$~24, 25, 29, 34, 35 and 41

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 10592/2019**

NISHANT BASOYA ..... Petitioner

Through: Mr.Sagar S.Jaiswal with Mr.Nivesh Sharma, Mr.Kirti Gupta and Ms.Ritu Singh, Advocates.

versus

REGISTRAR GENERAL, THE HIGH COURT OF DELHI ..... Respondent

Through: Mr.Rajshekhar Rao with Mr.Ankit Jain, Mr.Chaitanya Puri, Mr.Siddhant Nath, Mr.Abhay Pratap Singh, Mr.Areeb Y.Amanullah, Mr.Siddharth Raval and Ms.Rajshree Jaiswal, Advocates for Delhi High Court.

\+ **W.P.(C) 10692/2019**

ANU KUMARI AND ORS. ..... Petitioners

Through: Mr.Prashant Manchanda with Mr.Mohit Saroha, Mr.Mohit Siwach and Mr.Rakshit Pandey, Advocates along with Petitioners in person .

versus

REGISTRAR GENERAL DELHI HIGH COURT .... Respondent

Through: Mr.Rajshekhar Rao with Mr. Ankit Jain, Mr.Chaitanya Puri, Mr.Siddhant Nath, Mr.Abhay Pratap Singh, Mr.Areeb Y.Amanullah, Mr.Siddharth Raval and Ms.Rajshree Jaiswal, Advocates for Delhi High

Court.
Mrs.Avnish Ahlawat with
Ms.Laveena Arora, Advocates for
GNCTD.

\+ **W.P.(C) 10704/2019**

SHREYA GUPTA ..... Petitioner

Through: Petitioner in person.

versus

THE REGISTRAR GENERAL, DELHI HIGH COURT
..... Respondent

Through: Mr.Rajshekhar Rao with Mr. Ankit Jain, Mr.Chaitanya Puri, Mr.Siddhant Nath, Mr.Abhay Pratap Singh, Mr.Areeb Y.Amanullah, Mr.Siddharth Raval and Ms.Rajshree Jaiswal, Advocates for Delhi High Court.

\+ **W.P.(C) 10706/2019**

VASU DEV MONGA ..... Petitioner

Through: Petitioner in person.

versus

REGISTRAR GENERAL DELHI HIGH COURT ..... Respondent

Through: Mr.Rajshekhar Rao with Mr.Ankit Jain, Mr.Chaitanya Puri, Mr.Siddhant Nath, Mr.Abhay Pratap Singh, Mr.Areeb Y.Amanullah, Mr.Siddharth Raval and Ms.Rajshree Jaiswal, Advocates for Delhi High Court.

\+ **W.P.(C) 10727/2019**

VIKAS SHARMA & ORS ..... Petitioners

Through: Petitioners in person.

versus

REGISTRAR GENERAL, DELHI HIGH COURT & ANR
..... Respondents

Through: Mr.Rajshekhar Rao with Mr.Ankit Jain, Mr.Chaitanya Puri, Mr.Siddhant Nath, Mr.Abhay Pratap Singh, Mr.Areeb Y.Amanullah, Mr.Siddharth Raval and Ms.Rajshree Jaiswal, Advocates for Delhi High Court.
Mrs.Avnish Ahlawat with Ms.Laveena Arora, Advocates for GNCTD.

\+ **W.P.(C) 10757/2019**

OMESH ..... Petitioner

Through: Mr.Sachin Mittal with Mr.Gaurav Tanwar, Ms.Shreya Jain and Ms.Sonal Chauhan, Advocates.

versus

REGISTRAR GENERAL, DELHI HIGH COURT & ANR
..... Respondents

Through: Mr.Rajshekhar Rao with Mr.Ankit Jain, Mr.Chaitanya Puri, Mr.Siddhant Nath, Mr.Abhay Pratap Singh, Mr.Areeb Y.Amanullah, Mr.Siddharth Raval and Ms.Rajshree Jaiswal, Advocates for Delhi High Court.

Mrs.Avnish Ahlawat with
Ms.Laveena Arora, Advocates for
GNCTD.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% 01.10.2019

CM APPL. 43807/2019 (exemption) in WP (C) 10592/2019
CM APPL. 44198/2019 (exemption) in WP (C) 10692/2019
CM APPL. 44251/2019 (exemption) in WP (C) 10706/2019
CM APPL. 44365/2019 (exemption) in WP (C) 10727/2019
CM APPL. 44440/2019 (exemption) in WP (C) 10757/2019

1. Allowed, subject to all just exceptions.

WP (C) 10592/2019 and CM APPL. 43806/2019 (stay)
WP (C) 10692/2019
WP (C) 10704/2019
WP (C) 10706/2019 and CM APPL. 44250/2019 (direction)
WP (C) 10727/2019 and CM APPL. 44368/2019 (stay)
WP (C) 10757/2019 and CM APPL. 44439/2019 (stay)

Dr. S. Muralidhar, J.:

1. These writ petitions by law graduates aspiring to be judicial officers, question the correctness of the answer keys to some of the questions in the Delhi Judicial Services (Preliminary) Examinations ('DJS Preliminary Exams') held on 22nd September 2019.

