Maharashtra Civil Judge (Mains) 2019

Paper I: Civil Laws · compulsory paper

Civil Procedure Code, Transfer of Property Act, Specific Relief Act, Law of Contracts, Sale of Goods Act and Partnership Act. Time: 3 Hours · Maximum Marks: 100

Instructions to the candidates

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, wherever possible quoting the specific provision of law.
4. Do not reproduce any question. Write only the question's number against the answer.
5. Wherever an option has been given, only the required number of responses in the serial order attempted shall be assessed. Excess responses shall be ignored.
6. Other than cited cases, the 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.
7. The English version of the question shall be authentic in case of any ambiguity.
8. All questions can be attempted only in one language, either English or Marathi, as per the option given in the application form.
9. Candidates are expected to answer all the sub-questions of a question together. If a sub-question is attempted elsewhere (after leaving a few pages or after attempting another question), the later sub-question shall be overlooked.

Question No. 1 [20 marks]

Write a judgment on the basis of the facts given below. You must pay attention to the following points: (a) The judgment should be in proper format; (b) Frame issues properly and give findings on them; (c) Conclude the judgment with an operative order.

Facts for judgment. Plaintiff's case is as under:

Sunil Borate and Sham Pandit are friends. Sunil is a cloth merchant and Sham is a builder/contractor. Sunil and Sham were having financial transactions in the past. Sunil was in need of money and therefore approached Sham on 2.2.2014 with a request to lend him an amount of ₹ 3,00,000 for his business purpose. Sham extended the said amount on 15.2.2014 by withdrawing it from his account. Sunil had promised to return the amount within 6 months. It was agreed that no interest will be paid on the said amount, if the same is returned within the stipulated period.

Sunil failed to return the amount within 6 months. Sham issued a notice dt. 23.10.2014 through his Advocate to Sunil and called upon him to make payment within 15 days. Sunil received the notice on 25.10.2014. He issued a cheque bearing No. 12345 drawn on State Bank of India, Rajwada Branch, Sangli for ₹ 3,00,000 dt. 5.11.2014. The said cheque was presented by Sham with his banker HDFC Bank, Ganesh Peth, Sangli on 6.11.2014. The said cheque came to be dishonoured on the ground 'refer to drawer' on 7.11.2014.

Again Sham issued a notice through Advocate on 20.11.2014 and informed all facts to Sunil. Sunil was called upon to make payment on or before 2.12.2014. Sunil had received the said notice on 22.11.2014

but failed to comply with it. Hence the suit has been filed by Sham for recovery of ₹ 3,25,000 against Sunil. The claim is inclusive of interest from the date after expiry of the first 6 months and notice charges. Future interest is also prayed.

Defence taken in the written statement:

Sunil admits that he had borrowed an amount from Sham in the past but denied having taken an amount this time. He had booked a flat in the project undertaken by Sham and had issued the cheque towards the said contract. The said cheque has been misused by Sham.

Sham had filed a complaint under section 138 of the Negotiable Instruments Act against him in respect of the same cheque. He has been acquitted by the competent Court after holding that there was no "legally enforceable debt or liability". No doubt, an appeal against the acquittal is pending.

All the other averments in the plaint have been denied specifically.

Evidence by parties: as per imagination.

Question No. 2 [16 marks]

Write short notes on any four of the following topics:

(a) Doctrine of lis pendens

(b) Mortgage by deposit of title-deeds

(c) Determination of lease

(d) Effect of part delivery

(e) Subrogation

(f) Right of foreclosure

Question No. 3 [16 marks]

Answer any two of the following sub-questions:

(a) Whether in all circumstances an executing court cannot go behind the decree?

(b) Court Commissioner cannot be appointed to collect evidence: comment on this proposition.

(c) Whether a defendant can ask for the relief of temporary injunction in a suit against him, when that suit itself has been filed for declaration and injunction?

Question No. 4 [16 marks]

Write short notes on any four topics:

(a) How is a contract of sale made?

(b) Rights of a minor partner

(c) Unpaid seller

(d) Auction sale

(e) Dissolution of partnership firm

(f) When should a condition be treated as a warranty?

Question No. 5 [16 marks]

Answer any two sub-questions:

(a) When can an interpleader suit be filed and when can it not be filed?

(b) Notice under section 80 of the Code of Civil Procedure, 1908: a pre-requisite.

(c) Whether exclusion of jurisdiction of a Civil Court can be readily inferred?

Question No. 6 [16 marks]

Write short notes on any four of the following:

(a) Decree against minor
(b) Necessary and/or proper parties
(c) Specific denials
(d) Impounding of documents
(e) Attachment before judgment
(f) Set-off