

Choose Mediation



SAMADHAN
DELHI HIGH COURT
MEDIATION AND CONCILIATION CENTRE

ABOUT US

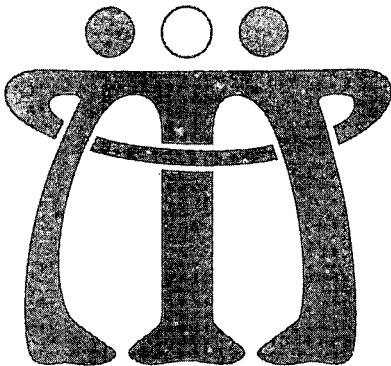
- The Indian judiciary and the legal profession have endorsed and supported mediation. This has resulted in court-annexed Mediation Centres being created as institutionalized schemes.
- The Delhi High Court Mediation and Conciliation Centre, known as *Samadhan*, was established in May 2006. It is the result of the joint initiative of the Bench and the Bar of the Delhi High Court who have committed themselves to Mediation as an appropriate method of Alternate Dispute Resolution. It is run by the Bar and is co-ordinated by an Organizing Secretary. A panel of judges and advocates oversee the work of this Centre. The Centre is proud to have highly qualified and experienced Mediators who are members of the Delhi High Court Bar Association. The Centre maintains a list of trained Mediators from among members of the Bar whose services are available for disputes referred to the Centre.
- Mediation services of the Centre can be availed of by parties directly or through reference by the Court. Disputes referred to Mediation upon directions of the Court are called Court-annexed Mediations. Services of the Centre are available for pre-litigation disputes (i.e. matters which are not in Court) as well as for disputes pending in Court.
- The Centre handles cases referred to it by the Delhi High Court, its sub-ordinate courts and

About Us

Frequently Asked Questions

The Law

The Rules



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the Supreme Court of India. The Centre has handled a variety of cases covering matters relating to business contracts/transactions, real estate and construction, consumer issues, employment and service issues, industrial disputes, banking and insurance cases, trade mark and copyright disputes, accident-related claims, landlord-tenant disputes, partnership disputes, family and matrimonial disputes, child custody and visitation rights, verification in habeas corpus matters etc. Public sector undertakings and government departments and institutions have also participated. Samadhan has seen very good results. In eighteen months, nearly 300 cases referred by the Delhi High Court and the Supreme Court of India have been settled, and these settlements also resolved over 400 related cases pending in different courts. These efforts have been greatly appreciated.

- The Centre undertakes training of Mediators by conducting training programmes periodically for members of the Delhi High Court Bar Association.
- Wherever necessary and desirable, the Centre makes available the services of an appropriate professional or welfare expert who assists the Mediation process along with the Mediator to ensure the best possible resolution to a dispute referred to it. The Centre maintains a panel of such professionals.

FREQUENTLY ASKED QUESTIONS

What is Mediation?

Mediation is a process in which an impartial or neutral third party assists disputants in finding a mutually acceptable solution. It is both confidential and voluntary. It is participatory. Parties have the chance to voice their feelings and are involved in creating solutions to end their dispute. Mediation is thus a combination of willingness of the parties to resolve their disputes and the skills of the Mediator to guide parties towards a settlement.

Why do we need Mediation?

It is a good method of resolving disputes, especially those involving relationships which are not easily resolved through the litigation process, to the mutual satisfaction of both sides. These relationships can be personal, commercial, contractual or social.

Does Mediation really help?

Yes it does. Intense conflict tends to generate misunderstandings and suspicion. Many of these evaporate and vanish when parties are able to talk directly and air their grievances through the Mediation process. Because Mediation is not bound by the rules of a formal proceeding, the parties can bring up whatever concerns them most. They are not



restricted to those issues which are the official, public subject of a dispute. The written settlement helps by protecting parties from further friction and misunderstandings so that the conflict can just fade away.

What are the advantages of Mediation?

