

**JUDGEMENTS
ON
MEDIATION**

Salem Advocate Bar Association Vs. UOI

AIR 2003 SC 189

The Amendments which were made in Section 89 CPC were held to be constitutionally valid. Supreme Court observe that amendments are effective and would result in quicker dispensation of justice.

Salem Advocate Bar Association Vs. UOI

AIR 2005 SC 3353

Civil Procedure Alternative Dispute Resolution and Mediation Rules, 2003 were held to be constitutionally valid by the Court.

Afcons Infra Ltd. Vs. Cherian V. Cons. Company

2010 Rajdhani Law Reporter 555
(SC) CA 6000 of 2010

1. It is not necessary for the Court to formulate or re-formulate possible terms of settlement as given in Section 89
2. Definition of Judicial Settlement and Mediation in Clauses (c) & (d) of Section 89 (2) should be inter-changed to correct the drafting error in CPC

3. Section 89 has to be read with Rule 1A of Order X CPC which requires the Court direct the parties to opt for any of the five modes of ADR processes and on their option refer the matter.
4. After the pleadings are complete and after seeking admission/denial wherever required, and before framing issues the court will have recourse to Section 89 of CPC. The Court shall consider and record the nature of the dispute, inform the parties about the five options available, take note of their preferences and then refer them to one of ADR processes.
5. If there is no agreement between the parties for reference to Arbitration, the Court cannot refer the matter to Arbitration u/s 89 CPC. However, the Court can refer the matter to Arbitration and Conciliation, if there is mutual consent of both the parties.

6. No consent of parties is required for referring the matter to Mediation, Lok Adalat or Judicial Settlement.
7. Regarding Judicial Settlement, the Court held that if the Judge In Charge of the case assist the parties and if negotiations failed, he should not deal with the matter and may reclude himself. It is advisable to refer cases proposed for judicial settlement to another Judge.
8. Referral Court should keep track of the matter referred to ADR by fixing a date. ADR process should not become a tool in the hands of an unscrupulous litigant who wants to drag the proceedings.
9. Normally original record of the case should not be sent for ADR processes.

10. Court listed the **matters suitable** for ADR processes as under:
- (i) Money Claims
 - (ii) Specific Performance
 - (iii) Supply Disputes
 - (iv) Banker and Customer
 - (v) Builders & Customer
 - (vi) Landlord and Tenant
 - (vii) Insurer and Insured
 - (viii) Family Disputes like Divorce, Custody, Maintenance, 498A IPC, Partition,
 - (ix) Disputes between neighbor
 - (x) Employment/Labour/Industrial Disputes
 - (xi) Society Disputes
 - (xii) MACT cases

11. Court listed the **matters unsuitable** for ADR processes as under:
- (i) Representative Suits under Order 1 Rule 8 CPC
 - (ii) Election Disputes
 - (iii) Probate or Letters of Administration
 - (iv) Fraud, fabrication of documents, forgery, impersonation, coercion etc.
 - (v) Claims against minors, deities and mentally challenged and suits for declaration of title against government.
 - (vi) Prosecution for criminal offences.

12. When settlements reach the referral court, it should apply the principals of Order 23 Rule 3 of CPC and make a decree in terms of settlement. If, the matter in the settlement is not the subject matter of the court proceeding, the court will direct that it shall be governed by Section 74 of Arbitration & Conciliation Act or Section 21 of the Legal Services Authorities Act.

K. Srinivas Rao Vs. D.A. Deepa

AIR 2013 SC 2176

Though offence punishable u/s 498A IPC is not compoundable, in appropriate cases if the parties are willing and the court feels that there is element of settlement, it should direct the parties to explore mediation as an ADR.

In terms of Section 9 of the Family Courts Act, the Family Courts shall make all efforts to settle the matrimonial disputes through mediation, even if the counselor submits a failure report.

All mediation Centre shall set up pre-litigation desks/clinics, give them wide publicity and make efforts to settle matrimonial disputes as pre-litigation stage.

Rajesh Kumar Bajaj Vs. Purshotam Lal Bajaj and Ors.

MANU/DE/2080/2009

On emotional ground the defendant No.2 cannot turn around and oppose the settlement which has already been agreed by the parties at the time of modification proceedings.

