93. For the foregoing reasons, the appeals filed by BOL deserve to be allowed and are accordingly allowed by setting aside the order passed by the learned Single Judge and confirmed by the Division Bench and by restoring the award passed by the arbitrator. In view of the order passed in the appeals of BOL, the appeal filed by HCL deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

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(BEFORE RUMA PAL AND DR. AR. LAKSHMANAN, JJ.)

P.T. THOMAS .. Appellant;

Versus

THOMAS JOB .. Respondent.

Civil Appeal No. 4677 of 2005†, decided on August 4, 2005

A. Legal Aid — Legal Services Authorities Act, 1987 — S. 21 — Nature and binding effect of Lok Adalat award — Held, though a Lok Adalat award is not the result of a contest on merits, it is as equal and on a par with a decree on compromise and will have the same binding effect and be conclusive — It is final and permanent, is equivalent to a decree executable, and is an ending to the litigation among the parties — Civil Procedure Code, 1908, Ss. 89, 11, 96(3) and Or. 23 R. 3 (Paras 25, 26 and 28)

B. Civil Procedure Code, 1908 — Or. 23 R. 3, Ss. 11 and 89 — Decree by consent or compromise — Binding effect of — Approach to be taken by court — Held, a judgment by consent is as effective an estoppel between the parties as a judgment whereby court exercises its mind on a contested case — Court's attempt should be to give life and enforceability to compromise award and not to defeat it on technical grounds (Paras 25, 26 and 28)

Sailendra Narayan Bhanja Deo v. *State of Orissa*, 1956 SCR 72 : AIR 1956 SC 346; *Kinch* v. *Walcott*, 1929 AC 482 : 1929 All ER Rep 720 : 98 LJPC 129 (PC), *relied on*

South American and Mexican Co., ex p Bank of England, In re, (1895) 1 Ch 37 : (1891-94) All ER Rep 680 : 71 LT 594 (CA); *Secy. of State for India in Council* v. *Ateendranath Das*, ILR (1936) 63 Cal 550; *Bhaishanker Nanabhai* v. *Moraji Keshavji & Co.*, ILR (1912) 36 Bom 283 : 12 Bom LR 950; *Raja Kumara Venkata Perumal Raja Bahadur* v. *Thatha Ramasamy Chetty*, ILR (1912) 35 Mad 75 : 21 MLJ 709, *approved*

C. Legal Aid — Legal Services Authorities Act, 1987 — S. 21(2) — Lok Adalat award — Final nature of — Lok Adalat award being passed with consent of parties, no appeal shall lie therefrom as provided under S. 96(3) CPC — Furthermore, the same cannot be challenged under any of the remedies available under law, including by invoking Art. 226 of the Constitution — Judicial review cannot be invoked in such awards, especially on grounds amounting to a challenge to the factual findings or appraisal of evidence — Civil Procedure Code, 1908 — Ss. 96(3), 114, 115 and 89 — Constitution of India — Art. 226 (Paras 16, 21 to 23)

Punjab National Bank v. *Laxmichand Rai*, AIR 2000 MP 301; *Board of Trustees of the Port of Visakhapatnam* v. *Presiding Officer, Permanent, Lok Adalat-cum-Secy., District Legal Services Authority*, (2000) 5 An LT 577, *approved*

† Arising out of SLP (C) No. 20179 of 2003. From the Judgment and Order dated 27-8-2003 of the Kerala High Court in CRP No. 1136 of 2003(A)

D. Legal Aid — Legal Services Authorities Act, 1987 — Ss. 21 and 22 — Power of (executing) court in relation to Lok Adalat award — Power to extend time — Held, (executing) court has all the powers in relation to Lok Adalat award as it has in relation to a decree passed by itself — This includes power to extend time in appropriate cases — Civil Procedure Code, 1908 — Ss. 89, 9, 47 and 148 (Paras 16 and 28)

E. Legal Aid — Legal Services Authorities Act, 1987 — Ss. 19, 21 and 22 — Benefits of Lok Adalat — Enumerated — Benefits being in relation to absence of court fees, procedural flexibility and speedy trial, direct interaction of parties with the judge, binding nature of award and non-appealability thereof — Civil Procedure Code, 1908, S. 89 (Para 19)

F. Legal Aid — Legal Services Authorities Act, 1987 — Ss. 21 and 22 — Nature and mode of adjudication to be followed by Lok Adalat, explained, and laid down (Paras 23 and 24)

G. Civil Procedure Code, 1908 — S. 115 — Jurisdiction under — Scope — Investigation into questions of fact and appraisal of evidence, held, not contemplated (Paras 7 and 10)

H. Legal Aid — Legal Services Authorities Act, 1987 — S. 21 — Execution of Lok Adalat award — Propriety — Obligations of parties — Appellant obtaining decree of ejectment against respondent — Pending appeal thereagainst, Lok Adalat making award on reference thereto — Lok Adalat award providing for execution of sale deed by respondent on payment of Rs 9.5 lakhs by appellant within two years of award — On failure to pay on time, appellant to forego said right and be entitled to only Rs 3.5 lakhs from respondent — Respondent not executing sale deed within time fixed, despite repeated requests by appellant and steadfastly refusing to accept service of appellant's legal notices — On appellant's application, executing court overruling objections of respondent and granting time to appellant — Appellant depositing the Rs 9.5 lakhs within time given therefor by executing court — However, High Court in revision setting aside execution petition — Propriety — Held, from the facts it is evident that appellant decree-holder had all along expressed his readiness and willingness to deposit amount as per award and get sale deed executed — High Court has misunderstood terms of award — Obligation was on respondent to evince his willingness to execute sale deed within two years and not vice versa — There was already a decree of ejectment against him — Settlement was a concession in favour of respondent to give him time to give vacant possession — Therefore initiative had to come from respondent — Not only did respondent not take the initiative as required, he adopted delaying tactics — Hence interference by High Court, not proper — Further held, this is a fit case for awarding costs — Respondent directed to execute sale deed within two weeks of this order — Civil Procedure Code, 1908 — Ss. 89, 35 and Or. 23 R. 3 (Paras 7, 10 to 14, 28 and 29)

I. Civil Procedure Code, 1908 — Or. 5 Rr. 9 and 9-A — Deemed service of notice — When obtains — Notice correctly addressed and despite intimation by post office, not accepted and returned unserved — Held, in such circumstances it is presumed that notice has been served — Evidence Act, 1872 — Ss. 114 Ill. (e) and 16 — General Clauses Act, 1897, S. 27 (Paras 14 and 15)

1. Posts and Telegraph — Post Office Act, 1898 — S. 27 — Applicability — Deemed service of notice — Presumption under Post Office Act, 1898 as distinguished from that under S. 114 Ill. (e), Evidence Act, 1872 — Operation of — Endorsement made by postman on notice issued — Nevertheless respondent not accepting notice and it being returned unserved — Held, there was no obligation cast on appellant to examine postman as assumed by High Court — Presumption under S. 114 Ill. (e), Evidence Act, 1872 operates apart from that under Post Office Act — In any case, requirement of S. 27, Post Office Act, 1898 had been complied with — Civil Procedure Code, 1908 — Or. 5 Rr. 9 and 9-A— General Clauses Act, 1897, S. 27 (Para 15)

Appeal allowed D-M/32717/C

Advocates who appeared in this case :
T.L.V. Iyer, Senior Advocate (T.G. Narayanan Nair, Advocate, with him) for the Appellant;
M.P. Vinod, Ajay K. Jain and P. Sajith, Advocates, for the Respondent.

Chronological list of cases cited *on page(s)*

1. (2000) 5 An LT 577, *Board of Trustees of the Port of Visakhapatnam* v. *Presiding Officer, Permanent, Lok Adalat-cum-Secy., District Legal Services Authority* 487c
2. AIR 2000 MP 301, *Punjab National Bank* v. *Laxmichand Rai* 486g-h
3. 1956 SCR 72 : AIR 1956 SC 346, *Sailendra Narayan Bhanja Deo* v. *State of Orissa* 487f
4. ILR (1936) 63 Cal 550, *Secy. of State for India in Council* v. *Ateendranath Das* 488d, 488d-e
5. 1929 AC 482 : 1929 All ER Rep 720 : 98 LJPC 129 (PC), *Kinch* v. *Walcott* 487g, 488b-c
6. ILR (1912) 36 Bom 283 : 12 Bom LR 950, *Bhaishanker Nanabhai* v. *Moraji Keshavji & Co.* 488d
7. ILR (1912) 35 Mad 75 : 21 MLJ 709, *Raja Kumara Venkata Perumal Raja Bahadur* v. *Thatha Ramasamy Chetty* 488d
8. (1895) 1 Ch 37 : (1891-94) All ER Rep 680 : 71 LT 594 (CA), *South American and Mexican Co., ex p Bank of England, In re* 487g, 487g-h

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J.— Leave granted.

2. The above appeal is directed against the final order of the High Court of Kerala at Ernakulam dated 27-8-2003 in CRP No. 1136 of 2003 allowing the revision petition filed by the respondent herein.

3. The appellant and the respondent are brothers, the respondent being the elder. They have another brother who is well employed in the United States. The three brothers partitioned the property left behind by their father by metes and bounds. The respondent was running a theatre. A part of the theatre fell in the property allotted to the appellant. Since the respondent did not vacate and give vacant possession to the appellant, he was constrained to file a suit for a mandatory injunction for removal of the building and to surrender vacant possession. The appellant also prayed for a decree for recovery of possession.