- It immediately puts disputants in control of both the dispute and its resolution.
- The law mandates it and the courts encourage and endorse it.
- The process is voluntary and parties can opt out of it at any time if they feel it does not help them.
- The process is confidential, the procedure is simple and the atmosphere is informal. Procedure can be modified to suit the demands of each case. Mediation can be initiated at any stage in a case – pre-litigation, during trial or at the appeal stage. Issues can be limited or expanded during the course of the proceedings.
- It shows parties the strengths and weaknesses of their respective cases which helps them find realistic solutions.
- It focuses on long-term interests, examines alternatives and helps create options for settlement. It gives an opportunity to parties to fully resolve all their differences.



- The process improves communication between the parties which is crucial to resolving any dispute.
- Disputants save precious time and energy. Time spent in Mediation is significantly less than the time needed for trial and appeal. A case which lasts for years in court can be disposed of within days, weeks or months after Mediation starts.
- Disputants save costs on what invariably becomes a prolonged litigation. It is less expensive than other forms of dispute resolution. If the case is settled through Mediation, the court fee paid by the plaintiff is refunded.
- Mediation helps restore broken relationships and focuses on improving the future, not on dissecting the past.
- Parties opt for more by signing a settlement that works to benefit both.
- At the end of Mediation, disputants can actually shake hands with their opponents.
- With every case that is settled, other related cases between the parties also get settled.
- There is no further appeal. It saves judicial cost and time.

How is Mediation different from Litigation, Arbitration and Conciliation?

In litigation the judge decides the issue and the parties must accept that decision, subject to the right of appeal. Arbitration proceedings also end in awards which can be challenged. In Mediation parties are encouraged with the help of the Mediator to explore various



mutually acceptable solutions to end their dispute. It is their resolution, not the Court's. However, when parties come to a settlement in Court-annexed Mediation, the Court also endorses the settlement by a judicial order. In India, presently the terms 'Mediation' and 'Conciliation' are used synonymously.

Is there a conflict between Mediation and Litigation?

No. Some cases need a judicial pronouncement through litigation while others need an amicable settlement through Mediation. There is a complementary relationship between litigation and Mediation.

Who initiates Mediation?

One party can contact the other party and suggest Mediation. If there is a Mediation clause built into the agreement that will bring both parties to the Mediation table. Otherwise parties can go through an Institute or Centre for Mediation. The Delhi High Court initiates Mediation by passing an order in a pending litigation with the consent of parties to try Mediation in cases it considers fit and appropriate. The Delhi High Court Mediation and Conciliation Centre also undertakes pre-litigation Mediation, i.e. Mediation before a case is filed in Court.

How is the Mediator appointed?

Parties can select their Mediator/s by consent. Where Mediation is directed by a Court like the Delhi High Court, the Mediator/s is/are



appointed by the Court itself. Alternatively, upon reference by the Court, the Delhi High Court Mediation and Conciliation Centre appoints the Mediator/s from its panel of trained and experienced Mediators, who are members of the Delhi High Court Bar Association.

Who can participate in Mediation?

All disputing parties and all the important stakeholders in the matter come to the mediating table. Where the disputant is a company or a firm, it should be represented by an officer who has the authority to take the decision to settle the case. Parties are advised to bring their lawyers.

Can a party be forced to participate in Mediation?

No. The process is completely voluntary and requires the consent of parties to come to the Mediation table and participate in the process. If, at any time, a party feels that its interests are not served by the process, the party may terminate its participation without any adverse consequences.

Does Mediation affect the legal rights of a party before a court?

No. Mediation is an opportunity for parties to amicably resolve their disputes. Parties can avail of Mediation before filing a case in Court. Parties can also avail of Mediation services at any stage of their litigation in Court. If Mediation fails, their rights before the Court



remain intact. If a settlement is signed, they are bound by the settlement.

What are the steps in the Mediation process?

