

ANNEXURE A-1**(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**

“The Rules will apply to all mediation and conciliation connected with any suit or other proceeding pending in the High Court of Delhi or in any other subordinate to the High Court of Delhi. The mediation in respect of any suit or proceeding pending before the High Court of Delhi or any other Court or Tribunal may be referred to the Delhi High Court Mediation and Conciliation Centre or any other Mediation Centre set up by Legal Services Authorities. Upon such a reference being made to Delhi High Court Mediation and Conciliation Centre, the same will be governed by the Charter of the Delhi High Court Mediation and Conciliation Centre and to those mediation proceedings, the present Rules will apply mutatis mutandi.”
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 mediator/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) (i) Retired Judges of the Supreme Court of India;

- (ii) Retired Judges of the High Courts;
 - (iii) Retired District & Sessions Judges or retired Officers of Delhi Higher Judicial Service;
 - (iv) 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 : Disqualification of Persons

The following persons shall be deemed to be disqualified for being empanelled as mediators/conciliators :

- (a) any person who has been adjudged as insolvent or persons
 - (i) against whom criminal charges involving moral turpitude are framed by a criminal court and are pending; or
 - (ii) persons who have been convicted by a criminal court for any offence involving moral turpitude.
- (b) any person against whom disciplinary proceedings have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment.
- (c) any person who is interested or connected with the subject-matter of dispute(s) or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing.
- (d) Any legal practitioner who has or is appearing for any of the parties in the suit or in other proceeding(s).
- (e) Such other categories of persons as may be notified by the High Court.

Rule 6 : Addition to or deletion from panel

The High Court or the District & Sessions Judge with prior approval of the High Court, may in its/his discretion, from time to time, add or delete any person in the panel of mediator/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 circumstances 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 circumstances 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 of ten days may be curtailed in the discretion of the mediator/conciliator;
- (v) each party shall furnish to the mediator/conciliator such other information as may be required by him in connection with the issues to be resolved.

(c) Where there is more than one mediator/conciliator, the mediator/conciliator nominated by each party may first confer with the party that nominated him and thereafter interact with the other mediator/conciliator, with a view to 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 parties not residing in India, may be represented by the constituted attorney at the sessions or meetings. However, it may be represented by the counsel with permission of the mediator/conciliator in such sessions or meetings.

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

If a party fails to attend a session or a meeting notified by the mediator/conciliator on account of deliberate or 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 a 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/conciliator

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 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 of where, the mediator/conciliator is of the view that no settlement is possible, he shall report the same to the Court in writing.

Rule 24 : 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 : Fees 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 of 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 in Clause (e), the Court shall, on the application of the mediator/conciliator, or any party, issue appropriate directions to the concerned parties.

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

Rule 27 : Ethics to be followed by mediator/conciliator

The mediator/conciliator shall :

- (a) follow and observe these Rules strictly and with due diligence;
- (b) not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator/conciliator;
- (c) uphold the integrity and fairness of the mediation/conciliation process;
- (d) ensure that the parties involved in the mediation/conciliation are fairly informed and have an adequate understanding of the procedural aspects of the process;
- (e) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;
- (f) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;

- (g) avoid, while communicating with the parties, any impropriety or appearance of impropriety;
- (h) be faithful to the relationship of trust and confidentiality imposed in the office of mediator/conciliator;
- (i) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;
- (j) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;
- (j) recognize that the mediation / conciliation is based on principles of self determination by the parties and that the mediation / conciliation process relies upon the ability of parties to reach a voluntary, undisclosed agreement.
- (k) maintain the reasonable expectations of the parties as to confidentiality, refrain from promises or guarantees of results.

Rule 28 : Transitory provisions

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

ANNEXURE A-2

SOME GUIDELINES FOR REFERRAL JUDGES

A. Introduction

In mediation, the key to success depends on Judges referring appropriate cases, which occurs at the very beginning of the process. Conversely, failure is dependent on referring inappropriate cases. It has been seen over a period of time that almost 20% of the cases sent to the Mediation Centre were not fit for mediation as disclosed by the parties/their advocates. This is a very high percentage and affects the working of the Mediation Centre.

Failure to refer an appropriate case for mediation results in the case having to go through its full course of trial. Therefore, by and large, some objective assessment need to be made in every case by a referral judge. This exercise should not be done in casual manner.

B. Categories of cases fit for mediation

Certain cases are particularly appropriate for referral to mediation.

From the available statistics, it is clear that successful mediation occurs in following categories of cases :-

I Civil Cases

- Injunctions
- Specific performance
- Civil recovery
- Labour
- MACT
- Landlord/tenant disputes : (In landlord/tenant matters, restoration of services claims are especially successful, although some eviction cases have also be resolved through mediation).
- Matrimonial Cases : (Matrimonial cases are much more likely to settle if the parties are educated, the marriage is a shorter one with no children involved, and the litigants are from an urban area. In such cases, the fear of women

accepting a monetary payment after a failed marriage is less than would be the case with an uneducated spouse, particularly if there are children).