4. The appellant's suit was decreed as prayed for. When the matter was pending in appeal at the instance of the respondent in the District Court, the dispute was referred to the Lok Adalat constituted under the Legal Services Authorities Act, 1987 for resolution of the dispute. The matter was settled in the Lok Adalat. The award of the Lok Adalat dated 5-10-1999 provided for sale to the appellant or his nominee of the property scheduled to the award after a period of one year and within a period of two years on payment of a sum of Rs 9.5 lakhs to the respondent and on default of the respondent to execute the document, the appellant could get it executed through court. On the other hand, in case of default on the part of the appellant, he had to give up his aforesaid right and instead be entitled to be paid Rs 3.5 lakhs by the respondent.

5. The respondent did not execute the sale deed within the time fixed despite repeated requests by the appellant. The appellant, therefore, sent a lawyer's notice on 3-10-2001 to the respondent calling upon him to execute the sale deed. The respondent did not receive the notice and the notice was returned unserved to the appellant. The appellant thereafter sent a telegram on 26-10-2001 requiring the respondent to execute the sale deed and also sent him a copy of his earlier notice dated 3-10-2001 by certificate of posting. There was no response from the respondent. The appellant was, therefore, constrained to move for execution of the award by filing petition in the trial court, which was opposed on various grounds. The Subordinate Judge overruled all the objections and the appellant was directed to deposit a sum of Rs 9.5 lakhs within three days i.e. on or before 8-4-2003. The appellant, however, deposited the amount one day earlier on 7-4-2003 the next working day. But, the High Court allowed the revision filed by the respondent and dismissed the execution petition on grounds, which according to the appellant, are irrelevant and incorrect. Hence, the appellant preferred the above special leave petition.

6. We have heard Mr T.L.V. Iyer, learned Senior Counsel for the appellant and Mr M.P. Vinod, learned counsel for the respondent and perused the pleadings, orders passed by the courts below and the annexures filed along with the appeal.

7. Mr T.L.V. Iyer, learned Senior Counsel appearing for the appellant submitted that the High Court has exceeded its jurisdiction under Section 115 CPC in entering into the investigation of questions of fact and appraisal of evidence in setting aside the well-considered order of the executing court. He further submitted that the High Court is in error in holding that the appellant did not have the funds with him to have the deed of sale executed in his favour and the reasoning and the premises on which such a conclusion is based are faulty and fallacious besides being beyond jurisdiction. It is further submitted that the respondent had not performed his obligations by evincing his willingness to execute the sale deed on receipt of the amount of Rs 9.5 lakhs. Concluding his arguments, Mr Iyer submitted that the view taken by the High Court would totally defeat the object and purposes of the Legal

Services Authorities Act and render the decisions of the Lok Adalat meaningless.

8. Per contra, Mr Vinod, learned counsel for the respondent submitted that the appellant has not paid the sum of Rs 9.5 lakhs after one year from the date of the award, namely, 5-10-1999 and at any rate within two years therefrom. It is further submitted that the appellant also did not deposit the amount before filing the execution petition as contemplated in the award. Even when he was examined in court on 22-2-2003, he had not deposited the said amount. According to Mr Vinod, the award of the Lok Adalat cannot be equated with a decree and it only incorporates an agreement between the parties and that in case of any violation of the said agreement, or the terms of the compromise recorded in the award, the parties lose their right to get the same executed and the compromise stands withdrawn. It is further argued that the appellant admittedly had not produced any material to show that the appellant had the resources to pay the said amount at any relevant point of time or that the said amount was ever offered to the respondent at any point of time and, therefore, the appellant is not entitled to any relief in this appeal.

9. It is further submitted that there is no effective service of any notice on the respondent before 5-10-1999 and the only endorsement is that the respondent was absent. It is submitted that the appellant never had the money with him and the belated payment after the order of the executing court will not improve the case of the appellant to prove his readiness and willingness to deposit a sum of Rs 9.5 lakhs as agreed upon by him, and on the date specified, on the basis on which the matter was compromised before the Lok Adalat and an award was passed. Concluding his arguments, learned counsel submitted that there is no merit whatsoever in the grounds raised in this appeal and therefore, the appeal, which is clearly without any merits, deserves to be dismissed.

10. We have carefully considered the rival submissions made by both the learned counsel. We do not find any merit in the submissions made by learned counsel for the respondent. From the evidence and the documents filed, we see bona fides on the part of the appellant in giving effect to the compromise arrived at between parties in the Lok Adalat. We also see absolute merits in the submissions made by learned Senior Counsel, Mr T.L.V. Iyer.

11. It is seen from the records that the appellant was compelled to file the suit for recovery of possession of Plot No. 2 since the respondent herein refused to comply with the terms of the compromise arrived at between the parties. The suit was decreed on 26-7-1990 and appeal was filed by the respondent judgment-debtor before the District Court and during the pendency of the appeal the matter was compromised between parties on 5-10-1999. We have already extracted the terms of compromise in paragraph 4, supra. It is thus clear that the appellant decree-holder has approached the executing court on the ground that the respondent judgment-debtor failed to execute the sale deed after receiving Rs 9.5 lakhs from the decree-holder.

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Therefore the appellant prayed before the executing court that he should be permitted to deposit Rs 9.5 lakhs in that court and get the documents executed through court if the judgment-debtor failed to do so on issuance of notice for the purpose by the executing court. The respondent submitted that the compromise arrived at is a conditional one and the judgment-debtor is liable to execute the sale deed in favour of the decree-holder only if he remits the amount as agreed, and since the decree-holder has failed to comply with the conditions the judgment-debtor is not bound by the terms of the compromise. On the other hand the respondent judgment-debtor was ready and willing to deposit Rs 3.5 lakhs before the executing court as per the terms of the compromise.

12. Before the executing court witnesses were examined on both sides and Exhibits A-1 to A-8 and B-1 were produced by the respective parties. The executing court, accepting the evidence of PW 1 came to the conclusion that the notice issued requiring the respondent to execute the document as submitted in the award was not received by the judgment-debtor and it has been returned unclaimed. It is seen that notice was attempted to be served on the judgment-debtor on 4-10-2001 and since he was absent, intimation regarding the notice was given and the above notice was returned as unclaimed on 19-10-2001. The appellant after return of the Exhibit A-2 notice immediately sent a telegram to the judgment-debtor on 26-10-2001. The receipt issued for the telegram and certified true copy of the telegram were marked as Exhibits A-3 and A-4. The original telegram was produced on the side of the respondent and marked as an exhibit. By the telegram the judgment-debtor was intimated that the notice sent by the decree-holder through his advocate on 3-10-2001 was returned unclaimed and copy of that notice was being forwarded by certificate of posting and that he was always ready and willing to pay Rs 9.5 lakhs and get the sale deed executed in terms of the award. The copy of the Exhibit A-2 notice is marked as A-5, the certificate of posting obtained for issuing the copy of notice along with the copy of the telegram is marked as Exhibit A-6. Thus, it is clearly seen that the appellant decree-holder had expressed his readiness and willingness to deposit the amount as per the award and get the document executed.

13. It is argued on the side of the respondent that the appellant has not sufficient funds to fulfil the obligation as per the award and that the appellant had issued a notice and telegram so as to create some records in his favour that he was always willing and ready to pay the amount as per the award. It is submitted that it is only due to the default of the appellant that the execution of the sale deed has not taken place and therefore, the appellant is not entitled to any relief in this appeal. The learned Subordinate Judge on a consideration of the entire evidence placed on record granted the appellant three days' time to deposit Rs 9.5 lakhs before the said court upon which he could get the sale deed through court as stipulated in the award. The appellant as directed by the learned Subordinate Judge deposited the entire sum of Rs 9.5 lakhs in the sub-court on 7-4-2003 as could be seen from Annexure 6.

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14. We have also perused the order of the learned Single Judge of the High Court in revision. The learned Single Judge, in our view, has misunderstood the terms of the award. The obligation was on the respondent to evince his willingness to execute the sale deed within two years and not vice versa as assumed by the High Court. There was already a decree of ejectment against the respondent in the suit in the trial court and it was his appeal that was sought to be settled in the Lok Adalat. The settlement was a concession in his favour giving a breathing time to vacate and give vacant possession. Therefore, the initiative had to come from the respondent after offering to execute the sale deed whereupon it became necessary to comply with his obligations. However, without taking any initiative the respondent adopted the delaying tactics by alleging that the appellant was not able to provide the requisite funds for purchase and forgetting the fact that the appellant's brother is in the USA and providing the requisite funds for purchase. It was he, in fact, who had provided the amount which was deposited on 7-4-2003 and not on 8-4-2003 as assumed by the High Court. It is, thus, seen that the appellant has performed his obligation. He had sent the notice on 3-10-2001 and it was well before the expiry of time on 5-10-2001. Though the notice was correctly addressed and despite the intimation by the post office, the notice was not accepted by the respondent and was returned unserved. In such circumstances, the presumption of law is that the notice has been served on the respondent.

15. The High Court, in our view, has also misinterpreted Section 27 of the Post Office Act, 1898. The requirement of the section has been complied with in this case. The reasoning of the High Court on this issue is not correct and not in accordance with factual position. In the notice issued, the postman has made the endorsement. This presumption is correct in law. He had given notice and intimation. Nevertheless, the respondent did not receive the notice and it was returned unserved. Therefore, in our view, there is no obligation cast on the appellant to examine the postman as assumed by the High Court. The presumption under Section 114 of the Evidence Act, 1872 operates apart from that under the Post Office Act, 1898.

