 12th September, 2000, from the Plaintiffs to the Defendant-bank. However, the same has been denied on behalf of the Defendant submitting that there is no acknowledgment of the Defendant or the liquidator. Since the Custodian would also get an

opportunity to cross-examine the Plaintiff's witness, the said document is marked as **Exhibit P-13**, subject to proof of truth of its existence and contents.

10. The document at Serial No. 9 is the office copy of a communication dated 4th October, 2000, from the Plaintiff to the Defendant-bank.

11. Mr. Takke, learned AGP, draws the attention of this Court to the statement of admission and denial and submits that the said document has been denied as there is neither acknowledgment of the Defendant nor of the liquidator.

12. Ms. Naik, learned Counsel for the Plaintiff would submit that it is an office copy by which two letters dated 12th September, 2000, which have been marked by this Court, by which the original bank guarantees had been sent for invocation of the bank guarantees and that, therefore, this document be marked.

13. Since the Custodian would also get an opportunity to cross-examine the Plaintiff's witness, the said document is marked as **Exhibit**

P-14, subject to proof of truth of its existence and contents.

14. The documents at Serial Nos.10, 11 and 12 are office copies of communications dated 19th October, 2000 from the Plaintiff to the Defendant-bank. The same have been denied on behalf of the Defendant submitting that there is neither an acknowledgment of Defendant nor of the liquidator or the custodian.

15. Ms. Naik, would submit that the originals of the said letters have been dispatched by Registered Post AD enclosing original bank guarantees as referred to therein and therefore the same be marked. The Custodian would also get an opportunity to cross-examine the Plaintiff's witness on the said documents. The said documents at Serial No. 10, 11 and 12 are respectively marked as **Exhibits, 15, 16 and 17**, subject to proof of truth of their existence and contents.

16. The document at Serial No. 13 is an office copy of the letter dated 9th November, 2000, from the Plaintiff to the Defendant-bank. The Defendant has denied the same, submitting that there is no acknowledgment of the Defendant or the liquidator or the custodian.

17. Ms. Naik, learned Counsel would submit that said document is an office copy of the communication between the Plaintiff and the Defendant, enclosing the statement of the bank guarantees, originals whereof had been sent to the bank for encashment and that the same be marked. The Custodian would also get an opportunity to cross-examine the Plaintiff's witness on the said document. The said document at Serial No. 13 is marked as **Exhibit 18**, subject to proof of truth of its existence and contents.

18. The document at Serial No. 14 is a typed copy of the letter dated 29th December, 2000, from the Plaintiff to the Joint Secretary (banking Operations) of the Finance Ministry. The said document has been denied on behalf of the Defendant. Since the said document is a typed copy and neither bears any signature nor any acknowledgment, the said document is identified as **Article 1**, which will have to be proved by the Plaintiff.

19. The documents at Serial No. 15 are typed copies of Plaintiffs Advocate's notice dated 8th May, 2001, addressed to the original Defendant in respect of the 43 bank guarantees in favour of the Plaintiffs. The said documents have been denied on behalf of the

Defendant. Since the said documents are typed copy and neither bear any signature nor any acknowledgment, the said documents are identified as **Article 2 (colly.)**, which will have to be proved by the Plaintiff.

20. The documents at Serial No. 16 are typed copies of notices under Section 164 of the Maharashtra Co-operative Societies Act, 1960, sent by the Plaintiff's Advocate to the Deputy Registrar of Co-operative Societies in respect of the 43 bank guarantees, issued by the original Defendant in favour of the Plaintiff. The said documents have been denied on behalf of the Defendant. Since the said documents are typed copy and neither bear any signature nor any acknowledgment, the said documents are identified as **Article 3 (colly.)**, which will have to be proved by the Plaintiff.

21. Both the learned Counsel now agree that the Plaintiff's documents have been marked and submit that this Court appoint a suitable Commissioner to record the cross-examination of the Plaintiff's witness.

22. Accordingly, Mr. Shantanu Sharma, Advocate of this Court is

appointed as Commissioner to cross-examine the Plaintiff's witness in accordance with the following:-

(a) The Commissioner is at liberty to exercise discretion under Order XVII Rule 4(4) of the Code of Civil Procedure, 1908, to note the demeanour of the witnesses where necessary.

(b) All cross-examination shall be conducted strictly in question and answer form.

(c) The Commissioner will also be at liberty to direct that the whole or any part of the cross-examination should be video recorded for later reference of the Court. Should that be done, the original audio visual recording will be submitted alongwith the Commissioner's Report to the Registry.

(d) Liberty to the parties as also to the Commissioner to apply in case of difficulty.

(e) All re-examination will be conducted only in court.

(f) Costs of the commission shall be borne equally by the parties.

(g) Parties shall also pay costs of Rs.500/- per hearing to the Court Clerk who attends the commission with Court Papers. This is required since these clerks attend the commission in addition to their regular duties and outside their normal working hours.

(h) The Commissioner is not to permit any applications for adjournment on dates previously fixed, except where absolutely unavoidable. Counsel's inconvenience or unavailability does not constitute such unavailability.

23. Mr. Shantanu Sharma's Contact details are as under:-

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Nariman Point, Mumbai-400021.
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24. Let the learned Commissioner endeavour to complete the cross-examination of the Defendant's witness by 31st July, 2024.

25. List on 31st July, 2024.

(ABHAY AHUJA, J.)