HIGH COURT OF BOMBAY
MAIN WRITTEN EXAMINATION-2019 FOR THE POST OF DISTRICT JUDGE

PAPER I- CIVIL LAW

INSTRUCTIONS

1. All questions are compulsory.
2. Figures to the right indicate marks.
3. Answers to optional questions, in excess of prescribed number, will not be assessed.

1. Write a Judgment on the following facts :-

[40]

Plaintiff's case :

Defendant is tenant of suit premises at Aurangabad on the monthly rent of Rs. 1,000/- since 01.01.2010. The defendant was regular in payment of rent till 01.01.2012, however, thereafter the defendant/tenant adopted practice of remaining in arrears of rent.

The plaintiff had to issue notices to the defendant for claiming the arrears of rent. The plaintiff had issued the first notice in the year 2012 claiming arrears for the period 01.01.2012 to 01.08.2012. He was further required to issue notice demanding the arrears of rent for the period 01.01.2013 to 31.12.2013 and then again a third notice for the period 01.04.2014 to 31.12.2014. It is only after issuance of such notices the defendant/tenant had paid the rent as demanded in these notices. Thereafter, also the defendant was not regular in payment of the rent and he uses to pay the same intermediately.

The plaintiff lastly issued a demand notice dated 03.06.2016 claiming arrears of rent of Rs. 12,000/- for the period 01.06.2015 to 31.05.2016. Followed by the notice, the plaintiff filed the suit for the recovery of the possession of the rented premises, as the defendant has not paid and is not ready and willing to pay the agreed rent.

Defendant's case :

As per the defendant he has responded the demand notices of the plaintiff from time to time and has also paid the arrears of rent as claimed therein. He has also paid the amount of Rs. 12,000/- by cheque to the plaintiff, as claimed in the demand notice dated 03.06.2016, on the basis of which the plaintiff has filed the suit.

Evidence:

The plaintiff in support of his contention has examined himself and produced on record, three demand notices issued earlier and so also the demand notice dated 03.06.2016 which are marked as Exhibit '8' to '11' respectively.

The defendant examined himself and produced the reply notice and the copy of cheque of the payment of Rs. 12,000/- in favour of plaintiff alongwith the receipts of earlier payments made against the three demand notices issued by the plaintiff. These documents are at Exhibit '13' to '17' respectively.

Plaintiff's argument:

As the defendant is habitually irregular in payment of rent, the suit is tenable and the plaintiff is entitled to relief as claimed.

Defendant's argument :

In view of the payments of arrears of rent in respond to the demand notice the suit for possession simpliciter on the ground of arrears of rent is not tenable.

As per the defendant in view of the requirement under section 15(2) of the Maharashtra Rent Control Act 1999, and as the defendant has paid the amount as per demand notice, the suit is not tenable and deserves to be dismissed.

The Trial Court dismissed the suit on 01.08.2019.

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The plaintiff preferred appeal against the judgment and decree of the Trial Court. Decide the appeal on the above facts.

2. Write an essay in about 500 words on any one of the following:- [20]

a. Procedure of admission of appeal and procedure for hearing of appeal.
b. Procedure for suits involving a substantial question of law as to the interpretation of the constitution or as to the validity of any statutory instrument.
c. The niceties of Commercial Court Act 2015 and case management hearing of commercial disputes.
d. The amendments made to the Specific Relief Act, particularly contract relating to the infrastructure projects, by the Specific Relief (Amendment) Act, 2018.

3. Write short notes on any four of the following:- [20]

(i) Appointment of receivers.
(ii) Rejection of plaint and return of plaint.
(iii) Res judicata and Res sub-judice.
(iv) Reference.
(v) Effect of withdrawal of the suit with liberty to institute a fresh suit and otherwise.

4. Answer any two questions of the following:- [20]

(a) Discuss rejection of application for permission to sue as an indigent person.
(b) Effect of death, marriage and insolvency of parties.
(c) Describe the mode of execution of decree of specific performance for restitution of conjugal rights and for an injunction.

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HIGH COURT OF BOMBAY
MAIN WRITTEN EXAMINATION-2019 FOR THE POST OF DISTRICT JUDGE

PAPER II- CRIMINAL LAW

INSTRUCTIONS

1. All Questions are compulsory.
2. Figures to the right indicate marks.
3. Answers to optional questions, in excess of prescribed number, will not be assessed.

1. Write a Judgment on the following facts :-

[40]

The victim aged 6 to 7 years had been to the school on 12.04.2018. In the afternoon around 12.15 p.m. Avinash had been to the school to pick up the child but could not find him. A hectic search was made by the family members along with the school staff for long time. As the child could not be traced, a report was lodged with the police around 10.00 p.m. regarding the kidnapping of the victim on 12.04.2018.

