

2008 (1) UTTARANCHAL DECISIONS STATUTE SECTION

THE CIVIL PROCEDURE-ALTERNATIVE DISPUTE RESOLUTION RULES, 2007 & THE CIVIL PROCEDURE MEDIATION RULES, 2007

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HIGH COURT OF UTTARAKHAND, NAINITAL

No. 4233 UHC/XI-C-2/Admin(B)/2005, September 29, 2007.

Part I - ALTERNATIVE DISPUTE RESOLUTION RULES

Rule 1 : These Rules shall be called the 'Civil Procedure-Alternative Dispute Resolution Rules, 2007'.

Rule 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 of Order X C.P.C. and where it appears to the Court that there exist elements of a 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 C.P.C. and the parties shall submit to the Court their responses within thirty days.

(b) At the next hearing which shall be not later than thirty days of the receipt of responses and after modification of terms of a possible settlement, if necessary, the Court 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 X, Code of Civil Procedure 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 institute without the written consent of all the parties to the suit.

Rule 3 : Persons authorized to take decision for the Union of India, State Government and others : Where one of the parties to the suit is the Union of India, State Government, Union Territory, Local Authority, a Public Sector Undertaking, a Statutory Corporation or body or Public Authority, shall nominate a person or group of persons who will be empowered to take a final decision as to the mode of Alternative Dispute Resolution which, it opt for. Such decision shall be communicated to the concerned Court within the period specified in the notice but not later than thirty days from the date of receipt of notice.

Rule 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 should 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 mode of settlement referred to in section 89 C.P.C. 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 C.P.C.

(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 clauses (b) or (d) of sub-section (1) of section 89 C.P.C.

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 interest of the parties to seek reference of the matter to Lok Adalat or to Judicial settlement as envisaged in clause (c) of sub-section (1) of section 89 C.P.C.

(v) The difference between the different modes of settlement, namely arbitration, conciliation,

mediation, Lok Adalat and Judicial settlement is explained as under.

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 them and passes an award by applying the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996), in so far as they refer to arbitration.

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 (26 of 1996) in so far as they relate to conciliation and in particular in exercise of his powers under sections 67 and 73 of said 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 them by applying the provisions of the Mediation Rules contained in Part II of these rules and in particular by facilitating discussion between the parties directly or by communicating with each other through the mediator by assisting the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasizing that is in their own interest.

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

Judicial Settlement means a final settlement by way of compromise before a Lok Adalat or before a suitable institution or person, which shall be deemed to be a settlement before a Lok Adalat within the meaning of the Legal Services Authorities Act, 1987 (39 of 1987).

Rule 5 : Procedure for reference by the Court to the different modes of settlement : (a) Where all or any of the party to the suit exercise their option to settle the dispute by alternative mode referred under section 89 C.P.C. as per direction of the Court under clause (b) of Rule 2, and Court after considering all the aspect of the matter as mentioned in Rule 4 and affording an opportunity of hearing to the parties thinks that there exist an element of settlement of dispute between parties by alternative mode, the Court shall refer the matter to the arbitration, reconciliation, mediation, Lok Adalat or Judicial settlement as the case may be.

(b) Where the matter has been referred to arbitration, reconciliation, mediation, Lok Adalat or Judicial settlement by the Court under clause (a) of Rule 5, the relevant procedure and rules of that mode shall apply.

(c) No next friend or guardian for the suit shall without the leave of the Court, expressly recorded, opt for any one of the mode of alternative dispute resolution nor shall enter into any settlement on behalf of a minor or person under disability with reference to the suit.

(d) Where an application is made to the Court for leave to enter into a settlement on behalf of a minor or other person under disability and such minor or other person under disability is represented by pleader, the pleader shall file a certificate along with the said application to the effect that the settlement, in his opinion is for the benefit 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.

Rule 6 : Referral of the Court and appearance before the Court upon failure of attempts to settle disputes by conciliation or Judicial settlement or mediation : (a) Where a suit referred for settlement for conciliation, Lok Adalat, mediation or Judicial settlement is settled between the parties, the suit will be referred back to the Court after recording settlement and the Court shall thereupon pass suitable orders in accordance with law.