2. Notice. Notice is accepted by learned Standing Counsel for the Respondent.

3. Given the urgency of the matter in light of the fact that the Delhi Judicial Services (Mains) Exam is to be held on 12th and 13th October 2019, these

petitions have been heard finally today itself with the consent of the parties.

4. The Court straightway takes up for discussion the answer keys to 15 questions that have been challenged by these Petitioners. It must only be noticed at this stage that in a departure from the practice adopted earlier where before declaring the results of the DJS Preliminary Exams the answer keys would be published on the website of the Delhi High Court and objections invited, this time with a view to adhering to a deadline of completing the entire examination and selection process before the end of February 2020 as undertaken by the High Court before the Supreme Court of India in proceedings arising in Civil Appeal No.1867 of 2006 (***Malik Mazhar Sultan v. U.P. Public Services Commission***) the High Court dispensed with the publishing of the answer keys prior to the declaration of the result.

5. As it turned out the answer keys were ultimately published on 26th September 2019 and immediately upon noticing the answer keys to some of the questions the present petitions have been filed.

6. It must also be noticed that there are different series of questions for e.g. A, B, C and so on. Some questions are common to the different series. In other words the question numbers of the same question would be different in the different series.

7. For 13 of the 15 questions, the answer keys to which have been challenged, the Court has had the benefit of a chart prepared by learned

counsel appearing for the High Court. The answer keys to the 2 further questions have been challenged in WP (C) 10757 of 2019 (***Umesh v. Registrar General and Anr.***) which would be discussed sequentially.

Question I

8. Question No.171 in Series 'C' and Question No.73 in Series 'D' the question reads as under:

> "'A' filed a suit against three defendants. Defendant No.1 alleged that there was no cause of action against him under Order VII Rule 11(d) CPC. The Plaint is to be:
>
> (1) Rejected in whole
>
> (2) Rejected in part if cause of action is not joint and several
>
> (3) Proceed with against all the defendants
>
> (4) None of the above."

9. In terms of the answer key, the correct answer is (2) above whereas the Petitioners insist that it is (3) above.

10. Learned counsel for the High Court, place reliance on the judgments in ***Union of India v. S. K. Kapoor (2011) 4 SCC 589, Church of Christ Charitable Trust and Educational Society v. Ponniamman Educational Trust (2012) 8 SCC 706*** and ***Zubair Ul Abidin v. Sameena Abidin (2014) 214 DLT 340.***

11. Of the above, it is the decision in ***Church of Christ Charitable Trust and Educational Society*** *(supra)* that is relevant to the issue at hand. There

were two Defendants i.e. the Appellant as Defendant No.1 and 'S' as Defendant No.2. The Appellant filed an application under Order VII Rule 11 CPC for rejection of the plaint filed by the Respondent/Plaintiff. The learned Single Judge of the High Court on the Original Side rejected the plaint in so far as the Appellant was concerned and directed that the suit would be proceeded with against 'S' only. However, the first Appellate Court allowed the appeal against the rejection of the plaint. Aggrieved, the Appellant approached the Supreme Court which reversed the Appellate Court and restored the judgment of the learned Single Judge. It was held that under Order VII Rule 11 CPC where the plaint fails to disclose cause of action vis-a-vis the particular Defendant who objects, it can be rejected in so far as it concerns that Defendant.

12. However learned counsel for the Petitioners rely on the decision of the Supreme Court in ***Sejal Glass Limited v. Navilan Merchants Private Limited (2018) 11 SCC 780*** which discussed in particular Clause (d) of Order VII Rule 11 and held as under:

> "What is important to remember is that the provision refers to the "plaint" which necessarily means the plaint as a whole. It is only where the plaint as a whole does not disclose a cause of action that Order VII Rule 11 springs into being and interdicts a suit from proceeding.
>
> 6) It is settled law that the plaint as a whole alone can be rejected under Order VII Rule 11. In *Maqsud Ahmad vs. Mathra Datt & Co., A.I. R. 1936 Lahore 1021 at 1022*, the High Court held that a note recorded by the trial Court did not amount to a rejection of the plaint as a whole, as contemplated by the CPC, and, therefore, rejected a revision petition in the following terms:
>
> "There is no provision in the Civil Procedure Code for the

rejection of a plaint in part, and the note recorded by the trial Court does not, therefore, amount to the rejection of the plaint as contemplated in the Civil Procedure Code."

