

Guidelines for Effective Implementation of ADR Mechanism

THE BOMBAY HIGH COURT MEDIATION SCHEME
(For District and Taluka Courts and other Courts)

INTRODUCTION

The Main Mediation Monitoring Committee, Bombay High Court (MMC) appointed by the Hon'ble the Chief Justice operates a Mediation Scheme for the resolution of disputes in pending cases in the District and Taluka Courts as well as in other Courts i.e., Family Courts, City Civil Court, Small Causes Court, Metropolitan Magistrates Courts etc. The MMC seeks to provide litigants with an opportunity to resolve their disputes through mediation.

2. The Court Scheme offers a Pro-bono and/or fixed-cost mediation.

3. The Parties having cases in the District / Taluka or other Courts may opt to take benefit of the scheme by making necessary application to the concerned Court before which the case is pending. The Court can also make a reference to mediation in appropriate cases by exercising the powers under section 89 of the Code of Civil Procedure, 1908 either on an application of one of the parties or on its own motion. When an application as aforesaid is made or when an order as aforesaid is made,

(a) the Court may give an opportunity to the parties to suggest the name of an empanelled Mediator/ Mediators or an empanelled Mediation Institution and appoint the Mediator/ Mediators or the Mediation Institution, as the case may be, suggested by the parties; or

(b) the Court may appoint either a Mediator or Mediators or a Mediation Institution as the Mediator/ Mediators; or

(c) the Court may direct the Coordinator of the concerned District Mediation Monitoring Committee or the concerned Taluka Monitoring Sub Committee, as the case may be, to refer the case to either an empanelled Mediator/Mediators or an empanelled Mediation Institution.

4. The persons possessing qualifications prescribed by Rule 4 of Part II of the Civil Procedure Alternative Dispute Resolution and Mediation Rules, 2006 (for short "ADR Rules") framed by the High Court of Judicature at Bombay can be empanelled by the District Mediation Monitoring Committee or by Taluka Mediation Monitoring Sub-Committee. The Mediation Institutions having qualified Mediators as per Rule 4 above as its Members and trained in-service Judge Mediators may be empanelled by the District Mediation Monitoring Committees or Taluka Monitoring Sub Committees. The Mediation Institutions shall be empanelled on the condition that the cases referred to them will be referred only to the qualified Mediators as set out in Rule 4 of ADR Rules.

5. Mediation meetings will normally take place at the premises of the District Mediation Monitoring Committees, or Taluka Monitoring Sub Committees or any other premises approved by District Mediation Monitoring Committees or Taluka Monitoring Sub Committees, or the premises determined by the Mediator or the Mediation Institution, as the case may be, after consultation with the parties. It will be open for the Mediator or the Institution, as the case may be, to hold mediation via video conferencing or by using any other electronic device or media with the consent of the parties and by following the agreed procedure.

PANEL OF MEDIATORS.

6. The following persons may be empanelled by the District Mediation Monitoring Committees or the Taluka Monitoring Sub Committees either on the basis of the applications of the persons concerned or with their written consent:

- i. The Persons possessing qualification as per Rule 4 of Part II of the Civil Procedure Alternative Dispute Resolution and Mediation Rules,2006;
- ii. Institutions (called as Mediation Institutions) which have qualified Mediators as per Rule 4 Rule 4 of Part II of the Civil Procedure Alternative Dispute Resolution and Mediation Rules,2006;
- iii. Trained Mediator in-service Judges.

The Panel shall be as per Rule 3 of Part II of ADR Rules. District Mediation Monitoring Committee or Taluka Monitoring Sub Committee shall be entitled to reject the applications. District Mediation Monitoring Committee or Taluka Monitoring Sub Committee shall have power to remove the names of the Mediators or Mediation Institutions from the panel, without assigning any reason. The panel can be revised from time to time and shall be revised in the month of June of every calendar year.

7. The Panel will be divided into the categories mentioned in clause 6 above.

8. Updated list of empanelled Mediators and Mediation Institutions will be provided to every Judge of all the Courts in the District and to the Bar Associations. The list will be displayed on the Website of the

concerned District Court. Even the contact details such as addresses and contact numbers of the Co-ordinators of District and Taluka Monitoring Committees shall be notified on the website as well as to the Bar Associations.

REFERENCE TO MEDIATION.

9. Appropriate cases which are suitable for mediation may be referred for mediation by the Referral Judge. Section 89 and Rule 1A of Order X of Code of Civil Procedure, 1908 require the Courts to direct the parties to opt for any of the alternate dispute resolution mechanism. The reference to the mediation can be made at any stage of the proceedings. Reference to the mediation shall be preferably made at the stage contemplated by Rule 1A of Order X.

10. The Referral Judge is required to acquaint himself with the facts of the case and the nature of the dispute between the parties and to make an objective assessment of the suitability of the case for mediation.

CASES WHICH MAY NOT BE FIT FOR REFERENCE

11. i. Representative suits under Order I Rule 8 of the Code of Civil Procedure which involve public interest or interest of numerous persons who are not parties before the Court.

ii Disputes relating to election to the public offices.

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 non-compoundable criminal offences.
- vii Matters regarding trusts especially cases involving dispute amongst or against trust/trustees.

