

**DELHI HIGHER JUDICIAL SERVICE MAIN EXAMINATION
(DESCRIPTIVE), 2013**

Duration : 150 Minutes

Maximum Marks : 500

Important Instructions:

1. All questions are compulsory.
2. You are allowed 15 minutes reading time i.e. from 9.45 AM to 10.00 AM, before the examination begins, during which you should read the question paper and, if you wish, highlight and/or make notes on the question paper. However, you are not allowed, under any circumstances, to open the answer sheet and start writing during this reading time.
3. You should answer Part-A and Part-B Questions in separate answer sheets. If any question of Part-A is attempted in Part-B answer sheet or vice versa, it would not be evaluated.
4. Support your answers with relevant provisions of law, legal principles and case law.

PART – A

1. Government of India announced a policy to allot land for establishing Special Economic Zones. The policy document stated that the requisite allotment will be made on first come first served basis. Subsequently, deposit of earnest money of Rupees One Thousand Crore was introduced as a pre-requisite. The land was allocated to five applicants.

'X' files a Public Interest Litigation under Article 32 of the Constitution of India seeking direction from the Supreme Court to quash the allotments, inter-alia, on the grounds that the information regarding change in the policy was selectively leaked. The petitioner claimed violation of Articles 14 & 19 of the Constitution and also sought direction from the Court that in

future allotment of land by the Government should be only by public auction.

Decide in the light of relevant constitutional provisions, principles of judicial review and the opinions expressed by the Supreme Court in recent pronouncement.

(50 Marks)

2. 'X' went to the police station holding a blood stained sword in his hand and made a statement to the Duty Officer that since his wife was living in adultery he killed her and his children with the sword. He stated the manner in which he had killed his wife and children. On the basis of which FIR was lodged.

'X' was committed for the charge of murder of his wife and three minor children under section 302 IPC.

The prosecution relies on the following evidence:

- i. Confessional statement was made by 'X' to the duty officer of the police station that he had killed his wife and children with the sword which was handed over by 'X' to the duty officer;
- ii. In the confessional statement 'X' said that since his wife was living in adultery he killed the children and his wife;
- iii. In the confessional statement 'X' also said that he pierced the sword in the chest of his wife to kill her, he chopped the head of his son which was severed from his body and he used the sword to slit throats of two other children;
- iv. The dead bodies were recovered at the instance of 'X' from his house;
- v. The blood on the clothes of the accused, and on the sword, matched with that of the deceased;
- vi. Post-mortem report showed that the wife died due to piercing of the heart, the male child died due to head decapitation and the two girls died due to slitting of the throats

- vii. 'P', sister-in-law (wife of brother) of 'X' had heard the cries of children during the course of incident and had seen 'X' running out of the house holding the blood-stained sword in his hands.

The prosecution seeks conviction on the basis of confession of 'X' in the FIR and other circumstantial evidence.

In the trial, 'X' retracted from the confession and claimed that he went to the police station to lodge complaint of the incident. The defence pleas, inter-alia, are: murders were committed by some unknown person in the absence of accused; confession is not admissible; 'P' is an interested witness and has given false evidence; weapon has been planted and clothes of the accused got smeared with blood of the victims when he had tried to lift the bodies on discovering them.

Decide in the light of rival contentions.

(75 Marks)

3. 'H' has been tried on the charge for offences under sections 304-B and 201 IPC. 'H' was married to 'W', 2 years before the date of incident.