13. The above decision of the Supreme Court has been followed in a recent judgment dated 1st July, 2019 in ***Madhav Prasad Aggarwal & Anr. v. Axis Bank Ltd. (2019) 7 SCC 158*** where it was held as under:

"11. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) of CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power Order 7 Rule 11 (d) of CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in the case of ***Sejal Glass Limited*** (supra) is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) of CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the director's defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against defendant No.1- company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) of CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) of CPC will have no application at all, and the suit as a whole must then proceed to trial."

.....

13. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) of CPC on account of

noncompliance of mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 of CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by respondent No.1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against respondent No.1 in the concerned suit is barred by Section 34 of 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 of CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly."

14. The latter judgments of the Supreme Court being specific to the issue concerning Order VII Rule 11 (d) CPC and the question framed being specific to that provision, the answer key is incorrect. The Petitioners are right in their contention that the correct answer would be (3) above.

<u>Question II</u> (No.6 in Series C, 26 in Series A and 46 in Series D)

15. The Question reads as under:

"Contract for sale of a Maruti Ciaz Car:

1. Can be specifically enforced.
2. Cannot be specifically enforced.
3. Only damages can be claimed.
4. Both (2 and 3)"

16. According to the answer key provided by the High Court, the correct answer is (2) above whereas according to Petitioners it is (1).

17. Learned counsel for the High Court place reliance on the decision in ***Rajasthan Breweries Limited v. The Stroh Brewery Company, 2000 (55) DRJ (DB)*** of this Court. This was a judgment delivered on 12th July, 2000 holding that contracts that were by their nature determinable were not specifically enforceable under Section 14 (1) (c) of the Specific Relief Act 1963 (SR Act). At the relevant point in time i.e. in the year 2000, Section 10 of the SR Act read as under:

> "10. *Cases in which specific performance of contract enforceable-*
>
> Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced-
>
> (a) when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or
>
> (b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief."
>
> Explanation:....(not reproduced)"

18. Thus it is seen that the specific performance of a contract was a matter in the discretion of the Court, subject to the conditions spelt out under the above provision being fulfilled. However, by an amendment brought about by Act No. 18 of 2018 Section 10 of the SR Act has been substituted as under:

"10. Specific performance in respect of contracts- The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of section 11, section 14 and section 16."

19. While it is not in dispute that Section 11 (2) or Section 16 is not

attracted, the question that arises is whether Section 14 (d) which states that a contract which is in its nature determinable and therefore not specifically enforceable is attracted in the facts as set out in the question.

20. The question is simply that there is contract for sale of a Maruti Ciaz Car. There is nothing to indicate whether the contract is in its very nature determinable. Only if that fact is clearly stated can the student be expected to opt for answer (2). Otherwise given the wording of Section 10 of the SR Act as amended in 2018 a contract is mandatorily enforceable whereas under the unamended Section 10 it was a matter still in the discretion of the Court. The question has not accounted for the amended Section 10 of the SR Act. The Court is of the view, that the benefit must therefore be given to the candidates like the Petitioners who may have proceeded on the basis that the correct answer is (1) above.

21. Consequently, the Court holds that the answer key to this question is incorrect and the contention of the Petitioner that the correct answer is (1) above is upheld.

Question III Q.No.163 (in Series C) and Q.No.165 (in Series D).

22. The said question reads as under:

"A compromise decree

1. Operates as the res-judicata between the parties to the compromise
2. Does not operate as res-judicata
3. (1) or (2) depending on the circumstances of each case
4. (1) or (2) depending on the discretion of court"

23. The correct answer according to the answer key is (1) above, whereas the Petitioners state that it is (2).

24. Learned counsel for the High Court rely on a decision of a 3 Judge Bench of the Supreme Court in ***Shankar Sitaram Sonetakke v. Balkrishan Sitaram Sonteakke AIR 1954 SC 352***, and the subsequent decision of a two-Judge Bench of the Supreme Court in ***Varun Pastangi Garuwala v Union Bank of India (1992) 1 SCC 31*** and of the Bombay High Court in ***State of Goa v. Taxido Gawansa (2001) 4 Bom CR 95***. It is contended that the principle that has been laid down in the aforementioned judgments is that a compromise decree closes once for all the disputes between the parties; that they would be bound by the terms of the compromise and the consent decree following upon it.

25. On the side of the Petitioners, however, reliance is placed on two other decisions 3 Judge Benches of the Supreme Court in ***Sunderbhai Deshpande v Devaji Deshpande AIR 1954 SC 82*** and ***Pullawarthy Venkatarao v Valluri Jagannath Rao AIR 1967 SC 591***.

