

**EXAMINATION OF ARTICLED CLERKS**  
**PAPER – I**  
**PRACTICE AND PROCEDURE**  
**Monday, 11<sup>th</sup> November 2024**  
**TIME : 3 HOURS [ 1:00 P.M. TO 4:00 P.M.]**  
**TOTAL MARKS : 100**

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**Notes :**

- (i) Support your answers with reasons, relevant legal principles, provisions, and case laws.**
- (ii) Keep your answers concise. Where context so requires, answer how you would advise a client.**
- (iii) Answer every new question on a separate sheet.**

1. Sunil runs a restaurant in Mumbai in partnership with Anil and Ashok. Puneet had taken a loan from Sunil, which was payable on demand. When Puneet failed to repay, Sunil filed a suit for recovery in the court in May 2024. While suit was pending, Sunil died intestate in September 2024. Sunil's family came to know that Anil and Ashok are planning to substitute themselves as plaintiffs in the suit filed by Sunil, claiming it to be a loan by the partnership firm. **(8 Marks)**

Sunil's family has approached a solicitor and asked for below clarifications.

**Answer any 1 (one) out of the following 2 questions:**

- a) What is the extent of court's power to order a new party to be substituted on plaintiff's death in this situation?

**OR**

- b) If Puneet was willing to repay the loan but he was unsure whether to pay to the partnership firm or Sunil's family, what proceedings can he file?

2. Ms. Das entered into an agreement to sell her land to a developer. The consideration was to be paid within 2 years from the date of the agreement. The conveyance deed was agreed to be executed within 3 months of full consideration being paid by the developer. **(8 Marks)**

As the 2-year period was about to expire, Ms. Das called upon the developer to pay the consideration. As a pre-condition for payment, the developer demanded that Ms. Das furnish a declaration from her brother confirming that he has no rights in the land. Ms. Das refused this demand as the developer had undertaken title due diligence prior to executing the agreement. The 2 – year period expired.

**Answer any 1 (one) out of the following 2 questions:**

- a) Ms. Das filed a suit for specific performance of the agreement against the developer wherein she pleaded that she is ready and willing to

execute the conveyance deed on receipt of the full consideration. On the other hand, it is the developer's case that Ms. Das cannot be said to be ready and willing as she failed to furnish her brother's declaration.

If the plaintiff's readiness and willingness is the only issue to be decided, is the trial court likely to grant the decree for specific performance?

**OR**

- b) Ms. Das filed a suit for specific performance of the agreement against the developer wherein she pleaded that she is ready and willing to execute the conveyance deed on receipt of the full consideration. On the other hand, it is the developer's case that after the agreement to sell was executed, he found out that the land did not belong to Ms. Das but to her brother.

Is the trial court likely to grant the decree for specific performance?

**3. Answer any 1 (one) out of the following 2 questions:**

**(10 Marks)**

- a) X, a resident of Navi Mumbai, was wrongfully terminated from service by ABC Pvt. Ltd. having its registered office in Fort, Mumbai. X seeks to file a suit against ABC and its director Y, who resides in Navi Mumbai in the Bombay High Court.

Does X need to apply for leave under Clause XII of the Letters Patent? If he does, when should he seek the leave and what are the consequences if he fails to seek the leave?

**OR**

- b) The single judge of the Bombay High Court heard the Plaintiff's application for ad-interim injunction in a non-commercial suit and instead of granting any relief, an order was passed allowing the Defendant to file his affidavit in reply to the Plaintiff's application and the matter was adjourned to be listed after two weeks for hearing.

In light of Clause XV of the Letters Patent and Order XLIII of the Code of Civil Procedure, discuss the maintainability of Plaintiff's appeal against this order before the Division Bench of the Bombay High Court?

4. Rahul works at XYZ Pvt. Ltd. as a manager. He received a poor performance review. XYZ suspects that he has been leaking certain sensitive customer data to third parties, even though his employment agreement requires him to keep it confidential. Rahul apprehends that he may be terminated as soon as next month. His employment agreement is valid for a term of 3 years.

