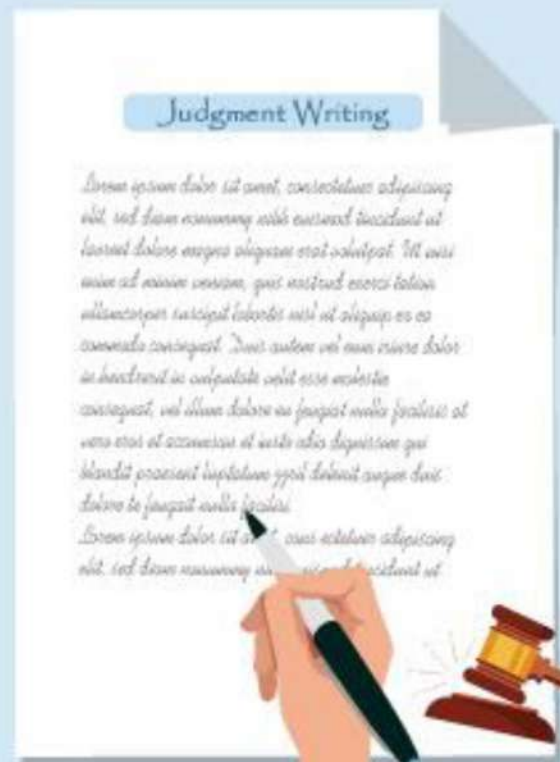


Judgment Writing



WORKBOOK



UPPCS-J & UKJS - PLAINT AND WRITTEN STATEMENT- 1 (CIVIL) - SOLVED

Q.1. Draft a plaint and file a written statement on the basis of following facts:

Plaintiff's Pleadings:

'A' a suit for recovery of Rs. 14,000 plus costs of suit against 'X', 'Y', 'Z' on following facts:

- (i) That the defendant's father 'F' needed Rs. 10,000 for treatment of his wife. On the request of 'F', plaintiff 'A' advanced a loan of Rs. 10,000 on 25th December, 2002. On the same day 'F' executed a promissory note and receipt in favour of plaintiff with the stipulation to pay interest @ 1% p.m.
- (ii) That the plaintiff's accountant 'M' was a scribe of the pro note and receipt.
- (iii) That 'F' has orally promised to repay the loan along with interest within 2 months. After 2 months plaintiff demanded the amount but 'F' did not pay any amount.
- (iv) That somewhere in January 2004, 'F' died. After the death of 'F' plaintiff demanded loan amount orally and through a registered notice from defendant Nos. 1, 2 and 3, i.e., 'X' 'Y', 'Z' being sons of 'F'.
- (v) That defendants did not pay any amount to plaintiff, either towards principal or interest. Plaintiff has, therefore filed this suit on 24th December, 2005 seeking principal amount Rs. 10,000 interests Rs. 3600 and notice charges Rs. 400 total Rs. 14,000 plus 1% p.m. interest from the date of the suit till realization and costs of suit.

Defendant's Pleadings:

The suit is being contested by two sons of 'F' namely 'X' and 'Y' defendant Nos. 1 & 2, whereas third son of 'F' namely 'Z' defendant No. 3 remained *ex parte*.

- (i) That defendant Nos. 1 & 2 denied having any knowledge of execution or consideration of the promissory note and further alleged that the loan, if taken by their father must have been paid back by him in his lifetime.
- (ii) That the promissory note is insufficiently stamped and therefore inadmissible in evidence.
- (iii) That the plaintiff is a money lender and he has not complied with the

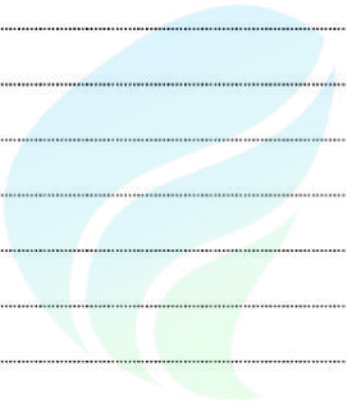




provisions of U.P. Money Lender's Act, therefore he is not entitled for interest and costs of the suit.

