Test Series: April-2022

MOCK TEST PAPER

FINAL COURSE GROUP II

PAPER 6D: ECONOMIC LAWS

Suggested answers /Hints

Case study 1

1.1. (c)

1.2 (d)

1.3 (d)

1.4 (c)

1.5 (b)

1.6 Legal Position

Evasion of duty or prohibitions as per Section 135 of the Customs Act, 1962 is a Scheduled Offence under the Prevention of Money Laundering Act, 2002 as per Paragraph 12 of Part A of the Scheduled Offences.

Section 2(1)(u) defines "proceeds of crime" as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

As per Section 5 of the Prevention of Money Laundering Act, 2002:

Where the Director or any other officer (not below the rank of Deputy Director authorised by the Director), has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

Such director/ any other officer may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed.

Condition for attachment: Provided that no such order of attachment shall be made unless, in relation to the scheduled offence:

- a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or
- a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or
- a similar report or complaint has been made or filed under the corresponding law of any other country.

Exception to the aforesaid conditions:-

Any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Given Case & Analysis

Mr. Surjit provided false declaration in the customs regarding the type of imports made because of which there was invasion of customs duty of ₹ 25,00,000. Such act was unrevealed by the Customs authority and Mr. Surjit was held punishable for such an offence under section 135 of the Customs Act, 1962.

Thus, Mr. Surjit has committed a Scheduled Offence as aforesaid and he was in possession of the proceeds of crime i.e. the imported furniture.

As it was a Scheduled Offence, the Director could have only attached such furniture if the any of the aforesaid conditions were satisfied but there is an exception that in case if Director on the basis of material in his possession, has reasons to believe that if the property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Thus, the Director under the Prevention of Money Laundering Act, 2002, can be considered to have been properly passed the order of provisional attachment of the imported furniture by Mr. Surjit provided he was having reasons to believe that on the basis of material in his possession that the non-attachment of the imported furniture was likely to frustrate any proceeding under this Act.

1.7 (i) As per Section 2(v) of the FEMA, 1999, "Person resident in India", inter-alia, means: a person residing in India for more than 182 days during the course of the preceding financial year but does not include a person who has gone out of India or who stays outside India, in either case—

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Implication of the term '**intention to stay outside India**':- If a person goes outside India in such circumstances that his period of stay outside India is not certain, it cannot be said that he has intention to stay outside India for an uncertain period.

It is given that Mr. Surjit went to USA for the first time on 15th February, 2021, for assisting in the operation of nervous system of his nephew, Mr. Ashok, who was unable to travel to India. So, he would have resided in India for more than 182 days during the course of the preceding financial year 2019-20.

Further it is given that his period of stay in USA was for an uncertain period as it was dependent on the recovery by Mr. Ashok who was able to recover fast and so, Mr. Surjit was able to leave for India 20th April, 2021.

Now here, it cannot be said that Mr. Surjit had intention to stay outside India for an uncertain period as in the given circumstances his stay outside India dependent on the recovery of his nephew, Mr. Ashok.

Thus, the residential status of Mr. Surjit for F.Y. 2020-21 as per FEMA, 1999 would be **person resident in India.**

(ii) Under the Liberalised Remittance Scheme (LRS), all resident individuals, including minors, are allowed to freely draw and remit up to USD 250,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both.

AD Category I banks and AD Category II, may release foreign exchange up to USD 2,50,000 or its equivalent to resident individuals for studies abroad without insisting on any estimate from the foreign University. However, AD Category I bank and AD Category II may allow remittances (without seeking prior approval of the Reserve Bank of India) exceeding USD 2,50,000 based on the estimate received from the institution abroad.

'Drawal ' means drawal of foreign exchange from an authorised person and includes opening of Letter of Credit or use of International Credit Card or International Debit Card or ATM card or any other thing by whatever name called which has the effect of creating foreign exchange liability.

No approval is required where any remittance has to be made from an RFC account.

Given Case & Analysis:

During the F.Y. 2021-22, Mr. Surjit imported furniture from USA worth $ 1,30,000 for a new tenement home bought by him in New Delhi for which he used letter of credit drawn from SBI bank for the purpose of making payment.