16. In our opinion, the award of the Lok Adalat is fictionally deemed to be a decree of court and therefore the courts have all the powers in relation thereto as it has in relation to a decree passed by itself. This, in our opinion, includes the powers to extend time in appropriate cases. In our opinion, the award passed by the Lok Adalat is the decision of the court itself though arrived at by the simpler method of conciliation instead of the process of arguments in court. The effect is the same. In this connection, the High Court has failed to note that by the award what was put to an end was the appeal in the District Court and thereby the litigations between brothers forever. The view taken by the High Court, in our view, will totally defeat the object and purposes of the Legal Services Authorities Act, 1987 and render the decision of the Lok Adalat meaningless.

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17. Section 21 of the Legal Services Authorities Act, 1987 reads as follows:

"21. *Award of Lok Adalat.*—(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of Section 20, the court fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870 (7 of 1870).

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award."

Section 22 reads thus:

"22. *Powers of Lok Adalats.*—(1) The Lok Adalat shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:

(*a*) the summoning and enforcing the attendance of any witness and examining him on oath;

(*b*) the discovery and production of any document;

(*c*) the reception of evidence on affidavits;

(*d*) the requisitioning of any public record or document or copy of such record or document from any court or office; and

(*e*) such other matters as may be prescribed.

(2) Without prejudice to the generality of the powers contained in sub-section (1), every Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

(3) All proceedings before the Lok Adalat shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every Lok Adalat shall be deemed to be a civil court for the purpose of Section 195 and Chapter 26 of the Code of Criminal Procedure, 1973 (2 of 1974)."

18. *What is Lok Adalat?*

"The 'Lok Adalat' is an old form of adjudicating system prevailed in ancient India and its validity has not been taken away even in the modern days too. The words 'Lok Adalat' mean 'People's Court'. This system is based on Gandhian principles. It is one of the components of ADR system. As the Indian courts are overburdened with the backlog of cases and the regular courts are to decide the cases involve a lengthy, expensive and tedious procedure. The court takes years together to settle even petty cases. Lok Adalat, therefore provides alternative resolution or devise for expedious and inexpensive justice.

In Lok Adalat proceedings there are no victors and vanquished and, thus, no rancour.

Experiment of 'Lok Adalat' as an alternate mode of dispute settlement has come to be accepted in India, as a viable, economic, efficient and informal one.

LOK ADALAT is another alternative to JUDICIAL JUSTICE. This is a recent strategy for delivering informal, cheap and expeditious justice to the common man by way of settling disputes, which are pending in courts and also those, which have not yet reached courts by negotiation, conciliation and by adopting persuasive, common sense and human approach to the problems of the disputants, with the assistance of specially trained and experienced members of a team of conciliators."

19. ***Benefits under Lok Adalat***

1. There is no court fee and if court fee is already paid the amount will be refunded if the dispute is settled at Lok Adalat according to the rules.

2. The basic features of Lok Adalat are the procedural flexibility and speedy trial of the disputes. There is no strict application of procedural laws like the Civil Procedure Code and the Evidence Act while assessing the claim by Lok Adalat.

3. The parties to the dispute can directly interact with the judge through their counsel which is not possible in regular courts of law.

4. The award by the Lok Adalat is binding on the parties and it has the status of a decree of a civil court and it is non-appealable, which does not cause the delay in the settlement of disputes finally.

In view of above facilities provided by "the Act" Lok Adalats are boon to the litigating public that they can get their disputes settled fast and free of cost amicably.

Award of Lok Adalat

20. The Lok Adalat shall proceed and dispose the cases and arrive at a compromise or settlement by following legal principles, equity and natural justice. Ultimately, the Lok Adalat passes an award, and every such award shall be deemed to be a decree of the civil court or as the case may be, which is final.

Award of Lok Adalat shall be final

21. The Lok Adalat will pass the award with the consent of the parties, therefore there is no need either to reconsider or review the matter again and again, as the award passed by the Lok Adalat shall be final. Even as under Section 96(3) CPC "no appeal shall lie from a decree passed by the court with the consent of parties". The award of the Lok Adalat is an order by the Lok Adalat with the consent of the parties, and it shall be deemed to be a decree of the civil court, therefore an appeal shall not lie from the award of the Lok Adalat as under Section 96(3) CPC.

22. In *Punjab National Bank* v. *Laxmichand Rai*[1] (AIR at p. 304, para 9) the High Court held that:

"This provision of the Act shall prevail in the matter of filing an appeal and an appeal would not lie under the provisions of Section 96

1 AIR 2000 MP 301

CPC. Lok Adalat is conducted under an independent enactment and once the award is made by a Lok Adalat the right of appeal shall be governed by the provisions of the Legal Services Authorities Act. When it has been specifically barred under provisions of Section 21(2), no appeal can be filed against the award under Section 96 CPC."

The Court further stated that: (AIR pp. 304-05, para 14)

"*14.* It may incidentally be further seen that even the Code of Civil Procedure does not provide for an appeal under Section 96(3) against a consent decree. The Code of Civil Procedure also intends that once a consent decree is passed by civil court finality is attached to it. Such finality cannot be permitted to be destroyed, particularly under the Legal Services Authorities Act, as it would amount to defeat the very aim and object of the Act with which it has been enacted. Hence, we hold that the appeal filed is not maintainable."

23. The High Court of Andhra Pradesh held that, in *Board of Trustees of the Port of Visakhapatnam* v. *Presiding Officer, Permanent, Lok Adalat-cum-Secy., District Legal Services Authority*[2] the award is enforceable as a decree and it is final. On all fours, the endeavour is only to see that the disputes are narrowed down and make the final settlement so that the parties are not again driven to further litigation or any dispute. Though the award of a Lok Adalat is not a result of a contest on merits just as a regular suit by a court in a regular trial is, however, it is as equal and on a par with a decree on compromise and will have the same binding effect and be conclusive. Just as the decree passed on compromise cannot be challenged in a regular appeal, the award of the Lok Adalat, being akin to the same, cannot be challenged by any of the regular remedies available under law, including by invoking Article 226 of the Constitution and challenging the correctness of the award, on any ground. Judicial review cannot be invoked in such awards, especially on the grounds as were raised in the revision petition.

24. The award of Lok Adalat is final and permanent which is equivalent to a decree executable, and the same is an ending to the litigation among parties.

25. In *Sailendra Narayan Bhanja Deo* v. *State of Orissa*[3] the Constitution Bench held as follows: (SCR p. 82)

> A judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the court exercises its mind on a contested case. (*South American and Mexican Co., ex p Bank of England, In re*[4] & *Kinch* v. *Walcott*[5])
>
> "In *South American and Mexican Co., ex p Bank of England, In re*[4], it has been held that a judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the court exercises

2 (2000) 5 An LT 577

3 1956 SCR 72 : AIR 1956 SC 346

4 (1895) 1 Ch 37 : (1891-94) All ER Rep 680 : 71 LT 594 (CA)

5 1929 AC 482 : 1929 All ER Rep 720 : 98 LJPC 129 (PC)

its mind on a contested case. Upholding the judgment of Vaughan Williams, J., Lord Herschell said (Ch p. 50):

> 'The truth is, a judgment by consent is intended to put a stop to litigation between the parties just as much as is a judgment which results from the decision of the Court after the matter has been fought out to the end. And I think it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgments, and were to allow questions that were really involved in the action to be fought over again in a subsequent action.'

To the like effect are the following observations of the Judicial Committee in *Kinch* v. *Walcott*[5] (AC at p. 493):

> 'First of all Their Lordships are clear that in relation to this plea of estoppel it is of no advantage to the appellant that the order in the libel action which is said to raise it was a consent order. For such a purpose an order by consent, not discharged by mutual agreement, and remaining unreduced, is as effective as an order of the Court made otherwise than by consent and not discharged on appeal.' "

26. The same principle has been followed by the High Courts in India in a number of reported decisions. Reference need only be made to the cases of *Secy. of State for India in Council* v. *Ateendranath Das*[6], ILR at p. 558; *Bhaishanker Nanabhai* v. *Moraji Keshavji & Co.*[7] and *Raja Kumara Venkata Perumal Raja Bahadur* v. *Thatha Ramasamy Chetty*[8]. In the *Calcutta case*[6] after referring to the English decisions the High Court observed as follows: (*Ateendranath Das case*[6], ILR p. 558)

> "On this authority it becomes absolutely clear that the consent order is as effective as an order passed on contest, not only with reference to the conclusions arrived at in the previous suit but also with regard to every step in the process of reasoning on which the said conclusion is founded. When we say 'every step in the reasoning' we mean the findings on the essential facts on which the judgment or the ultimate conclusion was founded. In other words the finding which it was necessary to arrive at for the purposes of sustaining the judgment in the particular case will operate as estoppel by judgment."

27. The Civil Procedure Code contains the following provisions: Order 23 Rule 3 provides for compromise of suit — where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, written and signed by the parties, the court after satisfying itself about the settlement, it can convert the settlement into a judgment decree.

28. We have already discussed the steps taken by the appellant to serve notice on the respondent and the steps taken by him to perform his

6 ILR (1936) 63 Cal 550
7 ILR (1912) 36 Bom 283 : 12 Bom LR 950
8 ILR (1912) 35 Mad 75 : 21 MLJ 709

obligations and sending of the notice and telegram, etc. would not have been done unless the appellant was ready with his obligations and the money all along. The appellant had waited till almost the last day for the respondent to perform his obligations. The High Court, in our view, has failed to note that the court's attempt should be to give life and enforceability to the compromise award and not to defeat it on technical grounds. This is a fit case, in our view, where the respondent ought to have been directed to execute the sale deed by extended time, if necessary. The High Court is also not correct in holding that the court has no jurisdiction to extend the time. In our view, the learned Subordinate Judge rightly extended the time for depositing the money which the High Court wrongly interfered with.