26. In ***Sunderbhai Deshpande*** (*supra*), which was again a judgment of three Judges, it was held as under:

> "12. The bar of '*res judicata*' however, may not in terms be applicable in the present case, as the decree passed in Suit No. 291 of 1937 was a decree in terms of the compromise. The terms of section 11 of the Civil Procedure Code would not be strictly applicable to the same but the underlying principle of estoppel would still apply. Vide: the commentary of Sir Dinshaw Mulla on section 11 of the Civil Procedure Code at page 84 of the 11th Edition under the caption 'Consent decree and estoppel':

> "The present section does not apply in terms to consent decrees; for it cannot be said in the cases of such decrees that the matters in issue between the parties 'have been heard & finally decided' within the meaning of this section. A consent decree, however, has to all intents and purposes the same effect as '*res judicata*' as a decree passed '*in invitum'*. It raises an estoppel as much as a decree passed '*in invitum.*"

27. The decision in ***Sunderbhai Deshpande*** (*supra*) by a three Judge Bench is dated 3rd October, 1952, whereas the decision in ***Shankar Sitaram Sontake*** (*supra*) is by a Coordinate Bench of three Judges decided on 12th April, 1954, which makes no reference to the former judgment. In ***Pullawarthy Venkatarao v Valluri Jagannath Rao*** (*supra*) another three Judge Bench held that as a compromise decree is not a decision by the Court, and merely signifies acceptance by the Court something to which parties had agreed, it cannot be said to be a decision of the Court. It was held that "Only a decision by the court could be *res judicata*, whether statutory under Section 11 of the Code of Civil Procedure, or constructive as a matter of public policy on which the entire doctrine rests."

28. The Court notices that in ***Varun Pastangi Garuwala v Union Bank of India*** (*supra*) a two Judge Bench while referring to the decision in ***Shankar Sitaram Sontakke*** (*supra*) made no reference either to ***Sunderbhai Deshpande*** (*supra*) or to ***Pullawarthy Venkatarao v Valluri Jagannath Rao*** (*supra*), which were decisions of 3 Judge Benches.

29. The Court is, therefore, inclined to accept the plea of the Petitioners that the settled legal position appears to be what is stated in the aforementioned judgments in ***Sunderbhai Deshpande*** (*supra*) and ***Pullawarthy Venkatarao***

v Valluri Jagannath Rao (*supra*), both of which are by three Judge Benches of the Supreme Court and appear to hold the field.

30. The net result is that the Court holds the answer key to this question is incorrect and upholds the contention of the Petitioners that it is the answer (2) which is the correct answer.

Question IV [Q.No.96 (in Series A) and Q.No.165 (in Series D).

31. The said question reads as under:

> 'A', a resident of Delhi, files a suit at Delhi for infringement of Trademark by 'B', a resident of Mumbai, for using the Mark at Mumbai.
>
> 1. The court at Delhi has jurisdiction
> 2. The court at Delhi has no jurisdiction because 'B' is a resident of Mumbai and cause of action has arisen in Mumbai
> 3. The court at Delhi has jurisdiction with leave of court
> 4. The court at Delhi has jurisdiction only if 'A' does not have an office in Mumbai"

32. The answer key gives (4) as the correct answer, whereas the contention of the Petitioners is that the Court at Delhi has no jurisdiction because B is a resident of Mumbai and the cause of action has arisen in Mumbai.

33. The Court finds that the issue is no longer *res integra*. In terms of the decision of the Supreme Court in ***Indian Performing Rights Society Limited v Sanjay Dalia (2015) 10 SCC 161*** the Court at Delhi would have jurisdiction only if the Plaintiff does not have an office in Mumbai. This is based on the interpretation of Section 134 of the Trademark Act, 1999. The Court accordingly holds that the answer key for this question is correct, and

rejects the contention of the Petitioners to the contrary.

Question V [Q.No.122 (in Series A) and Q.No.196 (in Series D)].

34. The said question reads as under:

> 'A' and 'B' go into a shop. 'B' says to the shopkeeper "Let 'A' have the goods. I will see that you are paid."
>
> 1. Guarantee
> 2. Bailment
> 3. Indemnity
> 4. Pledge

35. The answer key states that the correct answer is (3) whereas according to the Petitioners, it is (1). Learned counsel for the Petitioners have placed reliance on the decision in ***State Bank of India v Mool Sehkarai Sakkar Karkhana (2006) 6 SCC 293*** in support of their submissions.

36. To understand the rival contentions, it is necessary to set out both Sections 124 and 126 of the Indian Contract Act, 1872, which read as under:

124. "Contract of indemnity" defined

A contract by which one party promises to save the other from loss caused to him by the contract of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity".

