

## AVOIDANCE OF DELAY IN THE HEARING OF NOTICE OF MOTION

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Code of Civil Procedure 1908 (Act V of 1908) provides for interim orders during the pendency of the suit (S. 94, O 38 O 40). Because of long delays in the hearing of suits, Applications for Interim Orders have gained tremendous importance and the only hope for the litigants, because the final hearing of the suit takes about ten years. Under the circumstances, ex parte, interim orders have their own importance. Maintenance of status quo, no doubt, helps in preservation of property and prevention of further injury to the plaintiff. However, sometimes, ex parte ad-interim orders cause tremendous hardship and misery to the defendants and on many occasions, it is far out of proportion to the hardship that may cause to the plaintiff if ad-interim orders are not passed. The defendant against whom ex parte ad-interim orders without hearing, at least wants to be heard expeditiously. Though civil procedure code provides for disposing of Injunction Application on merits after hearing within one month of the passing of the order (O 39 R 3A) because of heavy workload such applications are not heard for two to three years or even more in some cases. This delay also further delays the regular hearing of the suit.

In India, there are three categories of Court structures – (1) District Court and Court of Civil Judge (S.D.) and Civil Judge (J.D.), (2) City Civil Courts in bigger cities and (3) Original side of the High Courts. In the case of the first structure, cases are usually allotted from the beginning to different Courts though at some places, one Court is assigned for the hearing of interim matters. In the second and third kinds of Court structures, the Chamber Judge and/or Auxiliary Chamber Judge or on occasions, even an additional Judge is assigned the hearing of Applications for Injunctions or other interim applications or Notices of Motions as they are described. Such

final hearing of the suit takes years. The judge in charge of granting ad-interim relief gets no time to read or study the papers which come to him in the second Session of the day on which they are filed. Therefore, ex parte orders are usually passed under tremendous pressure of work in open Court houses where about 100 to 150 lawyers and clients are present and other matters for hearing of Applications are staring in front of the Judge. Defendants against whom harsh ad-interim orders are passed ex parte rush to the Court and struggle to request the judge for hearing on priority basis. Many times, ad-interim orders for a limited duration are passed till the returnable date. On returnable date, even if defendant files his affidavit in reply, ad-interim orders given, usually continue till the hearing and disposal of the Application. The pathetic backlog of matters pending for hearing of Applications for injunction handled by a single judge or a couple of judges makes it difficult for the judge either to take up for hearing urgent matters or give reasons for not being able to hear them as required under 0 39 R 3A and at the most, he directs party wanting the urgent hearing to move the Principal Judge of the Court to allot the matter to another Judge. This also takes time as a separate Application is required to be given and the party sitting tight with the ex parte order does not co-operate and agree or even objects. Even if the Application is dismissed after hearing, the aggrieved party applies for stay of the order vacating the ex parte ad-interim orders with a view to prefer Appeal from order in which case trial Court invariably grants the stay as a matter of course, in spite of its finding that the plaintiff's case was prima facie not tenable. Ad-interim order, therefore, continues in spite of the Judge's finding that plaintiff had no prima facie case or balance of convenience in his favour.

In this kind of grave situation, it would do a lot of good to immediately introduce Interim Case Management concept at the stage of hearing of Application for Interim Orders also. This can be done by (1) Administrative measures by working out a formulae with Bar Associations or by orders of the Court without any amendments in Civil Procedure Code as an immediate

Courts.

3. Hearing of cases even on Saturdays where urgency so demands, of course, by persuading the Advocates to agree if they want urgent hearing.
  4. Fixing the backlogs of Applications continuously for a week in all Courts or on a Saturday in all Courts as a Notice of Motion Week as a dynamic effort of course with previous co-operation of the Bar Association. Such a successful attempt was made in the Gujarat High Court for hearing of Revision Applications by all Courts on Saturdays.;
  5. Directing the Advocates seeking urgent hearing to submit an Interim Case Management Statement, brief synopsis and chronology of events with short reasons why urgent hearing is sought/hardship is suffered or caused by the order (ordinarily in not more than one or two pages).
- II.
- (a) Circulation of all matters on the previous day for urgent ex parte hearing on the next day at 11.00 A.M. so that the Judge would have had read the matter in advance.
  - (b) No unreasonable adjournments be given for filing affidavits in urgent matters.
  - (c) Providing fixed time for arguments, supplemented by written arguments, if desired.
  - (d) Provision for high costs and/or security in frivolous and/or appropriate cases.