- Mediation services can be used by parties directly or through reference by the Court.
- Parties fill in a consent form made available to them by the Delhi High Court Mediation and Conciliation Centre for referring their case to Mediation.
- If the Mediator has or may be perceived to have any partiality or bias in the dispute referred to, he/she declines to act as Mediator.
- The Mediator is at liberty to meet the parties and their lawyers jointly or separately. Parties are encouraged to appear before the Mediator with their lawyers.
- The Mediator is in charge of the process and as long as it lasts, parties must abide by the Mediator's decision on the process to be followed.
- In the first session, the Mediator and each party makes an opening statement. The process works by the Mediator helping parties to establish the basic facts, identify the underlying issues for resolution and focus parties on their long-term interests.
- Parties can give a brief summary of their respective cases to the Mediator and produce such documents as they may like. Copies thereof can be given to the other side.
- The Mediator engages in improving communication between the parties. This can be done in further joint sessions with all parties and their lawyers or in separate sessions with each party and its lawyer at a time, or a combination of both.



- The Mediator then helps parties examine their best and worst alternatives to settlement, gives them the freedom to create options and refines their suggestions to reach a mutually acceptable agreement. Once consensus is reached, it is reflected in the settlement agreement which is signed by the parties, their lawyers and the Mediator.
- If the matter has been referred by the Court, this settlement agreement will be filed in the Court for appropriate directions. The Court passes an order recording the settlement agreement in consent terms. If an Agreement is reached in pre-litigation reference to Mediation, such an Agreement shall have the same status and effect.
- If for any reason a final settlement cannot be reached by the parties or if any party decides not to proceed with the Mediation process, the proceedings are terminated. The Mediator sends a report to the Court informing the Court that the mediation has been unsuccessful. No details or reasons are given and no blame apportioned as the proceedings are confidential between the parties and the Mediator. The report will not prejudice the Court or affect the merits of the case.

What about confidentiality in Mediation?

It is of utmost importance. Confidential information can be shared by the parties with the Mediator who does not disclose the same to the other side unless any party wants it to be so disclosed. Such confidential information does not form part of the Court's record. All matters relating to the proceedings are to be kept confidential because trust in the Mediator is the crux of Mediation. Views,



suggestions, admissions, statements made, evidence produced, proposals made during Mediation proceedings cannot be used in any legal proceedings.

Does a Mediator give an opinion?

No. Unlike an Arbitrator, the Mediator does not give his/her own judgment about the dispute. The Mediator does not impose terms of settlement on any party. The Mediator does not take sides and does not take a decision. If no settlement is reached, the Mediator informs the Court of the failure to settle without giving any reasons.

How long do most Mediations take?

Can recourse to Mediation become a tactic for delaying matters?

Time taken in Mediation depends on the nature of the case. Most cases settle in about 3-5 sessions. Some take even less. Some may take more. But in no event can any Mediation process take more than 90 days which is the limit prescribed by the Mediation Rules of the Delhi High Court. In exceptional cases the Court allows more time up to 30 days. Misuse of the process of Mediation is not unknown. Parties must be wary of the use of Mediation as a delaying tactic or as an attempt to obtain information without a genuine desire to settle.

Does the law recognize Mediation?

Yes it does. Section 89 Orders X 1A, 1C, 1D and XXXII-A of the Civil Procedure Code 1908 make it obligatory for the Court to give a fair



chance to a conciliated or negotiated settlement before adjudication is embarked upon. The Arbitration and Conciliation Act 1996 makes provisions for enabling settlements. Certain other statutes, like the Hindu Marriage Act 1955, focus on the judge's role in attempting a reconciliation. The Industrial Disputes Act 1947 and The Family Courts Act 1984 also obligate the court to attempt reconciliation before adjudication. At the highest level, the Indian judiciary has decided that Mediation will be increasingly used in the legal system.

Is the law used in Mediation?

Yes, it is. The law is used to make a realistic assessment of the party's position. Substantive and procedural law is brought into the process. This helps to provide an appraisal of the strengths, weaknesses, limitations and implications of the case which helps settlement. A sustainable settlement must be legally sound, binding and lasting. This naturally calls for legal knowledge from the Mediator.

Does every Mediation end in success?

Success lies partly in the advantages of the process of Mediation and the Mediators' skills. It also lies largely in the readiness of the parties to settle. If someone is bent upon keeping a conflict going, even the most obvious solutions will not work. If everyone wants to see a conflict end, Mediation is the graceful and efficient way to do so.



Is a Mediation Agreement enforceable?

