$~

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

\+ W.P.(C) 4913/2025

Reserved on: 28 April 2025
Pronounced on: 2 May 2025

ABHIN NARULA .....Petitioner

Through: Mr. Rakesh Khanna Sr. Adv. Mr. Aman Vachher, Mr. Bhupesh Narula, Mr. Yogesh Narula, Mr. Dhiraj, Mr. Ashutosh Dubey, Mrs. Anshu Vachher, Ms. Abhiti Vachher, Mr. Akshat Vachher, Mr. Amit Kumar and Mr. Jasvinder Choudhary, Advs.

versus

THE HIGH COURT OF DELHI THROUGH REGISTRAR GENERAL & ANR. .....Respondents

Through: Mr. Gautam Narayan, Sr. Adv. with Ms. Aakanksha Kaul, Ms. Ashima Chopra and Ms. Gunita Tandon, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT

% 02.05.2025

C. HARI SHANKAR, J.

1. The *lis*

1.1 Sub-question (iv) to Question 11[1] in Paper-II of Civil Law-I, as

[1] "Question 11(iv)" hereinafter

framed in the question paper of the Delhi Judicial Service Examination, 2023, read thus:

> "11. Please state whether each of the following statements is true or false. (Only either 'true' or 'false' is to be written, and nothing else.)
>
> *****
>
> (iv) An Agreement, where both the parties are under a mistake as to a matter of fact, is voidable at the option of either of the parties."

1.2 Section 20 of the Indian Contract Act 1872[2] reads as under:

> "20. **Agreement void where both parties are under mistake as to matter of fact.** – Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.
>
> *Explanation.* – An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact."

1.3 As Section 20 of the Contract Act specifically states that a contract, in which both parties are suffering from a mistake of fact, is void, and not voidable at the option of either of the parties, the petitioner, an aspirant for entry into the Delhi Judicial Service[3], ticked the "false" choice against Question 11 (iv). His answer was marked as incorrect and he was awarded zero marks for the question.

1.4 Aggrieved thereby, the petitioner has approached this Court

[2] "the Contract Act" hereinafter
[3] "DJS" hereinafter

under Article 226 of the Constitution of India.

2 The decision in ***Shobhin Bali***[4]

2.1 This, however, is not the first time that a challenge, to Question 11(iv), has engaged this Court.

2.2 The aforesaid question, as also another question in the DJS Examination, were made subject matter of challenge in WP(C) 1965/2025. The petitioner Shobhin Bali, in that case, who was also an aspirant for the DJS, submitted, like the present petitioner, that the answer to Question 11 (iv) had necessarily to be "false", in view of Section 20 of the Contract Act.

2.3 WP (C) 1965/2025 came up for hearing before a Coordinate Bench of this Court on 14 February 2025. This Court was of the view that the challenge laid by Shobhin Bali was required to be placed before the Examination Committee of this Court. The matter was accordingly adjourned.

2.4 The Examination Committee placed the matter before the learned Examiner who had set the question paper, for his comment. The learned Examiner responded thus:

[4] **Shobhin Bali v Registrar General Delhi High Court, 2025 SCC OnLine Del 911**

"**11. Please state whether each of the following statements is true or false. (Only either 'true' or 'false' is to be written, and nothing else.)**

*****

(iv) An Agreement, where both the parties are under a mistake as to a matter of fact, is voidable at the option of either of the parties.

Question 11(iv)

The question of an agreement, even if both parties thereto are under a mistake as to a matter of fact essential to the agreement, being void, arises only when either of the parties thereto chooses or opts to have it declared as void. Once neither of the parties to the contract, in spite of the same being void, chooses to have it declared void, it cannot be said that for all times, the contract is void and all future dealings of the purchaser with the property subject matter of contract, would also be void. For instance, if goods are sold under an agreement where both parties are under a mistake as to a matter of fact essential to the agreement, but neither the seller nor the purchaser chooses to have the contract declared as void, it cannot be said that further dealings of the purchaser with the said goods, with third parties, would also be void.

Moreover, the statute by its language makes only those agreements void, where the parties are under a mistake as to a matter of fact essential to the agreement and does not make void all agreements, parties whereto are under a mistake as to a matter of any fact to the agreement.

The question was framed without using the express language of the statute, for the aforesaid reason also."

2.5 Having thus obtained the response of the learned Examiner, the Division Bench went on to dismiss the challenge laid by Shobhin Bali, observing as under:

"21. Applying the above principles of law to the facts of the present case, we do not find any sufficient reason being made out

by the petitioner to interfere with the result declared for the Mains examination.

22. Though by legal reasoning, the petitioner has been able to demonstrate that there was an answer other than the one given in the answer-key, which could have been more appropriate, at the same time, this would not be sufficient to upset the entire result.

23. We must herein first note that re-evaluation of the answers was not permitted for the Mains examination. However, at our insistence, the Examination Committee of Judges has considered the grievance of the petitioner; has even taken the comments from the learned Examiner; and then found that the answer-key does not require any interference. We have been informed that there were a total of 698 candidates who were shortlisted for the Mains examination pursuant to the final revised result declared on 21.03.2024. Out of these candidates, 153 have been shortlisted for being called for the *viva voce*. Merely, because this Court may form a *prima facie* opinion that another answer may have been more appropriate to the questions, the entire result and the selection process should not be upset. This Court cannot take the role of an Examination Committee, which is the primary decision maker. We have also been informed that the petitioner is not only four marks short of the cut-off for the *viva-voce*, but is the sole candidate to have challenged the impugned questions."