## **Long Term Measures:**

- VI. Suitable amendments to clarify the Case Management (interim) techniques can be carried out if thought fit, on the above lines and till then, the measures suggested above can be implemented administratively, by orders and by dialogue with the Bar Associations.
- VII. Effective implementation of O 39 R 3A should be made and judge must record reasons invariably at the time of extending Injunctions or for his inability to dispose off the matters within one month as required by O 39 R 3A.

The above suggestions can be implemented immediately which will create tremendous impact and provide a much welcome measure even by Members of the Bar paving way for co-operation for CASE MANAGEMENT for the suit.

1. Whether previous notice to Defendant given  
Yes ( ) No ( )
2. Reasons why Notice to the other side before hearing should be Exempted (Be Brief or give reference to Application Page/Para).
3. Nature/category of suit (e.g. Money suit, Partition suit/Partnership suit/Declaration (Specific Relief Act) with or without Injunction/Recovery of Possession/Trade Mark/Patent/Easement, etc., as the case may be).
4. Threat/Injury apprehended: - (Not more than ... .... Lines).
5. What is the urgency (Not more than ... ... lines).
6. Chronology of Events:
 

Sr. No.	Date	Event	Documents, if any With Page No. of Application	Page/Para of The compilation For Interim Relief or plaint
7. Short Synopsis
8. Plaintiff and his Advocate give their consent for early hearing even on a holiday if so directed.

Plaintiff's Advocate

C) Whether served :

D) When served :

E) Nature of injury/hardship/difficulty caused by Ad-interim order/Reasons for Urgent Hearing.

F) Additional Chronology of Events, if necessary:

S. No.	Date	Documents, if any, With Page No. of The compilation	Page/ Para of Affidavit-in- Reply
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7. Additional Synopsis, if necessary.

8. Defendant and his Advocate give consent for early hearing even on a holiday.

Advocate for Defendant No.... ..

12(A) (hereinafter, the “Case Management Statement”) after serving a copy of such statement upon the other parties.

Rule 2 : Within fifteen (15) days of the receipt of the copy of the plaintiff’s Case Management Statement, defendant(s) shall file with the Court a case management statement in the form of Appendix C, No. 12 (A) after serving a copy of such statement upon the other parties.

Rule 3 : After fifteen (15) days from the date of filing the Case Management Statements by all the parties, but not later than thirty (30) days thereafter the Court shall fix the date for a Case Management Hearing in order to review in the presence of the parties the Case Management Statements and to pass appropriate orders thereon with reference to the questions raised therein.

Rule 4 : (1) In the event of failure by the plaintiff to submit the Case Management Statements within the period specified by Rule 1 (unless the Court extends such time for exceptional reasons to be recorded in writing), the Court shall direct the dismissal of the suit.

(2) In the event of failure by the defendant to submit the Case Management Statements within the period specified by Rule 2 (unless the Court extends such time for exceptional reasons to be recorded in writing), the Court shall strike the defense(s) of said defendant (s).

(3) More than one extension shall not be granted to each by the Court, and in no event shall such time extend thirty (30) days from the period specified herein.

And 4, the Court may, upon holding of admission of Admission of facts, make such order or give such judgement as it sees fit under Order XII, Rule 6 of this Code.

- Rule 8 : (1) If the Court does not see fit to make such order Or give such judgement under Rule 7 hereof, The Court shall fix a date for a joint Case Management Hearing.
- (2) In preparation of said Hearing, the parties or their Pleaders shall file a joint case management statement in the form of Appendix C, No.12 (A) (2) (hereinafter, the “Joint Case Management Statements”) within thirty (30) days of the Court’s Case Management Hearing.
- (3) Such Joint Case Management Statements shall be completed by the parties or their pleaders jointly.
- (4) In the Joint Case Management Statements, the parties or their pleaders shall elect, unless otherwise prescribed by statute, one from a list of alternative dispute resolution mechanisms available to the parties:
- Meditation, Arbitration under the Arbitration and Conciliation act of 1996 (Part I);
- Conciliation, under the Arbitration and Conciliation Act of 1996 (Part III);



senior advocate with at least fifteen (15) years of practical experience in the subject matter of the dispute, who prepares and conducts one-half day of ENE session free of charge, and

Mediation is defined for purposes of this order as Any form of confidential, non-binding, alternative dispute resolution].