(b) If after referring the matter to any of the mode for settlement, it is felt that it is not in the interests of justice to proceed further with the matter, the suit shall be referred back to the Court with a direction to the parties to appear before the Court on a specific date.

(c) The Court may suo moto or on an application of any party recall the suit and proceed further in accordance with law.

Rule 7 : Training in alternative methods of resolution of disputes, and preparation of manual : The Uttarakhand Judicial And Legal Academy shall take steps to have training courses conducted and shall also organize the workshop and seminars for the Judicial Officers and Lawyers, Mediators

& Counselors regarding the alternate modes of dispute resolution.

Part II - CIVIL PROCEDURE MEDIATION RULES

Rule 1 : (a) These Rules shall be called the Civil Procedure Mediation Rules, 2007.

(b) These Rules are framed under sub-clause (d) of Section 89 C.P.C.

Rule 2 : Penal of mediators : (a) The High Court shall for the purpose 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 copy to the High Court Bar Association.

(b) The District Judge shall prepare a panel of mediators for the District & separate list for each outlying Court within a period of sixty days of the commencement of these Rules and shall get these panels approved from High Court and publish these on Notice Board of the Courts & also send a copy to Bar Associations.

(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 having details of the qualifications and experiences of the empanelled persons.

(e) Until a panel is prepared by the High Court or the District Judge the Court concerned may nominate a mediator having the qualification as prescribed in Rule 4 and does not suffer with any disqualification.

Rule 3 : Qualifications of persons to be empanelled as Mediators : The following persons shall be treated qualified and eligible for being enlisted in the panel of mediators under Rule 2, namely :-

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

(ii) Retired Judges of the High Court; or

(iii) Retired District and Sessions Judges or retired Judges of equivalent status, or

(b) Legal practitioners with at least fifteen years standing at the Bar at the level of the Supreme Court, High Court, District Courts or Courts of equivalent status, or

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

(d) Institutions experts in mediation and recognized as such by the High Court :

Provided the names of members of the institution are approved by the High Court initially or whenever there is change in its membership.

(e) 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 empanelment for purposes of conciliation or mediation.

Rule 4 : Disqualifications of persons being empanelled as mediators: 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, or

(iv) any person against 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, or

(v) Any person who is interested or connected with the subject matter of dispute 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, or

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

(vii) Such other categories of persons as may be notified by the High Court from time to time.

Rule 5 : Appointment of mediator : When the parties opt for mediation under Rule 5 of Part I of rules and if,

- (a) All the parties to a suit may agree to nominate the sole mediator.
- (b) Where all the parties to suit are unable to agree to nominate the 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 1 nor bear the qualifications referred to in Rule 2 but should not be a person who suffers from the disqualifications referred to in Rule 5.
- (d) Where parties fail to nominate mediator under clause (a) or (b) the Court shall appoint a sole mediator out of panel prepared under Rule 3.
- (e) The Court after nominating the mediator shall refer the matter to mediator for mediation and shall fix a date for appearance of parties before mediator.

Rule 6 : 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.

Rule 7 : 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.

Rule 8 : Procedure of mediation : (a) The parties may agree on the procedure to be followed by the mediator in the mediation proceedings. Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the following procedure-

- (i) shall fix a venue, the date and the time of each mediation session, in consultation of parties,
- (ii) may conduct joint or separate meetings with the parties,
- (iii) 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,

- (iv) each party shall before session, provide to the mediator a brief memorandum setting forth the issues, need to be resolved, and its position in respect to those issues and all information reasonably required by the mediator to understand the issue, such memoranda shall also be mutually exchanged between the parties also.

- (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.

Rule 9 : Mediator not bound by Evidence Act, 1872 or Code of Civil Procedure, 1908 : The mediator shall not be bound by provision the Code of Civil Procedure, 1908 or the Evidence Act, 1972, but shall be guided by principles of fairness and justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the nature of the dispute.

Rule 10 : Duty of mediator to disclose certain facts : When a person is approached in connection with his possible appointment as a mediator or during the mediator proceeds if required, the person shall disclose in writing to the parties, any circumstance likely to give rise to a justifiable doubt as to his independence or impartiality.