CASES WHICH MAY BE FIT FOR REFERENCE

12. (i) All other suits and cases of civil nature and in particular the following categories of cases (whether pending in civil Courts or other special tribunals/fora) are normally suitable for ADR processes:

- (ii) All cases relating to trade, commerce and contracts, including disputes arising out of contracts (including all money suits); disputes relating to specific performance; disputes between suppliers and customers;
- (iii) disputes between bankers and customers;
- (iv) disputes between developers/builders and customers;
- (v) disputes between landlords and tenants/licensor and licensees;
- (vi) disputes between insurer and insured
- (vii) All cases arising from strained or soured relationships, including disputes relating to matrimonial causes, maintenance, custody of children;

disputes relating to partition/division amongst family members/
coparceners /co-owners; and

disputes relating to partnership among partners.

(viii) All cases where there is a need for continuation of the pre-existing relationship inspite 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;

(ix) All cases relating to tortious liability, including

claims for compensation in Motor accidents/other accidents; and

(x) 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;

(xi) dispute between employer and workmen/employees.

13. The above enumeration of "suitable" and "unsuitable" cases is not exhaustive or rigid. The enumeration is illustrative which can be subjected to just exceptions or additions by the Courts exercising its discretion in referring a dispute/case to an ADR process.

14. In spite of the categorization mentioned above, a Referral Judge must independently consider the suitability of each case with reference to its facts and circumstances.

15. The Referral Judge should encourage and motivate the parties for mediation. The Referral Judge should explain the concept and process of mediation and its advantages and how settlement through mediation is in the interests of the parties. Even when the case in its entirety is not suitable for mediation, a Referral Judge may consider

whether any of the issues involved in the dispute can be referred for mediation.

PROCEDURE

16. The referral order passed by the Court shall be forthwith communicated by the concerned Bench clerk/concerned clerk of the Referral Court by sending a copy of the referral order to the Secretary, District Legal Services Authority/Taluka Legal Services Committee. The communication as aforesaid shall be made within 3(three) working days from the date on which the order is uploaded. Even the parties to the case referred for mediation will be entitled to communicate the referral order to the Secretary, District Legal Services Authority/Taluka Legal Services Committee.

17. Upon receipt of the order, the concerned Mediation Committee/Sub-Committee shall take necessary action thereon including action of appointing a Mediator or Mediation Institution, if so directed by the Court and shall inform the parties as well as the Mediator or Institution, as the case may be, by forwarding a copy of the referral order. The Mediator may be requested to send the dates and the venues of mediation meetings to the District Mediation Monitoring Committee.

FEES AND CHARGES PAYABLE TO MEDIATORS

18. Mediation shall be *pro-bono* in all cases where there is a specific order of the Referral Judge to that effect. However, in the cases, involving matrimonial disputes, disputes between employer and

workmen/employee, the cases involving the dispute regarding the custody of minor children and the cases regarding compensation under the Motor Vehicles Act, 1988 or the Workmen's Compensation Act, 1923 the mediation shall always be *pro-bono* unless otherwise directed by the Court. In cases where the mediation is not *pro-bono*, the Mediator may charge fees not exceeding Rs.10,000/- for the Mediation process. The Referral Court always retains a discretion to permit fees in excess of Rs.10,000/- on its own motion or at the request of the parties or the Mediators. The Mediators shall be also entitled to get reimbursement of out of pocket expenses actually incurred by them from the parties to the mediation. The Mediators shall disclose the amounts paid to them on both the counts in the final report. In case the Mediator is an in-service Judge, he/she will not be entitled to claim any amount by way of fees or reimbursement of expenses. Cost/Fees shall be equally shared by the parties, unless there is specific order of the Court or an agreement between the parties to the contrary.

19. In the cases of Pre-Institution Mediation in Commercial Disputes to which section 12A of the Commercial Courts Act 2015 is applicable, the fees shall be levied as per Schedule II of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018. In such cases, the Maharashtra State Legal Services Authority will decide the quantum of Mediator's fees and disburse the same as per the guidelines issued by MMC.

PROCEDURE

20. The parties are free to agree how, and in what form, they will present their case before the Mediator. The Mediator will be at liberty to evolve his / her own procedure for mediation.

21. Any mediation settlement agreement entered into between the parties shall be in writing and signed by the parties, or their power of attorney holders as well as the Mediator.

22. The mediation shall be normally completed within 60 days from the date of communication of the appointment to the Mediator/Mediation Institution, as the case may be. In appropriate cases, the time can be extended by the Referral Court on an application made by the parties or on the Report submitted by the Mediator through District Mediation Monitoring Committee or Taluka Monitoring Sub Committee.

PROCEDURE AFTER CONCLUSION OF MEDIATION.

23. (i) The Mediator shall submit a report to the Referral Court on conclusion of mediation. The report shall only provide the final outcome without preface, reasons, conclusions or observations by the Mediator.

(ii) The report shall be placed in a sealed envelope.

(iii) In case of settlement, the original settlement document shall be forwarded to the Court by the Mediator along with the report.

POWERS OF THE COURT

24. Nothing stated in the Scheme shall affect the powers and the jurisdiction vested in the Courts.

25. It is clarified that, where any provision of this scheme is in conflict with any of the ADR Rules or the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, the provisions of both these Rules shall prevail.