Rakesh Kumar Vs. State & Another (Delhi High Court)

The settlement in the mediation will become final and binding once the referral court records the settlement and disposed off the matter in terms thereof.

B.S. Krishna Murthy & Anr. Vs. B.S. Nagaraj & Ors.

SLP (Civil) No. 2896 of 2010
decided on 14.01.2011

In our opinion, the lawyers should advise their clients to try for mediation for resolving the disputes, especially where relationships, like family relationship, business relationships, are involved, otherwise, the litigation drags on for years and decades often ruining both the parties.

Gurvinder Singh Vs. State

2012 (3) JCC 1772

Electricity Act, 2003 – Section 39 & 44 – Quashing of FIR – Allegations relating to theft of electricity – Parties found to have settled the matter under the aegis of Delhi High Court Mediation & Conciliation Centre – Resultantly, FIR directed to be quashed even after filing of charge-sheet.

State of Assam Vs. UOI

(2010) 10 SCC 408

Determination of the boundary between the states – dispute between the State of Assam and State of Nagaland by mediation Original suit under Article 131 of the Constitution of India filed by the State of Assam against the State of Nagaland – Two mediators and their assistants will first have three sittings with the Chief Secretaries of Assam and Nagaland

Naresh Kumar and Ors. Vs. Ashok Arora (DHC)

MANU/DE/9778/2007

There was no ground to resile as settlement was before Mediation – If such attempt was permitted, it would negate very purpose for which Section 89 of the Code was inserted by Parliament by way of amendment – Therefore, it was not open to Appellate to challenge said judgment and decree to which Appellant was consenting party.

Jasbir & others Vs. State & Another

142 (2007) DLT 141

Once the parties reach an agreement by the process of mediation, it would be in the public interest to attach importance to such a process and treat the settlement as a solemn settlement. Otherwise the movement of mediation may suffer if the parties can still backout.

This judgment was followed in the subsequent judgments by Delhi High Court and other High Courts.

- Purushotam Gupta Vs. State, Judgment dated 06.07.2009 in CS(OS) No.1495/2005 (DHC)
- Dalbir Singh Vs. State Judgment dated 23.08.2011 in Crl. M.C. No.1852/2011 (DHC)
- Sanjay Jain Vs. NCT of Delhi Judgment dated 31.01.2012 in Crl. M.C. No.2145 (DHC)
- Surinder Kaur & Ors. Vs. Pritam Singh & Ors.; 154 (2008) DLT 598

□ Abdul Saliq Khan Vs. Nahid Khan; RSA No.30/2011; Judgment dated 25.02.2011 DHC

□ Semant Sinha Vs. State; Cr.W.P. No.1450/2014 judgment dated 03.02.2015

□ Sunil Badolia Vs. State; Cr.M.C.No.1847 judgment dated 12.08.2015

Sachin Kumar @ Satpal Vs. The State

Crl. MC. No.2601 of 2015 dated
23.09.2015

Mediators are directed that in cases where the amount is not paid before the Mediators, while recording the amount already paid by the parties, they shall also ascertain some relevant facts, viz., the receipt and mode of payment, and this fact shall also invariably be incorporated in their reports.

Moti Ram (D) TR. LRs & Another Vs. Ashok Kumar & Another

Civil Appeal No.1095/2008
Order dated 07.12.2010

If the mediation is unsuccessful, then the mediator should only write one sentence in his report and send it to the Court stating that the 'Mediation has been unsuccessful'. Beyond that, the mediator should not write anything which was discussed, proposed or done during the mediation proceedings.

P.T. Thomas Vs. Thomas Job (2005) 6 SCC 478

Award of the Lok Adalat is decision of the court and is final. No appeal u/s 96(3) CPC lies against it.

Angel Infrastructure (P) Ltd. Vs. Ashok Manchanda

EFA (OS) No.1 decided on
09.03.2016 by DHC

Under Rule 25 of Delhi Mediation and Conciliation Rules 2004 framed under Section 89 of CPC, Court has no option but to pass a decree as per the settlement arrived in between the parties.

K.N. Gondan Kutty Menon Vs. C.D. Shaji

(2012) 2 SCC 51

If a case u/s 138 of NI Act is referred to Lok Adalat by a criminal court and if the matter is settled in the Lok Adalat, then by virtue of the deeming provision u/s 21 of the Act, an award passed by the Adalat based on the compromise has same effect as that of decree and capable of being executed by the Civil Court.