- (iv) That the defendant's father has not left any assets whereas defendants are poor agriculturist having only two bighas of land. Therefore, if court imposes any liability on defendants, they then may be granted facility to pay decretal amount in installments of Rs. 250 p.m.



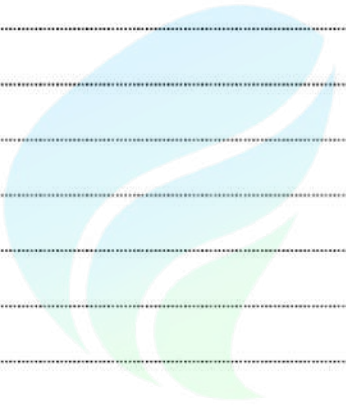


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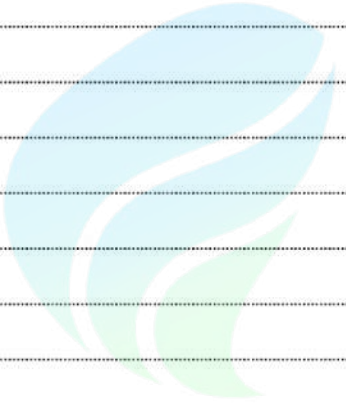


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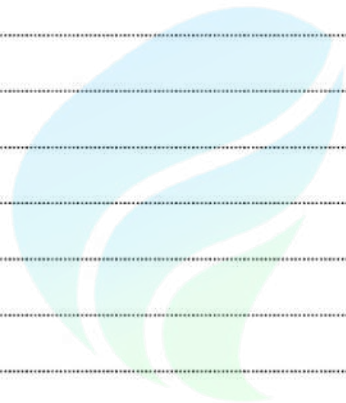


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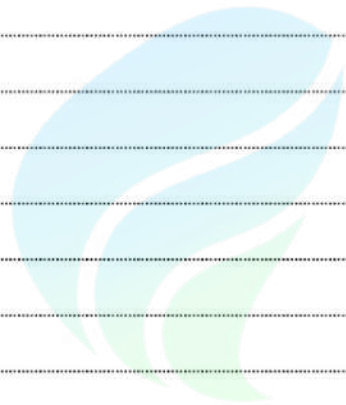
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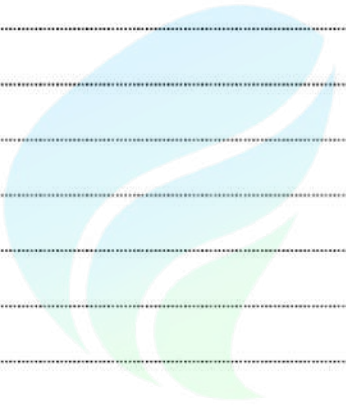




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must withstand the test
Article 19(1)(a). Freedom of press means
There can be no relationship in the press.
... articles or material...
... to exercise...
... however, restriction...
... but those restrictions...
democratic organisation
In *Sennett Case*...
India (1972), the...
the freedom of the press emb... the right of the



Ques 1

* Rule of
Convenience
* maxim
vigilantibus
non
dormientibus
jura subvertunt

Sec. 21 (1), of Code of Civil procedure provides that, no objection as to place of suing will be allowed by an appellate or revisional court unless following conditions are satisfied:

Court of first Instance

1. The objection was taken at first instance in court
2. It was taken at earliest possible opportunity and in cases where issues are settled at or before settlement of issues; and
3. There has been consequent failure of justice

Ques 2.

* provision
rising
Art. 16, 335,
338, 340,
341 & 342

Reservation of posts in government services is a broad and infamous subject. The basis of reservation was always to bring every class of people on equal footing majorly on financial and social aspects. So the basis and limit of reservation should still be the financial status as discrimination on caste and class level has been decreased but financial gap has been increased from past recent years.

* Indira Sawhney case
* Balaji vs State of Mysore
9

Ques 3

No, a remand order cannot confer jurisdiction on the subordinate court when such court originally do not have such power. It is settled principle that no appellate court can confer jurisdiction on a subordinate court, however high appellate court may be as, jurisdiction of a court is determined by statute. In case of Venkatarama v Angathayammal it is held that

(i)

an appellate court remanding a case to an inferior court cannot confer jurisdiction on court if it inherently lacked the same.