**(6 Marks)**

Can Rahul file a suit to restrain XYZ Pvt. Ltd. from terminating him before he completes the 3 years-tenure? Can XYZ Pvt. Ltd. file a suit to restrain the

employee from sharing its confidential data with any third party after his termination?

If yes, what would be the nature of injunction that Rahul and/or XYZ can seek?

5. In the following scenarios, choose which writ would be best suited and draft the main prayer of the writ petition: **(8 Marks)**

**(Answer any 2 (two) out of the following 3 questions)**

- a) Some persons have illegally encroached upon a public road. X complained to the municipal corporation, but no action was taken and the encroachment persists. X is seeking that municipal corporation should remove the encroachment.
- b) The state education department has issued an order seeking certain information from a private school. The private school contends that the state education department has no supervisory authority over the school and seeks to challenge the order.
- c) X had gone to attend a public event. Some members from the audience became rowdy and violence ensued. The police took X into custody along with others. X's family is seeking that X be allowed to return to his home.

6. Answer any 1 (one) out of the following 2 questions: **(8 Marks)**

- a) A Company found out that one of its employees has been working as a part time consultant for his friend's start -up venture, even though his agreement with the Company prohibited him from working anywhere else during the term of his employment. The Company terminated him from service and withheld his last salary. The employee filed a commercial suit claiming wrongful termination and sought damages.

The Company has approached you for legal advice. Only the basis of the facts stated above, what could be the possible grounds to challenge the maintainability of the suit as filed?

**OR**

- b) Malabar Pvt. Ltd. entered into an agreement with Fort Pvt. Ltd. to digitize its records stored in physical files and for this, Fort was given access to Malabar's files which also included confidential information. Fort finished the digitisation process and was paid. Malabar later learnt that even though Fort was required to delete all records of Malabar's data, Fort has unauthorizedly made copies of it.

Malabar has approached a solicitor for possible legal action/s to protect its data. The solicitor advised it to file a commercial suit and seek injunction. Malabar does not want to go through the pre-suit mediation, as it fears that Fort may imminently misuse its data. Can

Malabar file the commercial suit and seek reliefs without pre-suit mediation?

7. Aruna failed to repay a bank loan she had taken. The bank proceeded under SARFAESI Act and took possession of a land parcel which had been mortgaged to it. **(14 Marks)**

Aruna filed a commercial suit in the district court against the bank claiming that the bank had acted fraudulently in taking possession of the land and prayed for recovery of loss and damages.

The bank filed an application for rejection of plaint on the ground that civil court's jurisdiction was ousted and the disputes between the borrower and bank can be adjudicated by Debt Recovery Tribunal (DRT) alone.

Aruna did not put on record the correspondence exchanged between the bank and her. The bank believes this correspondence would show that Aruna had willingly handed over possession of the land to the bank.

The bank has sought legal advice on the following aspects.

**(Attempt any 2 (two) out of the following 4 questions)**

- a) Can the Bank rely upon this correspondence in support of its application ?
- b) What other proceeding/s, if any, can the Bank adopt in this situation to have the suit dismissed without evidence being led by the parties ?
- c) Assume that before approaching the civil court, Aruna had challenged the Bank's action of taking possession of the land before DRT as being in violation of the provisions of SARFAESI Act, and the DRT had rejected her challenge and no appeal was filed by Aruna. What, if any, is the additional ground(s) that can be urged by the Bank in its defence in the Suit ?
- d) If the district court rejects the Bank's application, can the decision be challenged by filing an appeal ? Would your answer be different if the commercial suit had been filed in the Bombay High Court ?

8. **(Attempt any 1 (one) out of the following 2 questions)** **(9 Marks)**

- a) Below statements are pleaded in a plaint. For verification of each statement (or part thereof), choose whether it should be indicated as either (i) 'it is true to Plaintiff's personal knowledge', and/or (ii) 'it is based on information and the Plaintiff believes it to be true'.