Besides, Mr. Surjit had used his two international debit cards, one associated with his Resident Foreign Currency Account and other associated with his SBI bank account for making payment of $ 80,000 and $ 1,95,000, respectively, for certain prescribed current account transactions. As per Mr. Surjit, the payment of $ 1,95,000 pertained to remitting foreign exchange for the purpose of his daughter's education in the University of Chicago, USA but the said University had provided an estimation fees certificate of only $ 35,000.

Thus, during the F.Y. 2021-22, Mr. Surjit has drawn $ 1,30,000 + $ 80,000 + $ 1,95,000 = $ 4,05,000 which would be reduced by $ 80,000 (as drawn from RFC account) and $ 35,000 (estimation fees certificate by University of Chicago, USA) = $ 2,90,000.

Thus, Mr. Surjit has drawn $ 40,000 in excess of the prescribed limit of $ 2,50,000 for which penalty leviable would be upto three times of the sum involved, as it is quantifiable and if it is a continuing offence, further penalty upto ₹ 5,000 per day after first day as per Section 13 of the FEMA, 1999.

Penalty that could be levied upon Mr. Surjit = $ 40,000 × 3 = $ 1,20,000 equivalent in Indian rupees.

1.8 As per Section 2(9) of the Prohibition of Benami Property Transactions Act, 1988, "Benami transaction", inter-alia, means a transaction or an arrangement where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person.

In the matter of *Bhim Singh & Anr vs Kan Singh (And Vice Versa) 1980 AIR 727, 1980 SCR (2) 628*, the Hon'ble Supreme Court of India, observed as given below –

The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus:

(a) The burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction;

(b) if it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary;

(c) the true character of the transaction is governed by the intention of the person who has contributed the purchase money; and

(d) the question as to what his intention was has to be decided on

(i) the basis of the surrounding circumstances,

(ii) the relationship of the parties,

(iii) the motives governing their action in bringing about the transaction and

(iv) their subsequent conduct etc.

All the four factors stated above may have to be considered cumulatively (O P Sharma vs. Rajendra Prasad Shewda & Ors. (CA 8609-8610 of 2009) (SC).

Given Case & Analysis:

Here, prima facie it appears that it is a benami transaction as Mr. Surjit has paid the consideration money for purchase of the tenement house bought in New Delhi but it has been registered in the name of Mr. Mangal who is his child hood friend.

The tenement house bought in New Delhi by Mr. Surjit in the name of Mr. Mangal can be considered as a benami transaction.

However, consideration needs to be given to the four factors as discussed above in the case law, to the given situation as follows:-

Factors	Given case
The basis of the surrounding circumstances	The father of Mr. Surjit, who had recently passed away, intended Mr. Surjit to buy the said home from the will money he inherited and donate it to an orphanage
The relationship of the parties	Mr. Surjit and Mr. Mangal, both are child hood friends and Mr. Mangal is a trustee of an orphanage.
The motives governing their action in bringing about the transaction	Mr. Surjit had bought the said tenement home in the name of, Mr. Mangal so that, later on it can be easily transferred to the orphanage.
Their subsequent conduct	It is not given in question but however it is given that Mr. Surjit and his family has decided to stay in the said tenement home till the time their newly bought apartment in the Greater Noida gets ready for physical possession which shows that the home was not meant for their personal residence or other purpose and in future will be given to the orphanage.

Thus, on unrevealing the true character of the transaction as above, it can be concluded that it is not a benami transaction.

Case study 2

2.1 (a)

2.2 (d)

2.3 (b)

2.4 (d)

2.5 (b)

2.6 Legal Position

As per Section 46 of the Competition Act, 2002, the commission may impose a lesser penalty (than otherwise leviable under this Act, Rules or Regulations) as it may deem fit, on any producer, seller, distributor, trader or service provider who is included in any such cartel which is alleged to have violated section 3, but subject to following conditions:

Condition 1 - If Commission is satisfied that such producer, seller, distributor, trader, or service provider, has made a full and true disclosure in respect of the alleged violations and such disclosure is vital.

Condition 2 - Such disclosure shall be made before the report of investigation by director general under section 26(3).

Condition 3 – Such producer, seller, distributor, trader, or service provider shall continue to cooperate with the Commission till the completion of the proceedings before the Commission.

Any such producer, seller, distributor, trader, or service provider shall be tried for an offence (for which lesser penalty charged earlier) and liable to pay penalty as normal (if the lesser penalty didn't charge), if Commission is satisfied that; it

- failed to comply with the condition on which the lesser penalty was imposed; or
- had given false evidence; or
- the disclosure made is not vital

As per Section 27 of the Competition Act, 2002, in case any agreement referred to in section 3 has been entered into by a cartel, the commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten percent of its turnover for each year of the continuance of such agreement, whichever is higher.