Ques 4

Start with Sec 9 of CPC along with explanation

A suit is of civil nature if the principal question therein relates to the determination of a civil right and its enforcement.

It is subject matter of suit which determines whether it is suit of civil nature or not.

In a suit in which right to property or to an office is contested whether it is of civil nature or not, what needs to be determined is whether it entirely depends on religious rites or ceremonies or not?

If its decision does not entirely depend on religious rites or ceremonies it is a suit of civil nature.

(i) Right to take out religious procession is a suit of civil nature

(ii) Right of Pandanashen Lady to observe parda is a suit of civil nature

(iii) Right to franchise is a suit of civil nature

11/5
3

Ques 5

Provision 9 Maxim

Doctrine of res judicata applies between co-defendant only if plaintiff claimed any relief and he cannot get his relief without trying and deciding a case between the co-defendants. However it has been stated that requisite conditions should be fulfilled to apply principle of res judicata as between defendants and that are:

(b) Police officer's report after completing investigation

Police Off Officers submit its report after completing investigation under sec 173 of Code of Criminal proceeding. Procedure Code

It is stated that every investigation should be completed without unnecessary delay. In case investigation relates to an offence under sec 376, 376 A, 376 B, 376 AB, 376 C, 376 D, 376 DD or 376 E of Indian Penal Code it ~~shall~~ should be completed within 2 months which shall be calculated from date of information was recorded by officer incharge of police station.

Such report shall be forwarded from officer incharge of police station to Magistrate empowered to take cognizance of offence under sec 173(2) of IPC.

Such report shall be in format or form as prescribed by state government. shall

It will contain following details

1. Nature of information
2. Name of the parties
3. Name of person acquainted with case
4. Offence which appears to have been committed?
5. If ~~case~~ so, by whom
6. Whether accused has been arrested
7. Whether released on bond or sureties
8. Whether he has been forwarded in custody under sec 170
9. Medical report of a woman.

Definition of police in 2(17) of CrPc can be mentioned

don't mention the Act if you are not sure

IPC & CrPc?



5
10

According to sec-173(3) In case superior officer of police has been appointed under sec-158 and state government by order directs, then report shall be submitted through that officer. While orders of Magistrate are pending, such an officer may also direct officer in charge of police to make further investigation if required.

When the transfer of prop of owner is not the owner

(c) Doctrine of election with illustration. Section 35 of Transfer of Property Act discusses the doctrine of election. It states that when a person / transferor in same transaction confers benefit on owner of property and to transferee, the owner is put to election either to accept benefit of transfer or refuse it.

Its essentials are - that transfer should be in same transaction

- Benefit & burden must come from same transaction.
- benefit is directly given to owner

For example, Ashwini proposes to transfer property of Rohan ~~and~~ ^{to} Gurjansh and gives 10,000 to ~~husband~~ wife of Rohan. This is not case of direct benefit to Rohan thus Rohan has no duty to elect.

As stated benefit and transfer must be inseparable and interdependent



Remarks:-



- ① Answer not in Answer format rather on notes format.
- ② Don't copy things from Internet.
The Answer on Internal & External aid was exact copy.
- ③ Missed out on lot of Questions.
- ④ Next time copies won't be evaluated if they are not in Answer format.
- ⑤ Always mention the Section no. on top & not at last.





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Solution:

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION U.P.

CNR No:

Civil Suit No:

Date of Institution:

A, S/o

Age....., R/o

Occupation.....

.....Plaintiff

Versus

X, S/o

Age....., R/o

Occupation

Y, S/o.....

Age....., R/o

Occupation.....

Z, S/o.....

Age....., R/o

Occupation.....