Yes it is. Once parties reach a settlement agreement and sign it, it becomes enforceable under the provisions of the Code of Civil Procedure and the Arbitration and Conciliation Act. The Court enforces the settlement agreement by the legal process of Execution/Contempt.

Who bears the cost of Mediation in the Delhi High Court?

In the Delhi High Court, Mediation services are generally free for the litigant but the Court in given cases may direct the parties to share the costs equally.

How do I contact the Mediation Centre to avail of its services?

If you desire to avail of the pre-litigation services of the Centre, you may contact the Centre directly by registering yourself with the Co-ordinator of the Centre. If you have been referred by an order of the Court, you and your lawyer first need to fill in the application for Mediation which will be provided to you by the Centre. You can then avail of the services of the Centre by marking your presence with the Co-ordinator.

THE LAW

Code of Civil Procedure, 1908

Section 89*

Settlement of disputes outside the court

(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for

- (a) arbitration;
- (b) CONCILIATION;
- (c) judicial settlement, including settlement through Lok Adalat; or
- (d) MEDIATION

(2) Where a dispute has been referred

(a) for arbitration or conciliation, the provisions of the **Arbitration and Conciliation Act, 1996** (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the

*Inserted by Amendment Act 46 of 1999 w.e.f. 1.7.2002.



provisions of sub-section (1) of Section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of the Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the disputes were referred to a Lok Adalat under the provisions of that Act;

(d) for Mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

ORDER X

EXAMINATION OF PARTIES BY THE COURT

X 1 A* Direction of the Court to opt for any one mode of alternative dispute resolution.

After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in sub-section (1) of Section 89. On the option of the parties, the Court shall fix the date of appearance before such forum or authority as may be opted by the parties.

*Inserted by Amendment Act, 1999 w.e.f. 1.7.2002



X 1 B* Appearance before the conciliatory forum or authority : Where a suit is referred under rule 1-A, the parties shall appear before such forum or authority for conciliation of the suit.

X 1 C* Appearance before the court consequent to the failure of efforts of conciliation : Where a suit is referred under Rule 1-A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it.

ORDER XXXII A**

SUITS RELATING TO MATTERS CONCERNING THE FAMILY

1. Application of the Order

The provisions of this Order shall apply to suits or proceeding relating to matters concerning the family.

3. Duty of the Court to make efforts for settlement

(1) In every suit or proceeding to which this Order applies, an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject matter of the suit.

(2) If, in any such suit or proceeding, at any stage, it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the

*Inserted by Amendment Act, 1999 w.e.f. 1.7.2002.

**Inserted by Amendment Act 1976 w.e.f. 1.2.77.

(The omitted Rule 2 is not relevant to Mediation).



proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-rule (2) shall be in addition to, and not in derogation of, any other power of the Court to adjourn the proceeding.

4. Assistance of welfare expert

In every suit or proceeding to which this Order applies, it shall be open to the Court to secure the services of such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the Court may think fit, for the purpose of assisting the Court in discharging the functions imposed by Rule 3 of this Order.

THE COURT FEES ACT, 1870

Section 16.* Refund of fee**

Where the Court refers the parties to the suit to any one of the mode of settlement of dispute referred to in section 89 of the Code of Civil Procedure, 1908 [5 of 1908], the plaintiff shall be entitled to a certificate from the Court authorizing him to receive back from the collector, the full amount of the fee paid in respect of such plaint.

***This section was inserted by Act 46 of 1999, section 34 with effect from 1.7.2002. The earlier section 16 relating to "Additional fee where respondent takes objection to unappealed part of decree" was repealed by Act 5 of 1908.

THE RULES

DELHI HIGH COURT MEDIATION AND CONCILIATION RULES, 2004

Rule 1 : Title

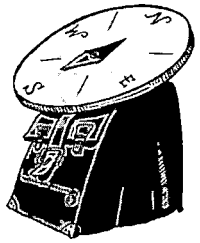
These Rules shall be called the Mediation and Conciliation Rules, 2004.