29. We, therefore, hold that the order passed by the High Court in CRP No. 1136 of 2003 is liable to be set aside. We do so accordingly. We direct the respondent herein to execute the sale deed within two weeks from today failing which the appellant could get the sale deed executed through court as stipulated in the award. The respondent is now entitled to withdraw Rs 9.5 lakhs from the Sub-Court, Alapuzha. Though this is a fit case for awarding costs, we refrain from doing so in view of the relationship between the parties.

30. The appeal is allowed. No costs.

(2005) 6 Supreme Court Cases 489

(BEFORE R.C. LAHOTI, C.J. AND G.P. MATHUR, J.)

ANDERSON WRIGHT & CO. .. Appellant;

Versus

AMAR NATH ROY AND OTHERS .. Respondents.

IA No. 4 in Civil Appeal No. 2663 of 2004†, decided on April 19, 2005

Rent Control and Eviction — Eviction — Eviction decree — Imposition of terms/conditions for grant of stay of execution of — Permissibility and rationale for — Mesne profits — Determination of, as condition for grant of stay — Following *Atma Ram case*, (2005) 1 SCC 705, mesne profits directed to be paid from date of eviction decree, at interim rate determined on basis of submissions of parties and rates of rent being paid for adjoining properties — Respondent landlords permitted to move or pursue application under Or. 20 R. 12 CPC for determination and recovery of mesne profits — Civil Procedure Code, 1908 — Or. 21 R. 26, Or. 41 R. 5 and Or. 20 R. 12 — Constitution of India — Art. 136 — Interference in rent control matters

Allowing the interim application in the terms below, the Supreme Court

Held :

Once a decree for eviction has been passed, in the event of execution of decree for eviction being stayed, the appellants can be put on such reasonable terms, as would in the opinion of the appellate court reasonably compensate the

† From the Judgment and Order dated 12-3-2004 of the Calcutta High Court in FA No. 23 of 2000

Jharkhand High Court Mediation Rules

Jharkhand High Court Mediation Rules

In exercise of the rule-making power under Part X of the Code of Civil Procedure, 1908 (5 of 1908) and clause (d) sub-section (2) of Section 89 of the said Code, the High Court of Jharkhand is hereby issuing the following Rules :-

PART - A

ALTERNATIVE DISPUTE RESOLUTION RULES

1. **Title** - These rules in Part I shall be called the Civil Procedure Alternative Disputes Resolution Rules, 2006.

2. **Procedure for directing parties to opt for alternative modes of settlement -**

   (a) The Court shall after recording admissions and denials at the first hearing of the suit under Rule 1 Order 10 and where it appears to the Court that there exist elements of settlement, which may be acceptable to the parties, formulate the terms of settlement and give them to the parties for their observations under sub-section (1) of Section 89 and parties shall submit to the Court their responses within thirty days of the first hearing.

   (b) At the next hearing, which shall be not later than thirty days of the receipt of responses, the Court may reformulate the terms of a possible settlement and shall direct the parties to opt for one of the modes of settlement of disputes outside the Court as specified in clauses (a) to (d) of sub-section (1) of Section 89 read with Rule 1-A of Order 10 in the manner stated hereunder:

   Provided that the Court, in the exercise of such power, shall not refer any dispute to arbitration or to judicial settlement by a person or institution without the written consent of all parties to the suit.

3. **Persons authorised to take decision for the Union of India, State Governments and others -**

   1) For the purpose of Rule 2, the Union of India or the Government of a State or Union Territory, all local authorities, all Public Sector Undertakings, all statutory corporations and all public authorities shall nominate a person or persons or group of persons who are authorised to take a final decision as to the mode of alternative dispute resolution in which it proposes to opt in the event of direction by the Court under Section 89 and such nomination shall be communicated to the High Court within the period of three months from the date of commencement of these Rules and the High Court shall notify all the subordinate courts in this behalf as soon as such nomination is received from such Government or authorities.

2) Where such person or persons or group of persons have not been nominated as aforesaid, such party as referred to in clause (1) shall, if it is a plaintiff, file alongwith the plaint or if it is a defendant, file alongwith or before the filing of the written statement, a memo into the Court, nominating a person or persons or group of persons who is or are authorised to take a final decision as to the mode of alternative dispute resolution, which the party prefers to adopt in the event of the Court directing the party to opt for one or other mode of alternative dispute resolution.

4. **Court to give guidance to parties while giving direction to opt.** – (a) Before directing the parties to exercise option under clause (b) of Rule 2, the Court shall give such guidance as it deems fit to the parties, by drawing their attention to the relevant factors which parties will have to take into account, before they exercise their option as to the particular mode of settlement, namely :

i) that it will be to the advantage of the parties, so far as time and expense, are concerned, to opt for one or other of these modes of settlement (referred to in Section 89) rather than seek a trial on the disputes arising in the suit;

ii) that, where there is no relationship between the parties which requires to be preserved, it may be in the interest of the parties to seek reference of the matter of arbitration as envisaged in clause (a) of sub-section (1) of Section 89;

iii) that, where there is a relationship between the parties which requires to be preserved, it may be in the interest of parties to seek reference of the matter to conciliation or mediation, as envisaged in clause (b) or (d) of sub-section (1) of Section 89;

Explanation – Disputes arising in matrimonial, maintenance and child custody matters shall, among others, be treated as cases where a relationship between the parties has to be preserved.

iv) that, where parties are interested in a final settlement which may lead to a compromise, it will be in the interests of the parties to seek reference of the matter to the Lok Adalat or to judicial settlement as envisaged in clause (c) of sub-section (1) of Section 89;

v) the difference between the different modes of settlement, namely, arbitration, conciliation, mediation and judicial settlement is as explained below :

Settlement by 'arbitration' means the process by which an arbitrator appointed by parties or by the Court, as the case may be, adjudicates the disputes between the parties to the suit and passes an award by the application of the provisions of the Arbitration and Conciliation Act, 1996.

Settlement by 'conciliation' means the process by which a conciliator, who is appointed by parties or by the Court, as the case may be, conciliates the disputes between the parties to the suit by the application of the provisions of the Arbitration and Conciliation Act, 1996 (29 of 1996) insofar as they relate to conciliation, and in particular, in exercise of his powers under Sections 67 and 73 of that Act, by making proposals for a settlement of the dispute and by formulating or reformulating the terms of a possible settlement: and has a greater role than a mediator.

Settlement by 'mediation' means the process by which a mediator appointed by parties or by the Court, as the case may be, mediates the dispute between the parties to the suit by the application of the provisions of the Mediation Rules, 2003 in Part II, and in particular, by facilitating discussion between parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasising that it is the parties own responsibility for making decisions which affect them.

Settlement in the Lok Adalat means settlement by the Lok Adalat as contemplated by the Legal Services Authorities Act, 1987.

Judicial settlement means a final settlement by way of compromise entered into before a suitable institution or person to which the Court has referred the dispute and which institution or person are deemed to be the Lok Adalats under the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) and where after such reference, the provisions of the said Act apply as if the dispute was referred to a Lok Adalat under the provisions of that Act.

5. Procedure for reference by the Court to the different modes of settlement

a) Where all parties to the suit decide to exercise their option and to agree for settlement by arbitration, they shall apply to the Court, within thirty days of the direction of the Court under clause (b) of Rule - 2 and the Court shall, within thirty days of the said application, refer the matter to arbitration and thereafter the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) which are applicable after the stage of making of the reference to arbitration under that Act, shall apply as if the proceedings were referred for settlement by way of arbitration under the provisions of that Act.

b) Where all the parties to the suit decide to exercise their option and to agree for settlement by the Lok Adalat or where one of the parties applies for reference to the Lok Adalat, the procedure envisaged under the Legal Services Authorities Act, 1987 and in particular by Section 20 of that Act, shall apply.

c) Where all the parties to the suit decide to exercise their option and to agree for judicial settlement, they shall apply to the Court within thirty days of the direction under clause (b) of Rule 2 and then the Court shall, within thirty days of the application, refer the matter to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and thereafter the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) which are applicable after the stage of making of the reference to the Lok Adalat under that Act, shall apply as if the proceedings were referred for settlement under the provisions of that Act.

d) Where non of the parties are willing to agree to opt or agree to refer the dispute to arbitration or the Lok Adalat, or to Judicial settlement within thiry days of the direction of the Court under clause (b) of Rule 2, they shall consider if they could agree for reference to conciliation or mediation, within the same period.

e) i) Where all the parties opt and agree for conciliation, they shall apply to the Court, within thirty days of the direction under clause (b) of Rule 2 and the Court shall, within thirty days of the application refer the matter to conciliation and thereafter the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) which are applicable after the stage of making of the reference to conciliation under that Act, shall apply, as if the proceedings were referred for settlement by way of conciliation under the provisions of that Act.

ii) Where all the parties opt and agree for mediation, they shall apply to the Court, within thirty days of the direction under clause (b) of Rule 2 and the Court shall, within thirty days of the application, refer the matter to mediation and then the Mediation Rules, 2003 in Part II shall apply.

f) Where under clause (d), all the parties are not able to opt and agree for conciliation or mediation, one or more parties pay apply to the Court within thirty days of the direction under clause (b) of Rule 2, seeking settlement through conciliation or mediation as the case may be, and in that event, the Court shall, within a further period of thirty days issue notice to the other parties to respond to the application, and

i) In case all the parties agree for conciliation, the Court shall refer the matter to conciliation and thereafter, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to conciliation under that Act, shall apply.