.....Defendants





SUIT FOR RECOVERY OF MONEY ALONGWITH FUTURE AND PENDENTE-LITE INTEREST

The above named plaintiff most respectfully submits as follows:-

1. That the present suit has been filed by the plaintiff seeking recovery of an amount of money given as loan by the plaintiff to Sh. F, father of the defendants herein.
2. That in the month of December, 2012, the father of defendants, Sh. F was in need of money for treatment of his wife Smt. L.
3. That said Sh. F had approached the plaintiff and requesting for giving an amount of Rs. 10,000/- on loan to him for period of 2 months.
4. That the plaintiff with intent to help said Sh. F, gave an amount of Rs. 10,000/- to him. It was agreed in between the plaintiff and said Sh. F, that the latter shall pay an interest @ 1% per month on said loan amount payable along with principal loan amount after expiry of 2 months to former.
5. That the plaintiff has advanced said loan amount of Rs. 10,000 to said Sh. F on 25th December, 2002. On the same day said Sh. F had executed a promissory note and receipt in favour of plaintiff with the stipulation to repay said loan amount alongwith interest @ 1% p.m. That the said pronote and receipt were also duly witnessed and scribed by one Sh. M, the accountant of the plaintiff herein. The original pronote and receipt are annexed herewith as **"Annexure: A"** and **"Annexure: B"** respectively.
6. That after expiry of 2 months, on 25/02/2003 plaintiff called upon the said Sh. F to repay said loan amount along with interest accrued thereupon however said Sh. F did not pay any amount.
7. That thereafter, in the month of January 2004, said Sh. F died. After the death of said Sh. F, the defendants herein being his sons and Class-I legal heirs, succeeded to his estate. The defendants herein having acquired the estate of their father Late Sh. F, became jointly and severally liable to clear the liabilities of their father.





- Thus, the plaintiff herein called upon the defendants herein orally as well as through a registered notice dated 15/09/2005, to clear the loan amount alongwith interest accrued thereon.
8. That the said legal notice was sent through Registered post and has been duly served upon all the defendants, however, the defendants neither replied to the same nor have come forward to pay the amount due in favour of the plaintiff. The office copy of the said legal notice dated 15/09/2005 and original postal receipt are annexed herewith and marked as **Annexure: C (Colly)**.
 9. That the plaintiff is entitled for recovery of money alongwith the interest at the agreed rate of interest, accrued till the filing of present suit. The plaintiff had lent a principal sum of Rs. 10,000 as loan on interest to be payable at the rate of 1% per month. Till the date of filing of present suit an amount of Rs. 3600 has accrued as interest due and payable by the defendants on said principal loan amount, which the defendants are also liable to pay the plaintiff. The defendants are also liable to pay the future and pendent lite interest to on the amounts due payable @ 1% per month. At the time of issuance of aforesaid legal notice, the defendants were also categorically informed that the costs incurred by the plaintiff for issuance of said legal notice shall also be borne by the defendants, thus the defendants are liable to pay an amount of Rs. 400 as charges paid by the plaintiff for issuance of said legal notice. Thus as on filing of present suit, the defendants are jointly and severally liable to pay an amount of Rs. 14,000/- alongwith future and pendent lite interest on said amount to the plaintiff. The plaintiff is also entitled to recovery of costs of present suit.
 10. That the cause of action for filing the present suit arose in favour of the plaintiff and against the defendant on 25/12/2002 when the plaintiff had given the amount of Rs. 10,000/- as loan to said Sh. F, the father of the defendants herein. The cause of action also arose on 25/02/2003, when the said loan amount became due and payable alongwith interest accrued thereupon by said Sh. F to the plaintiff herein. The cause of action also arose in the month of January, 2004, when said Sh. F died and all his estate and liabilities had devolved upon the defendants herein.





The cause of action also arose when the plaintiff orally as well through registered legal notice had called upon the defendants herein to pay said loan amount alongwith interest accrued thereupon. Infact the cause of action is still subsisting and accruing in favour of the plaintiff and against the defendants.

11. That as the agreement was entered in the jurisdiction of this court this court has the competency to try it.
12. That the value of the subject matter of the suit is Rs. 14,000/- thus this Court has the pecuniary jurisdiction to try and adjudicate the present suit.
13. That the present suit is valued at Rs. 14,000/- upon which requisite court fee of Rs _____ has been paid.
14. That the breach of contract has been committed on 25/02/2003 and hence, the present suit is filed within the period of limitation.
15. That the plaintiff relies upon the documents filed alongwith the list of documents annexed to the plaint.
16. That no other suit on the same cause of action has been instituted in any other court.

