

DELHI HIGHER JUDICIAL SERVICE MAINS
EXAMINATION (WRITTEN) 2023

LAW-I

PART-I

Answer any four out of the following six questions:

1. The defendant, on service of summons of the suit, made an application under Order VII Rule 11 of the CPC contending that the plaintiff had not sought the appropriate prayer of declaration of the sale deed as illegal, null and void and axiomatically not paid any court fees in that regard.

Decide the said application

2. Defendants No. 1 and 2 in a suit concerning adjudication of rights over immovable properties, though filed a written statement but did not take effective part in the suit thereafter. The suit was decreed in favour of the plaintiff on 1st October, 2005 by the Court of the Civil Judge, Delhi. The defendants No. 1 and 2 filed a Regular First Appeal under Section 96 of the CPC assailing the suit judgment and decree. Since there was a delay of 62 days in filing the appeal, an application under Section 5 of the Limitation Act was filed seeking condonation of delay, on the ground that the judgment under appeal was not in the knowledge of the appellants/defendants No. 1 and 2.

Decide the said application

3. What is a 'Bolar Exception' and what are the qualifying factors for determining whether the exception is applicable.

4. Discuss the scope of reservation in promotion under Article 16 of the Constitution of India.

5. Whether copyright protection can be granted to a religious scripture?

6. The father of twinboys files writ petition under Article 226 of the Constitution of India in the High Court of Delhi for issuance of appropriate writ directing the Government of NCT of Delhi, Union of India and Lt. Governor of Delhi to expedite the finalization of Delhi School Education (Amendment) Bill 2015 which prescribes for prohibition of screening procedure in the matter of admission of children at Pre-Primary Level in Schools. It is pleaded in the writ petition that the said Bill was prepared in the year 2015 and without any justification and against public interest was hanging between Central Government and Delhi Government and was not being passed and delay in proceeding further was contrary to the interest of children in the matter of admission to Nursery/Pre-Primary in private schools and had resulted in arbitrary procedure being adopted by different schools in matters of admission of children at Pre-Primary Level.

Decide giving reasons, whether you would issue notice of the writ petition or dismiss the petition in limini. (10marks x 4 = 40 marks)

PART-II

Attempt any two out of the following three questions:

7. (a) The defendant in a suit applied for rejection of plaint under Order VII Rule 11 of the CPC, contending that the suit was barred by res- judicata. Along with the application, the defendant filed several documents/orders of various courts. Discuss, whether a plaint can be rejected under Order VII Rule 11 of the CPC on such ground.

(b) What are dynamic injunctions?

8. 'A', in the year 2003, instituted a suit in the Court of Civil Judge, Delhi against Union of India, Delhi Development Authority and Municipal Corporation of Delhi, contending that he had become the owner of certain land by adverse possession and seeking injunction against the defendants from dispossessing him. 'A' on 28.07.2007 withdrew the said suit and the same was dismissed as withdrawn. Though 'A' sought permission to file a fresh suit but the same was declined by the Civil Judge, Delhi. 'A' thereafter, in the year 2008 filed a writ petition in the High Court of Delhi praying for a direction to Union of India, Delhi Development Authority and Municipal Corporation of Delhi to record the land in his name. While filing the writ petition, no mention was made of the suit earlier filed or withdrawal thereof. Upon the respondents in the writ petition disclosing the suit earlier filed by 'A', 'A' in his rejoinder pleaded that during the pendency of the suit, he had applied to the authorities for recording the land in his name and since the said application was being actively considered by the Government, therefore the suit was withdrawn. Reliance was placed on filenotings recorded at different levels wherein positive notes were prepared and opined that 'A' was entitled to the said land. It was further pleaded in the rejoinder that since in spite of such notings at different levels, the decision was not being taken, the writ petition was filed to ensure that the authorities decide the said application of 'A'.

