



2024:DHC:1437-DE



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

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Date of decision: 20.02.2024

+ **W.P.(C) 2344/2024 & CM APPL. 9705/2024**

SHRUTI KATIYAR

..... Petitioner

Through: Mr Harsh Tikoo, Mr Manish Kashyap
and Mr Prabhakar Roy, Advocates.

versus

REGISTRAR GENERAL, DELHI HIGH COURT Respondent

Through: Dr Amit George, Mr Arkaneil
Bhaumik, Mr Rayadurgam Bharat, Mr
Adhishwar Suri and Mr Shashwat
Kabi, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL)

1. The controversy in the present writ action centres around, and is limited to two aspects.

1.1. First, whether the petitioner should be allowed to assail the correctness of the answer furnished by the respondent, qua question no.54 found in 'Booklet A', having regard to the fact that no objections were lodged by the petitioner within the stipulated time?

1.2. Second, whether the error pointed out by the petitioner was palpable and, therefore, the relief, as sought for by her, should be granted?

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2. Briefly, the facts which obtain in the instant case, against the backdrop of which the present writ action has been instituted, are the following :

2.1. The respondent took out a notification dated 06.11.2023 concerning the preliminary examination to be held with regard to the Delhi Judicial Services-2023 [in short “DJS-2023”].

2.2. The petitioner, being eligible, applied and sat for the examination, which was conducted on 17.12.2023.

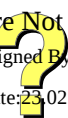
2.3. Once the examination was conducted, a model answer key was made available as by the respondent to the candidates who sat for the examination, via a notice dated 20.12.2023. It is not in dispute that the candidates were called upon to lodge their objections with regard to the questions which formed part of Booklets A, B, C, and D.

2.4. The candidates were granted time till 23.12.2023 by the respondents to lodge their objections against the answers provided in the model answer key.

2.5. It is not in dispute that the respondents issued a notice dated 29.01.2024 whereby answers to ten (10) questions were re-evaluated. However, question no.54 in ‘Booklet A’ was not re-evaluated, despite objections having been received from candidates other than the petitioner.

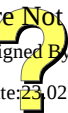
2.6. The record shows that the results of those candidates who had cleared the preliminary examination and have been shortlisted for Delhi Judicial Services Main Examination-2023 were published on 02.02.2024. The cut-off marks fixed for the General Category was 160.75.

2.7 Concededly, the petitioner who is a general category candidate was awarded 160.25 marks in the DJS Preliminary Examination-2023. Since the petitioner failed to make the cut-off marks, she decided to approach this Court *via* the instant writ petition.





3. The instant writ petition was listed for the first time on 16.02.2024. On that date, we heard the learned counsel for the parties for some time and at their request, directed that the matter be listed today i.e., 20.02.2024.
4. Since the defence of the respondent is based on the record, which is available with the writ petition and the official record concerning the case, with the consent of the counsel for the parties, we have taken up the writ petition for hearing and final disposal.
5. We may also indicate that Dr Amit George, Advocate, who appears on behalf of the respondent, at the outset, has raised preliminary objection concerning the maintainability of the writ petition.
6. Dr George says that since the petitioner did not prefer objections, she has no locus to approach the Court and seek relief. In support of his plea, Dr George has relied upon the judgment of a division bench of this Court in ***Salil Maheswari vs. The High Court of Delhi and Anr.***, 2014 SCC OnLine Del 4563.
7. As indicated above, although it is not in dispute that the petitioner had not preferred objection concerning the question in issue i.e., question no.54 in 'Booklet A', there were other candidates who had lodged an objection qua the same with the respondent. Therefore, in our view, the preliminary objection taken by Dr George loses its efficacy as a relief given to any candidate would inure ordinarily in favour of all the candidates. The objections, in a sense, attain universality, once taken by any candidate. The purpose of affording candidates the opportunity to lodge objections is salutary as it allows the respondent to take corrective measures in the larger interest of candidates and move away from a possible unfair result.
8. Coming to the merits of the controversy raised in the instant writ





petition, as indicated above, it veers around question no.54. For convenience, the said question is extracted hereinafter:

“54. ‘A’ filed a suit for recovery of Rs.10 lakhs against ‘B’. It was B’s case that ‘A’ owed him Rs.20 lakhs but ‘B’, had not filed a suit to claim the said amount as the limitation period had expired. Which of the following is true?

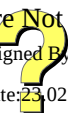
- (1) B cannot raise his claim as it is barred by limitation.
- (2) B can raise his claim by way of a separate counterclaim.
- (3) B can claim set off in the written statement.
- (4) B gets a new cause of action for filing a fresh suit after filing of A’s suit.”

9. We may note, it is not in dispute that, insofar as the petitioner is concerned, she marked Option (1) as the answer to the said question. The moot point is whether the petitioner was right. In this context, it is required to be noticed that when the answer key was furnished to the candidates on 20.12.2023, it was indicated therein that the correct answer would be Option (3).