The Rules will apply to all Mediation and Conciliation connected with any suit or other proceeding pending in the High Court of Delhi or in any court subordinate to the High Court of Delhi. The Mediation in respect of any suit or proceeding pending before the High Court of Delhi or any other Court or Tribunal may be referred to the Delhi High Court Mediation & Conciliation Centre or any other Mediation Centre set up by Legal Services Authorities. Upon such a reference being made to Delhi High Court Mediation & Conciliation Centre, the same will be governed by the Charter of the Delhi High Court Mediation & Conciliation Centre and to those Mediation proceedings, the present Rules will apply *mutatis mutandis*.

Rule 2 :

Appointment of Mediator/Conciliator

(a) Parties to a suit or other proceeding may agree on the name of the sole Mediator/ Conciliator for mediating between them.



(b) Where, there are two or more sets of parties and are unable to agree on a sole Mediator/Conciliator, the Court may ask each party to nominate the Mediator/Conciliator or may nominate/appoint the Mediator/Conciliator, as it deems fit.

(c) Where parties agree on a sole Mediator/Conciliator under clause (a) or where the Mediator/Conciliator is nominated/appointed by the court under clause (b), the Mediator/Conciliator need not necessarily be from the panel of Mediators/Conciliators referred to in Rule 3 nor bear the qualifications referred to in Rule 4 but should not be a person who suffers from the disqualifications referred to in Rule 5.

Rule 3 : Panel of Mediators/Conciliators

(a) The High Court shall, for the purpose of appointing the Mediator/Conciliator between the parties in suits or proceedings, prepare a panel of the Mediators/Conciliators and put the same on the Notice Board within thirty days of coming into force of these Rules, with copy to the High Court Bar Association.

(b) (i) The District & Sessions Judge shall, for the purpose of appointing the Mediator/Conciliator to mediate between the parties in the suits or proceedings prepare a panel of the Mediators/Conciliators within a period of thirty days of the commencement of these rules and shall submit the same to the High Court for approval. On approval of the said



panel by the High Court, with or without modification, which shall be done within thirty days of the submission of the panel by the District & Sessions Judge, the same shall be put on the Notice Board.

(ii) Copies of the said panel referred in clause (i) shall be forwarded to all the Subordinate Courts by the District & Sessions Judge and to the District Bar Associations.

(c) The consent of the persons whose names are included in the panel shall be obtained before empanelling them.

(d) The panel shall contain Annexure giving details of the qualifications of the Mediators/Conciliators and their professional or technical experience in different fields.

(e) The panel of Mediators/Conciliators appointed under Clause (a) and Clause (b) (i) shall normally be for a period of three years from the date of appointment and further extension of the panel of Mediators/Conciliators or any Mediator/Conciliator shall be at the discretion of the High Court or the District & Sessions Judge with the prior approval of the High Court, as the case may be.

Rule 4 : Qualifications of persons to be empanelled under Rule 3

The following persons may be enlisted in the panel of Mediators/Conciliators under Rule 3, namely :

- (a) 1. Retired Judges of the Supreme Court of India;
2. Retired Judges of the High Courts;
3. Retired District & Sessions Judges or retired Officers of Delhi Higher Judicial Service;



4. District & Sessions Judge or Officers of Delhi Higher Judicial Service.

(b) Legal practitioners with at least ten years standing at the Bar at the level of the Supreme Court or the High Court or the District Courts.

(c) Experts or other professionals with at least fifteen years standing.

(d) Persons who are themselves experts in Mediation/Conciliation.

Rule 5 : Disqualifications of persons

The following persons shall be deemed to be disqualified for being empanelled as Mediators/Conciliators:

(a) any person who has been adjudged as insolvent or persons

(i) against whom criminal charges involving moral turpitude are framed by a criminal court and are pending; or

(ii) persons who have been convicted by a criminal court for any offence involving moral turpitude.

(b) any person against whom disciplinary proceedings have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment.

(c) any person who is interested or connected with the subject-matter of dispute(s) or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing.

(d) any legal practitioner who has or is appearing for any of the parties in the suit or in other proceeding(s).



(e) such other categories of persons as may be notified by the High Court.

Rule 6 : Addition to or deletion from panel

The High Court or the District & Sessions Judge with prior approval of the High Court, may in its/his discretion, from time to time, add or delete any person in the panel of Mediators/Conciliators.