Kaushalya Devi Vs. Roop Kishore Khroa

(2011) 4 SCC 593

Distinction between traditionally criminal offences and offence under Negotiable Instrument Act by Supreme Court. The gravity of a complaint under the NI Act cannot be equated with an offence under IPC of 1860 or other criminal offences. An offence under the Negotiable Instrument Act, 1881, is almost in the nature of a civil wrong which has been given criminal overtones. The cases under 138 NI Act considered to be appropriate cases for mediation.

Hardeep Singh Bajaj Vs. ICICI Bank

(2013) SCC Online Del
124

Delhi High Court has noted that “once the settlement reached is accepted by the Court or an undertaking is given, it becomes binding on the parties”.

Karuna Bhalla Vs. Rajeev Bansal

Execution Petition

No.44/2017 decided on

09.05.2017

The attempt of the mediator should be to bind the parties by providing such default clauses as may discourage further litigation. A Settlement Agreement drawn up by the Mediation Cell of this Court should not be allowed to furnish a cause of action to provide for continuation of the suit in the event of default, only allows an unscrupulous litigant to gain time under the garb of settlement and thereafter continue with the suit. **Justice Rajiv Sahai Endlaw**

Shikha Bhatia Vs. Gaurav Bhatia

(2011) DLT 128

Where an amicable settlement between the husband and wife was recorded and an order was passed by the Delhi High Court on an anticipatory bail application filed by the husband and his parents and later on, the husband had willfully violated the undertakings given by him in the agreement, compelling the wife to file a contempt petition, the Learned Single Judge arrived at a conclusion that the husband had willfully and deliberately disregarded the settlement recorded in court and on the strength of the said settlement, had virtually stolen an order of bail from the Court. It was therefore, held that the husband had interfered in the judicial process and was guilty of contempt of court.

Vikram Bakshi Vs. Sonia Khosla (D) by LRs

SLP (C) No.23796/2010

Mediation ensures a just solution acceptable to all the parties to dispute thereby achieving 'win-win' situation. It is only mediation that puts the parties in control of both their disputes and its resolution. It is mediation through which the parties can communicate in a real sense with each other, which they have not been able to do since the dispute started. It is mediation which makes the process voluntary and does not bind the parties against their wish.

It is mediation that saves precious time, energy as well as cost which can result in lesser burden on exchequer when poor litigants are to be provided legal aid. It is mediation which focuses on long term interest and helps the parties in creating numerous options for settlement. It is mediation that restores broken relationship and focuses on improving the future not of dissecting past. It is based on an alternative set of values in which formalism is replaced by informality of procedure, fair trial procedures by direct participation of parties, consistent norm enforcement by norm creation, judicial independence by the involvement of trusted peers, and so on. This presents an alternative conceptualization of justice.

Dayawati Vs. Yogesh Kumar Gosain

Crl. Ref. No. 1/2016
DHC

If a settlement is reached during the mediation, the settlement agreement which is drawn up must incorporate:

- A clear stipulation as to the amount which is agreed to be paid by the party;
- A clear and simple mechanism/method of payment and the manner and mode of payment
- Undertakings of all parties to abide and be bound by the terms of the settlement must be contained in the agreement to ensure that the parties comply with the terms agreed upon;
- A clear stipulation, if agreed upon, of the penalty which would ensue to the party if a default of the agreed terms is committed in addition to the consequences of the breach of the terms of the settlement ;

- An unequivocal declaration that both parties have executed the agreement after understanding the terms of the settlement agreement as well as of the consequences of its breach.
- A stipulation regarding the voluntariness of the settlement and declaration that the executors of the settlement agreement were executing and signing the same without any kind of force, pressure and undue influence.

Rajat Gupta and Ors. Vs. Rupali Gupta and Ors.

249(2018)DLT 289

The Court must apply its judicial mind to satisfy itself that the settlement arrived at between the parties is not only bonafide, equitable and voluntary in nature, but is enforceable in law and is not opposed to public policy. The court must also satisfy itself that there is no impediment of any nature in accepting the said settlement and the undertakings of the parties and binding them down thereto.

**THANK
YOU**