Given Case & Analysis

The CCI might have imposed a lesser penalty upon the said cartel member provided if it had satisfied the aforesaid conditions and not provided any false evidences.

However, as such cartel member had provided false evidences to the CCI, it would be liable to pay penalty as normal as per the provisions of Section 27, as aforesaid.

2.7 (i) As per Section 61 of the Competition Act, 2002, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter for which Commission or Appellate Tribunal is empowered under this Act.

In the given case, Long Life Hospital Ltd. had the option to file an appeal against the said order of combination with the Appellate Tribunal.

Thus, as the Appellate Tribunal had been empowered by the provisions of the Competition Act, 2002 to handle said matter, the suit instituted by Long Life Hospital Ltd. cannot be entertained by the City Civil Court.

(ii) As per Section 29 of the Competition Act, 2002, the Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the combination were published.

On reading of the said provisions, it can be understood that it is optional to the CCI to invite any written objections from persons affected by the combination and not mandatory.

So, the allegation made by Long Life Hospital Ltd. against CCI cannot be considered as valid as it was not mandatory for CCI to invite for written objections against the said combination between Malhotra Hospital Ltd. and Life & Care Hospital Ltd.

2.8 Legal Position

As per Section 39 of the Real Estate (Regulation And Development) Act, 2016, the Authority may, at any time within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties.

However, no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.

The Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

As per Section 29 of the Real Estate (Regulation And Development) Act, 2016, the questions which come up before the Authority shall be dealt with as expeditiously as possible and the Authority shall dispose of the same within a period of sixty days from the date of receipt of the application.

It is provided that where any such application could not be disposed of within the said period of sixty days, the Authority shall record its reasons in writing for not disposing of the application within that period.

Given Case & Analysis

A rectification application has been filed by the allottees against an order passed by the authority under RERA for a mistake apparent from the record on timely basis i.e. within 2 years.

However, as Malhotra Estate Ltd. had filed an appeal against the said order with the Appellate Tribunal and further with High Court against the decision of Appellate Tribunal, no amendment can be made in the said order by the authority under RERA.

Accordingly, the said application of the allottees would be rejected by the authority under RERA and such decision needs to be communicated by the authority under RERA to such allottees within 60 days from 12th November, 2021 i.e. by 11th January, 2022.

However, if the Authority could not dispose of the said application by 11th January, 2022, it shall record its reasons in writing for not disposing of the application within that period.

2.9 (i) As per Section 46 of the Prohibition of Benami Property Transactions Act, 1988, any person, including the Initiating Officer, aggrieved by an order of the Adjudicating Authority may prefer an appeal in such form and along with such fees, as may be prescribed, to the Appellate Tribunal against the order passed by the Adjudicating Authority under Section 26, within a period of forty-five days from the date of the order.

The Initiating Officer can file an appeal with the Appellate Tribunal against the said order passed by the Adjudicating Authority in favour of Mr. Tansen within the time period as aforesaid.

(ii) Legal Position

As per Section 44 of the Prohibition of Benami Property Transactions Act, 1988, the Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Approving Authority, Initiating Officer, Administrator and the officers subordinate to all of them shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860.

Bribing a public servant by exercise of personal influence is an offence as per Section 7A and Section 8 of the Prevention of Corruption Act, 1988 and also is a Scheduled Offence as per Paragraph 8 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002.

Given Case and Analysis

Here, the Adjudicating Authority shall be deemed to be public servant as per Section 44 of the Prohibition of Benami Property Transactions Act, 1988.

Mr. Tansen by exercise of his personal influence made a private arrangement with such Adjudicating Authority because of which the case was settled in favour of Mr. Tansen in exchange of some gratification money. This can be considered as bribing a public servant by exercise of personal influence by Mr. Tansen which can be considered as an offence under the provisions of the Prevention of Corruption Act, 1988 and the Prevention of Money Laundering Act, 2002, respectively, as aforesaid.

Case study 3

3.1 (b)

3.2 (c)

3.3 (c)

3.4 (b)

3.5 (d

3.6 Facts given in the case are similar to the facts of Sachin Joshi vs Directorate of Enforcement (Supreme Court of India, Petition(s) for Special Leave to Appeal (Criminal) No(s). 4482/2021, 28th September 2021).