Rule 7 : Preference

The Court shall, while nominating any person from the panel of Mediators/Conciliators referred to in Rule 3, consider his suitability for resolving the dispute(s) involved and shall give preference to those who have proven record of successful Mediation/Conciliation or who have special qualification or experience in Mediation/Conciliation.

Rule 8 : Duty of Mediator/Conciliator to disclose certain facts

(a) When a person is approached in connection with his proposed appointment as Mediator/Conciliator, he shall disclose any circumstance likely to give rise to a reasonable doubt as to his independence or impartiality.

(b) Every Mediator/Conciliator shall from the time of his appointment and throughout continuance of the Mediation/Conciliation proceedings, without delay, disclose to the parties, about the existence of any circumstance referred to in Clause (a).

Rule 9 : Withdrawal of appointment

Upon information furnished by the Mediator/Conciliator under Rule 8 or upon any other



information received from the parties or other persons, if the Court, in which the suit or proceeding is pending, is satisfied, that the said information has raised a reasonable doubt as to the Mediator's/Conciliator's independence or impartiality, it may withdraw the appointment and replace him by another Mediator/Conciliator.

Rule 10 : Procedure of Mediation/ Conciliation

(a) The parties may agree on the procedure to be followed by the Mediator/Conciliator in the conduct of the Mediation/Conciliation proceedings.

(b) Where the parties do not agree on any particular procedure to be followed by the Mediator/Conciliator, the Mediator/Conciliator shall follow the procedure hereinafter mentioned, namely :

(i) he shall fix, in consultation with the parties, a time schedule, the dates and the time of each Mediation/Conciliation session, where all parties have to be present;

(ii) he shall hold the Mediation/Conciliation at the place prescribed by the High Court or the District & Sessions Judge or the place where the parties and the Mediator/Conciliator jointly agree;

(iii) he may conduct joint or separate meetings with the parties;

(iv) each party shall, ten days before a session, provide to the Mediator/Conciliator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the Mediator/Conciliator to understand the issue;



such memoranda shall also be mutually exchanged between the parties. However, in suitable/appropriate cases, the period of ten days may be curtailed in the discretion of the Mediator/Conciliator;

(v) each party shall furnish to the Mediator/Conciliator such other information as may be required by him in connection with the issues to be resolved.

(c) Where there is more than one Mediator/Conciliator, the Mediator/Conciliator nominated by each party may first confer with the party that nominated him and thereafter interact with the other Mediator/Conciliator, with a view to resolving the dispute(s).

Rule 11 : Mediator/Conciliator not bound by Indian Evidence Act, 1872 or Code of Civil Procedure, 1908

The Mediator/Conciliator shall not be bound by the Code of Civil Procedure, 1908, or the Indian Evidence Act, 1872, but shall be guided by the principles of fairness and justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute(s).

Rule 12 : Representation of parties

The parties shall ordinarily be present personally or through constituted attorney at the sessions or meetings notified by the Mediator/Conciliator. However, they may be represented by the counsel with permission of the Mediator/Conciliator in such sessions or meetings.

The party not residing in India, may be represented by the constituted attorney at the sessions or meetings. However, it may be



represented by the counsel with permission of the Mediator/Conciliator in such sessions or meetings.

Rule 13: Consequences of non-attendance of parties at sessions or meetings on due dates

If a party fails to attend a session or a meeting notified by the Mediator/Conciliator on account of deliberate or wilful act, the other party or the Mediator/Conciliator can apply to the Court in which the suit or proceeding is pending, in that case Court may issue the appropriate directions having regard to the facts and circumstances of the case.

Rule 14 : Administrative assistance

In order to facilitate the conduct of Mediation/Conciliation proceedings, the parties, or the Mediator/Conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

Rule 15 : Offer of settlement by parties

(a) Any party to the suit may, 'without prejudice', offer a settlement to the other party at any stage of the proceedings, with notice to the Mediator/Conciliator.

(b) Any party to the suit may make a, 'with prejudice' offer to the other party at any stage of the proceedings, with notice to the Mediator/Conciliator.