ii) In case all the parties agree for mediation, the Court shall refer the matter to mediation in accordance with the Civil Procedure Mediation Rules, 2003 in Part II shall apply.

iii) In case all the parties do not agree and where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties and that there is a relationship between the parties which has to be preserved, the Court shall refer the matter to conciliation or mediation, as the case may be. In case the dispute is referred to conciliation, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to conciliation under that Act shall and in case the dispute is referred to mediation, the provisions of the Civil Procedure Mediation Rules, 2003, shall apply.

g) i) Where none of the parties apply for reference either to arbitration, or the Lok Adalat, or judicial settlement, or for conciliation or mediation, within thirty days of the direction under clause (b) of Rule 2, the Court shall, within a further period of thirty days, issue notices to the parties or their representatives fixing the matter for hearing on the question of making a reference either to conciliation or mediation.

ii) After hearing the parties or their representatives on the day so fixed the Court shall, if there exist elements of a settlement which may be acceptable to the parties and there is a relationship between the parties which has to be preserved, refer the matter to conciliation or mediation. In case the dispute is referred to conciliation, the provision of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to conciliation under that Act shall apply and in case the dispute is referred to mediation, the provisions of the Civil Procedure Mediation Rules, 2003, shall apply.

h) i) No next friend or guardian for the suit shall, without the leve of the Court, expressly recorded in the proceedings of the Court, opt for anyone of the modes of alternative dispute resolution nor shall enter into any settlement on behalf of a minor or person under disability with reference to the suit in which he acts as mere friend or guardian.

ii) Where an application is made to the Court for leave to enter into a settlement initiated into in the alternative dispute resolution proceedings on behalf of a minor or other person under disability and such minor or other person under disability is represented by counsel or pleader, the counsel or pleader shall file a certificate alongwith the said application to the effect that the settlement is, in his opinion, for the behefit of the minor or other person under disability. The decree of the Court based on the settlement to which the minor or other person under disability is a party, shall refer to the sanction of the Court thereto and shall set out the terms of the settlement.

6. **Referral to the Court and appearance before the Court upon failure of attempts to settle disputes by conciliation or judicial settlement or mediation –**

1) Where a suit has been referred for settlement for conciliation, mediation or judicial settlement and has not been settled or where it is felt that it would not be proper in the interests of justice to proceed further with the matter, the suit shall be referred back again to the Court with a direction to the parties to appear before the Court on a specific date.

2) Upon the reference of the matter back to the Court under sub-rule (1) or under sub-section 20 of the Legal Services Authorities Act, 1987, the Court shall proceed with the suit in accordance with law.

7. **Training in alternative methods of resolution of disputes, and preparation of manual –**

a) The High Court shall take steps to have training courses conducted in places where the High Court shall take steps to have training courses conducted in place where the High Court and the Distric Courts or courts of equal status are located, by requesting bodies recognised by the High Court or the Universities imparting legal education or retired faculty members or other persons who, according to the High Court are well versed in the techniques of alternative methods of resolution of disputes, to conduct training courses for lawyers and judicial officers.

b) i) The High Court shall nominate a committee of Judges, faculty members including retired persons belonging to the above categories, senior membrs of the Bar, other members of the Bar specially qualified in the techniques of alternative dispute resolution, for the purpose referred to in clause (a) and for the purpose of preparing a detailed manual of procedure for alternative dispute resolution to be used by the Courts in the State as well as by the arbitrators, or authority or person in the case of judicial settlement or conciliators or mediators.

ii) The said manual shall describe the various methods of alternative dispute resolution, the manner in which anyone of the said methods is to be opted for, the suitability of any particular method for any particular type of dispute and shall specifically deal with the role of the above persons in disputes which are commercial or domestic in nature or which relate to matrimonial, maintenance and child custody matters.

c) The High Court and the Distric Courts shall periodically conduct seminars and workshops on the subject of alternative dispute resolution procedures throughout the State or States over which the High Court has jurisdiction with a view to bring awareness of such procedures and to impart training to lawyers and judicial officers.

d) Persons who have experience in the matter of alternative dispute resolution procedures, and in particular in regard to conciliation and mediation, shall be given preference in the matter of empanellment for the purposes of conciliation or mediation.

8. **Applicability to other proceedings** – The provisions of these Rules may be applied to proceedings before the Courts, including Family Courts constituted under the Family Courts Act (66 of 1984), while dealing with matrimonial, maintenance and child custody disputes, wherever necessary, in addition to the rules framed under the Family Court Act (66 of 1984).

PART II

CIVIL PROCEDURE MEDIATION RULES

1. **Title** – These Rules in Part II shall be called the Civil Procedure Mediation Rules, 2003.

2. Appointment of mediator –

a) Parties to a suit may all agree on the name of the sole mediator for mediating between them.

b) Where, there are two sets of parties and are unable to agree on a sole mediator, each set of parties shall nominate a mediator.

c) Where parties agree on a sole mediator under clause (a) or where parties nominate more than one mediator under clause (b), the mediator need not necessarily be from the panel of mediators 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.

d) Where there are more than two sets of parties having diverse interests, each set shall nominate a person on its behalf and the said nominees shall select the sole mediator and failing unanimity in that behalf, the Court shall appoint a sole mediator.

3. **Panel of mediators** –

a) The High Court shall, for the prupose of appointing mediators between parties in suits filed on its original side, prepare a panel of mediators and publish the same on its notice board, within thirty days of the coming into force of these Rules, with a copy to the Bar Association attached to the original side of the High Court.

b) i) The Courts of the Principal District and Sessions Judge in each district or the Courts of the Principal Judge of the City Civil Court or courts of equal status shall, for the purposes of appointing mediators to mediate between parties in suits filed on their original side, prepare a panel of mediators, within a period

of sixty days of the commencement of these Rules, after obtaining the approval of the High Court to the names included in the panel, and shall publish the same on their respective notice boards.

ii) Copies of the said panels referred to in clause (i) shall be forwarded to all the courts of equivalent jurisdiction or courts subordinate to the courts referred to in sub-clause (i) and to the Bar Associations attached to each of the courts.

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

d) The panel of names shall contain a detailed annexure giving details of the qualifications of the mediators and their professional or technical experience in different fields.

4. Qualifications of persons to be empanelled under Rule 3 – The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under Rule 3, namely :

a) i) Retired Judges of the Supreme Court of India;

ii) Retired Judges of the High Court;

iii) Retired District and Sessions Judges or retired Judges of the City Civil Court or courts of equivalent status.

b) Legal practioners with at least fifteen years standing at the Bar at the level of the Supreme Court or the High Court; or the District Courts or courts of equivalent status.

c) Experts or other professionals with at least fifteen years standing; or retired senior bureaucrats or retired senior executives.

d) Institutions which are themselves experts in mediation and have been recognised as such by the High Court, provided the names of its members are approved by the High Court initially or whenever there is change in membership.

5. **Disqualifications of persons** – The following persons shall be deemed to be disqualified for being empanelled as mediators :

i) any person who has been adjudged as insolvent or is declared of unsound mind, or

ii) any person against whom criminal charges involving moral turpitude are framed by a criminal court and are pending, or

iii) any person who has been convicted by a criminal court for any offence involving moral turpitude.

iv) any person agaisnt whom disciplinary proceedings or charges relating to moral turpitude have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment.

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

vi) any legal practitioner who has or is appearing for any of the parties in the suit or in any other suit or proceedings,

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

6. **Venue for conducting mediation** – The mediator shall conduct the mediation at one or other of the following places :

i) Venue of the Lok Adalat or permanent Lok Adalat.

ii) Any place identified by the District Judge within the court precincts for the purpose of conducting mediation.

iii) Any place identified by the Bar Association or State Bar Council for the purpose of mediation, within the premises of the Bar Association or State Bar Council, as the case may be.

iv) Any other place as may be agreed upon by the parties subject to the approval of the Court.

7. **Preference** – The Court shall, while nominating any person from the panel of mediators referred to in Rule 3, consider his suitability for resolving the particular class of dispute involved in the suit and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in mediation.

8. **Duty of mediator to disclose certain facts** –

a) When a person is approached, in connection with his possible appointment as a mediator, the person shall disclose in writing to the parties, any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality.

b) Every mediator shall, from the time of his appointment and throughout the continuance of the mediation proceedings, without delay, disclose to the parties in writing, about the existence of any of the circumstances referred to in clause (a).

9. **Cancellation of appointment** – Upon information furnished by the mediator under Rule 8 or upon any other information received from the parties or other persons, if the Court, in which the suit is filed, is satisfied, after conducting such inquiry as it deems fit, and after giving a hearing to the mediator, that the said information has

raised a justifiable doubt as to the mediator's independence or impartiality, it shall cancel the appointment by a reasoned order and replace him by another mediator.

10. **Removal or deletion from panel** – A person whose name is placed in the panel referred to in Rule 3 may be removed or his name be deleted from the said panel by the Court which empanelled him if :

i) he resigns or withdraws his name from the panel for any reason;

ii) he is declared insolvent or is declared of unsound mind;

iii) he is a person against whom criminal charges involving moral turpitude are framed by a criminal court and are pending;

iv) he is a person who has been convicted by a criminal court for any offence involving moral turpitude;

v) he is a person whom disciplinary proceedings on charges relating to moral turpitude have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment;

vi) he exhibits or displays conduct, during the continuance of the mediation proceedings, which is unbecoming of a mediator;

vii) the Court which empanelled, upon receipt of information, if it is satisfied, after conducting such inquiry as it deems fit, is of the view, that it is not possible or desirable to continue the name of that person in the panel;

Provide that, before removing or deleting his name, under clauses (vi) and (vii), the Court shall hear the mediator whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order.