The prosecution adduced evidence at trial affirming the following facts:

- i. 'F', father of 'W', had given sufficient dowry in the marriage but 'H' being not satisfied raised demand for motorcycle and used to maltreat and harass 'W' on this account.
- ii. In above circumstances, 'W' had left the matrimonial home one year after marriage and went to her parental house where she continued to live for more than one year;
- iii. 'W' had returned to the matrimonial home, two months before her death, pursuant to a settlement worked out by the elders of the community, on the assurance of 'H';
- iv. On the date of incident, 'W' received burn injuries in the matrimonial home. 'W' was taken to a private nursing home

- in the same locality by 'H', where 'W' was declared brought dead due to 90% burn injuries.
- v. 'W' was cremated in the evening on the same day by 'H'. The cremation was attended by a number of persons living in the same neighborhood;
 - vi. A week after the incident, police registered the FIR on the complaint of 'F', inter alia, to the effect that he had learnt about the death of his daughter 'W' from an acquaintance 'A', a neighbour of 'H'. As per 'F', he had not been informed by 'H' about the incident in which 'W' had suffered the fatal burn injuries or her death;
 - vii. During investigation, evidence came to the effect that 'H' had not reported the matter to police and, further, that it was not a case of accidental fire.

In his statement under section 313 CrPC, 'H' claimed that 'W' was alone at home when the incident occurred. While prosecution seeks conviction of the accused, defence argues that the prosecution must fail on the grounds, inter-alia, that the FIR was an afterthought with delay not explained; it is a case of suicide in which the accused had no role; there is no evidence of demand of dowry or cruelty and there is no proximate connection between the alleged cause and suicide.

Decide and give verdict based on evidence, legal provisions and case law.

(75 Marks)

4. a. What are the essentials of 'valid acknowledgment of a debt' under the Limitation Act, 1963?

(25 Marks)

- b. Discuss the law on jurisdiction of the court to try the offence under section 138 of the Negotiable Instruments Act.

(25 Marks)

PART – B

1. The marriage between Sunil and Radha, both Hindus, was solemnized according to Hindu rites and customs on 01.02.2010. The marriage was duly consummated and the relationship of Sunil and Radha was normal for a month, beyond which Sunil started taunting Radha every day that she was ugly, old fashioned in her thoughts and style of dressing and below his standards. He demanded to be compensated with a flat in Delhi. He started compelling her to leave her job so that she could look after him better. Unable to bear the torture, on 02.04.2010 Radha returned to her parental home. On 03.04.2010, Sunil called Radha on her mobile phone and sent her sms and e-mails which she did not answer because she was extremely depressed and upset. On 04.04.2010, Radha answered Sunil's call who in turn abused her and hung up and thereafter refused to answer her calls. Barely ten days after her leaving the matrimonial house, Radha and her parents started making efforts to get Radha re-established in her matrimonial home, but Sunil shunned every possible effort. On 02.05.2010, the parents of Radha went to the house of Sunil but were rudely turned out by him. Sunil refused to respond to any reconciliation efforts on the part of Radha. On 21.06.2013, Sunil filed a petition for divorce in the Family Court at Delhi on the ground of cruelty under S 13(1)(i-a) and desertion under S. 13 (1)(i-b) of the Hindu Marriage Act, 1955. Sunil alleged that Radha had caused him mental cruelty by leaving him abruptly thereby depriving him of a normal matrimonial life, insulting him when she did not answer his calls or sms or e-mails on her mobile and had intentionally deserted him. It is Radha's case that she left the matrimonial home because of cruelty on the part of Sunil and it was he who had deserted her.

Decide.

(50 Marks)

2. 'P' filed a suit for Permanent Injunction against 'R' to restrain 'R' from dispossessing 'P' from a residential house, the suit property, and also to restrain 'R' from creating third party interest in the house on the following grounds:

- i. 'P' is the 'owner' of the house and has been residing therein for the last more than 22 years without any interference and thus has the right to remain in possession of the house.
- ii. A week before filing of the suit, 'R' had come to the suit property with malafide intention and asked 'P' to vacate the house, telling 'P' that he wanted to sell the house.

'R' contested the suit and filed written statement alongwith a counter-claim seeking decree of possession & mesne profits and also an application under Order 7 Rule 11 CPC seeking rejection of plaint, inter alia, on following grounds:

- a. 'R' is the true owner of the suit property and had employed 'P' as caretaker around two decades back.
- b. Pleadings are deficient and silent about the 'title' or 'interest' of 'P' and in what capacity and manner he entered into possession of the suit property.

