

HIGH COURT OF JAMMU AND KASHMIR
(Office of the Registrar General at Jammu)

NOTIFICATION

No: 1542

Dated: 10/03/2020

In exercise of the rule making power under Part-V of the Civil Procedure Code, 1908 and Clause (d) of sub-section 2 of Section 89 of the said Code read with Section 122 of the Civil Procedure Code, 1908, Section 21 of the Family Courts Act, 1984, Section 82 of the Arbitration and Conciliation Act, 1996 and all other enabling provisions, the High Court of Jammu and Kashmir is hereby issuing the following rules:-

Jammu and Kashmir Mediation and Conciliation
Rules, 2019

1. **TITLE:**

These Rules shall be called 'The Mediation and Conciliation Rules, 2019'. The Rules would be applicable to all Mediation and Conciliation Centres functioning in the High Court of Jammu & Kashmir and the District Courts in Jammu and Kashmir, in connection with all mediation/conciliation services offered by them as also in connection with any suit or other proceeding, pending in the High Court of Jammu and Kashmir or in any Court subordinate thereto. The reference to mediation or conciliation may be made by the High Court or any other Court subordinate thereto to the Mediation Centre(s) in the High Court, District Courts and/or any Mediation Centres set up by the Courts or the Legal Services Authorities.

2. **APPOINTMENT OF MEDIATOR OR CONCILIATOR.**

(a) Parties to a suit or other proceeding may agree on the name of the sole mediator or conciliator for mediating the disputes between them.

(b) Where there are two or more sets of parties and are unable to agree on a sole mediator/conciliator, each set of parties shall nominate the mediator/conciliator or the Court 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 or otherwise under clause (b), the mediator/conciliator need not necessarily be from the panel of mediators/conciliators referred to in Rule 3 nor bear the

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qualifications referred to in Rule 4 but should not be a person who suffers from the disqualifications referred to in Rule 5.

(d) Where there are more than two sets of parties having diverse interests, each set shall nominate a person on its behalf and the said nominees shall appoint a sole mediator.

3. PANEL OF MEDIATORS/CONCILIATORS.

(a) The High Court shall, for the purpose of appointing mediators between the parties at the pre-litigation stage or in pending 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 or any changes being carried out with copy to the High Court Bar Association.

(b) (i) The High Court or the Court of the Principal District & Sessions Judge in each District or the Courts of the Principal Judge of the City Civil Courts or Courts of equal status shall, for the purpose of appointing a mediator/conciliator to mediate between the parties at the pre-litigation stage or in pending suits or proceedings prepare a panel of the mediators/conciliators within a period of ninety 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, the same shall be published on their respective Notice Board(s).

(ii) Copies of the said panel referred in clause (i) shall be forwarded to all the Courts of equivalent jurisdiction or subordinate courts referred to in sub clause (i) and to the Bar Associations attached to each of the Courts.

(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 giving details of the qualifications of the mediators/conciliators and their professional or technical experience in different fields.

(e) The panel of mediators/conciliators appointed under Clause (a) and Clause (b) 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 Court of the Principal District & Sessions Judge in each District or the Courts of the Principal Judge of the City Civil Courts with the approval of the High Court, as the case may be.

4. QUALIFICATION OF PERSONS TO BE EMPANELLED UNDER RULE 3.

The following persons may be treated as the qualified and eligible for being enlisted in the panel of mediators/conciliators under Rule 3, namely:-

- i) Retired Judges of the Supreme Court of India;
- ii) Retired Judges of the High Court;
- iii) Retired District and Sessions Judges of the City Civil Court or Courts of equivalents status;
- iv) 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 or Courts of equivalent status.
- v) Experts or other professionals with at least five years standing.
- vi) Institutions and persons who are themselves experts in mediation and have been recognized as such by the High Court provided the names of its members are approved by the High Court initially or whenever there is change in membership.

The empanelment of any of the above shall be effected only after their having undergone the training as per settled norms.