11. **Procedure of mediation** –

a) The parties agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.

b) Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the proceudre hereinafter mentioned, namely:

i) he shall fix, in consultation with the parties, a time-schedule, the dates and the time of each mediation session, where all parties have to be present:

ii) he shall hold the mediation conference in accordance with the provisions of Rule 6;

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

iv) each party shall, ten days before a session, provide to the mediator 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 to understand the issue; such memoranda shall also be mutually exchanged between the parties;

v) each party shall furnish to the mediator, copies of pleadings or documents or such other information as may be required by him in connection with the issues to be resolved:

Provided that where the mediator is of the opinion that he should look into any original document, the Court may permit him to look into the original document before such officer of the Court and on such date or time as the Court may fix.

vi) each party shall furnish to the mediator 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, the mediator nominated by each party shall first confer with the party that nominated him and shall thereafter interact with the other mediators, with a view to resolving the disputes.

12. **Mediator not bound by the Evidence Act, 1872 or the Code of Civil Procedure, 1908.** – The mediator shall not be bound by the Code of Civil Procedure, 1908 or the Evidence Act, 1872, but shall be guided by the principles of fairness and justice, have regard to the rights and obligations of the parties, usages of trade, if any, and the nature of the dispute.

13. **Non-attendance of Parties at sessions or meetings on due dates.** –

(a) The parties shall be present personally or may be represented by their counsel or power-of-attorney holders at the meetings or sessions notified by the mediator.

(b) If a party fails to attend a session or a meeting notified by the mediator, other parties or the mediator can apply to the court in which the suit is filed, to issue appropriate directions to that party to attend before the mediator without sufficient reason, the court may take action against the said party by imposition of costs.

(c) The parties not resident in India, may be represented by the counsel or power-of-attorney holders at the sessions or meetings.

14. **Administrative assistance** – In order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

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.

(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.

16. **Role of mediator** – The mediator shall attempt to facilitate voluntary resolution of the dispute 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 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.

17. **Parties alone responsible for taking decision** – The parties must understand, that the mediator only facilitates in arriving at a decision to resolve disputes and that he will not and cannot impose any settlement nor does the mediator give any warranty that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.

18. **Time-limit for completion of mediation.** – On the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless the court, which referred the matter, either *suo motu*, or upon request by the mediator or 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.

19. **Parties to act in good faith.** – While no one can be compelled to commit to settle his case in advance of mediation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute, if possible.

20. **Confidentiality, disclosure and inadmissibility of information.**

1) When a mediator receives confidential information concerning the dispute from any party, he shall disclose the substance of that information to the other party, if permitted in writing by the first party.

2) When a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party, nor shall the mediator voluntarily divulge any information regarding the documents or what is conveyed to him orally as to what transpired during the mediation.

3) Receipt or perusal, or preparation of records, reports or other documents by the mediator, or receipt of information orally by the mediator while serving in that capacity, shall be confidential and the mediator shall not be compelled to divulge information regarding the documents nor in regard to the oral information nor as to what transpired during the mediation.

4) Parties shall maintain confidentiality in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to:

a) views expressed by a party in the course of the mediation proceedings;

b) documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators;

c) proposals made or views expressed by the mediator;

d) admission made by a party in the course of mediation proceedings;

e) the fact that a party had or had not indicated willingness to accept a proposal;

5) There shall be no stenographic or audio or video recording of the mediation proceedings.

21. **Privacy** – Mediation sessions and meetings are private; only the parties or their counsel or power-of-attorney holders concerned can attend. Other persons may attend only with the permission of the parties or with the consent of the mediator.

22. **Immunity** – No mediator shall be held liable for anything *bona fide* done or omitted to be done by him during the mediation proceedings for civil or criminal action, nor shall he be summoned by any party to the suit 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 proceedings.

23. **Communication between mediator and the Court.**

a) In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there should be no communication between the mediator and the Court, except as stated in clauses (b) and (c) of this Rule.

b) If any communication between the mediator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their counsel or power of attorney.

c) Communication between the mediator and the Court shall be limited to communication by the mediator:

(i) with the Court about the failure of the party to attend;

ii) with the Court with the consent of the parties;

iii) regarding his assessment that the case is not suited for settlement through mediation;

iv) that the parties have settled the dispute or disputes.

24. Settlement agreement –

1) Where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced to writing and signed by the parties or their power-of-attorney holders. If any counsel have represented the parties, they shall attest the signature of their respective clients.

2) The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the court in which the suit is pending.

3) Where no agreement is arrived at between the parties, before the time-limit stated in Rule 18 or where, the mediator is of the view that no settlement is possible, he shall report the same to the said court in writing.

25. Court to fix a date for recording settlement and passing decree. –

(1) Within seven days of the receipt of any settlement, the Court shall issue notice to the parties fixing a day for recording the settlement, such date not being beyond a further period of fourteen days from the date of receipt of settlement, and the Court shall record the settlement, if it is not collusive.

2) The Court shall then pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.

3) If the settlement disposes of only certain issues arising in the suit, the Court shall record the settlement on the date fixed for recording the settlement, and

i) if the issues are severable from other issues and if a decree could be passed to the extent of the settlement covered by those issues, the Court may pass a decree straight away in accordance with the settlement on those issues without waiting for a decision of the Court on the other issues, which are not settled,

ii) If the issues are not severable, the Court shall wait for a decision of the Court on the other issues which are not settled.

26. Fee of mediator and costs. –

1) At the time of referring the disputes to, mediation, the Court shall, after consulting the mediator and the parties, fix the fee of the mediator.

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

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

4) The expense of the mediation including the fee of the mediator, 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.

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

6) The mediator may, before the commencement of mediation, direct the parties to deposit equal sums, tentatively, to the extent of 40% of the probable costs of the mediation, as referred to in clauses (1), (3) and (4) The remaining 60% shall be deposited with the mediator, after the conclusion of mediation. For the amount of cost paid to the mediator, hii shall issue the necessary receipts and a statement of account shall be filed, by the mediator in the Court.

7) The expense of mediation including fee, if not paid by the parties, the Court shall, on the application of the mediator or parties, direct the parties concerned 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.

8) Where a party is entitled to legal aid under Section 12 of the Legal Services Authorities Act, 1987, the amount of fee payable to the mediator and costs shall be paid by the Legal Services Authority concerned under that Act.

27. **Ethics to be followed by the mediator.** – The mediator shall:

1) follow and observe these Rules strictly and with due diligence;

2) not carry on any activity, or conduct which could reasonably be considered as conduct unbecoming of a mediator;

3) uphold the integrity and fairness of the mediation process;

4) ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process;

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

6) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;

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

8) be faithful to the relationship of trust and confidentiality imposed in the office of mediator;

9) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;

10) recognise that mediation is based on the principles of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;

11) maintain the reasonable expectations of the parties as to confidentiality;

12) refrain from promises or guarantees of results.

28. **Transitory provisions.** – Until a panel of arbitrators is prepared by the High Court and the District Court, the courts referred to in Rule 3, may nominate a mediator of their choice if the mediator 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 for resolving the particular dispute.

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Delhi High Court
Mediation and Conciliation Rules

TO BE PUBLISHED IN PART IV OF DELHI GAZETTE EXTRAORDINARY)
HIGH COURT OF DELHI : NEW DELHI

NOTIFICATION

No.171/Rules/DHC Dated: 11th August, 2005

In exercise of the rule making power under Part X of the Code of Civil Procedure, 1908 (5 of 1908) and clause (d) of sub-section (2) of Section 89 of the said Code and all other powers enabling it in this behalf, the High Court of Delhi hereby makes the following Rules:-

MEDIATION AND CONCILIATION RULES, 2004

Rule - 1 : Title.

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

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 the 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 proceedings(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 the 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/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 often 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 resolve 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 sessiqns 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 willful 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 decision which effect 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 motu, 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 of 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 bonafide 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 the 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 conciliator/mediator 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 dispose 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 the 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 two sets of 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 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:

1. **follow and observe these Rules strictly and with due diligence;**

2. **not carry on any activity or conduct which could reasonably be considered as**

conduct unbecoming of a mediator/conciliator;

3. uphold the integrity and fairness of the mediation/conciliation process;

4. ensure that the parties involved in the mediation/conciliation and fairly informed and have an adequate understanding of the procedural aspects of the process;

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

6. disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;

7. avoid, while communicating with the parties, any impropriety or appearance of impropriety;

8. be faithful to the relationship of trust and confidentiality imposed in the office of mediator/conciliator;

9. conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;

10. 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;

11. 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).

Jharkhand High Court Ranchi

Order

No.- 01 /R&S. Dated, Ranchi the 31st January, 2012

In view of the direction issued by the Hon'ble Supreme Court in the case of ***Afcons Infrastructure Ltd. V. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24***, the Hon'ble the Chief Justice has been pleased to order that while adjudicating the cases as mentioned hereinafter all the Subordinate Courts are directed to abide by the following guidelines in connection with ADR process:-

"Every court shall form an opinion for a case that whether it is one that is capable of being referred to and settled through ADR process or not. Having regard to the tenor of provisions of Rule 1-A of Order 10 of the Code, the civil court should invariably refer cases to ADR process. Only in certain recognized excluded categories of cases, it may choose not to refer to an ADR process. Where the case is unsuited for reference to any of the ADR processes, the court will have to briefly record the reasons for not resorting to any of the settlement procedures prescribed under Section 89 of the Code. After completion of pleadings, to consider recourse to ADR process under Section 89 of the Code, is mandatory. However, actual reference to an ADR process in all cases is not mandatory. Where the case falls under an excluded category there need not be reference to ADR process. In all other cases reference to ADR process is a must.