(i) Hon'ble apex court after considering the submissions made by both sides and the material on record, is of opinion that there is **no error committed by the High Court** in interfering with the order passed by the Sessions Court. However, taking note of the submissions (similar to those stated in the given case) made by counsel for the petitioner about the treatment of the petitioner (Mr. Iyer in the given case), the Supreme Court doubled the period of temporary bail (conditional bail for specific purpose). The bail granted by Supreme Court is also subject to the conditions that were imposed by the High Court in its Order.

(ii) The offence under the Prevention of Money Laundering Act, 2002 are non-bailable in nature hence bail is not a matter of right of the accused. The court shall apply judicial mind while granting/rejecting the bail application under CrPC, apart from considering the specific provisions stated under any special statues.

The bail should not be granted on the medical ground **only,** without discussing the merits of the allegations made. Undoubtedly medical ground may be one of considerable factor. It depends upon case to case basis.

It is worth noting here that section 45 (2) of the Prevention of Money Laundering Act, 2002 provides that the limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

3.7 As per section 13 of the Real Estate (Regulation and Development) Act 2016, a promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

Hence in the present case, the maximum advance that can be charged by ADRPL from Ms. Gurdeep is ₹ 8.04 lakhs

Further, as per section 4 (2) (l) (D) of the Real Estate (Regulation and Development) Act 2016, seventy percent of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose. Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project.

The same is applicable in the case of advance money or application fee as well, hence ADRPL shall deposit seventy percent of the advance or booking fee also in a separate account.

As per section 60 of the Real Estate (Regulation and Development) Act 2016, if any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty that may extend up to five percent of the estimated cost of the real estate project, as determined by the Authority. Hence if ADRPL fails to deposit seventy percent of the advance or booking fee also in a separate account then liable to penalties stated under section 60.

Whereas for accepting the advance or booking/application fee of more than ten percent of the cost of the apartment, the penalty specified under section 61 shall be levied.

Section 61 provides, if any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to

a penalty which may extend up to five percent of the estimated cost of the real estate project as determined by the Authority.

3.8 Benami transaction is defined under clause 9 to section 2 of the Prohibition of Benami Property Transactions Act 1988. Benami transaction means a transaction or an arrangement **where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person**; and the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration.

It is important to consider that Mr. Satbir will neither get any immediate nor future benefit, neither direct nor indirect benefit from such flat as he resides in Delhi and flat is in Mohali, further such flat is self-occupied by Ms. Gurdeep.

It is also important to consider the apex court judgment in the landmark case '**Pawan Kumar Gupta vs. Rochiram Nagdeo**', AIR 1999 SC 1823. The word **provided** used in section 2 (9) (A) **shall not be constructed narrowly**. So even if the purchaser had availed himself of the help rendered by his father for making up the sale consideration that would not make the sale deed a Benami transaction so as to push it into the forbidden area envisaged in section 3(1) of the act. Court also took the example of a purchaser of land, who might have availed himself of the loan facility from the bank to make up the purchase money.

It is worth noting that money given to Ms. Gurdeep by Mr. Satbir is in form of borrowing, which is duly repaid by Ms. Gurdeep.

Hence amount borrowed by Ms. Gurdeep from his younger brother Mr. Satbir to pay advance or booking deposit shall not make push transactions into the forbidden area; **hence the transaction is not a Benami transaction.**

Case study 4

4.1 (b)

4.2 (b)

4.3 (c)

4.4 (b)

4.5 (d)

4.6. The need and procedure of servicing notice of combination is described under section 6 (2) of the Competition Act 2002 read with the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (hereinafter referred as to the regulations).

Section 6 (2) of the Competition Act 2002 requires the ZML to **serve the notice by 17.04.2022 and 29.04.2022 in the case of BMC and MMPL respectively** i.e. within 30 days from the date of executing the document of acquisition.