Decide the said writ petition under the headsof — 1) maintainability of the writ petition after withdrawal of the suit, 2) effect, if any, of non disclosure by 'A' in the writ petition, of the earlier suit and withdrawal thereof; and, 3) whether 'A' can rely on notings in the Government file, without any final decision being taken by the Government.

From Student to Lawyer to Judge

9. (a) What is 'evergreening' of a patent and which provision of the Indian Patent Act prevents evergreening of a patent and how?

(b) The plaintiff leased out land measuring 400 sq. yards in Shahdara, Delhi to the Municipal Corporation of Delhi (MCD) for a period of 10 years. On expiry of lease, the plaintiff served a notice on MCD, calling upon the MCD to hand over the vacant peaceful possession of the land and on the MCD not complying with the notice, instituted a suit for recovery of possession, before the Court of Civil Judge, Delhi and which was decreed in favour of the plaintiff and against the MCD. The plaintiff thereafter tailed an execution, to get the decree for possession executed and obtained warrants of possession. MCD filed objections on the ground that on the spot there was a school built on land ad-measuring 1700 sq. yards and disputed decretal land ad-measuring 400 sq. yards could not be identified. It was also stated that a part of the said 1700 sq. yards of land had been encroached.

Decide the said objections.

(20 marks x 2 = 40 marks)

PART-III

Attempt any four out of the following six questions:

10. Airport Authority of India (AAI), in November, 2022 awards the contract for construction of a runway to Runways Construction Company Pvt. Ltd. The said Runways Construction Company Pvt. Ltd., with the consent of AAI, in November, 2022 itself sub-contracts the said work to Runways Incorporated, a partnership of Dalip Kumar and Sanjeev Kumar. Runways Construction Company Pvt. Ltd., in March, 2023 terminates the sub-contract of Runways Incorporated, inter-alia on the ground that Runways Incorporated, in terms of the sub-contract was required to commence the work within one month of the execution of the sub-contract but had not commenced the work till then and forfeits the security deposit taken from Runways Incorporated and immediately thereafter awards the sub- contract in favour of Fly High Pvt. Ltd. Runways Incorporated institutes a suit, impleading AAI, Runways Construction Company Pvt. Ltd. and Fly High Pvt. Ltd. as defendants thereto, for,

(i) Declaration that termination of the sub-contract in its favour and award of the sub-contract to Fly High Pvt. Ltd. is illegal;

(ii) Permanent injunction to restrain AAI, Runways Construction Company Pvt. Ltd. and Fly High Pvt. Ltd. from proceeding with the work;

(iii) For specific performance of the sub-contract in its favour.

Along with the suit, an application under Order 39 Rules 1 and 2 of the CPC is also filed to restrain all the three defendants from proceeding with the work. AAI contests the suit pleading that it has no privity with Runways

Incorporated and has no concern with the dispute between Runways Construction Company Pvt. Ltd. and Runways Incorporated and the delay in construction of the runway would be detrimental to public interest. Runways Construction Company Pvt. Ltd. contests the suit pleading that Runways Incorporated, in accordance with the sub- contract was to commence the construction within one month and having not done so, it was fully entitled to terminate the contract. Fly High Pvt. Ltd. files an application for deletion of its name from the array of defendants, also stating that if owing to pendency of the suit or any orders therein, any delay is caused in execution of work, it would not be responsible therefore. Runways Incorporated in its replication to the written statement of Runways Construction Company Pvt. Ltd. states that it was unable to commence the work for the reason of the entire land for the runway having not been made available and without the entire land being made available, it could not be expected to commence construction. Both AAI and Runways Construction Company Pvt. Ltd., after taking permission of the Court filed a further pleading stating that of the total length of 2.4 kms of the runway, only the land for 0.03 kms had not been made available and would have been made available but Runways Incorporated could not have held up the work of the entire runway.

Decide the application for interim relief.