2.6 Shobhin Bali preferred SLP (C) 9475/2025 against the judgment of this Court, which was dismissed by the Supreme Court by the following order dated 24 February 2025:

"We have heard learned counsel for the petitioner, at length.

We are not inclined to interfere in the matter.

The Special Leave Petition is hence, dismissed. Pending application(s), if any, shall stand disposed of."

3. It is in this background that we have to decide the present writ petition.

4. Rival Contentions

4.1 We have heard Mr. Rakesh Khanna, learned Senior Counsel for the petitioner and Mr. Gautam Narayan, learned Senior Counsel for the High Court, at length. We deemed it appropriate to call on Mr. Gautam Narayan to first justify the impugned decision.

4.2 Mr. Gautam Narayan submits that, whatsoever be the opinion of the Court regarding the correct answer to Question 11 (iv), once the Examiner had provided a reason to justify the choice of correct option as "true", the Court was required to defer to the view of the Examiner. This, he submits, was not a case in which the view of the Examiner was so irrational or palpably unacceptable, as would justify interference by this Court.

4.3 In any case, submits Mr. Gautam Narayan, once the Coordinate Bench had considered the entire matter and had dismissed the writ petition in ***Shobhin Bali***, and the decision stands affirmed by the Supreme Court, it would not be proper for this Bench to interfere in the matter.

4.4 As against this, Mr. Rakesh Khanna, learned Senior Counsel for the petitioner, submits that it would a travesty of justice if the view of the Examiner with respect to Question 11 (iv) were to be upheld. He submits that there is no provision in the Contract Act which renders a contract between two parties, both of whom suffer from a mistake of

fact, whether it pertains to an essential feature of the contract or any other feature, as voidable at the option of one of the parties.

4.5 The emphasis laid by the Examiner, in his response to the query raised by Shobhin Bali, when it was put to him by the Examination Committee, he submits, is *ex facie* unacceptable in law. It could hardly be said, according to Mr. Khanna, that the correct answer to Question 11 (iv) could become "true" merely because the question had not included the words "essential to the agreement". Further, he submits that, the contract is *ipso facto* void and its nature as a void document is not dependent on one or either of the parties seeking a declaration from court to have it declared as void.

4.6 Apropos the decision in ***Shobhin Bali***, Mr. Khanna submits that the decision cannot be said to have been affirmed by the Supreme Court, applying the law laid down in ***Kunhayammed v State of Kerala***[5], as the order 24 February 2025 merely dismisses Shobhin Bali's SLP *in limine*, without issuing notice.

Analysis

5. We confess that we were initially inclined to agree with Mr. Khanna. There is in fact no provision in the Contract Act under which a contract, in which both the parties to the contract are suffering from a mistake of fact, is voidable at the option of one of the parties. The

[5] **(2000) 6 SCC 359**

only provision in the Contract Act which deals with a situation in which both parties suffer from a mistake of fact is Section 20. No other provision deals with such a contingency. Section 20 makes such a contract void, and not voidable at the option of one of the parties.

6. We are, however, constrained by considerations of judicial discipline in adopting the said view. A Coordinate Bench of this Court has, after taking into account the answer of the Examiner, held that, even if "false" was a more appropriate answer to Question 11 (iv), that would not make out a case for interference.

7. Though Mr. Khanna's submission is that there is no question of a more appropriate, or less appropriate, answer to Question 11 (iv), and there is only possible answer to the said question, which is "false" in view of Section 20 of the Contract Act, we regret our inability to accept the submission, in view of the judgment of the Coordinate Bench in ***Shobhin Bali***, which stands affirmed by the Supreme Court *after hearing the parties in detail*.

8. Though the Supreme Court has dismissed the SLP in *limine* without issuing notice, and it was the earnest endeavour of Mr. Rakesh Khanna to convince us that the dismissal of the SLP would not, therefore, constitute affirmation of the judgment of this Court, applying the law laid down in ***Kunhayammed***, we are unable to agree.

9. The Supreme Court has clearly noted that, before dismissing the

SLP, it had heard learned Counsel for the petitioner at length. If, after hearing learned Counsel for the petitioner at length, the Supreme Court did not find it appropriate to interfere with the judgment of the Coordinate Bench in ***Shobhin Bali***, we are of the opinion that the considerations of judicial discipline would require that we refrain from taking a contrary view.

10. Besides, Mr. Gautam Narayan pointed out that several of the candidates above the petitioner have chosen "false" as the correct answer to Question 11 (iv). He submits that, therefore, if we were to reverse the decision of the Examiner on the said question, it would require awarding of marks to all such candidates, and the petitioner would be placed in the same place as he finds himself today. In other words, the petitioner would only have with him the award, and not the reward.

11. The issuance of any writ by this Court would, therefore, be a purely academic exercise, and Mr. Gautam Narayan exhorts on the Court not to undertake such an exercise, especially as a similar exercise ended in futility in ***Shobhin Bali***, which stands affirmed by the Supreme Court.

12. For the aforesaid reasons, but primarily because of the view adopted by the Coordinate Bench in ***Shobhin Bali***, against which SLP stands dismissed by the Supreme Court after hearing the Counsel in detail, we regret our inability to provide any succour to the petitioner.

13. The writ petition is accordingly dismissed with no orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MAY 2, 2025/ar

Click here to check corrigendum, if any