Rule 16 : Role of Mediator/Conciliator

The Mediator/Conciliator shall attempt to facilitate voluntary resolution of the dispute(s) by the parties, and communicate the view of



each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute(s), emphasizing that it is the responsibility of the parties to take decisions which affect them; he shall not impose any terms of settlement on the parties.

Rule 17 : Parties alone responsible for taking decision

The parties shall be made to understand that the Mediator/Conciliator only facilitates in arriving at a decision to resolve dispute(s) and that he will not and cannot impose any settlement nor does the Mediator/Conciliator give any assurance that the Mediation/Conciliation will result in a settlement. The Mediator/Conciliator shall not impose any decision on the parties.

Rule 18 : Time limit for completion of Mediation/Conciliation

On the expiry of ninety days from the date fixed for the first appearance of the parties before the Mediator/Conciliator, the Mediation/Conciliation shall stand terminated, unless the Court, which referred the matter, either suo moto, or upon request by any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of thirty days.

Rule 19 : Parties to act in good faith

All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute(s), if possible.



Rule 20 : Confidentiality, disclosure and inadmissibility of information

(a) When a Mediator/Conciliator receives factual information concerning the dispute(s) from any party, he shall disclose the substance of that information to the other party; so that the other party may have an opportunity to present such explanation as it may consider appropriate.

Provided that, when a party gives information to the Mediator/Conciliator subject to a specific condition that it be kept confidential, the Mediator/Conciliator shall not disclose that information to the other party.

(b) Receipt or perusal, or preparation of records, reports or other documents by the Mediator/Conciliator, while serving in that capacity shall be confidential and the Mediator/Conciliator shall not be compelled to divulge information regarding those documents nor as to what transpired during the Mediation/Conciliation before any Court or tribunal or any other authority or any person or group of persons.

(c) Parties shall maintain confidentiality in respect of events that transpired during the Mediation/Conciliation and shall not rely on or introduce the said information in other proceedings as to :

(i) views expressed by a party in the course of the Mediation/Conciliation proceedings;

(ii) documents obtained during the Mediation/Conciliation which were expressly required to be treated as confidential or other notes, drafts or information given by the parties or the Mediator/Conciliator;

(iii) proposals made or views expressed by the Mediator/Conciliator.



(iv) admission made by a party in the course of Mediation/Conciliation proceedings;

(v) the fact that a party had or had not indicated willingness to accept a proposal.

(d) There shall be no audio or video recording of the Mediation/Conciliation proceedings.

(e) No statement of parties or the witnesses shall be recorded by the Mediator/Conciliator.

Rule 21 : Privacy

The Mediation/Conciliation sessions or meetings would be conducted in privacy where the persons as mentioned in Rule 12 shall be entitled to represent parties. However, other persons may attend only with the permission of the parties and with the consent of the Mediator/Conciliator.

Rule 22 : Immunity

No Mediator/Conciliator shall be held liable for anything bona fide done or omitted to be done by him during the Mediation/Conciliation proceedings for civil or criminal action nor shall he be summoned by any party to the suit or proceeding to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the Mediation/Conciliation proceedings.

Rule 23 : Communication between Mediator/Conciliator and the Court

(a) In order to preserve the confidence of parties in the Court and the neutrality of the Mediator/Conciliator, there should be no communication between the Mediator/Conciliator and the Court, except as stated in



clauses (b) and (c) of this Rule.

(b) If any communication between the Mediator/Conciliator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or the constituted attorney or the counsel.

(c) Communication between the Mediator/Conciliator and the Court shall be limited to communication by the Mediator/Conciliator:

- (i) with the Court about the failure of the party to attend;
- (ii) with the Court about the consent of the parties;
- (iii) regarding his assessment that the case is not suited for settlement through Mediation/Conciliation;
- (iv) that the parties have settled the dispute(s).

Rule 24 : Settlement Agreement

(a) Where an agreement is reached between the parties in regard to all the issues in the suit or proceeding or some of the issues, the same shall be reduced to writing and signed by the parties or their constituted attorney. If any counsel has represented the parties, the Mediator/Conciliator may obtain his signature also on the settlement agreement.

