

**HIGH COURT OF BOMBAY AT GOA (PANAJI)**  
**(PAPER-1)**

**2010**

Time : 3 Hours

Max. Marks : 100

- N.B. : (1) All questions are compulsory.
- (2) Your answers must be to the point and wherever possible quoting the specific provisions of law will be appreciated.
- (3) Do not reproduce any question. Write only question's number against the answer.
- (4) Number of optional questions upto the prescribed number in the order in which questions have been solved, will only be assessed and excess answers of the question/s will not be assessed.
- (5) "Other than cited cases, candidate should not write roll number, any names (including his own), signature, address or any indication of his identity anywhere inside the answer book otherwise he will be disqualified".

1. Draft one judgment out of the 2 (two) sets on the following facts: (20)

- (- Frame proper issues arising out of stated pleadings.
- Adhere to requirements of the contents of the judgment under CPC.
  - Wherever necessary, you may exercise discretion in filling up the details while appreciating evidence, during the course of trial of a civil suit.
  - Assign logical, legal and proper reasons in support of your findings and conclude the judgment with a proper order.)

**SET A**

**Averments in Plaintiff**

A & B (Plaintiffs) entered into an Agreement with X (defendant) on 05.04.1998 to purchase flat in the project of X developed by him for Rs. 4,50,000/- and made the payments on different dates though construction was carried out at a slow pace. The date agreed for handing over possession was on 05.05.2000 but possession was not handed over nor construction completed despite payments. Hence, the suit filed in 2007 for delivery of vacant possession of the flat with occupancy certificate and direction to execute and transfer the flat by execution of a Sale deed or alternately for a direction to the defendants to pay the amount of Rs. 4,50,000/- with interest @ 18% p.a. till payment.

Averments in the written statement

Defendant's plea - suit beyond limitation and as the last payment effected on 04.04.2000. The receipt though alleged to be signed at Panaji was signed at Margaon. The plaintiffs had not paid Rs. 4,50,000/- but only Rs. 2,75,000/-. The defendant had terminated the agreement vide registered notice dated 06.06.2000 and returned the amount of Rs. 2,75,000/-. The flat was complete in all respects but the plaintiffs had failed to take possession despite the letter dated 06.06.2000 and it was sold to another party. Hence, the suit be dismissed.

SET B

Averments in Plaint

The plaintiff's case in brief was that the defendant was in the business of metal stone quarry at Quepem. The plaintiff was entrusted the running of the quarry by defendant by a Memorandum of Agreement dated 23.03.2003 on rentals of Rs. 3000/- p.m. and a refundable deposit kept with defendant of Rs. 4,00,000/-. The business was dependent on the handing over of the explosive licence. He failed to hand over explosive licence in a valid condition for next 6 months. Plaintiff had employed persons to keep the machinery running. The crusher had collapsed and he had spent Rs. 80,000/- towards repairs to keep the machinery running. Defendant demanded rent, alleged construction activity and terminated the agreement. Plaintiff sent reply that machinery was old and repaired, that valid explosive licence was not handed over to exploit quarry and he was not liable to pay rent. The defendant failed and neglected to refund Rs. 4,00,000/- and the amount that the plaintiff spent towards repairs. Hence, the suit for a direction to defendant to refund Rs. 4,00,000/- and to pay Rs. 80,000/- with interest @18% p.a. from the date of agreement till payment, (ii) mesne profits @ Rs. 500/- per day.

Averments in the written statement

Defence case: The defendant admitted the agreement and deposit of Rs. 4,00,000/- and rent fees. He denied that any agreement was made to handover valid explosive licence. The plaintiff took over possession of quarry with equipment and machinery in running condition and started operation. He denied that no work was done for 6 months and instead there was damage to machinery due to extensive use by plaintiff and as he had handed over in proper running condition. Plaintiff had not repaired machinery by spending Rs. 80,000/-. Plaintiff was under an obligation as per the terms of Agreement to maintain machinery and equipment in good condition. Plaintiff failed to handover possession of quarry and machinery despite termination of licence and hence the defendant is entitled to adjust the security deposit towards rental and repairs of machinery. There was no cause of action and suit had to be dismissed.

2. Discuss *any four* of the following: (16)
- a) Mode of retirement of a partner from a firm.
  - b) Agreement in restraint of trade vis-a-vis the outgoing partner of a partnership firm.
  - c) Remedy available to a person dispossessed of immovable property.
  - d) Salient features where specific performance of contract can be enforced.
  - e) Define decree, explain preliminary and final decree.
3. Write short notes on *any four* of the following: (16)
- a) Adjudication of rescission of contract or refusal.
  - b) Contract and persons who are competent to contract.
  - c) Contingent contracts.
  - d) Define bailment, lien and pledge.
  - e) What are the circumstances in which a contract is said to be induced by undue influence between the parties generally?

4. Answer *any four* of the following: (16)

- a) Which persons can sue for redemption of the mortgaged property.
- b) Define 'lease' of immovable property and how it is made.
- c) Explain the doctrine of lis pendens and illustrate.
- d) What do you understand by doctrine of holding out? Elaborate with the provisions of law.
- e) Rights and liabilities of seller and buyer.

5. Answer *any four* of the following: (16)

- a) Elaborate on stay of suit and res judicata and the distinct differences between the two. What do you understand by constructive res judicata?
- b) Elaborate on Mesne profits and decree.
- c) Return of plaint and rejection of plaint - effect of and the remedy to the aggrieved party.
- d) Mode of hearing of suit, examination of witnesses and more particularly the development subsequent to the 2002 Amendment Act.
- e) Enunciate the principles and provisions for amendment of pleadings.

6. Write short notes on *any four* of the following: (16)

- a) How is a contract of sale made?
  - b) What is the effect of sale by a person who is not the owner?
  - c) Who is an unpaid seller and what are his rights?
  - d) Elaborate on sale by a sample and its effects.
  - e) Power and functions of a receiver.
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