PRAYER

That the plaintiff most respectfully prays to this Hon'ble Court to:

- (i) Pass a decree of recovery of sum of Rs. 14,000/- in favour of the plaintiff and against the defendants.
- (ii) Grant future and pendent lite interest @ 1% per month on the loan amount due and payable by the defendants from date of institution of present suit till the date of realisation of loan amount in favour of the plaintiff.
- (iii) Award costs of present suit in favour of plaintiff and against the defendants.





(iv) Any other further order(s) as this Hon'ble Court may deem fit, just and proper in facts of present case may also be passed in favour of the plaintiff and against the defendants.

Place:

Plaintiff

Date:

Through his advocate

VERIFICATION

Verified at _____ on this _____ of _____, that the contents of Para No. 1 to 9, 15 & 16 of the plaint are true and correct to my knowledge, the contents of Para Nos. 10 to 14 of the plaint are true and correct as per legal knowledge received and believed to be true while last para is prayer this Hon'ble Court.

Plaintiff

(Affidavit annexed herewith)





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IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION U.P.

CNR No.....

Civil Suit no.....

Date of Institution.....

A, S/o.....

Age...., R/o.....

Occupation.....

.....Plaintiff

Versus

X, S/o.....

Age....., R/o.....

Occupation.....

Y, S/o.....

Age....., R/o.....

Occupation.....

Z, S/o.....

Age....., R/o.....

Occupation.....

.....Defendants





WRITTEN STATEMENT FOR AND ON BEHALF OF THE DEFENDANTS

NO. 1 & 2

The above named defendant most respectfully submits as follows:

PRELIMINARY OBJECTIONS:

1. That the plaintiff has not come to the court with clean hand and has concealed true and correct facts from this Hon'ble Court.
2. That the father of the defendants Late Sh. F had not taken any loan from the Plaintiff as per knowledge and information of the defendants. It is also submitted that as per knowledge of the defendants, their father had never executed any such promissory note or receipt as alleged by the plaintiff.
3. That without prejudice to their rights and contentions, the defendant submits that the loan, if any, taken by their father has been duly paid back by him during his lifetime as their father had settled and paid off all his liabilities during his lifetime itself. Thus, the averments made in the plaint are apparently false.
4. That the promissory note, alleged to have been executed by father of the defendants herein, is apparently insufficiently stamped. It is most respectfully submitted that as per provisions of Indian Stamp Act, any instrument which is insufficiently stamped is inadmissible in evidence. It is also submitted that any such document is liable to be impounded by this Hon'ble Court as per provisions of Indian Stamp Act.
5. That the plaintiff is a money lender and he has not complied with the mandatory provisions of U.P. Money Lender's Act, therefore the plaintiff is not entitled for interest or costs of the suit.
6. It is most respectfully submitted that the father of the defendants herein has not left behind any estate, which would have devolved upon the defendants herein. It is also submitted that legal heir(s) of a deceased person are liable for liabilities of such deceased person only to the extent of estate of such deceased person inherited by such legal heir. As the defendants herein have not inherited any estate of their father, thus they are not liable for any such alleged liability.





7. That it is most respectfully submitted that the defendants herein are poor agriculturist having only two bighas of land. Under the circumstances, it is most humble submission of the defendants herein, that in case, this Hon'ble Court comes to conclusion that the defendants herein are liable to pay suit amount to the plaintiff, and then this Hon'ble Court may kindly be pleased to allow the defendants to pay such decretal amount in installments of Rs. 250 p.m. to the plaintiff.

REPLY ON MERITS:

1. That the contents of para under reply so far being matter of record need no reply however it is vehemently denied that any such loan was ever given by the plaintiff to the father of the defendants herein.
2. That the contents of para under reply being false and frivolous hence denied. It is denied that in the month of December, 2012, the father of defendants was in need of money for treatment of his wife Smt. L as alleged. It is also submitted that loan, if any, taken by the father of the defendants from any person, has been duly paid by him during his lifetime itself.
3. That the contents of para under reply being false and frivolous hence denied. It is vehemently denied that father of the defendants had ever approached the plaintiff for taking any amount much less an amount of Rs. 10,000/- on loan for period of 2 months as alleged.
4. That the contents of para under reply being false and frivolous hence denied. It is vehemently denied that the plaintiff had ever given any money much less an amount of Rs. 10,000/- as loan to the father of the defendants herein. It is also denied that it was ever agreed in between the plaintiff or father of the defendants, that the latter shall pay an interest @ 1% per month on said alleged loan amount. It is submitted that since there had been no loan given by the plaintiff to the father of defendant thus there was no occasion for payment of any such interest as alleged.
5. That the contents of para under reply being false and frivolous hence denied. It is vehemently denied that plaintiff has ever advanced any sum much less a sum of Rs. 10,000 as loan to the father of the defendant.





It is also denied that the father of the defendants had ever executed any promissory note or a receipt in favour of plaintiff as alleged. As submitted hereinabove, since there had been no such loan transaction in between the plaintiff and father of the defendants, thus there was no occasion for execution of alleged pronote or receipt as alleged. It is further denied that the any such pronote or receipt were witnessed by said Sh. M, accountant of the plaintiff, as alleged. As submitted hereinabove, the alleged promissory note being insufficiently stamped is per se inadmissible in evidence. No court can take cognizance on said document and same is liable to be impounded by this Hon'ble Court under the provisions of Indian Stamp Act.

6. That the contents of para under reply being false and frivolous hence denied that the plaintiff had ever called upon the father of the defendants to repay said loan amount along with interest as alleged.
7. That the contents of para under reply so far being matter of record need no reply. However it is vehemently denied that the defendants herein have succeeded to any estate left by this father as alleged. It is submitted that father of the defendants had not left behind any estate, which could have devolved upon the defendants as alleged. It is also denied that the plaintiff had ever asked the defendants to clear the liabilities of their father either orally or through any such legal notice as alleged.
8. That the content of para under reply being false and frivolous hence denied. It is denied that the defendants have ever received any such said legal notice as alleged. It is also denied that the defendants are liable to pay any amount to the plaintiff as alleged.
9. That the contents of para under reply being false and frivolous hence denied. It is denied that the plaintiff is entitled for recovery of money or any interest thereupon as alleged. It is also denied that the plaintiff had ever lent a principal sum of Rs. 10,000 as loan on interest to be payable at the rate of 1% per month to the father of the defendants as alleged. It is also denied that the defendants are liable to pay any such interest much less an amount of Rs. 3,600/- as claimed in the suit. It is also denied that the defendants are liable





to pay the future or pendent-lite interest or charges for issuance of said legal notice to the plaintiff as alleged. It is further denied that the defendants are liable to pay any costs as alleged.

10. That the contents of para under reply being false and frivolous hence denied. It is vehemently denied that any cause of action had ever arose in favour of the plaintiff or against the defendants as alleged. It is also denied that the cause of action is still subsisting or accruing in favour of the plaintiff and against the defendants as alleged.
11. That the contents of para under reply being false and frivolous hence denied. It is denied that any agreement much less a loan agreement was ever executed in between the plaintiff or the father of the defendants herein. It is most respectfully submitted that this Hon'ble Court does not have any territorial jurisdiction try or adjudicate the presentsuit as alleged.
12. That the contents of para being legal need no reply.
13. That the contents of para under reply being mater of record need no reply.
14. That the content of para being false and frivolous hence denied. It is denied that there has been breach on the part of defendants on any date much less on 25.02.2003 as alleged. As submitted hereinabove, since there has been no contract either between the plaintiff or the father of the defendants, thus there is no question of any breach as alleged.
15. That the content of para needs no reply.
16. That the content of para being matter of record need no reply.
17. That the contents of prayer clause are denied in totality. It is denied that the plaintiff is entitled for any relief as claimed.

In the aforesaid facts and circumstances, it is most respectfully prayed that the present suit may kindly be dismissed with exemplary cost.

Place:

Defendant

Date:

Through his advocate





VERIFICATION:

Verified at _____ on this _____ of _____ that the contents of Para No. 1 to 3, 6 & 7 of the preliminary objections and Para Nos. 1 to 9, 15 & 16 of the reply on merits of the written statement are true and correct to my knowledge, the contents of Para Nos. 4 & 5 of the preliminary objections and Para Nos. 10 to 14 of the reply on merits are true and correct as per legal knowledge received and believed to be true. The second last para is reply to prayer clause while last para is prayer before this Hon'ble Court.