The following categories of cases are normally considered suitable for ADR process in the light of the aforesaid decision of the Hon'ble Supreme Court:-

(i) All cases relating to trade, commerce and contract, including

- disputes arising out of contracts (including all money claims);
- disputes relating to specific performance;
- disputes between suppliers and customers;
- disputes between bankers and customers;
- disputes between developers/builders and customers;
- disputes between landlords and tenants/licensor and licensees;
- disputes between insurer and insured;

(ii) All cases arising from strained or soured relationships, including

- disputes relating to matrimonial causes, maintenance, custody of children;
- disputes relating to partition/division among family members/coparceners/co-owners; and
- disputes relating to partnership among partners.

(iii) All cases where there is a need for continuation of the preexisting relationship in spite of the disputes, including

- disputes between neighbours (relating to easementary rights, encroachments, nuisance etc.);
- disputes between employers and employees;

- disputes among members of societies/ associations/ apartment owners' associations;

(iv) All cases relating to tortious liability, including

- claims for compensation in motor accidents /other accidents; and

(v) All consumer disputes, including

- Disputes where a trader/supplier/manufacturer/ service provider is keen to maintain his business/professional reputation and credibility or product popularity.

Following categories of cases are normally considered to be not suitable for ADR process having regard to their nature:-

(i) Representative suits under Order 1 Rule 8 CPC which involve public interest or interest of numerous persons who are not parties before the Court. (in fact, even a compromise in such a suit is a difficult process requiring notice to the persons interested in the suit, before its acceptance).

(ii) Disputes relating to election to public offices (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, association, etc.).

(iii) Cases involving grant of authority by the court after enquiry, as for example, suits for grant of probate or letters of administration.

(iv) Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion etc.

(v) Cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against the Government.

(vi) Cases involving prosecution for criminal offences.

The above enumeration of "suitable" and "unsuitable" categorisation of case is not intended to be exhaustive or rigid. They are illustrative, which can be subjected to just exceptions or additions by the court/ tribunal exercising its jurisdiction/discretion in referring a dispute/case to an ADR process."

All the Principal District Judges of Jharkhand including the Principal Judicial Commissioner, Ranchi are hereby directed to ensure the adherence of aforesaid direction and communicate all the Judicial Officers posted in the concerned judgeship. They shall follow the decision of the Hon'ble Supreme Court and the cases which are suitable for ADR process be necessarily referred to Mediation Centres of the concerned districts as per section 89 of the Code of Civil Procedure.

The Principal District Judges including the Principal Judicial Commissioner, Ranchi shall also ensure the sending of Quarterly statement to this court with regard to making reference and settlement of cases, in separate sheet, along with the quarterly statement of statistics. Be it noted

that such reference and disposal by the Judicial Officer will be reflected in the Annual Confidential Report of the officer.

By order,
Sd/- P.R.Dash
Registrar General

Memo no. 303 – 36 R&S Dated, Ranchi the 31st Jan., 2012.

Copy forwarded to the all the Principal District and Sessions Judges, Jharkhand / the Principal Judicial Commissioner, Ranchi / Secretary, Law (Judl.)Department, Govt. of Jharkhand, Ranchi / The Director, Judicial Academy, Jharkhand, Ranchi / The Member Secretary, JHALSA, Ranchi/ The Office of the Registrar General/ The Registrar (Admn.)/The Registrar (Estab.)/ The Registrar (Vigilance)/ The Joint Registrar, List & Computer/The Joint Registrar-cum-P.P.S. to Hon'ble the Chief Justice/ The Assistant Registrar (Judl.)/The Section Officer, Vigilance Cell/The Section Officer, Administrative (Appointment) Section Jharkhand High Court, Ranchi for kind information and needful.

31/1/12
Registrar General

The Jharkhand State Legal Services Authority (Amendment) Regulation 2013

The Jharkhand State Legal Services Authority (Amendment) Regulation, 2013 Notification No. 12 dated 21/02/13

In exercise of the powers conferred under the provisions of Section 29A of the Legal Services Authorities Act, 1987 (Act No. 39 of 1987) as amended by Legal Services Authorities (Amendment Act No. 59 of 1994) and in consultation with Hon'ble the Chief Justice, Jharkhand High Court, whereever necessary to give effect to the provisions of the Act, Jharkhand State Legal Services Authority is pleased to make the following amendments in the Jharkhand State Legal Services Authority Regulation, 2002.

1. **Short Title and Commencement-** These Regulations may be called the Jharkhand State Legal Services Authority(Amendment)Regulation 2013 and they shall come into force at once.

2. **Insertion of new Sub- Regulation 13** - After Sub Regulation 12 of **Regulation 18**, the following shall be inserted namely-

   13. The expenditure incurred on any single Legal Awareness Camp/Legal Literacy Camp/Programmes etc. organized by District Legal Services Authority shall not exceed Rs. 5,000/-.

3. **Amendment of Regulation 25** –

   (1) In Regulation 25 (a), for the words and figures "Rs. 600/- (Rupees Six Hundred only)" the words and figures " Rs. 5000 (Rupees Five thousand only)" shall be substituted.

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and

for the words and figures "Rs. 200/- (Rupees Two Hundred only)" the words and figures " Rs. 2000 (Rupees Two thousand only)" shall be substituted;

(2) In Regulation 25 (b), for the words and figures "Rs. 400/- (Rupees Four Hundred only)" the words and figures " Rs. 3000 (Rupees Three thousand only)" shall be substituted.

(3) In Regulation 25 (c), for the words and figures "Rs. 250/- (Rupees Two Fifty only)" the words and figures " Rs. 2000 (Rupees Two thousand only)" shall be substituted.

(4) In Regulation 25 (d), for the words and figures "Rs. 150/- (Rupees One hundred and Fifty only)" the words and figures " Rs. 1000 (Rupees One thousand only)" shall be substituted.

4. **Omission of Regulation 29** -Regulation 29 shall be omitted.

5. **Amendment of Regulation 35 (a) Regulation 35- Composition of the Lok Adalat**: Existing Sub Regulation 1, 2 and 3 shall be substituted as follows:

(1) **At State Authority Level.-** The Member-Secretary organizing the Lok Adalat shall constitute benches of the Lok Adalats, each bench comprising of a sitting or retired Judge of the High Court or a serving or retired judicial officer and anyone or both of the following:

(i) a member from the legal profession; and

(ii) a social worker of repute who is engaged in the upliftment of the weaker sections of the people, including the Scheduled Castes, the Scheduled Tribes, women, children, rural and urban labour and interested in the implementation of legal services schemes or programmes.

(2) **At High Court Level.-** The Secretary of the High Court Legal Services Committee organising the Lok Adalats shall constitute benches of the Lok Adalats, each bench comprising of a sitting or retired Judge of the High Court or a serving or retired judicial officer and anyone or both of the following:

(i) a member from the legal profession;

(ii) a social worker belonging to the category as mentioned in item (ii) of sub-para (i) above.

(3) **At District Level.-** The Secretary of the District Authority organising the Lok Adalats shall constitute benches of the Lok Adalats, each bench comprising of a sitting or retired judicial officer and anyone or both of the following:

(i) a member from the legal profession;

(ii) a social worker belonging to the category as mentioned in item (ii) of sub-para (i) above or a person engaged in para-legal activities of the area, preferably a woman.

(4) **At Subdivision Level.-** The Chairman of the Subdivisional Legal Services Committee organising the Lok Adalats shall constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judicial officer and anyone or both of the following:

(i) a member from the legal profession; and

(ii) a social worker belonging to the category as mentioned in item (ii) of sub-para (i) above or a person engaged in para- legal activities of the area, preferably a woman.

(b) **Existing Sub-Regulation '4' shall be renumbered as '5'.**

6. Amendment to Regulation 37

(1) In Regulation 37 para (1) for the words and figures "Rs. 500/- (Rupees Five Hundred only)", the words and figures "Rs.5000/- (Rupees Five Thousand Only)" shall be substituted.

(2) **Insertion of New Para**: The following new para shall be inserted after Para I of

Regulation 37.

