

# **CASE MANAGEMENT - A MODERN CONCEPT**

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CASE MANAGEMENT is a judicial process which provides effective, efficient and purposeful judicial management of a case so as to achieve a timely and qualitative resolution of a dispute. It assists in the early identification of disputed issues of fact and law, the establishment of a procedural calendar for the life of the case and the exploration of a possibility of resolution of the dispute through methods other than the Court trial.

CASE MANAGEMENT requires early assignment of a case to a judge who then exercises judicial control over the case immediately after it is filed and keeps track of the record at every stage. The Judge applies judicial process to the rival contentions at the earliest stage after filing of the written statement and requires and enforces active participation and joint communication amongst the parties and their lawyers for the smooth progress of the case. Case management technique mobilizes early preparation of respective cases by the parties and their lawyers by requiring them to identify the real controversies in the case and seeking

early response from the other sides on the questions of facts and law raised by the opponents; this is done effectively utilizing procedures laid down by Civil Procedure Code. It requires submission of separate case management statements by each party and enforces the other side to answer any of the requisitions, if any made by each party and, in addition, provides sanctions for non-compliance.

At the time of hearing of the case management statements by the parties, the Judge evolves a joint case management statement by all the parties recording therein, inter alia, the admitted and disputed facts. Minimizing or narrowing down the controversies, and explore the possibility of early resolution of disputes by judicial settlement/conciliation/arbitration/mediation/early neutral evaluation. The Judge then delivers early judgment on agreed, admitted or uncontested questions wherever possible, thereby greatly reducing the case load.

If the case remains undecided after the above stated efforts fail, the judge fixes the schedule for the trial of the case and directs the parties to follow and adhere to the said schedule so that he may run and finalize the trial expeditiously.

Delay defeats equity and many times delay amounts to denial of justice. Law's delays create tremendous backlog which, in turn, creates confusion and chaotic conditions in the administration of justice and results in the loss of public confidence in the judicial system. The causes for delay are attributable to explosion of litigation, fewer judges and lack of awareness to tackle the problem of delay. A laissez fair approach in the handling of case load results in the piling up of cases. Lack of will and joint co-operation of legal actors the judges and the lawyers – and total non involvement of litigants have left the “unattended child to its fate”. The problems have multiplied due to lethargy and passive handling of the administrative aspects of the case thereby creating an absence of answerability. Without dynamic control and continuous monitoring of the system, a passive indifference and despair creating a helpless acceptance of the existing situation prevail, resulting in multiplication of back logs. It is therefore necessary to create an awareness that the justice system is an integral part of the national system and can contribute effectively to nation-building by a motivated modern approach with modern mechanisms and joint involvement of judges, lawyers, administrative officers and the litigants. Creating an awareness, introducing the concept of answerability exhibiting a conscious effort and determination, introducing a modern management concept and proven modern mechanisms to increase communication will

all help in reaching solutions to the problems. It is necessary to impress upon all concerned that a well managed justice system can contribute effectively towards the growth of commerce, industry, social values and awareness for law and order in the society, thereby reviving people's faith in a judicial system which people have recently started to view as a savior of democratic process.

Thus, CASE MANAGEMENT will provide the immediate need for preventing futile backlogs, providing swift justice, dealing with backlogs with a more determined effort and creating an atmosphere of joint venture between judges, lawyers, litigants and administrative officers. Identification of the problem area will create the need for their solution and continuous steering of the life of a case will result in due attention to the complicated aspects of the litigation process. Faster turnover of cases will create respect and confidence for the system and a new attitude amongst legal actors will build up the institution of justice with a sense of purpose and meaning.

### **ROLE OF A JUDGE IN CASE MANAGEMENT**

1. No sooner the case is filed in the Court, it is assigned to a Judge who assumes immediate control over the case and becomes an

active participant alongwith the advocates, parties and Court Officers involved with the case.