5. DISQUALIFICATIONS OF PERSONS.

The following persons shall be deemed to be disqualified for being empanelled as mediators/Conciliators/co-mediator/co-conciliator:-

- (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 the criminal Court and are pending; or
- (iii) any person who has been convicted by a criminal court for any offence involving moral turpitude;
- (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;
- (v) any person who is interested or connected with the subject matter of dispute or is related to anyone of the parties or to those who represent them, unless such objection is waived by all the parties in writing;
- (vi) any legal practitioner who has or is appearing for any of the parties in the suit or in any other suit or proceedings;

(vii) such other categories of persons as may be notified by the High Court.

The empanelment of any of the above shall be effected only after their having undergone the training as per settled norms.

6. VENUE FOR CONDUCTING MEDIATION & CONCILIATION.

The mediator/conciliator shall conduct the mediation/conciliation at one or other of the following places:-

- (1) Mediation and conciliation centers established by the High Court,
- (2) Venue of the Lok Adalat or Permanent Lok Adalat,
- (3) Any place identified by the High Court/Principal District Judge within the Court precincts for the purpose of conducting mediation.
- (4) 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;
- (5) Any other place as may be agreed upon by the parties subject to the approval of the Court.

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.

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 circumstance(s) likely to give rise to a justifiable 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).

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/her by another Mediator/Conciliator.

10. REMOVAL OR DELETION FROM PANEL.

A person whose name is placed in the panel referred to in rule 3 may be removed or his name be deleted from the said panel, by the Court which empanelled him, if:-

- i) he resigns or withdraws his name from the panel for any reason;
- ii) he is declared insolvent or is declared of unsound mind;
- iii) he is a person against whom criminal charges involving moral turpitude are framed by a criminal court and are pending;
- iv) he is a person who has been convicted by a criminal court for any offence involving moral turpitude;
- v) he is a person against whom disciplinary proceedings on charges relating to moral turpitude have been initiated by appropriate disciplinary authority which are pending or have resulted in a punishment;
- vi) he exhibits or displays conduct, during the continuance of the mediation proceedings, which is unbecoming of a mediator;
- vii) the court which empanelled, upon receipt of information, is satisfied, after conducting such inquiry as it deems fit, is of the view that it is not possible or desirable to continue the name of that person in the panel; provided that, before removing or deleting his name, under clauses (vi) and (vii), the Court shall hear the mediator/conciliator whose name is proposed to be removed or deleted from the panel, before passing the order.

11. PROCEDURE OF MEDIATION/ CONCILIATION.

The following procedure shall be followed during the process of Mediation/Conciliation:

- a. The Mediator/Conciliator shall, at the outset, disclose the procedure/process of mediation/conciliation to the parties before commencement of mediation session.
- b. The parties shall, at the commencement of Mediation/Conciliation session, sign a consent form agreeing to participate in the Mediation/Conciliation process in good faith and with the intention to settle the dispute.
- c. The Mediator/Conciliator shall as far as practicable follow the procedure/process of mediation in true letter and spirit and fix the time schedule for completion of the Mediation/Conciliation proceedings which shall not be for more than 90 days, extendable with prior approval of the court/tribunal in which the suit or proceedings may be pending.

d. The Mediation/ Conciliation sessions shall be held within the premises of the Centre or such other place where the parties to the suit or proceedings jointly agree with the Mediator/Conciliator after taking prior approval from the Coordinator/Incharge of the Centre.

e. The Mediator/Conciliator shall not be bound by the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 1973 and shall be guided by the principles of fairness and justice, having regard to the rights and obligations of the parties and the circumstances of the dispute(s).

f. Mediation/Conciliation shall not be limited to the issues in dispute and the Mediator/Conciliator may take into consideration disputes between the parties to a case not subject of the pending litigation and facilitate resolution of all the disputes between the parties agreed to be placed before the Mediator/Conciliator.

g. The Centre shall endeavor to ensure that each Mediation/Conciliation proceedings is concluded within a period of 90 days from the date of referral or such time as may be granted by the court.