However, DLSA shall be competent to spend an amount not exceeding Rs.25000/- (twenty five thousand only) for Mega Lok Adalat to be organized under guidelines of **13th Finance Commission**. However, this shall be operational only till the **13th Finance Commission** guidelines remain in force.(co-terminus with the period of 13th Finance Commission)

7. Omission of Regulation 45. Regulation 45 shall be omitted.

8. Amendment of schedule after Regulation No.49.

Existing Schedule I, II, and III upto para (a) and (b) shall be omitted and substituted by new schedule A,B,C,D and E as follows:-

Schedule A

(1) Consolidated fee for Legal Aid Counsel for High Court cases

(a)	Writ petition contempt, LPA, First Appeal, Second Appeal Cr. Revision Civil Revision	Up to admission stage Rs. 3000/- Drafting fee Rs. 1000/-	For final hearing Rs. 3000/-
(b)	B.A., A.B.A. Quashing matter, CMP, Transfer Petition, Misc. Appeal IA and any other similar application	Rs. 1500/- (One Time)	

Consolidated fee for Legal Aid Counsel for cases before State or Central Level Tribunal or Commission, Board of Revenue, Divisional Commissioner or other like Forum

(a)	For matters like original application, appeal etc.	Up to admission stage Rs. 2500/- Drafting Fee Rs. 1000/- shall be admissible	For final hearing Rs. 2500/-
(b)	For interlocutory application, restoration, misc. or other like matter	Rs. 1000/- (one time)	

Schedule B

Fee for Legal Aid Counsels in Subordinate Court

	Civil Cases		
(1)	**Before District Judges including MACT, Family Court, Labour Court**		
(a)	For civil appeal	Up to admission stage Rs. 1000/-	After final disposal Rs. 2000/-

(b)	For original Civil, Labour, Matrimonial, , Probate, Succession, Letter of Administration, Arbitration, Land Acquisition, Insolvency or any other original proceeding	Rs. 4000/- Drafting fee Rs. 500/- for (a) & (b)	Rs. 1000/- on framing of issues or points, Rs. 1500 on closure of evidence and Rs. 1500 on final disposal
(c)	For Misc. appeal, restoration application, Transfer application, misc. application etc.	Rs. 500/-	Rs. 1000
(2)	**Before Civil Judge (Senior or Junior Divisions)**		
(a)	For original suit	Rs. 4000/- (Rs. 1000/- at the stage of framing of issues or point, Rs. 1500/- after the closure of evidence and Rs. 1500/- on final disposal) Drafting fee Rs. 500/-	
(b)	For Execution application	Rs. 2500/- (one time payment)	
(c)	For any other application or proceeding	Rs. 1500/- (one time payment)	
	Criminal Cases		
(1)	**Before Sessions Court**		
(a)	For cases involving sentence of death or life imprisonment or imprisonment exceeding 7 yrs.	Rs. 6000/- (1/3 on framing of charge, 1/3 on conclusion of evidence and 1/3 on final disposal)	
(b)	For all other Sessions Cases including cases under Spl. Acts	Rs. 5000/- (1/3 on framing of charge, 1/3 on conclusion of evidence and 1/3 on final disposal)	
(c)	Criminal Appeal or Criminal Revision	Rs. 2500/- (one time) Drafting fee Rs. 500/-	
(d)	Bail or ABP	Rs. 1500/- (one time)	
(e)	Any other application, IA etc requiring hearing in the case.	Rs. 500/- per case	

(2)	Before CJM/ ACJM, JM 1st Class or any Judicial Magistrates under Special Act (Be it GR, Public or Private Complaint or the like)	Rs. 3000/- (1/3 payment at the stage of framing of charge, 1/3 at conclusion of evidence, 1/3 on final disposal)
	Bail application or any other application requiring hearing in the case	Rs. 500/- (one time)

Schedule-C

For cases before District Level Revenue Court or Executive Court i.e. Deputy Commissioner, Addl. Commissioner, DCLR, SDO/SDM, City Magistrates			
1.	Appeal or original proceeding	Up to admission stage Rs. 1000/-	For final hearing Rs. 2000/-
2.	Misc. appeal, restoration proceeding or other misc. proceeding	Rs. 800/-	Rs. 1700/-

Expl.

1. In batch matter with substantially similar pleading or nature or arising out of same FIR, order or common judgement one extra fee of Rs. 500/- for a set of three persons/cases shall be admissible subject to a maximum of 3 times of original fee
2. The court fee, clerkage (10% of the fee), Tying charges, photo copy and other misc. expenses shall be admissible on actual on production of genuine bill
3. Court fee through Legal Aid shall be payable by way of judicial stamp.
4. The Executive Chairman, JHALSA, Chairman, (HCLSC) or Chairman (DLSA or SDLSC) may in appropriate cases approve for availing the services of any Legal Practitioner other then those on the panel of JHALSA/HCLSC/DLSA or SDLSC.
5. Likewise, he may in appropriate cases approve for any Special Fee different from the above prescribed fee or remuneration in any special case to be paid to any legal Practitioner or Legal Aid Counsel.

SCHEDULE-D

Fee for Mediation

A. Honorarium/fee payable at the Level of High Court, JHALSA or HCLSC	
1. For successful Mediation/ Conciliation	Rs. 2000 per case
2. For unsuccessful Mediation/Conciliation	Rs. 500 per case
B. Honorarium/ fee at the District or Sub Division Level.	
1. For successful Mediation/Conciliation	Rs. 1400 per case
2. For unsuccessful Mediation/Conciliation	Rs. 350 per case
As the idea of enhancement of Mediation Fee was under consideration from Jan., 2010, we hereby fix the Mediation Fee for the Period from Jan., 2010 till Notification of the above, which is as follows:	

A. Honorarium/Fee payable at the level of JHALSA/HCLSC	
1. For Successful Mediation or Conciliation, per case	Rs. 600
2. For un Successful Mediation or Conciliation, per case	Rs. 200
B. Honorarium/Fee payable at the District level or Sub Division Legal Services Authority Level	
1. For Successful Mediation or Conciliation, per case	Rs. 500
2. For un Successful Mediation or Conciliation, per case	Rs. 200
Note:1. Any Mediation or Conciliation proceedings in pre-litigation matters at any level of the Legal Services Authority or Committee shall be treated as taking place at the level of District Legal Services Authority.	
1. ***The newly amended fee structure as above shall be made effective after the Notifications of the Resolution of this General Body Meeting***	

SCHEDULE E

Honorarium/Fee Payable

1	Honorarium/Fee Payable a. to Presiding Officer (Retd.) of the Lok Adalat held U/s 19 of Legal Services Authorities Act, 1987 at the **High Court Level**	**Rs.2000/- per sitting of Lok Adalat**
	b. Payable to other Members	Rs.1000/- per sitting of Lok Adalat.
2	Honorarium/Fee Payable a. to Presiding Officer (Retd.) of the Lok Adalat held U/s 19 of Legal Services Authorities Act, 1987 at the District or Sub Divisional Level.	Rs. 100 per case subject to maximum of Rs.500 per sitting of Lok Adalat
	b. Payable to other Members	Rs.75 per case subject to Rs.375 per sitting of Lok Adalat.

3.	Honorarium/Fee payable to Retd Judicial Officers, Legal Aid Counsels or Panel lawyers attached to Legal Aid Clinics, to jails, Juvenile Justice Board, Remand Home, Observation Home, Probation Home, Shelter Home, if deputed by JHALSA, DLSA, HCLSC, SDLSC	Rs. 500/- per visit with detailed report of minimum of 5 cases or 5 inmates + expenses.*
4.	Honorarium/Fee payable to Legal Aid Counsels/ Panel lawyers other advocates, legal experts, social workers, law students, attending the Legal Aid Clinics, Literacy awareness, or mobile awareness camps in colleges, universities and other places if deputed specially by JHALSA, DLSA, HCLSC, DLSA.	Rs. 350/- per visit+ expenses*
5.	Honorarium/ Fee payable for utilization of specific services of the trained Para Legal Volunteers	Rs.250/- per visit + expenses*
6.	a. Honorarium /Fee payable to outstation lawyers, other legal experts as Resource Person approved by JHALSA/ HCLSC/ DLSA/ SDLSC for imparting training of legal services.	Rs.1000/- per day + expenses*
	b. Honorarium /Fee payable to local lawyers and other legal experts as Resource Person approved by JHALSA/ HCLSC/ DLSA/ SDLSC for imparting training of legal services. Provided also that in appropriate cases with prior approval of the Hon'ble Executive Chairman of JHALSA, special honorarium/ remuneration/ fee and other expenses may be sanctioned in favour of any person being invited as Resource Person for any National, State or district Level Conference, Seminar, Workshop, Symposium etc.	Rs.500/- per day+expenses*

*Expenses: 1. On actuals on production of Tickets by rail or by bus or on production of vouchers or Rs. 5/- per Km, whichever is less.

2. Rs.150/- would be paid for Local traveling within the jurisdiction of DLSA

3. With the prior approval of Executive Chairman, JHALSA; Chairman, HCLSC; Chairman, DLSA and SDLSC respectively; above expenses including bills for any other expenses may be sanctioned and passed by the Member Secretary or Secretary as the case may be.

4. For organizing Awareness camps, Seminars, literacy programmes etc, or supervising any other activity, DLSA can arrange transport by hiring vehicle on need base locally with ceiling of 60 ltrs. Fuel per month. The Chairman of the DLSA/ SDLSC may approve extra fuel not exceeding 20 ltrs. in special case for such purposes the expenses to be met out of State Legal Aid fund of the DLSA/SDLSC as the case may be. The DLSA or SDLSC shall maintain proper Log Book for the same. Actual incidental expenditure including typing misc. charges incurred by the legal aid advocate will be reimbursed provided it is supported by the vouchers and a certificate is given to that effect by such Legal Aid advocates. Single set of honorarium shall be payable in cases in which more than one person is involved.

This has concurrence of the Finance Department, Govt. of Jharkhand.

By order and in the name of
Jharkhand State Legal Services Authority

Sd/-
(B.K Goswami)
Member Secretary
(Principal District Judge)

- 132(3) Cr.P.C.
- Anuradha Bhasin – B.B.C Act.
  - Two writ appln
    - WPC 4971/2013 – Purushottam Bansal vs Birla Ltd.
  - Eviction suit
  - 2011 में कोर्ट की matter सम् लेते
  - Letter of सम् लेते

- Two Additional Family courts.
- Process without S/R. by Magistrates / by Magistrate
  - Ahmadpur vs 204 Cr.P.C. decision