11. The plaintiff instituted a suit for permanent injunction pleading that,

- (i) Plaintiff was in the business of running Entertainment and Infotainment Media Channels;
- (ii) In addition to operating television channels, the plaintiff was also engaged in the business of creating television shows and which inter-alia, were broadcast under the well-known trademark 'BhaiyaJiAah'in', the plaintiff had also got the said trademark registered and had already broadcast over 1200 episodes;
- (iii) Owing to said show being successful, the trademark 'BhaiyajiKah'in' had attained immense goodwill and reputation and the show had viewership of over 10 lakhs; the show - 'BhaiyaJiAah'in' had also won several awards and generated revenue of crores of rupees;
- (iv) It had recently come to the knowledge of the plaintiff that defendant was about to launch a show titled 'Bhaiyaji Superhit' which was planned to be a satire on the show of the plaintiffs;
- (v) Owing to the similarity in trademarks as well as the nature of the show of the plaintiff as well as the defendant, there was likelihood of the patrons confusing the show of the defendant for the show of the plaintiff.

From Student to Lawyer to Judge

Along with the suit, an application under Order 39 Rules 1 and 2 of the CPC is filed for interim relief restraining the defendant from broadcasting the show 'BhalyajiSuperhit'.

The defendant contests the suit and the application for interim relief pleading that, (i) there is no likelihood of confusion between the show of the defendant and show of the plaintiff and between two marks; (ii) the registration in favour of the plaintiff of 'B/2aiyaJiAah'in' was with the rider/condition that 'registration of this trademark shall give no right to its exclusive use of the words separately', thereby meaning that the plaintiff has no right to claim exclusive use of the word 'Bhaiyaji', (iii) the word/term 'Bhaiyaji' is a generic Hindi word that literally translates to brother and therefore the plaintiff cannot claim exclusive use of the said word; (iv) the show of the plaintiff and the show of the defendant would be broadcast on different news channels, further eliminating the possibility of confusion; (v) while the show of the plaintiff was in the form of news debate, the show of the defendant was an Infotainment programme to be hosted by a comedian.

Decide the application for interim relief.

12. A. Vallaiannai entered into an agreement dated 26th May, 1988 for sale of his property to K. Shreeram and received advance consideration and the balance consideration was to be paid by 26th May, 1989. With an endorsement dated 26th May, 1989, the timeline for payment of balance consideration and execution of sale deed extended till 26th November, 1989. On 11th July, 1991, K. Shreeram issued notice to A. Vallaiannai to accept the balance sale consideration and execute the sale deed within one month. A. Vallaiannai responded with a reply dated 9th August, 1991 alleging that K. Shreeram had failed to perform and abide by the agreement to sell within the stipulated deadline. On 15th July, 1991 K. Shreeram filed a suit for permanent injunction to restrain A. Vallaiannai from dealing with the property till he executes the sale deed. It was pleaded that A. Vallaiannai was negotiating with third parties to sell the suit property. It was further pleaded that K. Shreeram would be filing a suit for specific performance in a short time. A. Vallaiannai contested the suit pleading that K. Shreeram was never ready and willing to perform the agreement to sell and for this reason only, instead of filing a suit for specific performance, had filed the suit for permanent injunction. However, on 23^d December, 1992, the suit for injunction was dismissed as not pressed. Thereafter on 27th September, 1995, K. Shreeram filed a suit for specific performance of the agreement to sell. It was inter-alia the defence of A. Vallaiannai that the suit was barred by limitation. K. Shreeram, in replication pleaded that A. Vallaiannai had not denied her intention to complete the agreement to sell and therefore the limitation period had not commenced.

Decide whether the suit was barred by limitation.

From Student to Lawyer to Judge

13. Madras Aluminium Co. Ltd. had entered into a contract with the Electricity Board and obtained an electricity load of 67000 KVA at its plant. Upon establishing a captive power plant, it applied to the Electricity Board to reduce the load to 10000 KVA with effect from 27th January, 2002. Despite such request, no steps were taken by the Electricity Board for so reducing the load. Therefore the company was being forced to pay charges for 67000 KVA load. The company, in the year 2005 filed a writ petition in the High Court in this regard, also seeking refund from the Electricity Board of the charges collected from the company over and above the load of 10000 KVA. The Electricity Board in its response to the writ petition placed reliance on various clauses of the agreement entered into with the company and the terms and conditions of supply of electricity to justify their stand. It was further pleaded that simply because the Electricity Board was taking time to consider the application of the company for reduction of load would not entitle the company to automatically pay charges as per the rates applicable to load of 10000 KVA and till the load was actually reduced.