Illustration

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

126. "Contract of guarantee", "surety", "principal debtor" and "creditor"

A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety", the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

37. It will straightway be seen that under Section 124 what is envisaged is a promisor (which in this case would be 'B'), who has promised to save the other (in this case the 'shopkeeper') from loss caused to such 'other' i.e. the shopkeeper, by either the conduct of the promisor himself (B) or conduct of any other person (in this case, it could be 'A'). In the present case, the statement by B to the shopkeeper that "I will see that you are paid" is not expressly made contingent upon the conduct of either B or the conduct of A. It was argued by learned counsel for the High Court that B has undertaken to pay A for the failure by the A to pay for the goods. However, that is not stated in the question explicitly.

38. If now one turns to the definition of 'guarantee' in Section 126 of the Contract Act, it envisages a tripartite arrangement involving a promise to discharge the liability of a third person in case of his default. In the present case, there is a promise by B to the shopkeeper that he will ensure that the shopkeeper is paid. While it could be argued that is a 'guarantee', it is certainly not an 'indemnity'.

39. The Court is of the view that the answer key that this is an indemnity is

not correct and therefore benefit should be given to the Petitioners who contend that it is a guarantee. The Court therefore upholds the contention of the Petitioners in this regard.

Question VI [Q.No.16 (in Series A)].

40. The said question reads as under:

> Suit for arrears of maintenance can be filed within:
> 1. One year
> 2. Two years
> 3. Three years
> 4. None of these

41. The answer key gives the correct answer as (3), whereas according to the Petitioners, it is (1).

42. The question is clear that what has been filed is a 'suit' and not a 'petition'. Therefore, the contention that in case of a petition under Section 125 Cr PC, the limitation would be one year in terms of Article 105 of the Limitation Act, 1963, is unacceptable. The Court, therefore, rejects the challenge to the above answer key.

Question VII [Q.No.81 (in Series A), Q.No.49 (in Series D) and 147 (In Series C).

43. The said question reads as under:

> "A suit is dismissed wrongly on the ground of being barred by limitation. The order of dismissal would operate as *res judicata* and bar a subsequent suit on the same cause of action.
>
> 1. The above statement is true
> 2. The above statement is false

3. It would depend upon the facts and circumstances of each case
4. None of these"

44. According to the answer key, the correct answer is (1) above, whereas according to the Petitioners, the correct answer is (2) above.

45. Counsel for the High Court relying on the decisions in ***Mohanlal Goenka v. Benoy Krishna Mukherjee, AIR 1953 SC 65*** and ***State of West Bengal v. Hemant Kumar Bhattacharjee, AIR 1966 SC 1061.*** Both these decisions are by 4 Judge Benches of the Supreme Court and they hold that even an erroneous decision operates as ***res judicata*** between the parties to it. This was also the decision of a 2 Judge Bench of the Supreme Court in ***Supreme Court Employees' Welfare Association and Ors. V. Union of India (1989 4 SCC 187).***

46. However, counsel for the Petitioners place reliance on the decision in ***Mathura Prasad Bajoo Jaiswal and Ors. V. Dossibai N.B. Jeejebhoy AIR 1971 SC 2355*** which suggest that a decision appear on a question of law relating to the jurisdiction of the Court which is erroneous would not preclude a party affected from challenging the validity of that order under the rule of *res judicata*. Reliance is also placed on the decisions in ***Sheodan Singh v. Daryao Kunwar, (1966) 3 SCR 300*** and ***Pandurang Dhondi Chougule v. Maruti Hari Jadhav, AIR 1966 SC 153***. Reference has also been made to decision in ***State of Uttar Pradesh and Anr. V. Jagdish Sharan Agrawal and Ors. (2009) 1 SCC 689.***

47. The question if carefully perused reveals that the suit was erroneously

dismissed on the ground that it was barred by limitation. Question of limitation is invariably a mixed question of law and fact. If that question was intended to refer to the decision being purely on a question of law, then it should have expressed so. In that view of the matter the decisions relied upon by the Petitioners support their plea that the correct answer would be (2) above. The answer key is therefore incorrect.

Question VIII [Q No. 86 in A series]

48. The question reads thus:

"For the purpose of amendment of pleadings under Order VI Rule 17 CPC, the commencement of trial takes place
1. When the issues are framed
2. When the affidavits in evidence are filed
3. When the affidavits in evidence are tendered by the witness
4. Once cross-examination begins"

49. Learned counsel for the High Court place reliance on the decision in ***Baldev Singh v. Manohar Singh (2006) 6 SCC 498*** where there is a stray observation in para 17 which reads as under:

> "commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing "of arguments."