h. In an appropriate case, the Centre /Mediator/Conciliator may invite the parties other than those who are involved in the litigation to join the Mediation/Conciliation. Such a party(ies) shall also be bound by these rules and required to sign the consent form as mentioned above.

i. As soon as a referral order is received from the court by the Centre, a Mediator/Conciliator/Co-mediator/Co-conciliator shall be appointed by the Centre.

j. The Mediator/Conciliator may meet the parties, jointly and separately, as may be decided upon by the mediator/conciliator.

k. The Mediator/Conciliator shall not be required to maintain the details of the proceedings but shall be entitled to record notes for his/her own reference only.

l. The Mediator/ Conciliator shall fix the dates for Mediation/Conciliation sessions and for this purpose shall give sufficient notice to the parties.

m. At the end of Mediation/Conciliation, if any settlement is arrived at, the Mediator/Conciliator shall draw up the settlement and shall obtain the signatures of the parties thereon along with their advocates, if represented. Any third party invited during mediation, if required, shall also sign the settlement.

n. Settlement so recorded shall be presented to the court/tribunal in the cases referred by it.

o. In case of failure to resolve the dispute, the Mediator/Conciliator shall submit his report to the court/tribunal to the said effect without assigning reasons therefor.

12. MEDIATOR NOT BOUND BY INDIAN EVIDENCE ACT, 1872 OR CODE OF CIVIL PROCEDURE, 1908.

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

13. REPRESENTATION OF PARTIES AND CONSEQUENCES OF NON-ATTENDANCE OF PARTIES AT SESSIONS OR MEETINGS ON DUE DATES.

a) The parties shall ordinarily be present personally or through constituted attorney/authorized representative at the sessions or meetings notified by the Mediator/Conciliator. The parties may be present before the Mediator/Conciliator through any electronic mode, audio-video communication, if not in a position to be personally present. However, they may be represented by the counsel with permission of the Mediator/Conciliator in such sessions or meetings.

b) The party 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.

c) 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 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.

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.

15. OFFER OF SETTLEMENT BY PARTIES.

a) Any party to the suit may make a, "without prejudice" offer, 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.

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.

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.

18. TIME LIMIT FOR COMPLETION OF MEDIATION/ CONCILIATION.

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-moto, 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.

19. PARTIES TO ACT IN GOOD FAITH.

While no one can be compelled to commit to settle his case in advance by way of mediation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute, if possible.

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 or 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 stenographic, audio or video recording of the Mediation / Conciliation proceedings.

e) No statement of parties or the witnesses shall be recorded by the Mediator/Conciliator.

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.

22. IMMUNITY.

No Mediator/Conciliator/Co-mediator/Co- 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, give information about or 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.

23. COMMUNICATION BETWEEN MEDIATOR/ CONCILIATOR AND THE COURT.

(i) 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 (ii) and (iii) of this Rule.

ii) 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.

(iii) Communication between the Mediator/Conciliator and the Court shall be limited to communication by the Mediator/Conciliator:

- a) with the Court about the failure of the party to attend;
- b) with the Court about the consent of the parties;
- c) regarding his assessment that the case is not suited for settlement through the mediation/conciliation;
- d) that the parties have settled the dispute(s).

24. SETTLEMENT AGREEMENT.

i) Where an agreement is reached between the parties in regard to all the issues either in the suit or proceedings or some of the issues or otherwise between the parties, the same shall be reduced to writing, executed and signed by the parties or their constituted attorney. If any counsel has represented the parties, the Mediator may obtain his signature also on the settlement agreement.

ii) The agreement of the parties so signed and attested shall be submitted to the Mediator who shall forward the same to the court in which the suit is pending.

iii) Where no agreement is arrived at between the parties or where the Mediator/Co-mediator/Co-conciliator is of the view that no settlement is possible he shall report the same to the said court in writing.

25. COURT TO FIX A DATE FOR RECORDING SETTLEMENT AND PASSING ORDER/DECREE IN CIVIL CASES.

1) On receipt of any settlement in a pending case if the Court is satisfied that the parties have settled their dispute(s), it shall pass appropriate decree/order in accordance with terms thereof.