Further sub-regulation 2 to regulation 5 of the regulations the notice under sub-section(2) of section 6 of the Competition Act 2002, shall ordinarily be filed in Form I as specified in schedule II to these regulations, duly filled in and accompanied by evidence of payment of requisite fee by the parties to the combination

But sub-regulation 3, which has an overriding effect over sub-regulation (2) provides without prejudice to the provisions of sub-regulation (5), the parties to the combination may, at their option, give notice in Form II, as specified in schedule II to these regulations, preferably in the instances where-

(a) the parties to the combination are engaged in production, supply, distribution, storage, sale, or trade of similar or identical or substitutable goods or provision of similar or identical or substitutable services and the combined market share of the parties to the combination after such combination is more than fifteen percent (15%) in the relevant market;

(b) the parties to the combination are engaged at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or trade-in goods or provision of services, and their individual or combined market share is more than twenty-five percent (25%) in the relevant market.

As per the facts given in the case, the integration with BMC is horizontal in nature and results in a total share of 18% of the relevant market, whereas the combination with MMPL is vertical Integration and results in a 22% share of the relevant market. Hence **notice under section 6(2) preferably shall be served in Form II and Form I in the case of BMC and MMPL respectively.**

4.7 The similar issue was addressed by the hon'ble apex court in the case of **Devi Ispat Ltd. vs. State Bank of India & Ors**. In the stated case the bank issued a notice to Devi Ispat under Section 13(2) of the SARFAESI Act demanding payment of the outstanding liabilities dues and interest. Devi Ispat reacted by filing a writ petition in the Calcutta High Court challenging, inter alia, the declaration of its being an NPA and for setting aside the previous letters issued by the Bank. The Calcutta High Court dismissed the writ petition on the ground that the company had an alternative statutory remedy under section 13(3A) of the SARFAESI Act, to make a representation against the letter issued under section 13(2) thereof.

The Appellant filed an appeal against that order, meanwhile appellant also made representation to the bank under section 13(3A) but the same was rejected. Division Bench dismissed the appellant's appeal. The Supreme Court held that since the appellant had availed statutory remedy by making representation to the bank, hence there was no reason to interfere with the impugned order and, therefore, the special leave petition was too dismissed.

Hence it is advisable for the SMC concern to raise objections and make representations in response to the notice served under section 13(2). Such representations shall be made very carefully because in case of rejection of such representations by a secured creditor, then only communication from the end of a secured creditor is required made under section 13 (3A) and such communication shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 of the Court of District Judge under section 17A.

Extra Reading

It is worth noting here to consider 13 (3A) for more clarity. Section 13 (3A) provides if, on receipt of the notice, the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within 15 days of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower.

Further proviso to section 13 (3A) provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

4.8 The facts stated herein are similar to those in **IREO Grace Realtech Pvt. Ltd. Vis Abhishek Khanna & Others** (Civil Appeal No. 5785 of 2019). Through its order dated 11th January 2021 the Supreme Court decided that the Consumer Protection Act, 1986 was enacted to protect the interests of consumers, and provide a remedy for better protection of the interests of consumers, including the right to seek redressal against unfair trade practices or unscrupulous exploitation. The order also makes reference to the recent judgment delivered in **M/s Imperia Structures Ltd. vs. Anil Patni & Anr** (2020) 10 SCC 783, wherein it was held that **remedies under the Consumer Protection Act were in addition to the remedies available under special statutes**.

Section 79 of the Real Estate (Regulation and Development) Act, 2016, provided no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Further section 88 provides that, the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force; to ensure application of other laws not barred.

Hence the absence of a bar under Section 79 to the initiation of proceedings before a forum that is not a civil court, read with Section 88 makes the position clear.

Case study 5

5.1 (b)

5.2 (c)

5.3 (b)

5.4 (b)

5.5 (d)

5.6 a. In the matter of **Mangathai Ammal (Died) through legal heirs vs. Rajeswari** (Civil Appeal no. 4805 of 2019 dated 09.05.2019), the Supreme Court held that while considering a particular transaction as Benami, the intention of the person who contributed the purchase money is determinative of the nature of the transaction. The intention of the person, who contributed the purchase money, has to be decided on the basis of the surrounding circumstances; the relationship of the parties; the motives governing their action in bringing about the transaction, and their subsequent conduct, etc.

To hold a particular transaction is benami in nature these six circumstances can be taken as a guide:

1. The source from which the purchase money came:
2. The nature and possession of the property, after the purchase:
3. Motive, if any, for giving the transaction a Benami colour:
4. Position of the parties and the relationship, if any, between the claimant and the alleged benamidar;
5. Custody of the title deeds after the sale:
6. Conduct of the parties concerned in dealing with the property after the sale.