10. The petitioner, however, has stated that the answer to the said question is no longer *res-integra* in view of the decision of the division bench rendered in ***Gunjan Sinha Jain vs Registrar General, High Court of Delhi***, ILR (2012) IV Del 676: 2012 SCC OnLine Del 1984.

10.1 Based on said decision, Mr Harsh Tikoo, learned counsel, who appears on behalf of the petitioner, points out that almost the very same question was considered by the division bench, which analysed as to when set-off can be claimed by the defendant, de hors the fact that limitation is crossed.

11. It is the submission of Mr Tikoo that if defence by way of equitable set-off is claimed by the defendant in a suit for recovery (without the impediment of limitation being put against him), it should arise from the same transaction and if such defence is entertained, the amount claimed by the defendant





cannot exceed the amount for which he is sued by the plaintiff. In other words, a defence of this kind is categorized as an “equitable set-off”.

12. The argument was that the question as framed does not indicate that the suit for recovery and the amount claimed by the plaintiff ‘A’ from defendant ‘B’, *qua* which set-off was sought, arises from the same transaction.

13. It is also pointed out that a perusal of the question would show that ‘A’ sought to recover from defendant ‘B’ Rs.10 Lakhs against which ‘B’ sought a set-off of Rs.20 Lakhs, although the limitation period had expired.

14. In a nutshell, the Mr Tikoo asserts that option (1) was the correct option and that option (3), which the respondent indicated as the correct answer in the answer key published on 20.12.2023, would have been the correct answer if the necessary ingredients were embedded in the question.

15. Dr George says that although the petitioner has set up an arguable case on merits, if he were to succeed the preliminary objection taken by him, the Court would not have to enter into the merits of the matter.

16. Since we have already ruled against the respondent so far as the preliminary objection is concerned, we are of the view that the petitioner’s contention with regard to the answer furnished by the respondent in the answer key dated 20.12.2023 is correct. For convenience, the relevant extracts from ***Gunjan Sinha Jain (supra)*** are set forth hereinafter:

“52. Consequently, Delhi is the only place where a suit could have been filed. Therefore, option (2) [Only in the Courts at Delhi], as indicated in the Answer Key, is the correct answer.

Question No. 182

182. A time barred debt can be claimed:

- (1) As a set off.*
- (2) As a counterclaim.*
- (3) As afresh suit.*
- (4) None of the above.*

53. According to the petitioners, option (1) [As a set off] is the correct



answer. But, the Answer Key shows option (4) [None of the above] to be the correct answer.

54. There can be a legal set-off and an equitable set-off. The question does not specify which. Therefore, it must be presumed that it refers to both kinds of set-off. Order VIII Rule 6 of the Code of Civil Procedure, 1908 deals with legal set-off. But, independent of the provisions of the said Code, there also exists the concept of equitable set-off. This would be clear from the following observations of the Supreme Court in *Union of India v. Karam Chand Thapar & Bros. (Coal Sales) Ltd.* : (2004) 3 SCC 504, with reference to the provisions of Order VIII Rule 6 of the said Code:—

“17. Sub-rule (1) of Rule 6 of Order 8 of the CPC provides as under:

“6. Particulars of set-off to be given in written statement.— (1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiffs demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterward unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off.”

18. What the rule deals with is legal set-off. The claim sought to be set-off must be for an ascertained sum of money and legally recoverable by the claimant. What is more significant is that both the parties must fill the same character in respect of the two claims sought to be set-off or adjusted. Apart from the rule enacted in Rule 6 abovesaid there exists a right to set-off, called equitable, independently of the provisions of the Code. Such mutual debts and credits or cross-demands, to be available for extinction by way of equitable set-off, must have arisen out of the same transaction or ought to be so connected in their nature and circumstances as to make it inequitable for the Court to allow the claim before it and leave the defendant high and dry for the present unless he files a cross-suit of his own. When a plea in the nature of equitable set-off is raised it is not done as of right and the discretion lies with the Court to entertain and allow such plea or not to do so.”

55. Once it is clear that there can be two kinds of set-offs and that the question does not distinguish between either of them, what needs to be seen is whether in either case a time barred claim can be claimed as a set-off. A Division Bench of the Calcutta High Court in the case of *Peerless General Finance and Investment Co. Ltd. v. Jitendra Kumar Khan* : 2004 (4) CHN 255 noted as under:—

“14. In the case of *Ramdhari Singh*, reported at 19 CWN 1183, also a Division Bench judgement, it was opined that the right of set-off exists not only in cases of mutual debits and credits but also where cross-demands arise out of the same transaction or are so connected in their



nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross-suit. It was also said there that an equitable set-off is to be permitted in the defendants' pleadings "more specially when a fresh suit, may be barred by limitation".