50. However, the above observations do not account for the decision in ***Kailash v Nankoo AIR 2005 SC 2441*** wherein a three Judge Bench in para 13 held as under:

> "13. At this point the question arises : When does the trial of an election petition commence or what is the meaning to be assigned to the word 'trial' in the context of an election petition? In a civil

> suit, the trial begins when issues are framed and the case is set down for recording of evidence. All the proceedings before that stage are treated as proceedings preliminary to trial or for making the case ready for trial. As held by this Court in several decided cases, this general rule is not applicable to the trial of election petitions as in the case of election petitions, all the proceedings commencing with the presentation of the election petition and upto the date of decision therein are included within the meaning of the word 'trial'."

51. This was followed in the subsequent judgments in ***Vidyabai v Padmalata AIR 2009 SC 1433***.

52. Consequently, this Court upholds the contention of the Petitioners that the answer key to the above question is incorrect. The correct answer is (1) above.

Question IX [Q.No.59 in Series D]

53. The said question reads as under:

> "Where an interim injunction has been granted without notice to the opposite party and the plaintiff fails to comply with the provisions of Order XXXIX Rule 3 CPC:
>
> 1. The ex parte injunction lapses on the expiry of the time for compliance
> 2. The ex parte injunction would necessarily be liable to be vacated
> 3. The court can extend the time for compliance of Order XXXIX Rule 3 CPC even after the Defendant has appeared and filed written statement
> 4. The ex parte injunction would be vacated if the non-compliance is prejudicial to the defendant."

54. According to the answer key, the correct answer is (4) above whereas

according to the Petitioners, it is (2) above. The Petitioners rely upon the decisions of this Court in ***Ashwani Pan Products Pvt. Ltd. v Krishna Traders (2012) 128 DRJ 592 (Del.)***, ***Marble Udyog Limited v P&O Indian Agencies Pvt. Ltd. 1995 3 AD(Del) 12*** and ***Shiv Kumar Chadha v MCD (1993) 3 SCC 161***.

55. On the other hand, learned counsel for the High Court rely on the decision in ***Institute of Inner Studies v Charlet Anderson (2014) 57 PTC 228***.

56. The question as framed simply states that there is a failure to comply with the provision of Order XXXIX Rule 3 CPC with no reference to whether such failure is prejudicial to the Defendant. That important fact could not have been presumed by the candidate. In that view of the matter, Order XXXIX Rule 3 CPC has to apply. The decisions in ***Shiv Kumar Chadha v MCD*** (supra) makes the position explicit.

57. Consequently, the Court upholds the objection of the Petitioners and holds that the answer key to this question is incorrect. Hence correct answer is (2).

Question X [Q.No.48 (in Series C) and Q. No.121 (in Series D)]

58. The said question reads as under:

> An order for monthly allowance for maintenance or interim maintenance and expenses of proceeding under Section 125 of the Code of Criminal Procedure shall be payable:
>
> 1. From the date of the order

> 2. From the date of the application for maintenance or interim maintenance and expense of proceedings
> 3. From the date of order, or, if so ordered from the date of the application for maintenance or interim maintenance and expenses of the proceedings
> 4. From any date as the Magistrate may deem fit and proper."

59. According to the answer key, the correct answer is (3) above, whereas according to the Petitioners, it is (2) above.

60. The answer key has adopted the language of Section 125 (2) Cr PC which reads more or less as answer (3) above. However, there are two decisions of this Court that support the answer at (2) above. One is ***Pushpa v Ram Avtar*** (decision dated 19th March, 2019 in Crl. Rev. Pet. 347/2017) and the other is ***Nisha Saifi v Mohd. Sahid (2019) 3 JCC 1882***, both of which hold that ordinarily maintenance should be granted from the date of the application and for valid reasons to be recorded from the date of the order. A candidate who has been following the judgments of this Court, cannot be faulted for adopting the view of this High Court on an interpretation placed of Section 125 Cr PC. The answer as suggested by the Petitioners is therefore the correct answer, if one goes by those judgments.

61. Consequently, the Court upholds the contention of the Petitioners as regards this question and holds that the answer could well be (2) above.

Question XI [Q.No.149 (in Series C), Q.No.51 (in Series D).

62. The said question reads as under:

> "In a suit for recovery of Rs. 25 lakh, the defendant files its written statement and pleads that it does not owe any money to

> the plaintiff but in fact, it is entitled to recover the sum of Rs 40 lakh from the plaintiff. The defendant, however, does not file counter claim. Can the defendant file the counter claim at a subsequent stage in the suit or file a fresh suit seeking recovery of Rs 40 lakhs?
>
> 1. The counter claim and the suit will be barred
> 2. Only the counter claim would be barred
> 3. The defendant can file both either a counter claim or a suit
> 4. The defendant's claim stands abandoned."