Rule 11 : 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 arrears of compromise and generating options in an attempt to solve the dispute, emphasizing that it is the responsibility of the parties to take decision which effect them, he shall not impose any term of settlement on the parties.

Rule 12 : 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.

Rule 13 : 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, is satisfied, upon such inquiry, if any, as it deems fit, and after giving an opportunity of hearing to the mediator, that the said information has raised a justifiable doubt as to the mediator's independence or impartiality, shall cancel the appointment by a reasoned order and replace him by another mediator.

Rule 14 : Removal of mediator : The name of the mediator may be removed/deleted from the panel by the Court which empanelled him on the following grounds and after affording an opportunity of hearing to the mediator concerned and upon enquiry, if any, to which the Court deems fit by passing the reasoned order :-

- (i) Mediator resigns or withdraws his name from the panel for any reason,
- (ii) Mediator is declared insolvent or is declared of unsound mind, otherwise has become incapacitated to conduct the mediation proceedings,
- (iii) Criminal charges involving moral turpitude are framed by a criminal Court against the mediator,
- (iv) Mediator is convicted by a criminal court for any offence,
- (v) Disciplinary proceedings on charges relating to moral turpitude are initiated by appropriate disciplinary authority which are pending or have resulted in a punishment against the mediator,
- (vi) Mediator exhibits or displays conduct during the mediation proceedings, which is unbecoming of a mediator.

Rule 15 : Parties alone responsible for taking decision : The parties must understand that the mediator only facilitates in arriving at the 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.

Rule 16 : 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, either suo moto, or upon request by the mediator or any of the parties, and upon affording an opportunity of hearing to 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 17 : 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.

Rule 18 : 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 given information to the mediator subject 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 that mediator shall not be compelled to divulge information regarding the documents nor in regard to the oral information not 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 mediator proceedings;
- (b) Documents obtained during the mediations 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 course of mediation proceedings;
- (e) The fact that a party had or had not indicated willingness to accept a proposal;
- (f) There shall be no stenographic or audio or video recording of the mediation proceedings.

Rule 19 : Privacy : Mediation sessions and meetings are private; only the concerned parties or their counsel or power of attorney holders can attend. Other persons may attend only with the permission of the parties or with the consent of the mediator.

Rule 20 : Immunity : No mediator shall be held liable for Civil or Criminal action for his *bona fide* acts or omission the mediation proceedings 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.

Rule 21 : 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), (c) and (d) 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 the following :-

(i) With the Court about the failure of 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;

(d) That the parties have settled the dispute.

Rule 22 : 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 holder. 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 along with all the record of proceedings and fix a date for appearance of parties before Court.

(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 Court in writing.

Rule 23 : Court to fix a date for recording settlement and passing decree : (1) On receipt of any settlement, the Court shall record the settlement, then pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.

(2) If the settlement disposes of only certain issues arising in the suit, the Court shall record the settlement and shall proceed in accordance with law.

Rule 24 : Fee of mediator and costs : (1) At the time of referring the disputes to mediation, the Court shall, fix the fee of the mediator, and shall be payable by the parts as by the parties as directed by Court.

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

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

(4) 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) and (3). The remaining 60% shall be deposited with the mediator, after the conclusion of mediation. For the amount of cost paid to the mediator, he shall issue the necessary receipts and a statement of account shall be filed by the mediator in the Court.

(5) 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 concerned party 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.

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

Rule 25 : Ethics to be followed by mediator : The mediator 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;

- c. uphold the integrity and fairness of the mediation process;
- d. ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process;
- e. avoid, while communicating with the parties, any impropriety or appearance of impropriety;
- f. be faithful to the relationship of trust and confidentiality imposed in the office of mediator;
- g. conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;
- h. recognize that mediation is based on principles of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;
- i. refrain from promises or guarantees of results.

7- (a) The High Court shall take steps to have training courses conducted in places where the High Court and the District Courts or Courts of equal status are located, by requesting bodies recognized by the High Courts 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 dispute, to conduct raining courses for lawyers and judicial officers.

(b)(i) The High Court may nominate a committee of Judges, faculty members including retired persons belonging to the above categories, senior members 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 followed 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 any one 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.

By order of Hon'ble the Chief Justice

Sd/-

V.K. MAHESHWARI,
Registrar General