(underlining added)

56. *It was further observed in the said decision as follows:—*

"18. In the facts of the present case, in our opinion, it would be inequitable to permit the plaintiffs to recover its unliquidated damages, provided he is able to prove the case at trial, without allowing the defendants to set-off the amounts outstanding on an old debt, provided the existence of the loan and the existence of still outstanding amounts can be sufficiently proved by the defendants at trial apart from the question of limitation 19. We are of the opinion that section 3 of the Limitation Act of 1963 does not relate to equitable set-offs at all. The most important distinction between a legal set-off as mentioned in the Code, and an equitable set-off as formulated by Judge made law, is that at the end of a suit, a legal set-off might result in a sum of money being paid to the defendants alone without the plaintiffs being held to be entitled to any recovery at all; but in the case of an equitable set-off, which is time-barred, this can never happen. Such an equitable set-off can only wipe off pro tanto the plaintiffs' claim. If the plaintiffs claim is not proved at all and if the defendants' barred equitable set-off is proved to the full extent, even then the defendants cannot claim a decree because the whole purpose why he was allowed to plead a barred equitable set-off was that it was inequitable to allow the plaintiff to recover, leaving the defendants equitable claims out of consideration altogether. If the plaintiff is recovering nothing, then nothing inequitable is done if the defendants equitable set-off is completely brushed off."

So, there is judicial precedent that a time barred debt may be claimed by way of an equitable set-off. Therefore, option (1) cannot be regarded as a wrong answer. But, at the same time, we must also keep in mind that some candidates may have had in mind only a legal set-off. This is so because the question does not specify the kind of set-off. So, candidates, who worked out the solution on the understanding that the question dealt with legal set-off and the provisions of Order 8 Rule 6 CPC, and, consequently, chose option (4), also cannot be faulted. But, as there cannot be two correct answers for the same question in the scheme of the 'OMR Sheet' based test, the question would have to be removed from consideration so that neither those candidates who chose option (1) nor those who chose option (4) are negatively marked."

17. The view taken by the division bench of this Court also finds resonance

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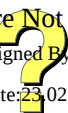
in the judgment of the Supreme Court, rendered in ***Jitender Kumar v. General Finance Company Ltd.***, (2013) 8 SCC 769. The principle of law with regard to the distinction between the equitable set-off and the legal set-off has been articulated in the following observations of the Court:

“16. From the aforesaid enunciation of law it is quite clear that equitable set-off is different than the legal set-off; that it is independent of the provisions of the Code of Civil Procedure; that the mutual debits and credits or cross-demands must have arisen out of the same transaction or to be connected in the nature and circumstances; that such a plea is raised not as a matter of right; and that it is the discretion of the court to entertain and allow such a plea or not. The concept of equitable set-off is founded on the fundamental principles of equity, justice and good conscience. The discretion rests with the court to adjudicate upon it and the said discretion has to be exercised in an equitable manner. An equitable set-off is not to be allowed where protracted enquiry is needed for the determination of the sum due, as has been stated in Dobson & Barlow Ltd. v. Bengal Spg. & Wvg. Co. [ILR (1897) 21 Bom 126] and Girdharilal Chaturbhuj v. Surajmal Chauthmal Agarwal [AIR 1940 Nag 177].”

18. It would be evident (something which the petitioner has asserted before us) that for option (3) to apply, it had to be a case of equitable set-off. If one had to treat the question, as framed, as granting the defendant the right to claim equitable set-off, the question should have indicated that it arose from the same transaction or that it had the same nature and character.

19. Besides this, as noticed above, the amount claimed by the defendant B was more than the amount claimed by the plaintiff A, and therefore, in any event, the defence of equitable set-off would not be available to defendant B for a sum more than what the plaintiff A would be able to, ultimately, prove. Therefore, the only correct answer *qua* question No.54, as framed by the respondent, was option (1), as indicated by the petitioner in her answer key.

20. Since this a case that brings to the fore a palpable error, the Court,





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which is otherwise wary of entering an arena reserved for the experts, is constrained to entertain the writ petition and grant the necessary relief.

21. Accordingly, the respondent would award to the petitioner marks for question no.54.

22. However, we make it clear that the results of those candidates who have already qualified in the preliminary examination -2023, by virtue of having marked option (3) as the correct option, will not be altered. Further, all the candidates who had opted for option (1) as the correct answer qua question no. 54, would also be given the benefit of this judgment (Reference in this regard may be to *Pallav Mongia v. Registrar General, Delhi High Court and Another* in Civil Appeal No. 4794/2012 decided on 28th May, 2012, *Gunjan Sinha Jain v. Registrar General, High Court of Delhi*, 188 (2012) DLT 627 (DB) and *Sumit Kumar v. High Court of Delhi and Anr*, in W.P(C) 3453/2016 decided on 9th May, 2016).

**RAJIV SHAKDHER
(JUDGE)**

**AMIT BANSAL
(JUDGE)**

FEBRUARY 20, 2024

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