Defendant

(Affidavit annexed herewith)





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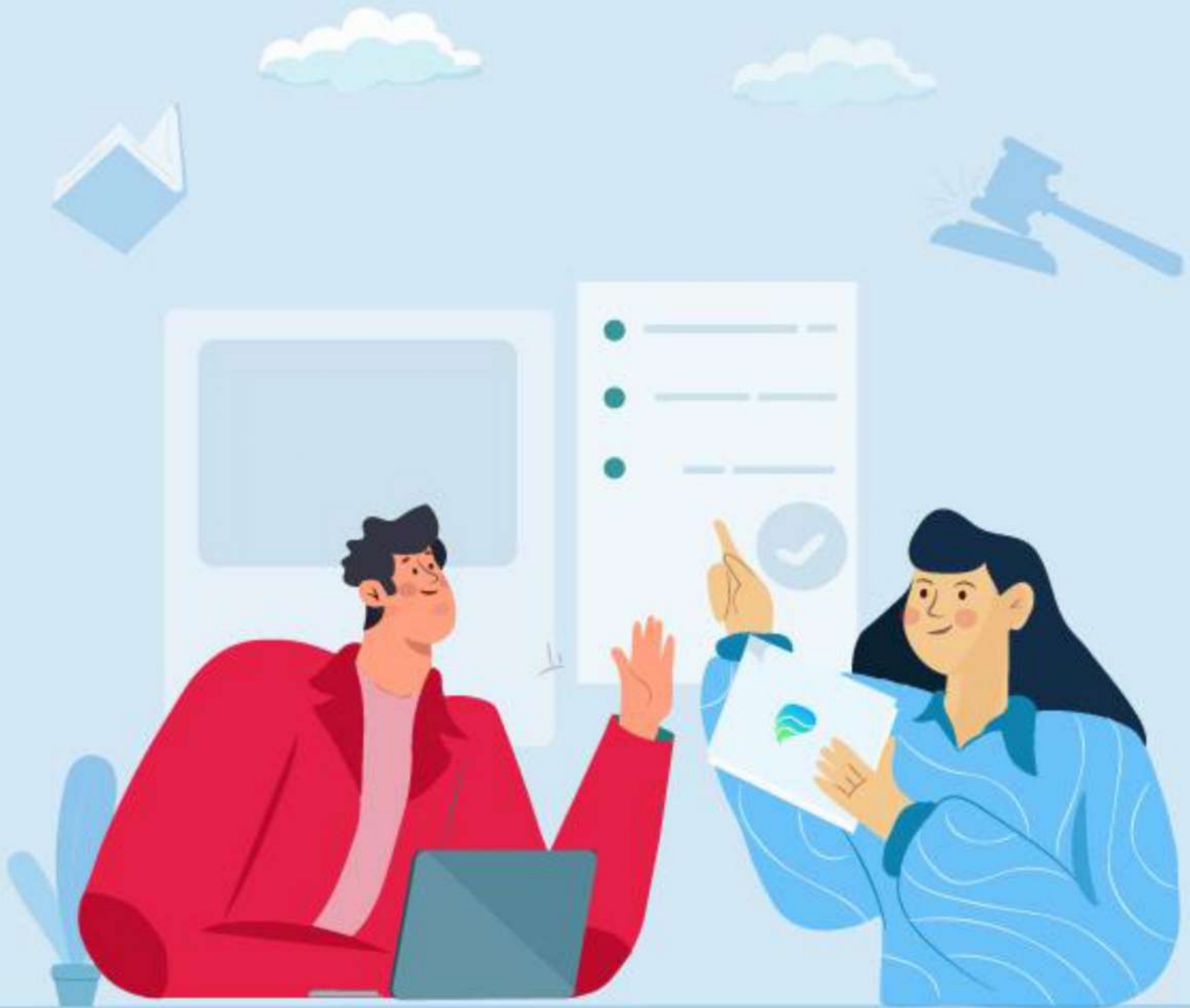


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