2) If the settlement disposes of only certain issues arising in the suit or proceeding, on the basis of which any order or decree is passed as stated in Clause (a), the Court shall proceed further to decide the remaining issues.

26. MEDIATION/CONCILIATION IN CASES WHEREIN THE SUBJECT MATTER INVOLVES OFFENCES COVERED UNDER SECTION 320 OF THE CENTRAL Cr.P.C. AS WELL AS COMPOUNDABLE OFFENCES UNDER SPECIAL STATUTES SUCH AS SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881.

A. The following procedure shall govern the process of reference of the parties to mediation by a court exercising criminal jurisdiction for settlement of criminal offences which are statutorily compoundable:

i) In the event that the complainant/victim and the person(s) accused are inclined to settle their disputes and seek reference to Mediation/Conciliation, the Magistrate/Court shall refer the parties to a Mediation and Conciliation Centre attached to Courts, the Mediation/Conciliation shall take place in the same manner as followed for Mediation/Conciliation in a civil dispute as detailed in these rules.

ii) If a settlement is reached during the Mediation/Conciliation, the settlement agreement which is drawn-up must incorporate:

a) A clear stipulation as to the condition(s) precedent, if any, subject to performance of which the complainant and/or the victim has agreed to compound the offence alleged to have been committed by the person accused and/or

b) A stipulation regarding the voluntariness of the settlement and declaration that the executors of the settlement agreement were executing and signing the same without any kind of force, pressure and undue influence.

c) An unequivocal declaration that both parties have executed the agreement after understanding the terms of the settlement agreement as well as of the consequences of its breach;

d) A clear stipulation as to the terms of settlement, the amount (if any) which is agreed to be paid by any person accused of the offence, to the complainant and/ or the victim of the offence;

e) A clear and simple mechanism/method of performance by the persons including timeline(s) of the condition(s) precedent, and the manner and mode of the payment of the agreed amount as well as the terms thereof by the person accused to the complainant/ victim of the offence as also of any other terms agreed to by the parties.

f) Undertakings of all parties to abide and be bound by the terms of the settlement must be contained in the agreement to ensure that the parties comply with the terms agreed upon.

g) A clear stipulation, if agreed upon, of the penalty which would enure to the parties if a default of the agreed terms is committed by them, in addition to the consequences of the breach of the terms of the settlement.

h) The settlement agreement shall be signed (or bear thumb impression, if the party is incapacitated/unable to sign) by all parties or their authorized representatives, who shall be identified by the counsel in the matter. The counsel representing the parties would affix their signatures on the settlement agreement which shall be then endorsed by the mediator.

B) The Mediator should forward a carefully executed settlement agreement to the concerned court on the date fixed, when the parties and / or their authorized representative(s) would appear before the Court.

27. MEDIATION IN CASES WHEREIN THE SUBJECT MATTER INVOLVES OFFENCES WHICH ARE NOT COMPOUNDABLE UNDER SECTION 320 OF THE CODE OF CRIMINAL PROCEDURE, 1973 AND OTHER SPECIAL STATUTES.

a) In any proceeding before it arising out of cases involving offences which are not compoundable under Section 320 of the Cr.P.C. or other special statutes, upon request of the parties (complainant/ victim & accused), if the ends of justice and the facts of the case so warrant, the court may refer the parties to Mediation/Conciliation of the underlying dispute(s), provided that the same do not fall in the category of cases for which exercise of powers for quashing the criminal prosecution may not be exercised.

b) Upon receipt of an order or referral, or its reiteration in terms of the above, the person in charge of the mediation centre shall appoint a suitable Mediator/Conciliator having due regard to the nature of the dispute between the parties.

c) If a settlement is reached during the mediation, the settlement agreement which is drawn-up must incorporate all ingredients as prescribed under rule 24 above.

d) The Mediator/Conciliator should forward a carefully executed settlement agreement duly signed by the parties along with the report, to the referral court/parties on the date fixed. If the settlement is in a pending case, the parties or their authorised representatives would appear before the Court.

e) If agreed upon, the settlement shall also contain an agreement between the parties to seek appropriate orders for quashing of such offence or discharge of the accused from the High Court in accordance with law.

f) Where the settlement between the parties relates to cases pending in multiple courts, the Mediation & Conciliation Centre shall ensure that duly authenticated copies of the settlement agreement are placed before all the courts where such cases are pending.