'P' filed rejoinder and claimed that he was in 'adverse possession' of the property and enjoyed the possession without any interruption or hindrance from any person 'without paying' any payment to any person for the use and enjoyment of the property. He filed photocopies of his passbook, LIC Premium Receipts, ration card and birth certificate of his children bearing address of the suit property.

'R' filed original duly registered Sale Deed, which is not disputed by 'P' in the rejoinder.

Decide the application under Order 7 Rule 11 CPC filed by 'R' in the light of rival claims and contentions.

(75 Marks)

3. In a suit for specific performance of a contract filed on 01.01.2012, by 'P' against 'D', the following facts are admitted in the pleadings and the evidence:

- i. 'P' is a non-resident Indian (NRI) living in United Kingdom (UK) with business interests in India and has been maintaining an office of his Company in Delhi.
- ii. 'D' is an elderly housewife living in Kolkata and owned a residential property ('suit property') located in Delhi.
- iii. 'P' appointed his Delhi office manager 'A' as his attorney by executing a Power of Attorney (POA) on 01.01.2011, duly registered, and through him entered into an Agreement of Sale on 07.01.2011, executed at Delhi by 'D' through 'H', her husband and duly constituted attorney, for purchasing the suit property for total sale consideration of Rupees Thirty Lakh only, having paid to 'D' an amount of Rupees One Lakh only as earnest money, on the following terms and conditions:
 - a. The sale to be completed by 07.03.2011 and balance sale price to be paid at the time of registration of sale deed.
 - b. At the time of registration of sale deed, the vendor shall deliver her original title deed.
 - c. If vendor committed default, he would pay double the amount of earnest money to intending purchaser and if vendee committed default, the earnest money would stand forfeited.
- iv. On 06.06.2011, 'P' sent a telegram to 'D' to come to Delhi for execution and registration of Sale Deed in the office of Sub-Registrar on 08.06.2011, in response to which 'H' came from Kolkata to Delhi the same day. 'H', however, did not go to the office of Sub-Registrar on 08.06.2011.
- v. On 08.06.2011, 'A', the attorney of 'P' presented himself in the office of Sub-Registrar and waited but when no one on the side of vendor showed up the whole day, he formally informed the Sub-Registrar in writing these facts, obtaining formal acknowledgement of this submission.
- vi. On 08.10.2011, 'P' sent a legal notice to 'D' stating that he was always ready and willing to perform his part of the contract and get the sale deed registered by paying the balance consideration and calling upon her to complete the sale.
- vii. On 31.10.2011, the office manager 'A' retired and in his place 'B' was appointed by 'P'. On same day, 'P' executed a fresh

POA appointing 'B' as his attorney and through him filed the suit, *inter alia*, pleading that 'P' was ready with the balance payment to be handed over at the time of execution of sale deed.

The suit was contested by 'D', amongst others, on the grounds that time was of essence to the contract; 'P' had been neither ready nor willing nor had arranged the balance payment and, therefore, contract could not be enforced.

At trial, 'B' appeared as the sole witness on behalf of 'P' on the strength of POA dated 31.10.2011 and deposed the above facts. For 'D', her husband and attorney 'H' appeared and affirmed the version of 'D'.

While 'P' presses for decree, 'D' argued that 'P' cannot succeed since he himself not having entered the witness-box, an adverse inference arises and there is no acceptable or valid evidence about his readiness and willingness to perform his part of the contract, and further that the agreement only provided for damages in the event of breach and in absence of such stipulation specific performance cannot be ordered.

Decide the following issues:

- i. Whether time was of essence of the contract? If so, effect?
- ii. Whether 'P' was and is ready and willing to perform his part of the contract?
- iii. To what relief, if any, 'P' is entitled?

(75 Marks)

4. a. Write a note on the extent and nature of jurisdiction of court and arbitral tribunal to order interim measures in relation to a dispute which is governed by an arbitration agreement.

(25 Marks)

- b. What are the general rules of succession in the case of female Hindus? Whether the husband has any right to inherit the property of the deceased wife, which was inherited by her from her father?

(25 Marks)