During the investigation, it revealed that accused 'A' who had earlier worked as servant with the family of victim had in fact picked up the victim from the school; on the pretext of giving him ice-cream. Both accused 'A' and 'B' were last seen together along with the victim on 12.04.2018. Investigating Officer searched house of accused 'B' in the presence of panch witnesses and recovered the school bag of victim along with the land line and mobile numbers of father of victim.

Police filed charge sheet of hatching criminal conspiracy and kidnapping for ransom against both accused. Sessions Court framed charge against both the accused.

The prosecution examined following witnesses -

Avinash (P.W.No.1) -

He has deposed that he had dropped the victim to the school on 12.04.2018 and when he went to bring back the child he could not find him. He informed parents of the child. Hectic search was taken, but as the child could not be traced, he lodged report with police.

Khushabu (P.W.No.2) -

She deposed that on 12.04.2018 in the afternoon victim was standing at the school gate. At such time an unknown person who had concealed his identity by covering his face came there. He gave ice-cream to the victim and took him away with him. She identified accused 'A' as a person who had taken away the victim.

Ram(Father of victim) (P.W.No.3)

He deposed that he had received calls on his mobile asking him to arrange for the money to release his child. He deposed that the calls were made by accused 'A' and on account of his previous acquaintance with accused 'A', he identified his voice on phone.

Rajkumar (P.W. No.4) -

He deposed that both the accused had been to his liquor shop alongwith the victim and they consumed liquor there for around two hours and then left his shop with the child.

Mohammad (P.W.No.5) -

He deposed that accused 'B' had been with his hotel with the victim in the evening.

Ramdaval (P.W.No.6)-

He had also deposed of seeing accused 'B' with the victim. He further deposed that on seeing the photograph of victim on television, he informed the police immediately regarding seeing the victim in the company of accused 'B'.

Investigating Officer (P.W.No.7) -

He has deposed in respect of the manner in which the investigation was carried out. He has deposed about recording the statements of witnesses, recovery of the school bag from the house of accused

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'B' under section 27 of the Indian Evidence Act. He further deposed that after the arrest of both the accused during investigation they confessed of killing the victim and burring the dead body in the bed of river Sharayu. The investigating officer had admitted that he did not try to search for the body of the victim.

The seizure panchnama is at Exhibit - 15.

The prosecution argument

In view of the oral as well as circumstantial evidence on record, the offence of criminal conspiracy and kidnapping has been proved against both the accused. The victim was last seen in the company of the accused is strong circumstance against them.

As father of victim was known to accused 'A' and every individual has a distinctive style of speaking, the identification of voice of 'A' was conclusive.

With regard to failure of police to trace out the body of victim, it the argued by the prosecution that, it is not an invariable rule of Criminal Jurisprudence that the failure of the police to recover the corpus delecti will render the prosecution case doubtful entitling the accused any benefit of doubt.

The defence case

The identification of accused is not proved. There was no 'collection of voice sample to prove the ransom calls were made by accused 'A'. There is no recovery of the body of victim and the chain of circumstances is not complete to prove their guilt beyond reasonable doubt.

2. Write short notes on any five of the following :-

[20]

a. Difference between criminal misappropriation, criminal breach of trust and cheating.
b. Liability of abettor for an effect caused by the act abetted different from that intended by the abettor and the effect of presence of abettor when the offence is committed.
c. Discuss unsoundness of mind as a defence to criminal liability.
d. Right of private defence with reference to general exceptions under the Indian Penal Code.
e. Tender of pardon to accomplice and power to direct tender of pardon.
f. Suspension of sentence pending the appeal; release of appellant on bail.

3. Attempt any two of the following :-

[20]

(i) Whether a Court can take cognizance of the offence punishable u/s. 7, 11,13 and 15 of the Prevention of Corruption Act against the public servant on a criminal complaint filed by an individual, other than a police officer or an officer of an investigating agency or other law enforcement authority.
(ii) Development in the field of law with regard to requirement of previous sanction for the prosecution of public servants.
(iii) Use of the statement recorded under section 161 of the Code of Criminal Procedure, during Criminal Trial of the case.
(iv) Concept of Burden of proof under the Indian Evidence Act.

4. Elaborate any four of the following:-

[20]

(a) Joinder of charges and alteration of charge.
(b) Procedure of Sessions Trial.
(c) Right of accused on arrest.
(d) The scheme of compensation provided under the Code of Criminal Procedure.
(e) Provisions relating proof of document required by law to be attested.

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