- (5) In the event the parties or their pleaders cannot in good faith reach mutual agreement on a specific answer called for in the Joint Case Management statements, they shall note such disagreements on the said form.
- (6) The Court shall by order resolve any such disagreement as considered appropriate in its own discretion.
- (7) In the event the parties cannot agree on the choice of a alternative dispute resolution mechanism, the Court shall by order choose an appropriate mechanism in its discretion. The parties are not obligated to settle the litigation; they are only obligated to attend the chosen session.
- (8) In the event of failure to comply with the order(s) passed by the Court pursuant to this Rule 8 of this Order, the Court shall pass such orders as specified for non-compliance in Rule 4, including without limitation the imposition of costs [not to exceed # rupees] for one extension granted for exceptional

extend sixty (60) days beyond the date of the Joint Case Management Order.

Rule 9 : The Court shall issue such further orders pursuant To its authority to frame issues under O. XIX, to fix a trial date, and/or to conduct trial, as it sees fit.

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(No. of Suit or proceedings as the case may be) :

By Plaintiff/s

CASE MANAGEMENT STATEMENT

By Defendant/s

Pursuance to Order 9A, Rule(s) 1/2 of CPC, plaintiff/s/ Defendant/s as the case may be, submit Case Management Statement as under: -

1. A short synopsis/chronology of events is enclosed herewith.
2. The following parties are yet not served.
3. The following parties are necessary/proper to be joined in the suit/proceedings.
4. The other party should admit or specifically deny the following facts :  
(See 0 10 R 1, 0 12 R 1, 012 R 4 1 CPC).
5. The other party should answer the following:  
  
Interrogatories (See 0 11, R 1 CPC).
6. The other party should discover on oath in Form No. 5 of Appendix C of CPC the documents which are or have been in his possession or power relating to any matter in issue in this suit (See 0 11 R 12 CPC).  
7. The other party has been served with a Notice in Form No. 7 of Appendix C (CPC) to give inspection of the following documents referred to in his pleading or contained in list of documents annexed

documents except with the leave of the Court.

10. Plaintiff/s or defendant/s undertake to attend Joint Case Management conference with the Advocate/s of the other side and submit Joint Case Management Statement in Form No... .. Appendix C. CPC.

Signature of party's Advocate

Signature of the Party

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Place:

Time:

Present:

Pursuant to 0 9A R 8, the parties (through their Advocates) jointly submit this Case Management Statement and proposed order. Each party certifies that his Advocate (who will try this case) met and conferred for the preparation of this Statement, as required by 0 9A R 8.

1. Statement of admitted facts.
2. Statement of disputed facts.
3. Issues arising for determination including disagreement on Issues, enumerate issues which are agreed and those which are not agreed for Court's consideration.
4. The following parties are yet not served.
5. Any additional parties that a party intends to join are listed below.

Party who intends Joint	Additional parties	Deadline for making an application for joining
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6. The amendment to its pleading, if any party wants to make

Party who intends To move amendment	The deadline before which to move the amendment.
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7. ADR Choice:  
Plaintiff/s or Defendant/s elect from the following list of Alternate Dispute Resolution mechanisms mentioning their order of preference by writing 1, 2, 3, 4, 5 or 6 opposite to the following alter names:

(5) Lok Adalat

(6) Early Neutral Evaluation

8. Disclosure of Insurance Policies, if any, held by any of the parties.

9. Deadline for disclosure of witnesses and production of their affidavits in substitution of examination in Chief.

Part

Date

11. Trial Schedule:

(a) Trial date

(b) Anticipated length of trial

(c) Final pretrial conference date

12. Identification and signature of trial Advocate.

Party

Name

Address

Phone No.

The Court finds that each party was represented by Advocate responsible for trial of this matter and was given an opportunity to be heard as to all matters encompassed by the Case Management Statements by each party and the Joint Case Management Statements by all the parties. The Court adopts this statement as modified and enters it as the order of this Court under 0 9A R 10 and/or 11 of C.P. Code.

Date:

Signature and Designation of the Judge.

possible.

ADR encompasses a variety of techniques e.g., Meditation, binding and non-binding Arbitrations, Early Neutral Evaluation, judicial settlement, conciliation and settlement by Lok Adalat. ADR procedures are designed to create versatility in resolution of civil disputes. It is designed to provide broader range of dispute resolution opportunities.

#### Advantages of ADR

- \* Saves time – Faster
- Saves money – Less Expensive
- Enables a better understanding of the case
- More creative
- Allows Flexibility
- Allows direct participation of litigants.
- Offers more control
- Encourages mutual communication.
- Preserves relationship
- Protects ongoing business
- Offers confidentiality.

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parties and Arbitration Award can be filed in the Court and enforced as a Judgement of the Court.

