

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Civil Procedure
Semester-III (Batch: 2014-19)

End Semester Examination: Oct-Nov. 2015

Date: 29th October, 2015

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- Bare Act is not allowed.

Part-A**Marks**

- Q.1 Paridhan India Ltd. (PIL), a company engaged in the business of readymade garments and accessories under various reputed brand names, has appointed Ethical Dressing India (EDI), a Partnership Firm, as an agent to conduct its business of readymade garments and accessories with the reputed brand name 'Indian Attire' in the year 2014. Thereafter, in January 2015, PIL entered into a fresh agreement with EDI under which the firm agreed to sell the products of the company in the suit property (the shop) and also agreed to retain the suit property (the shop) until the expiry of the term of the agreement and agreed further not to sell any other articles or goods other than that supplied by the company. As per the agreement, the firm is entitled to a fixed commission of 7.5 lakhs of rupees per month, which has been increased to 10 lakhs of rupees per month in May 2015. In July 2015, the company notified to the firm for breach of various terms and conditions of the agreement but the firm did not set right the breaches. As a result, the company suffered huge financial loss. Then on 5th August 2015, the company issued a legal notice calling upon the firm to comply with the terms of the agreement. The firm, however, sent a letter dated 4th September 2015 claiming that the constitution of the partnership firm has changed and its partner Mr. M.A. Swaroop has retired and Mr. Swaroop, as the owner of the suit property has terminated the tenancy of the suit property (the shop) in favour of the firm and has also initiated an eviction proceeding against the firm. The Company thus initiated a suit against the firm on 1st October 2015 in the competent court praying for specific performance of the agreement and in the alternative for damages for expenses and loss amounting to 90 lakhs of rupees. Along with the suit for specific performance, the company also filed an application praying for a temporary injunction restraining the defendant from leasing, sub-leasing, alienating or encumbering the suit property in any manner pending the disposal of suit. (10)

Decide the fate of the application of temporary injunction, filed by the company on the basis of relevant legal provisions under the Code of Civil Procedure and settled judicial principles for granting temporary injunction.

- Q.2 Flora Chemical Ltd., engaged in the manufacture and sale of high grade flower seed oil and the registered owners of the trade mark "Flora-oil", filed a suit against Navneet Seed Oil Mills seeking permanent injunction on the ground of infringement of trade mark, 'Flora-oil'. In course of the trial, the Flora Chemical Ltd. submitted before the court, photocopies of the registration certificate under Trade and Merchandise Marks Act, 1958, which were "marked" by the trial court as Exhibits "subject to objection of proof and admissibility". The trial court, however, ultimately dismissed the suit on the ground that the Flora Chemical Ltd. did not file the trade mark registration certificate in original. Aggrieved by the decision, the Flora Chemical Ltd. filed an appeal before the High Court along with an application for accepting the original trade mark registration certificate as additional evidence. A single judge of the High Court allowed both the application for additional evidence and appeal, thereby setting aside the judgment passed by the trial court. Navneet Seed Oil Mills appealed against the single judge decision to the Division Bench of the High Court. It was held by the Division Bench that there was no occasion or justification for admitting the original trade mark registration certificate at the appellate stage as additional evidence. Hence, the Division Bench restored the judgment passed by the trial court. Flora Chemical Ltd. brought the matter before the Supreme Court contending that if the trial court was of the view that the photocopies of the documents in question were not admissible in evidence, it ought to have returned the copies at the time of their submission; so that the original could have been submitted then and there, for the proper disposal of the suit. But once the photocopies submission were marked as Exhibits, it had no means to know that while pronouncing the judgment, the court would keep those documents out of consideration, which caused great prejudice. (10)

Relying upon the legal provisions provided in Civil Procedure Code determining the power of appellate court in relation to admission of additional evidence and with the help of decided case laws suggest the probable decision of the Supreme Court on the above mentioned facts.

- Q.3 Abhinay Upadhayay obtained a decree for an amount of 2.5 lakhs of rupees against Ambika Prasad in a suit and made a regular application to the court to execute the decree by attachment and sale of the immovable properties belonging to Ambika Prasad. Ambika Prasad preferred an appeal against the decree in the first appellate court and therein also made an application seeking stay of execution of the decree, which was granted subject to satisfaction of certain conditions. But, Ambika Prasad could not full fill the conditions and hence the stay of the execution of decree as prayed for in the appellate court has been refused. Meanwhile, in the execution proceeding before the trial court, sale of immovable properties has been ordered for and proclamation of sale is issued thereby. At this stage, Abhinay Upadhayay preferred an application under Order - 41, Rule - 6(2) praying the sale to be stayed taking the ground in this application that properties are of considerable value and the interest of the decree-holder would be sufficiently safeguarded if they are taken in security. (10)

Read the above mentioned facts and answer the following:

- (i) Whether executing court has discretion to reject or allow the application for stay and thereby granting or refusing the stay of sale of property when an appeal challenging validity of the decree passed by the trial court is pending in the appellate court? Decide.
- (ii) Briefly explain the legal provisions for mode of execution of decree by attachment and sale of property and power of appellate court in relation to stay the execution of decree.

Part-B

- Q.4 A, sues X, Y & Co. a government organization for recovery of certain amount of money. (05)
The company made the objection that a prior notice under section 80 of the Civil Procedure Code was not served upon it.

Do you think that objection is sustainable?

- Q.5 The election of A was challenged before an election tribunal. He put an appearance, but (05)
subsequently failed to appear on three consecutive dates. The tribunal proceeded *ex parte*
against him. Thereafter, he put an appearance and filed an application for condonation
of previous non-appearances.

Should he now be permitted to contest the case? Can he insist on retrial of the part of
the case during which he was absent?

- Q.6 Analyze the grounds and power of the High Court in relation to reference and revision (05)
in civil proceedings.

Part-C

- Q.7 Write short notes on any two of the following: (2x2.5 =05)
- (a) Inherent power of the civil court
 - (b) Sec-5 of the Limitation Act
 - (c) Garnishee Order
 - (d) Precept

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