

EXAMINATION OF ARTICLED CLERKS**PAPER VI****GENERAL ACT**

MONDAY, 28TH NOVEMBER 2016

TIME : 3 HOURS [1-00 P.M. TO 4-00 P.M.]

(TOTAL MARKS—100)

- Instructions* :— (1) Answer should be precise and reasoned.
 (2) Cite applicable case law.
 (3) “Yes” or “No” answers will not be accepted.
 (4) All questions are *Compulsory*.
 (5) Please write in neat and clean handwriting.

Marks**Arbitration and Conciliation Act, 1996**

1. Amol and Sarika are partners in a firm, “M/s. MOLIKA”. Sarika’s ex-husband, purporting to act as her constituted attorney, sent a notice of dissolution to Amol. Sarika subsequently filed a suit for dissolution of the firm of M/s. Molika and consequential relief for accounts and her share. The Court referred parties to arbitration as the partnership deed provided for arbitration. In the arbitration proceedings the Arbitrator, passed an interim order under section 17 of the Act directing Amol not to dispose of certain flats which were assets of the firm. Amol nevertheless entered into a registered Agreement for Sale of 5 such flats in breach of the Arbitrator’s orders. Sarika proposes to file contempt proceedings against Amol and seeks your advice. 5
 - (a) Would contempt proceedings lie against Amol ?
 - (b) How would such proceedings be initiated ?
 - (c) If contempt proceedings do not lie, what redress would Sarika have against Amol ?
2. An agreement was executed between ABC Ltd. and RST Ltd. for supply of equipment, modernization and upgradation of production facilities of ABC Ltd. at its Taloja Plant in the State of Maharashtra. Disputes arose which were referred to arbitration. Parties agreed that the Agreement will be governed by the laws of India, the seat of arbitration would be London and English law would govern the arbitration proceedings. In March, 2016 the arbitration proceedings culminated in an award in favour of RST Ltd. which ABC Ltd. wants to challenge. 5
 - (a) Whether the Award can be challenged under section 34 of the Arbitration and Conciliation Act, 1996 ?
 - (b) If so, which Court would have jurisdiction to entertain the challenge ?
3. Salman, Amir and Shahrukh carried on business at Mumbai as partners of the firm of “M/s. SALAMRUKH”. Disputes arose amongst them and Salman filed a suit for dissolution of the said firm. Amir and Shahrukh filed an application under section 8 of the Act to dismiss the suit since the partnership deed contained a provision for arbitration. The trial court rejected the application of Amir and Shahrukh and continued with the trial of the suit. Salman then approaches the Chief Justice of the High Court of Judicature at Bombay by filing an Arbitration Application under section 11(6) of the Arbitration and Conciliation Act. 5
 - (a) Is the Arbitration Application under section 11(6) filed by Salman before the High Court maintainable ?

[Turn Over

- (b) Would your answer be different if, Amir and Shahrukh had alleged that Salman had committed fraud as a partner ?
- (c) Can Salman file an appeal against the order of the trial court passed under section 8 of the Arbitration and Conciliation Act in Civil Suit ?
4. In arbitral proceedings between parties, an award is passed on 23rd June, 2015 against ZICCI Ltd. and in favour of RTI Ltd. The award is put in execution by RTI Ltd. The award was challenged by ZICCI Ltd. on 20th September, 2015 by filing a Petition under section 34 of the Act. While the proceedings were pending, the Arbitration and Conciliation (Amendment) Act, received the assent of the President of India and was notified on 1st January, 2016 as the Arbitration and Conciliation (Amendment) Act, 2015. ZICCI Ltd. then took out an application seeking dismissal of RTI Ltd.'s execution application of the Arbitral Award. In this application ZICCI Ltd. contends that as it challenged the Award prior to the amendment of the Arbitration Act, its Petition under section 34 would be governed by section 36 of the Arbitration and Conciliation Act prior to the amendment. RTI Ltd. now comes to you seeking your advice on the amended provisions under the Arbitration and Conciliation (Amendment) Act, 2015. What advice will you give ?

MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, 1960

5. Hamdard Co-operative Housing Society Ltd. approaches you as they propose to expel its member Mr. A and wants to file an action before the Co-operative Court. Kindly advice with reference to the procedure to be followed under the Maharashtra Co-operative Societies Act and Rules. 4
6. Mr. X approaches you as in execution proceedings the flat in which he stays in the Co-operative Housing Society is attached by Mr. Y. He has in his possession the original share certificate issued by the Society which stands in the name of his mother and Mr. X is shown as an Associate Member. He has with him an Agreement for Sale which is executed by his mother and which is unregistered. Stamp duty is paid on the said Agreement under an Amnesty Scheme. Mr. X approaches you for advice. 4
- (a) Whether the attachment as levied upon X's flat can be raised on the strength of the document available with Mr. X ?
- (b) Is there any provision under Co-operative Societies Act exempting registration of transfer of the shares of the society ? If so, can it come to the aid of Mr. X ?
7. Mr. Vishwas Gupta was a member of the All View Co-operative Housing Society Ltd. He had two children, a son and a daughter, both married. Mr. Vishwas Gupta filed an Application for nomination in favour of his married daughter which nomination was recorded by the Society in its record. Mr. Vishwas Gupta expired on 30th April, 2016. The married daughter approached the Society in June, 2016 and the Society transferred the shares in her favour. On coming to learn of such transfer, the married son and widow of Mr. Vishwas Gupta approach you for advice. 4
- (a) What would your advice be, keeping in mind the provisions of the Act ?
- (b) Is the transfer by the Society in favour of the married daughter valid ?

8. Mayflower Co-operative Housing Society Ltd. initially constructed a building for its members. As the building became old by passage of time, the Society decided to redevelop the property. Mayflower Co-operative Housing Society Ltd. entered into a redevelopment agreement with ABC Ltd. for redevelopment of the flats of its Society. Disputes arose with ABC Ltd. with regard to redevelopment of the Society and one of its members filed a suit in the Bombay High Court against the Society and ABC Ltd. Statutory notice under the Act was not given by this member to the Society prior to filing of the suit. The Society approaches you and instructs you to oppose the suit. Please advise :-

- (a) Whether the High Court has jurisdiction to try and entertain the dispute as raised or is it only the Co-operative Court which has jurisdiction to decide the disputes as raised in the above case ?
- (b) Whether the suit without notice under section 164 is maintainable against the Co-operative Society.

MAHARASHTRA RENT CONTROL ACT, 1999

9. (i) Whether a tenancy in respect of premises governed by the Maharashtra Rent Control Act is extinguished by destruction of the subject matter of the tenancy (i.e. the premises) by natural calamities ?
- (ii) On the destruction of premises which Court would have jurisdiction to entertain and try the suit for recovery of possession of land by the landlord ?

10. Mr. X and Mr. Y approached State Bank of India (SBI) for a financial loan which was granted against an equitable mortgage. X and Y failed to pay the dues and in terms of SARFAESI Act their account became a Non-Performing Asset (NPA). A statutory notice was issued under Section 13(2) by SBI and an application under Section 14 of the SARFAESI Act was taken out by SBI for seeking possession of the mortgaged property. Mr. A, a tenant of Mr. X and Y who has been in use and occupation of the mortgaged premises even prior to the and Y. Mr. A files a suit before the Small Causes Court for a declaration that he continues to be a tenant and obtains an interim stay against eviction by Mr. X and Mr. Y. Mr. A is advised to file an application to intervene in SBI's pending Section 14 Application under SARFAESI Act before the Learned Magistrate. The intervention application of Mr. A is dismissed by the learned magistrate as no registered documents were produced by Mr. A. The Application filed by SBI under section 14 of the SARFAESI Act to recover possession is allowed. Mr. A now approaches you for advice.

What advice would you give to Mr. A ?

11. The Ambassador of Thailand was a tenant of certain premises. The Ambassador died. The Ambassador's heirs did not reside with the Ambassador in the tenanted premises at the time of his death. The Landlord files an eviction suit against the heirs of the Ambassador seeking possession of the premises. The heirs approach you and instruct you to urge immunity against diplomatic staff of foreign state as a defence under the Rent Act.

Please discuss and advise the heirs of the Ambassador.

12. Rakesh and Rupesh are brothers. Rakesh owns a flat being Flat No. 2 on the first floor and Rupesh owns Flat No.1 on the ground floor. Both brothers jointly use the two flats. Disputes arose and Rupesh barred Rakesh from using the common kitchen on the ground floor. Rakesh, in turn, called upon Rupesh to refrain from using any portion

of the first floor. Through mediation an arrangement was reached for joint user of the two premises. Rupesh, however, in breach of the arrangement prevented Rakesh and his family from using the common kitchen on the ground floor and insists on using the premises on first floor. Rakesh comes to you and wants you to file a suit to restrain Rupesh from encroaching on Rakesh's user of his side of the premises and that Rupesh is a gratuitous licensee.