Statement 1 : *"Before the Plaintiff was born, the Plaintiff's father and grandfather had an oral partition."*

Statement 2 : *"Since 2020, the Plaintiff is in exclusive possession of the agricultural lands."*

Statement 3 : “The cause of action first arose on 1<sup>st</sup> January 2024 when the Plaintiff called upon the Defendant to forthwith make the payment and the Defendant neglected and failed to pay and is still subsisting as the Defendant has failed to pay the outstanding amount despite subsequent repeated oral and written requests and reminders from the Plaintiff and the suit, thus, is within the period of limitation.”

Explain in not more than 2-3 lines your reasons for the same.

**OR**

- b) A petition filed before the Supreme Court under Article 136 of the Constitution, to challenge the High Court’s order (“*impugned Order*”), is dismissed by the Supreme Court as follows :

“We do not see any reason to interfere with the High Court’s impugned Order. The special leave petition is, accordingly, dismissed.”

Explain whether a petition can now be filed in the High Court for review of its impugned Order ? Does the High Court’s impugned Order merge with order of the Supreme Court in the special leave petition?

**9. (Attempt any 1 (one) out of the following 2 questions)**

**(9 Marks)**

- a) In a suit in the Bombay High Court, the plaintiff claims that he lost money due to the defendant’s fraudulent investment scheme and seeks recovery of his loss and damages. It is the defendant’s case that he was honest in his dealings with the plaintiff and he too was defrauded by a third party (non-party to the suit). What is the procedure under Bombay High Court (Original Side) Rules if the defendant wants to add this third party to the suit ? What are the consequences of default in appearance by a third party despite service of third party notice ? What are the powers of the court when a third party enters appearance ?

**OR**

- b) X and his wife are impleaded as defendants in a suit. X requests a solicitor to file his vakalatnama on behalf of X and his wife. His wife is out of India and unable to visit India for the next 3-4 months. Suit is coming up for hearing the next day, when the Plaintiff is likely to press for interim reliefs against both X and his wife. What should the solicitor do ?

Would your answer be different if instead of X and his wife, the defendants were X and a private company of which X is a non-executive director, and the managing director of the company was out of India and unlikely to return before the next hearing ?

10. Answer on any 5 (five) out of the following 7 questions :

(20 Marks)

- a) Draft the main prayer for summary suit under Order XXXVII of CPC, 1908.
- b) What are the exceptions to the principle that ‘executing court cannot go behind the decree’?
- c) Explain the scope of the power of the executing court to determine questions under CPC, 1908 relating to execution, discharge, or satisfaction of decree.
- d) Explain through instances the court’s reluctance to entertain a writ petition where there is an alternate efficacious remedy available to the petitioner.
- e) Write a short note on limitation(s), if any, on the exercise of the inherent power by the court under Section 151 of CPC, 1908.
- f) Distinguish between the scope of Articles 226 and 227 of the Constitution of India.
- g) The Plaintiff, in the plaint, has pleaded that *“The defendant was known to the plaintiff for many years as they grew up in the same neighbourhood. So, when the defendant approached the plaintiff on the night of 18<sup>th</sup> September 2023 and requested a sum of INR 11 lacs for a medical emergency in his family and promised to return it at 18% p.a. interest compounded annually when demanded, the plaintiff, in good faith and relying upon the defendant’s assurance, immediately advanced him the said sum through bank transfer.”*

It is the defendant’s case that while the plaintiff and he grew up in the same neighbourhood, he had lost all contact with the plaintiff once he went to the USA for his post – graduation in 2010. He returned in 2021 and settled down in Delhi. He briefly met the plaintiff while shopping at a supermarket in his old neighbourhood in Mumbai sometime in August 2023 when he was visiting his parents and they exchanged phone numbers. The plaintiff then phoned him sometime in September 2023 and told him that the plaintiff would send INR 11 lacs to defendant’s bank account and requested him to withdraw the same and give it to the plaintiff’s sister in Delhi. The plaintiff transferred INR 11 lacs on 20<sup>th</sup> September 2023 to defendant’s bank account, which the defendant withdrew and handed over the cash to the plaintiff’s sister on the same date.

Based on the above, draft a specific denial on behalf of the defendant, to the plaintiff’s above-quoted pleading.