28. MEDIATION/CONCILIATION IN CASES WHEREIN THE SUBJECT MATTER INVOLVES OFFENCES WHICH CANNOT BE COMPOUNDED BUT INCLUDES DISPUTES BETWEEN UNDERLYING PARTIES.

- a) These Rules shall apply to criminal cases which may of be such a nature where the parties may not be either permitted in law to compound the criminal case or may not be willing to compound the criminal case but may be willing to explore the possibility of a negotiated settlement of their underlying disputes.
- b) The Court before whom such a criminal prosecution is pending may encourage the parties to seek Mediation/Conciliation so far as the underlying dispute is concerned. In case the parties agree for mediation of their civil disputes, the Court shall refer the parties to Mediation/Conciliation and such Mediation/Conciliation shall follow the same procedure as indicated for settlement of civil disputes.
- c) The mediator would then follow the procedure prescribed above for mediation/conciliation in compoundable cases as per Rule 24 above.
- d) In case settlement of underlying disputes during a pending criminal case is reached in Mediation/Conciliation, the referring court shall require the Mediator/Conciliator to place such settlement in the litigation pending between the parties which would proceed in the matter in accordance with prescribed procedure.
- e) If settlement is reached regarding matters about which there is no pending litigation, the parties would be free to seek enforcement of the agreement reached, in accordance with law.

29. RECORDING OF SETTLEMENT OF DISPUTES IN CRIMINAL CASES.

The court shall adopt the following procedure with regard to a settlement agreement received from the Mediator/Conciliator in criminal cases:-

- i) The Court shall record a statement on oath of the parties affirming the terms of the settlement; that it was entered into voluntarily, out of the free will of the parties, after fully understanding the contents and implications thereof, affirming the contents of the agreement placed before the court; confirming their signatures thereon. A clear undertaking to abide by the terms of the settlement should also be recorded as a matter of abundant caution.
- ii) A statement to the above effect may be obtained on affidavit. However, the court must record a statement of the parties proving the settlement agreement and the affidavit on court record.
- iii) The Court should independently apply judicial mind and satisfy itself that the settlement agreement is genuine, equitable, lawful, not opposed to public policy, voluntary and that there is no legal impediment in accepting the same.

iv) Pursuant to recording of the statement of the parties, in its order, the Court should specifically accept the statement of the parties as well as their undertakings and hold them bound by the terms of the settlement terms entered into by and between them. The order should clearly stipulate that in the event of default by either party, the amount agreed to be paid in the settlement agreement will be recoverable in terms of Section 431 Cr.P.C read with Section 421 of the Cr.P.C. and that additionally, for breach of the undertaking given, the Magistrate/Court would take appropriate action permissible in law to enforce compliance with the undertaking as well as the orders of the court based thereon, including proceedings under Section 2(b) of the Contempt of Courts Act, 1971 for violation thereof.

v) Upon receiving a request from the complainant, that on account of the compromise vide the settlement agreement, it is withdrawing himself from prosecution, the matter has to be compounded. At this point, the Court should discharge/acquit the accused person, depending on the stage of the case. This procedure shall be followed even where the settlement terms require implementation of the terms and payment over a period of time.

vi) In the event that after various rounds of mediation/conciliation, the parties conclude that the matter cannot be amicably resolved or settled, information to this effect should be placed before the Court who should proceed in that case on merits, as per the procedure prescribed by law.