- (a) Kindly advise Rakesh whether such proceedings would lie and if so, which court would have jurisdiction ?
- (b) Since Rupesh's use was that of a gratuitous licensee, would Rupesh have protection under the Rent Act ?

THE LIMITATION ACT, 1963

13. (a) Whether under the Limitation Act, the Court has power to extend the period of limitation for filing a suit ? If so, specify with reasons. 2
- (b) Whether the period of limitation can be extended by Court for filing an application on equitable ground ? 2
14. In 2014 the Plaintiff, Angoor, files a suit for partition of certain ancestral property which belonged to his father, who died on 15th September, 2002. Angoor claims that the ancestral property devolved upon him and his sister Mausambi as co-owners, they being the heirs and legal representatives of the deceased father. The Defendant, Mausambi, contends that she alone is entitled to the property as the father bequeathed the property under his will to Mausambi. The will has not been probated. Mausambi counter-claims against Angoor claiming she has title to the property. Please advise :— 4
 - (a) Whether Angoor's suit is barred by limitation ?
 - (b) Whether Mausambi's counter-claim is barred by limitation ?
15. Whether an acknowledgement of liability signed and issued by the duly authorised agent of the Karta of the Hindu Undivided Family in favour of the creditor would constitute an acknowledgement of liability under section 18 of the Limitation Act ? 2

MAHARASHTRA PUBLIC TRUST ACT, 1950

16. A public trust, ABC, advertises for the sale and transfer of Transferable Development Rights (T.D.R.) to the extent of 2300 sq. metres and then agrees to sell the T.D.R. to one XYZ Pvt. Ltd. Please advise whether the permission of the Charity Commissioner is required under the Act for sale of TDR rights ? 5
17. Whether a public trust created and operating in Mumbai and registered under the provisions of the Societies Registration Act, 1860 is required to be registered under the Maharashtra Public Trusts Act ? 4
18. Write a short note on the following :— 6
 - (a) Is a suit for enforcement of a private right of a trustee of a public trust maintainable under Section 50 of the Act ?
 - (b) Can the Civil Court authorise alienation of immovable property of a public trust without the sanction of the Charity Commissioner ?

INDIAN TRUST ACT, 1882

19. (a) Whether Section 47 of the Indian Trust Act, 1882 which restricts a trustee from delegating his powers is applicable to a public trust? 2
- (b) Whether having regard to Section 47 of the Indian Trusts Act, 1882 the board of trustees of a trust can authorise and delegate to only one trustee the power to institute and prosecute a suit for recovery of the trust property? 2
20. In the matter of family settlement / arrangement, several properties were distributed amongst the family members. The parties agreed that a public trust "Daan Do Charities" set up by the family would be controlled by A, B and C as trustees and D would resign as a trustee of "Daan Do Charities". D would then independently set up a separate trust "Sab Ka Labh" and after "Sab Ka Labh" was set up "Daan Do Charities" would donate 1/5th of its corpus to "Sab Ka Labh" managed by D. "Daan Do Charities" was not a party to the family settlement / arrangement. 6
- (a) Can an independent trust, "Sab Ka Labh", be formed under a family settlement / arrangement?
- (b) Is the family settlement / arrangement binding on "Daan Do Charities"? Would your answer be different :—
- (i) If "Daan Do Charities" were a party to the family settlement/ arrangement; and
- (ii) If "Sab Ka Labh" was a public trust?
21. Can a trustee of a private family trust take a tenancy in respect of the premises of a trust of which he is a trustee at market rate of rent? 3

RULES OF ETIQUETTE AND PROFESSIONAL CONDUCT

22. Your client wants to take away papers. You are seeking lawyers' lien under the provisions of Contract Act. Are you justified in doing so? If not, why not? 2
23. Would you act for a company in a litigation where you are also a director of the company? 2
24. Mr. A instructing Solicitor receives money from his client as advance towards his professional fees and Counsel fees which have already accrued. Mr. A deposits the monies in his personal account and pays the counsel fees after one year after the date of receipt of the money. Is Mr. A's manner of allocation of advances correct? 2