Arbitration can be involuntary procedure utilized by the Court. Such an involuntary Arbitration is non-binding and either party can elect to proceed with a formal Court trial after the procedure has been completed. The purpose of involuntary arbitration is to give the parties the benefit of a neutral third party's views on merits of their case. This kind of Arbitration is not binding to the parties and the outcome of the Arbitration is not admissible in evidence if either party refuses to be bound by it. It indirectly enables the parties to get a near to realistic assessment of their case and enables them to decide a future course of action.

Who are the Arbitrators? Ordinarily the Arbitrators are professional or business people who are selected because of their knowledge, expertise and reputation for fairness and impartiality.

designed to resolve disputes through agreement i.e. through the mutual consent of the parties. It helps the parties in reaching agreement by exploring not only the relevant evidence and law, but also parties' underlying interests, needs and priorities. It is a flexible, non-binding confidential process in which the mediator facilitates settlement through negotiations.

How Mediation is carried out? A mediator who is impartial and who has conflict of interest is selected from a panel consisting of experienced lawyers or retired judges or experienced businessmen. Parties and their lawyers appear before him. Parties and their lawyers appear before him. Parties' lawyers exchange the statements of their case and submit them to the mediator at least 15 days in advance before the mediation hearing. Mediator may call the parties and their lawyers jointly and/or separately and may call for additional confidential statements that are not shared with the other side. These statements are not filed in the Court and would not form Court records. The Mediator meets with the parties in joint and separate sessions and helps to:

- \* Improve communications between them.
- \* Probes the strengths and weaknesses of each party's case factually and legally.

most difficult disputes.

What a Mediator  
Shall not do?

The Mediator generally does not give overall evaluation of the case. He does not and has no power to impose settlement.

He shall not and has no power to give his own judgement unlike an Arbitrator in a voluntary Arbitration.

He shall not coerce a party to accept the proposed terms. The procedures of a regular trial are preserved and if no settlement is reached, the case remains on the list of the Court cases.

Advantages of  
Mediation:

Fast

\* Helps in fast disposal of a case. Time spent in mediation is significantly less than the time needed for trial. It gets the case started immediately and the case does not have to wait for its turn. A case which lasts for years in Court can be disposed off within days or months of its filing.

Flexible

\* There is no set formula and a large scope for imaginative quick solutions. Even procedures can be modified to suit the demands of each case. It can be applied before the beginning of formal legal proceedings, during trial or at any stage of litigation. The issues of disputes can be limited or expanded during the course of the mediation proceedings.

sympathetic mediator brings the parties down to earth. Sometimes enmity is converted into friendship for a future advantage.

Convenient

\* The lack of formality and not subjected to overworked and sometimes bureaucratic Courts. Time, location and duration of the proceedings can be significantly controlled by parties.

Creative

\* Resolutions not possible through Courts or even arbitrations can be achieved. For example, two businessmen/companies/or firms can work out a continuing business relationship rather than result in payment of money or damages. It may help brothers into bonds stronger than just blood relationship.

Confidential

\* Parties can avoid glare of publicity and keep their disputes low key and private. Confidentiality encourages candor and candor is more likely to result in resolution.

What makes a Good Mediator?

Trust & Faith

\* If parties do not respect the mediator, the chances of success are small. Mediation often involves private and confidential discussion between a party and a mediator and therefore mediator must be honest, sincere and able to honour confidentiality. Similarly parties should be able to confide and trust the mediator. Therefore mediator should be trustworthy and reliable.

having some knowledge in the field probably would inspire greater confidence amongst the parties. Such a mediator would also be able to assist the parties in arriving at non-traditional solutions.

#### Diligence

\* Mediator should be not only able to understand the nature of disputes quickly, but should also understand the motivation of the parties. He must understand the points of view, need and interest of the parties. He should be able to understand the subject matter as well as people he is dealing with.

#### Impartiality

\* Mediator must be impartial. The parties must be satisfied that the mediator is honest, neutral and unapproachable or has no interest in any of the parties, failing which his opinion and expression will carry no weight.

#### Skills

\* A mediator needs good communication skills. He should be able identify disputes, see potential solutions and offer numerous alternatives for solutions of disputes.

### **Role of Chambers & Bar Associations**

- \* Both should help in educating litigants.
- \* Organise seminars, educational programmes, publish easy reading materials to educate the litigants.

ADR procedures.

- \* To establish contacts with other Trade Associations and Institutions.
- \* Form a joint co-ordination committee to review the results and highlight them.
- \* To formulate, standardise and publish the steps towards mediation procedures to be adopted and make them easily available to every litigant.
- \* To raise funds for the benefit of indigent and less fortunate litigants if they are willing to adopt ADR procedures.

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