30. MEDIATION/CONCILIATION IN CASES WHICH INVOLVE DISPUTES GOVERNED BY THE CENTRAL FAMILY COURTS ACT, 1984 OR PENDING BEFORE FAMILY COURTS.

a) Where in any proceeding it appears to the Court seized of a dispute covered under Section 9 of the Family Courts Act, 1984, that there is a reasonable possibility of a settlement between the parties and that such settlement may be better facilitated through the Alternate Dispute Mechanism of Mediation/Conciliation, such Court shall record the willingness of the parties for the same and make a reference thereof to a Mediation Centre of their choice.

b) At the stage when a reference is made by the Family Court as above, the parties shall also be asked if they are ready and willing to refer all/any other dispute(s) between them pending before any other court for exploring the possibility of a comprehensive settlement through Mediation/Conciliation. If the parties give their consent, then the same shall be recorded and a reference of such other pending disputes between them shall also be made to a Mediation Centre of their choice.

c) While referring the parties for Mediation/Conciliation, it shall be open to the Court to secure the services of a Counsellor/Psychologist/Medical Expert or such person whether related to the parties or not including a person

professionally engaged in promoting the welfare of the family as the court may think fit during the course of mediation.

d) If during the course of mediation a mediator deems necessary to involve an expert for facilitation, the Mediator may with the consent of the parties request an expert on the panel of the Mediation Centre to assist the parties in resolution of dispute during the mediation process.

e) In the event of failure of parties to reach a settlement, the expert shall strictly maintain confidentiality regarding the proceeding. Such expert report should not contain anything except the report of failure, and preferably only one sentence, e.g. "the parties could not agree to settle their disputes". The report of the expert shall not discuss generally or even in neutral narrative, the position of the parties or even without blaming the parties, indicating the reason for failure, unless the Court directs a detailed report to be submitted to the Court in a sealed cover.

f) If a settlement is reached, regarding drawing up the settlement agreement and recording thereof, the procedure in Rules 24 and 25 above shall be followed.

31. PROCEDURE FOR CONCILIATION OF DISPUTES AT PRE-LITIGATION STAGE.

i) Conciliation shall be in accordance with Part-III of the Arbitration & Conciliation Act, 1996.

ii) A party seeking conciliation of any matter may directly or through counsel submit his/her application seeking conciliation of any dispute on a legal size paper addressed to the Coordinator of the Concerned District Mediation and Conciliation Centre at the Reception Counter of the Centre along with one passport size photograph of the applicant and a self attested copy of the ID proof.

iii) Complete address of both the parties should be mentioned in the application with e-mail address and phone numbers.

iv) Such particulars of lawyer(s) if any, may also be mentioned. If all or some of the parties approach jointly then each applicant's passport size photo and self attested copy of the ID Proof shall be submitted along with the application(s).

v) The application shall contain a concise statement from the applicant(s) regarding the dispute and detailed particulars of all concerned parties.

vi) A stamp paper of Rs.100/- (Rupees One Hundred Only) for recording consent for appointment of Conciliator be also submitted alongwith the application.

vii) Number of copies of the application equal to the number of parties be furnished for serving the non applicants.

viii) In case of Conciliation in all disputes, except matrimonial disputes, the applicant shall deposit Rs. 1000/- (Rupees One thousand only) as administrative charges with the application.

ix) The fee of the Mediator/Conciliator is presently fixed at Rs.20000/- (Rupees Twenty Thousand Only) payable by either party jointly or singly. The same shall be deposited by the parties forthwith after they have consented to the appointment of Conciliator.

x) In the case of Matrimonial Disputes, the conciliator shall be paid the fee at the rate and in the manner applicable to the Mediators in these Rules.

xi) Parties, together or singly, shall deposit Rs. 250/- (Rupees Two Hundred Fifty Only) per sitting towards charges for the use for conciliation of the Mediation Centre. In the case of Conciliation in matrimonial disputes, no charges shall be payable.

xii) The amounts mentioned in clause viii), ix) and xi) above shall be paid either in cash or through Pay Order/Demand Draft drawn in favour of the Registrar General, J&K High Court for which a receipt shall be duly issued by the Centre.

xiii) A stamp paper of Rs.100/- (Rupees One Hundred Only) shall be submitted for recording the terms of a "Conciliated Settlement Agreement" if arrived at between the parties.

