

Sr. No. 101508

**2008
PAPER-I****Civil Procedure Code, Transfer of Property Act, Specific Relief Act,
Law of Contracts, Sale of Goods Act and Partnership Act****Time : 3 Hours****Max. Marks : 100**

- N.B. :**
- (1) All questions are compulsory.
 - (2) Question No.1 carries 20 marks. All other questions carry equal marks i.e. 16 marks each.
 - (3) Your answers must be to the point and wherever possible quoting the specific provisions of law will be appreciated.
 - (4) Do not reproduce any question. Write only question's number against the answer.
 - (5) "Other than cited cases, candidate should not write roll number, any names (including their own), signature, address or any indication of their identity anywhere inside the answer book otherwise he will be penalised".

1. Draft *one* judgment out of the 2 (two) sets on the following facts :
 - Frame proper issues arising out of stated pleadings.
 - Adhere to contents of judgment required under the Code of Civil Procedure.
 - Wherever it is necessary you may exercise discretion in filling up details, while appreciating evidence, which ordinarily one comes across during trial of a civil suit.
 - Give logical, legal and proper reasons in support of your findings and conclude the judgment with a proper order.

SET A**Averments in Plaint**

The plaintiff - ABC agreed to purchase a residential plot city survey no. 123 admeasuring 1500 sq.ft situated at Thane, from the defendant - XYZ, for a valuable consideration of Rs. 5,00,000/- (Rupees Five Lacs only), as per the agreement of sale executed on 10.6.2003 at Thane. The plaintiff paid an amount of Rs. 2,00,000/- (Rupees Two Lacs only) as earnest and the sale deed was agreed to be executed within a period of one year, after the defendant cleared the encumbrance on the suit plot. The remaining amount of consideration was agreed to be paid by the plaintiff at the time of the execution of the sale deed, when the defendant had agreed to deliver clear and vacant possession of the suit plot to the plaintiff.

P.T.O.

As the defendant failed to execute the sale deed as agreed, the plaintiff issued a notice to the defendant on 15.6.2004 calling upon him to execute the sale deed. As the defendant failed to comply, the plaintiff filed a civil suit against the defendant, in the court of Civil Judge Sr. Dvn. Thane, for specific performance of the contract. According to plaintiff he was ready and willing to perform his part of the contract but the defendant failed. The plaintiff prayed for a direction to execute the sale deed and delivery of vacant possession alongwith costs etc.

Averments in the written statement

The defendant resisted the claim. He contended that the plaintiff is a money lender doing illegal money lending business without a licence. He is charging exorbitant interest. The defendant was in need of money. Defendant had obtained Rs. 1,00,000/- as loan from the plaintiff. On the insistence of plaintiff the agreement of sale was executed as a security for the amount advanced. Inflated amount was shown as earnest. The amount with interest is returned to the plaintiff, when he agreed to destroy the document. The plaintiff is taking undue advantage of the same.

The alleged agreement is not on proper stamp paper and it is not registered. The suit be dismissed for these reasons.

SET B

Averments in the plaint

The plaintiff - ABC Bank advanced a loan of Rs. 10,00,000/- (Rupees Ten Lacs only) to the defendant no. 1 - X, who is an agriculturist. The loan is granted for purchase of a tractor and a trolley. Defendant no. 2 - Y and Defendant no. 3 - Z are the guarantors for the loan.

The defendant no. 1 executed a loan agreement and a deed of hypothecation of the tractor in favour of the bank. The defendant nos. 2 and 3 executed a deed of guarantee.

The loan carried interest rate of 10% p.a. and was repayable in equated monthly instalments, over a period of 36 months.

As the defendant no. 1 defaulted the instalment in the second year, the plaintiff issued a notice on 25.12.2008 recalling the loan. The defendants were called upon to pay the entire outstanding amount alongwith interest and notice charges within a month. The loan was granted on 25.11.2006. The defendants failed to comply. Hence the plaintiff filed a suit in the court of Civil Judge Sr. Dvn Nashik for recovery of the loan alongwith interest and costs etc.

Averments in the written statement

The defendant no. 1 claimed that the Branch Manager of the plaintiff has no authority to file the suit. There is no conscious execution of the documents. The plaintiff obtained signatures on some forms, without explaining the contents. The terms were never agreed to. The loan has not become overdue as it was payable in three years.

The defendant nos. 2 and 3 claimed that they have not obtained any money as such the agreement is without any consideration, hence void. The defendants are not jointly or severally liable. Thus the suit be dismissed with costs.

2. Discuss *any four* of the following :
 - (a) The consequences of breach of contract.
 - (b) Nature and extent of an agent's authority.
 - (c) Novation of contract. Conditions to be satisfied before a party can claim novation of contract.
 - (d) Specific performance of a part of contract and the circumstances in which it can be granted.
 - (e) Difference between fraud and misrepresentation.

3. Write short notes on *any four* of the following :
 - (a) Return of plaint and Rejection of plaint.
 - (b) Abatement of suit and setting aside abatement.
 - (c) Powers of court in relation to Alternate Dispute resolution under the amended provisions of the code of Civil Procedure 1908.
 - (d) Counter-claim and set off.
 - (e) Attachment before judgment.

4. Answer *any four* of the following :
 - (a) What is an actionable claim ? What are the conditions to be satisfied for transfer of an actionable claim ?
 - (b) What is a 'Gift' ? What are the conditions to be satisfied for a Valid Gift ? What is the difference between a 'Gift' and 'Onerous Gift'.
 - (c) What is part performance of a contract ? What are the conditions for claiming protection under part performance ?
 - (d) What are the different modes of determination of a lease under the Transfer of Property Act 1882 ? What is holding over and its effect ?
 - (e) How lease of immovable property is created ? What is tenancy at sufferance ?

P.T.O.

5. Answer *any four* of the following :
- (a) What is a contract of sale by sample ? What are its implied conditions ?
 - (b) What is delivery of Goods ? What are the rules as to delivery under The Sale of Goods Act 1930 ?
 - (c) What is a seller's lien ? What are the conditions where a seller's lien is terminated under The Sale of Goods Act 1930 ?
 - (d) What is the doctrine of holding out under The Indian Partnership Act 1932 ?
 - (e) What is dissolution of a firm ? Enumerate in brief the different modes of dissolution of a firm under the Indian Partnership Act 1932.
6. Write short notes on *any four* of the following :
- (a) The consequences of disobedience or breach of injunction.
 - (b) Preliminary and final decree.
 - (c) Suits by indigent persons.
 - (d) Suits by person dispossessed of immovable property, as provided for in Specific Relief Act 1963.
 - (e) Provisions regarding introduction and retirement of a partner under the Indian Partnership Act 1932.