63. The answer keys states that the correct answer is (3) above, whereas according to the Petitioners, the correct answer would be (2) above.

64. After some arguments, this question was not pressed and the challenge to the answer key to this question was withdrawn.

Question XII [Q.No.172 (in Series C)].

65. The said question reads as under:

> "In a civil suit coming up for admission, if the court does not have the subject matter jurisdiction to grant relief in the suit, court
>
> 1. Cannot grant interim relief under Order XXXIX
> 2. Can still grant interim relief under Order XXXIX
> 3. Has to nevertheless issue summons of the suit
> 4. Has to frame a question of law and refer it to the High Court."

66. According to the answer key, the correct answer is (1) above, whereas according to the Petitioners, it is (2) above. The question is no longer res integra. The Court that lacks jurisdiction cannot grant the relief, as explained

in ***Cotton Corporation of India v United Industrial Bank (1983) 4 SCC 625***. The challenge to this answer key is therefore negatived.

Question XIII [Q.No.112 (in Series D)]

67. The said question reads as under:

> "Parliament's lack of power to alter the Basic Structure of the Constitution was propounded for the first time in:
>
> 1. Sajjan Singh Vs. State of Rajasthan in a dissenting judgement
> 2. Keshavanand Bharati Vs. State of Kerala
> 3. I. C. Golak Nath Vs. State of Punjab
> 4. Minerva Mills Vs. UOI."

68. The answer key states that the correct answer is (1) above, whereas the Petitioners state that it is (2) above.

69. On perusing the relevant paragraph in the judgment of Justice Mudholkar in ***Sajjan Singh v State of Rajasthan (1965) 1 SCR 933*** i.e. paras 56 and 56, the Court finds that reference in both these paragraphs is to the "basic features to the Constitution" and not "basic structure". It appears that that expression as such was used first in ***Keshvanand Bharti*** (*supra*).

70. The Court accordingly upholds the objection by the Petitioners to the answer key to this question. So, the correct answer is (2).

Question XIV (Q.No. 150)

71. Question No.150 reads as under:-

"A supplies goods from Delhi to B at Mumbai under a contract which

provide s "Courts in Mumbai would have jurisdiction to deal with disputes arising out of disagreement." A sues B in a Court at Delhi for the outstanding balance.

i) The Court would not admit the plaint owing to the jurisdiction clause in the contract.
ii) the suit would be admitted and only if B raises an objection to the jurisdiction at Delhi could the Court determine the same.
iii) B can prefer an appeal against the order for admission of the suit in the Court as Delhi.
iv) B can prefer an appeal against the order of admission of the suit in the Court as Delhi."

72. The answer key states that the correct answer is (2) above whereas according to the Petitioner it should be (1) above.

73. The legal position has been clarified in ***Sneh Lata Goel vs. Pushplata (2019) 3 SCC 594*** which holds as under:

> "18. The Court in ***Kiran Singh*** **case** disallowed the objection to jurisdiction on the ground that no objection was raised at the first instance and that the party filing the suit was precluded from raising an objection to jurisdiction of that court at the appellate stage. This Court concluded thus: (AIR p. 345 para 16)
>
> "16. .... If the law were that the decree of a court which would have had no jurisdiction over the suit or appeal but for the overvaluation or undervaluation should be treated as a nullity, then of course, they would not be stopped from setting up want of jurisdiction in the court by the fact of their having themselves invoked it. That, however, is not the position under Section 11 of the Suits Valuation Act."
>
> Thus, where the defect in jurisdiction is of kind which falls within Section 21 of the CPC or Section 11 of the Suits Valuation Act 1887, an objection to jurisdiction cannot be 10 raised except in the manner and subject to the conditions mentioned thereunder. Far from helping the case of the respondent, the judgment in *Kiran Singh* (supra) holds that an objection to territorial jurisdiction and pecuniary jurisdiction is

different from an objection to jurisdiction over the subject matter. An objection to the want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit."

74. Consequently, the Court negatives the objection to the answer key to the question.

Question XV (Q No. 190)

75. The said question reads thus:

"The parties to the arbitration agreement are residents of Lucknow and Kolkata. The contract was performed at Varanasi. The parties agreed that arbitration proceedings will be conducted at New Delhi and were held at New Delhi. Where will the petition under Section 34 of the Arbitration and Conciliation Act, 1996 be filed?

1. Delhi
2. Lucknow
3. Varanasi
4. Kolkata"

76. According to the answer key, the correct answer is (1) above whereas the Petitioner states that it should be (3) above.