xiv) Self-attested passport size photographs of all the parties shall be affixed on the "Conciliated Settlement Agreement", if any.

xv) Self-attested ID proofs of all the parties shall also be attached to the "Conciliated Settlement Agreement", if any.

xvi) In addition to the signatures, thumb impression of all the signatories to the "Conciliated Settlement Agreement" shall be obtained on the last page of the "Conciliated Settlement Agreement" and encircled with name(s) of the person whose thumb impression is affixed, along with proper indication of the thumb impression viz. right thumb impression (RTI) or left thumb impression (LTI), as the case may be.

xvii) Certified copies of the "Conciliated Settlement Agreement" may be collected after a week of the execution of the same. Copies of "Conciliated Settlement Agreement" shall be supplied to the parties and/or their counsel free of cost only once. Subsequent copies, if required shall be supplied on payment of Rs. 5/- (Rupees Five Only) per page and Rs. 50/- (Rupees Fifty Only) as Processing fee. The same shall be made available after three working days of the application.

xviii) In case of requirement of an expert/ psychologist/counsellor, the same shall be appointed only with the written consent of the parties. The parties

shall be liable to deposit Rs. 2000/- (Rupees Two Thousand Only) per visit for such expert/psychologist/ counsellor jointly /severally.

xix) The coordinator may on consideration of any special circumstances of the dispute or the parties including their financial condition, waive payment of any of the charges payable under these Rules.

32. SETTLEMENT OF DISPUTE AT A PRE-LITIGATION STAGE.

In the event of the parties arriving at the settlement of a dispute at a pre-litigation stage, the settlement shall be drawn up and enforced in the manner prescribed under *Section 56* of the Arbitration and Conciliation Act, 1996.

33. FEE OF MEDIATOR/CONCILIATOR AND COSTS.

(i) Mediator will be paid honorarium as fixed by the High Court which may be re-fixed, reviewed from time to time.

(ii) Each party shall bear the costs for production of witnesses on his side including experts, or for production of documents. Costs shall be assessed by the Mediator/Conciliator.

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

34. ETHICS TO BE FOLLOWED BY MEDIATOR/ CONCILIATOR.

The MEDIATOR/ CONCILIATOR shall:-

- i) follow and observe these rules strictly and with due diligence;
- ii) not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of Mediator/Conciliator;
- iii) uphold the integrity and fairness of the mediation process;
- iv) ensure that the parties involved in the Mediation/Conciliation are fairly informed and have an adequate understanding of the procedural aspects of the process;
- v) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;
- vi) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;
- vii) avoid, while communicating with the parties, any impropriety or appearance of impropriety;
- viii) be faithful to the relationship of trust and confidentiality imposed in the office of Mediator/Conciliator;

- ix) conduct all proceedings related to the resolution of dispute, in accordance with the applicable law;
- x) recognize that Mediation/Conciliation is based on the principles of self determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;
- xi) maintain the reasonable expectations of the parties as to confidentiality;
- xii) refrain from promises or guarantees of results.

35. **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).

(Sanjay Dhar) 10/03/2020
Registrar General

No: 89971-40032/RS

Dated: 10/03/2020

Copy of the above forwarded to:

1. Principal Secretary to Hon'ble the Chief Justice High Court of J&K.
2. Secretary to Hon'ble Mr/Mrs Justice _____
.....for information of their Lordships.
3. Registrar Vigilance, High Court of J&K, Jammu.
4. Registrar Rules, High Court of J&K, Jammu.
5. Registrar Computers, High Court of Jammu and Kashmir, Jammu.
6. Member Secretary, J&K State, Legal Service Authority, Jammu.
7. Registrar Judicial, High Court of J&K, Jammu/Srinagar.
8. All Principal District and Sessions Judges of the U.T of J&K and Ladakh.
.....for information.
9. CPC e-Courts J&K High Court Jammu for information and with the request to upload the Notification on the official website of the High Court.
10. Manager, Government Press, Jammu for publication in the next issue of Government Gazette.

Registrar General
10/03/2020