II Criminal Cases

Suitable criminal cases include :-

- Section 406/498A IPC
- Section 138 N.I. Act.

C Selection of Cases

The referring Judge should evaluate all the important factors which in his discretion will facilitate a successful mediation. For example, if it is an older case where the parties have a lower emotional investment, and it involves quantum issues between educated investment, and it involves quantum issues between educated litigants, these factors would strongly suggest that the matter should be referred for mediation. There may be other factors which, in the judge's experience, make a case suitable for a successful mediation. However, no case should be sent to mediation merely to clear a Judge's docket; it will only delay resolution, result in a failed experience, and end up back on the Judge's calender.

A referral Judge should select appropriate cases for mediation. A referral Judge before selecting the cases appropriate for the mediation should consider following factors :-

1. Party Characteristics

- costs and time in mediation are not more than litigation.
- The parties and their advocates have a positive attitudes towards mediation.
- Government is not a party to the suit.

2. Case Characteristic

- case should not involve complex legal issues, ambiguous precedent, Constitutional issues or Public Policy.
- A referral Judge should ascertain whether previous attempts to mediation have failed and why.

D Consent

1. It has been found in some cases, that where there are too many parties involved, these are unsuitable for mediation. It is advisable not to refer such cases for mediation unless all the parties have a very positive frame of mind.
- Section 89 of the CPC mandates referral of a case for mediation only if there is an element of settlement. It is critical for the Judge to make inquiries which lay the foundation for successful referral. The elements of laying such a foundation are :-
 - Determine whether the parties have consented to mediation and whether they wish to settle their cases. Do not allow referral to mediation in which there is no evidence of good faith intent to settlement but mediation is intended to delay the legal proceedings. It should be made clear that mediation does not delay the proceedings.
 - Referral is appropriate when one party has agreed to mediation, and the other other party is willing to go to mediation, though not necessarily committed to settlement.
 - Referral to mediation is proper even when neither party has agreed to settle, but both parties are honestly willing to explore the possibilities of settlement through mediation. However, the referring Judge should believe it can be settled before he refers such cases to mediation.
 - Lastly, referral is appropriate where neither party has expressed a desire to settle a case, but where the referring Judge should believe that a settlement may be possible. The referring Judge's careful exercise of discretion is critical here. An example of such a situation might involve parties who are unaware of the law, and with the careful attention and time that could be given by a mediator, a case may very well settle with a credible explanation of the law and the damages can be easily worked out.

E Conference with the parties

1. Where parties are not open to a settlement, they may be given a copy of the Mediation Centre pamphlet. Sometimes it may be worthwhile talking to the parties for a few minutes. This kind of a discussion can sometimes go a long way in resolving disputes. It helps the parties to think about the benefits of settlement through mediation.

2. As a referring Judge, you should probe the issues with the parties to determine whether the possible terms of a settlement and the identified issues are proper subjects of mediation. For example, where “quantum” issues such as monetary damages can resolve a case, this has a high likelihood of settlement in mediation.
3. The parties should be informed by the referring Judge about the utility of mediation, and they should invariably be given the Mediation Centre pamphlet if they have not already received one.
 - It should be made clear to both the parties that mediation is free of cost and that if mediation process succeeds, the Plaintiff/Appellant will be entitled to refund of Court fees.
 - It should be explained that mediation provides a friendly non-adversarial opportunity to talk with a skilled Judge mediator and seek a solution to the entire litigation.
 - It should be emphasized that this is a voluntary process, and it is also confidential.

F Schedule of appearance before Mediation Centre

The parties and counsel should be directed to appear in person at the Mediation Centre to schedule a date and time for the mediation.

G Production of documents

In the Judges' discretion, the parties should be advised to bring documentation (evidence), if any, to help clarify the issues and facts at the mediation. This will help the mediator to resolve the outstanding issues and will prevent unnecessary delay.

H Referral Order

A referral order is an important document which initiates the mediation, explains ground rules and structures the process. A referral order should contain the following :

- A referral order should state relevant statute or rule authorizing a referral Judge to prefer to mediation.

- A referral order should outline proposed duties and responsibilities of the mediator.
- The parties may be advised to file/submit documents or any other relevant materials before the mediator.
- A referral order should state who is authorized to appear before a mediator. It should be mentioned whether advocates are permitted to appear during mediation proceedings.
- A referral order should contain that parties are required to participate in mediation in good faith.
- A referral order should spell out a definite time frame for conduction and conclusion of mediation proceedings.
- A referral order should spell out in unambiguous forms that mediation proceedings are confidential in nature.

CONCLUSION

1. Please take the time to properly select cases for referral to mediation. Your efforts to do so are extremely important to the success of this programme and to bring about a reduction in your caseload through successful settlements.
2. Do not expect miracles. Mediation process requires a lot of patience and it is necessary for the Judges as well as the litigants to appreciate this.