77. In ***Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited (2017) 7 SCC 678***, after discussing Section 2(1) (e) and 20 of the Act, the Supreme Court held that the Court having jurisdiction over the place where the arbitration proceedings are conducted pursuant to the agreement between the parties is vested with the jurisdiction to entertain the Section 11 petition. This view has been reaffirmed in the decision dated 25th

July 2019 of the Supreme Court in C.A. No. 5850 of 2019 (***Brahmani River Pellets Ltd. v. Kamachi Industries Ltd.***)

78. Though the above decisions were in the context of Section 11 of the Act the principle would extend to the petition under Section 34 of the Act. Once the arbitration is taking place in Mumbai pursuant to the agreement between the parties the further challenge to the Award would have to be in the Court of that place. Consequently, the Court negatives the challenge to the answer key to Question No.190.

79. To summarize the judgment of this Court, out of the challenge to the answer keys for 15 questions, the Court upholds the challenge to answer keys to the questions at I, II, III, V, VII, VIII, IX, X and XIII above i.e. nine questions. The Court notices at this stage that there is a negative 0.25 mark for each wrong answer and, therefore, the prejudice to the Petitioners in respect of the above 9 questions would be substantial.

80. The next issue that arises is about the consequential order that should be passed. The Court is conscious that in ***Ran Vijay Singh and Ors. v. State of Uttar Pradesh and Ors. 2018 (2) SCC 357*** it has been held that the Court should presume the correctness of key answers. In view of the paucity of time with the exam schedule already announced and no change is possible to the dates of 12th and 13th October 2019 fixed for the Main exams, the Court has had to undertake the above exercise.

81. The Court also notes that in similar circumstances the approach adopted by the Supreme Court in ***Pallav Mongia v. Registrar General Delhi High***

Court and Anr. (decision dated 20th May 2012 in Civil Appeal 4794 of 2012) was also adopted by this Court in its decision dated 9th May 2016 in WP (C) 3453 of 2016 (***Sumit Kumar v. High Court of Delhi***).

82. In ***Sumit Kumar*** (*supra*) the ratio of the decision in ***Pallav Mongia*** (supra) was explained as under:

> "23. The Supreme Court in Civil Appeal No.4794/2012, ***Pallav Mongia v. Registrar General, Delhi High Court and Anr.*** had examined the question of fresh short-listing consequent to deletion of some questions or correction of the model answer key. Noticing that the candidates in the first eligible list had not been excluded from the list of eligible candidates for appearing in the mains examination, even if the said candidate had come down in rank in view of deletion of some questions or change in the model answer key; it was directed that the other candidates, who upon re-evaluation pursuant to deletion of questions and modification of the model answer key had secured more marks than the last candidate allowed to appear in the main examination vide revised list, would also qualify and will be included in the eligibility list."

83. The Court also takes note of the approach adopted by this Court in ***Gunjan Sinha Jain v. Registrar General, High Court of Delhi 188 (2012) DLT 627 (DB)*** and ***Anil Kumar v. Registrar General, High Court of Delhi 2016 Law Suit (Del) 5583***. The Court is conscious that no prejudice should be caused to those who have already qualified for the Mains.

84. Accordingly, the Court disposes of the petitions by directing as under:

(i) The results of the 353 candidates already declared eligible to appear in the DJS (Mains) Examination, in terms of the list published on the website

of the Delhi High Court on 26th September 2019, are left undisturbed.

(ii) In respect of the answer keys which this Court has found to be erroneous, the High Court will proceed to apply the correct answer keys as decided by this Court and recompute the results in accordance with the applicable rules. By treating the marks obtained by the last of the 353 already shortlisted candidates in the revised list as the cut off marks, a further list of candidates found eligible to sit for the Mains exam will be prepared and published on the website of the Delhi High Court not later than 6 pm on 4th October 2019.

(iii) Although an earnest plea has been made by the Petitioners before this Court to postpone the date of the Mains exam, the Court is not inclined to do so in view of the deadline given by the High Court to the Supreme Court in the aforementioned matter having to be adhered to. In other words it is clarified that even the additional candidates found eligible as a result of the above exercise will have to necessarily sit for the Mains exam on the dates already fixed i.e. 12th and 13th October 2019.

(iv) Apart from placing the list of additional eligible candidates on the website by 6 pm on 4th October 2019, the High Court will communicate to each such eligible candidate both by SMS as well as e-mail (on the mobile number and email id provided by such candidate to the High Court) of such candidate having qualified for writing the Mains exam.

85. The writ petitions and pending applications are disposed of in the above terms.

86. Order be issued *dasti* under the signatures of the Court Master.

S.MURALIDHAR, J

TALWANT SINGH, J

OCTOBER 01, 2019 / tr/rd/mw