2. The Judge keeps track of the case by adhering to the schedules and sees that there is due service of process to the defendants and that the written statements are filed by the defendants. No unreasonable time should be allowed to be wasted for service of the process and filing of the written statements.
3. The Judge ensures that the procedures for case management and ADRs are properly explained by the Advocates to their clients and due certification about the same is given by the Advocates. He also receives verification from the parties that they have understood the said procedures properly. In addition, he verifies that the printed materials explaining the case management and ADR have been delivered to the plaintiff at the time of the filing of the suit and to the defendant at the time of service of the process.
4. The Court can ask the bailiffs / serving Officers whether the process is served or why it is not served. Such serving Officers will be answerable to the Court for non service without legitimate reasons.

5. After the pleadings are filed, the Judge will study them to understand the real controversy in order to control the hearing at all stages more effectively.
6. The Judge would ensure that the plaintiff and his Advocate file the case management statement within two months from the filing of the written statement. This will be after copies are served to the defendants and their Advocates. After the two months period, the Judges shall continue to direct the plaintiff's Advocate by special or general notice to prepare and file the case management statement within the time schedule. No extension for filing the case management statement shall be given except in special circumstances for reasons to be noted, briefly, in writing. Adjournments should not be granted as a matter of course. The Judge shall grant no more than one extension to the plaintiff and in no event shall such time extend beyond 30 days from the period specified.
7. The Judge shall ensure the case management statement is filed by the defendants and their Advocates, within 15 days from the filing of the case management statement by the plaintiff, after serving copies to other parties. No extension for filing case management statements by the defendants shall be given except in special circumstances for reasons to be recorded, briefly, in

writing. Adjournments should not be granted as a matter of course. The Judge shall not grant more than one extension to the defendant/s and in no even shall such time extend beyond 30 days from the period specified. In the event of such an extension given to either of the parties, the Judge shall the costs (not to exceed.....rupees). Orders imposing sanctions shall not be subject to appeal or revision and no adjournments or stay of such orders will be granted.

8. The Judge shall then study the respective case management statements and, between the period of 15 and 30 days after the filing of case management statements by the defendants, shall set the date for the case management hearing. At such hearing, he will give sufficient hearing and prevail upon the parties to properly and effectively comply with the requisitions made by the other parties. The approach of the Judge to the requisition and their compliance will both be casual, rather it will be effective and purposeful.
9. While ensuring compliance to the time schedule and to the requisitions, the Judge shall exercise judicial authority clearly, expeditiously and purposefully and impose sanctions to secure compliance and not to penalize. He will also use his judicial

discretion and powers discreetly, positively and practically to achieve results speedily and effectively.

10. While seeking compliance voluntarily or by agreement, the Judge shall not hesitate to pass necessary orders when required. The Judge shall keep in mind the provisions of O 9A(proposed) 0.10 to 0.16 and pass such orders, as the facts and circumstances demand, to include making orders or passing judgment under O.XII R 6 wherever possible.

At the time of the case management hearing, the Judge shall scrutinize and verify the respective case management statements of the parties and carefully check and the requirements of the prescribed formats are applied.

11. In case the Judge does not see fit to make order or pass judgment under O XII R 6 at the time of the case management hearing, he shall , within two months of the said hearing, fix a date for a joint case management hearing directing the parties to file a joint case management statement (in preparation for the hearing) within 30 days. The Judge shall ensure that the parties or their Advocates have selected one of the alternative dispute resolution mechanisms available to the parties. The Judge will explain to the parties, if necessary, the advantages of selecting the said mechanism and will further inform them that



failure to reach a result by a particular mechanism will enable the party to select another. Failure in bringing a result by any of the mechanisms, will however, not forfeit the right of the parties to go to the trial. Any misapprehensions of the parties about the said mechanisms must be removed by the Judge. He will explain to the parties the importance of a joint case management conference between the parties and their Advocates and then jointly prepare statements of admitted facts and issues arising for determination including any preliminary issues. The respective parties and their Advocates will include, in the statement and for the Court's consideration, any issues on which there is no agreement. The Judge will also stress the deadlines for trial of the case. The Judge will finally ensure that the parties and their Advocates write down their names and telephone numbers and sign the joint case management statement.

ADR – Alternate Dispute Resolution is also known as

CDR – Consensual Dispute Resolution

*For Case Management Statements please see pages 41 to 43*

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