Since part of the consideration provided by aunty of Mr. Vivek and title deed also found from her possession, whereas property is registered in the sole name of Mr. Vivek; hence prima-facie the transaction seems to fall under the forbidden area as Benami, but other factors such as who is benefited from property (Mr. Vivek is staying in flat or flat is rented-out and rent realised from there passed on to his aunty) shall also need to be considered.

b. Benami transaction as per clause 9 to section 2 of the Prohibition of Benami Property Transactions Act 1988 means a transaction or an arrangement where a property is transferred to, or is **held by, a person,** and **the consideration for such property has been provided, or paid by, another person**; and the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration.

Sub-clause A to clause 9 to section 2 has four exceptions as well. Exceptions (iii) and (iv) read as transaction shall not be benami if property is purchased and registered by;

Any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual.

Any person in the name of his brother or sister or **lineal ascendant** or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as **joint owners** in any document, and the consideration for such property has been provided or paid out of the known sources of the individual.

In the given case property is registered in name of Mr. Vivek only; whereas consideration for same is arranged with help from his aunty and mother, though the mother is covered under exception iii to section 2 (9) (A), but the help of aunty indicates Benami nature prima-facie. But in the facts of the case, nowhere it is mentioned that property is held by Mr. Vivek for immediate or future, direct or indirect benefit, of the aunty.

It is worth noting the apex court judgment in the landmark case of '**Pawan Kumar Gupta vs. Rochiram Nagdeo**', AIR 1999 SC 1823, that says word **provided** used in section 2 (9) (A) **shall not be constructed narrowly**. So even if the purchaser had availed himself of the help rendered by his father for making up the sale consideration that would not make the sale deed a Benami transaction so as to push it into the forbidden area envisaged in section 3(1) of the act. Court also took the example of a purchaser of land, who might have availed himself of the loan facility from the bank to make up the purchase money.

Hence if the title deed is also in the possession of Mr. Vivek, then taking the help of her aunty in order to make arrangements of funds to pay the instalments on the schedule shall not make push transactions into the forbidden area; **hence the transaction is not a Benami transaction**.

5.7 a. As per sub-rule 6 to rule 8 of the Security Interest (Enforcement) Rules, 2002 the authorised officer shall serve to the borrower a notice of 30 days for sale of the immovable secured asset.

Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding a public auction, the **secured creditor shall** cause a **public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality** by **setting out the terms of sale**, which **shall include**, -

(a) The description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) The secured debt for recovery of which the property is to be sold;

(c) Reserve price, below which the property may not be sold;

(d) Tune and place of public auction or the time after which sale by any other mode shall be completed;

(e) Depositing earnest money as may be stipulated by the secured creditor;

(f) Any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

b. Facts given in the case are similar to those considered by the High Court of Delhi in the case of **Anil Kumar Batla vs. Allahabad Bank**, W.P. (C) No. 1135 of 2014 dated 19th August 2014), the property was situated in Faridabad. The question raised whether the newspaper namely 'Economic Times' (in English) and 'Rashtriya Sahara' (in Hindi) had sufficient circulation in Faridabad?

The intent of sub-rule (6) of rule 8 of the Enforcement Rules, is to ensure the widest publicity in order to get the best price for the property. The word "sufficient" has been defined in the Oxford Dictionary to mean 'adequate' (esp. in quantity or extent) for a certain purpose; enough (for a person or thing, to do something).

There is no evidence on record that there is sufficient or adequate circulation of Economic Times in Faridabad. Further, Economic Times is generally purchased by a specific class of people who are interested in financial matters. Moreover, the property in question is a residential house and not a commercial property. However, one would not primarily rest its finding for publication in the Economic Times.

There is a specific finding that 'Rashtriya Sahara' has an independent edition for the State of Haryana. There is also a finding that the public notice was published in the Delhi Edition of 'Rashtriya Sahara', that too, on a page which was meant for 'East Delhi'. It is a matter of knowledge that East Delhi is a Trans Yamuna area, abutting the city of Ghaziabad and Noida in UP, and is in the other direction to Faridabad which abuts Badarpur, South Delhi.

It was held by the High Court of Delhi that auction sale on the basis of a notice published in a newspaper having low circulation in the locality where the property was situated was not valid.

Hence in the case of ESKAY enterprises, considering the low circulation of newspapers in which advertisement of the public auction was published for the sale of the secured immovable asset, the auction conducted by the bank **can be declared invalid**.