(b) The agreement of the parties so signed shall be submitted to the Mediator/Conciliator who shall, with a covering letter signed by him, forward the same to the Court in which the suit or proceeding is pending.

(c) Where no agreement is arrived at between the parties, before the time limit stated in Rule 18 or where, the Mediator/Conciliator is of the view that no settlement is possible, he shall report the same to the Court in writing.



Rule 25 : Court to fix a date for recording settlement and passing decree

(a) On receipt of any settlement, the court shall fix a date of hearing normally within seven days but in any case not beyond a period of fourteen days. On such date of hearing, if the Court is satisfied that the parties have settled their dispute(s), it shall pass a decree in accordance with terms thereof.

(b) If the settlement disposes of only certain issues arising in the suit or proceeding, on the basis of which any decree is passed as stated in Clause (a), the Court shall proceed further to decide remaining issues.

Rule 26 : Fee of Mediator/Conciliator and costs

(a) At the time of referring the dispute(s) to Mediation/Conciliation, the Court may fix the fee of the Mediator/Conciliator.

(b) As far as possible, a consolidated sum may be fixed rather than for each session or meeting.

(c) Where there are two Mediators/Conciliators as in clause (b) of Rule 2, the Court shall fix the fee payable to the Mediators/Conciliators, which shall be shared equally by the parties.

(d) The expense of the Mediation/Conciliation including the fee of the Mediator/Conciliator, costs of administrative assistance, and other ancillary expenses concerned, shall be borne equally by the various contesting parties or as may be otherwise directed by the Court.

(e) Each party shall bear the costs for production of witnesses on his side, including experts, or for production of documents.



(f) The Mediator/Conciliator may, before the commencement of the Mediation/Conciliation, direct the parties to deposit equal sums, tentatively, to the extent of 40% of the probable costs of the Mediation/Conciliation, as referred to in clause (d), including his fee. The remaining 60% shall be deposited with the Mediator/Conciliator, after the conclusion of the Mediation/Conciliation. The amount deposited towards costs shall be expended by the Mediator/Conciliator by obtaining receipts and a settlement of account shall be filed, by the Mediator/Conciliator in the Court.

(g) If any party or parties do not pay the amount referred to in Clause (e); the Court shall, on the application of the Mediator/Conciliator, or any party, issue appropriate directions to the concerned parties.

(h) The expense of the Mediation/Conciliation, including fee, if not paid by the parties, the Court shall, on the application of the Mediator/Conciliator or the parties, direct the concerned parties to pay, and if they do not pay, the Court shall recover the said amounts as if there was a decree for the said amount.

Rule 27 : Ethics to be followed by Mediator/Conciliator

The Mediator/Conciliator shall :

(a) follow and observe these Rules strictly and with due diligence;

(b) not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a Mediator/Conciliator;

(c) uphold the integrity and fairness of the Mediation/Conciliation process;

(d) ensure that the parties involved in the Mediation/Conciliation are fairly informed and



have an adequate understanding of the procedural aspects of the process;

(e) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;

(f) disclose any interest or relationship likely to affect impartiality or which might have an appearance of partiality or bias;

(g) avoid, while communicating with the parties, any impropriety or appearance of impropriety;

(h) be faithful to the relationship of trust and confidentiality imposed in the office of Mediator/Conciliator;

(i) conduct all proceedings related to the resolutions of disputes, in accordance with the applicable law;

(j) recognize that the Mediation/Conciliation is based on principles of self-determination by the parties and that the Mediation/Conciliation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;

(k) maintain the reasonable expectations of the parties as to confidentiality, refrain from promises or guarantees of results.

Rule 28 : Transitory provisions

Until a panel of Mediators/Conciliators is prepared by the High Court and the District & Sessions Judge as stated in Rule 3, the Courts may nominate a Mediator/Conciliator of their choice if the Mediator/Conciliator belongs to the various classes of persons referred to in Rule 4 and is duly qualified and is not disqualified, taking into account the suitability of the Mediator/Conciliator for resolving the particular dispute(s).



Resolve Disputes

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