Decide the writ petition in the context of 1) Article 14 of the Constitution of India; 2) maintainability of writ petition in contractual matters; and 3) grant of relief of recovery of money in writ petition.

14. (a) Mrs. Cherian instituted a suit in the Court of Civil Judge, Delhi, for declaration of title with respect to certain lands and for recovery of possession of the land from the defendants and for recovery of mesne profits. The defendants contested the suit claiming to be tenants in the land and being not liable to be evicted therefrom. The suit was dismissed by the Court of Civil Judge on 16th November, 1989. Mrs. Cherian filed an appeal before the Court of District Judge, Delhi on 10th January, 1991. The Court of District Judge on 18th December, 1998 set aside the judgment of the Civil Judge and remanded the suit to the Civil Judge for adjudication afresh. The defendants preferred a second appeal to the High Court of Delhi against the judgment and decree of the District Judge but it was dismissed on 13th December, 1999. Upon remand, the suit was decreed by the Court of Civil Judge on 21st October, 2000, in favour of Mrs. Cherian and a decree for possession passed in favour of Mrs. Cherian. The appeal preferred by the defendants against the said judgment was dismissed and the judgment of the Civil Judge decreeing the suit in favour of Mrs. Cherian attained finality. Thereafter Mrs. Cherian applied for execution of the decree for possession in her favour. Objections were filed by one Mr. Mathew to the said execution claiming to have purchased the property from the defendants on 17th March, 1991 i.e. between 16th November, 1989 when the suit was dismissed and 10th January, 1991 when Mrs. Cherian filed the appeal thereagainst.

Decide the said objections in light Order XXI Rule 102 CPC.

From Student to Lawyer to Judge

(b) The plaintiff instituted a suit in the Court of the Civil Judge, Delhi against the two defendants, for recovery of possession of land, pleading that he had purchased the land from the two defendants and paid entire consideration thereof and the defendants had also put the plaintiff in possession of the land but subsequently the defendant No. 2 forcibly took possession of the land from the plaintiff. The first defendant filed a written statement admitting the case of the plaintiff. Second defendant contested the suit by filing a written statement, pleading that 1) the sale deed was a sham document which was never intended to be acted upon and had never been acted upon; 2) that the sale deed was executed only as a security for a money lending transaction. The Civil Judge dismissed the suit, finding in favour of the Defendant No. 2. The plaintiff preferred first appeal before the District Judge contending that in the face of the registered sale deed and the failure of the defendant no. 2 to make any counter claim for cancellation of the registered sale deed, the suit could not have been dismissed.

Decide the said first appeal on the aforesaid contentions of the plaintiff.

15. (a) What is the impact of the amendment with effect from 24th September, 2001 to the Registration Act, 1908 on Section 53-A of the Transfer of Property Act, 1982?

(b) Section 12 of the Commercial Courts Act, 2015 is titled 'Determination of Specified Value'.

Discuss whether it impacts the valuation of the suit for the purposes of court fees and jurisdiction and if so, how?

(c) Write a short note on whether the Commercial Courts Act, 2015 impacts the limitation Act, 1963, in any manner whatsoever and if so, how?

(d) Write a short note on time for presenting documents for registration including document executed by several persons at different times.

(e) Whether after coming into force of the Commercial Courts Act, 2015, a petition under Article 227 of the Constitution of India in the High Court of Delhi is maintainable with respect to any order passed by the Civil Judge or the District Judge.

Answer giving reasons.

(30 marks x 4 = 120 marks)

From Student to Lawyer to Judge