The Orissa Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 606 CUTTACK, WEDNESDAY, MARCH 12, 2008/ FALGUNA 22, 1929

ORISSA HIGH COURT, CUTTACK

NOTIFICATION

The 4th March 2008

No. 101-R.—In exercise of the rule making power under Part X of the Code of Civil Procedure, 1908 (5 of 1908) and clause (d) of sub-section (2) of Section 89 of the said Code, the High Court of Orissa do hereby make the following Rules, namely:—

PART – II

Civil Procedure Mediation Rules

1. **Title :**

(a) These Rules in Part II shall be called the Civil Procedure Mediation Rules, 2007.

(b) They shall come into force on the date of their publication in the *Orissa Gazette*.

2. **Appointment of Mediator:**

(a) Parties to a suit may all agree on the name of the sole mediator for mediating between them.

(b) Where, there are two sets of parties and are unable to agree on a 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 3 nor bear the 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 select the sole mediator and failing unanimity in that behalf, the Court shall appoint a sole mediator.

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3. Panel of Mediators:

(a) The High Court shall for the purpose of appointing mediators between parties in the suits filed on its original side prepare a panel of mediators. Such panel of mediators shall be published on the Notice Board of the High Court within thirty days of the coming into force of these Rules. A copy of the panel of mediators shall be sent to the High Court Bar Association.

(b) (i) The Courts of the Principal District and Sessions Judge in each District or the Courts of the principal Judge of the City Civil Court or Courts of equal status shall, for the purposes of appointing mediators to mediate between parties in suits filed on their original side, prepare a panel of mediators, within a period of sixty days of the commencement of these Rules, after obtaining the approval of the High Court to the names included in the panel, and shall publish the same on their respective Notice Board.

(ii) Copies of the said panels referred to in clause (i) shall be forwarded to all the Courts of equivalent jurisdiction or Courts subordinate to the 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 qualification of the mediators and their professional or technical experience in different fields.

4. Qualifications of persons to be empanelled under Rule 3 :

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

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

(ii) Retired Judges of the High Court;

(iii) Retired District and Sessions Judges or retired Judges of the City Civil Court or Courts of equivalent status.

(iv) All in-Service Judicial Officers irrespective of Cadre.

(b) Legal practitioners with at least fifteen 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.

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

(d) Institutions, which are themselves experts in mediation and have been recognized as such by the High Court, provided the names of its members are

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approved by the High Court initially or whenever there is change in membership.

5. **Disqualifications of persons:**

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;

(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 any one 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.

6. **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.

7. **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

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is not possible or desirable to continue the name of that person in the panel :

Provided that, before removing of deleting his name, under clause (vi) and (vii), the Court shall hear the mediator whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order.

11. Procedure of mediation:

(a) The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.

(b) Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, namely :-

(i) he shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session, where all parties have to be present;

(ii) he shall hold the mediation conference in accordance with the provisions of Rule 6;

(iii) he may conduct joint or separate meetings with the parties;

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

(v) 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.

(vi) Each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.

(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.

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12. **Mediator not bound by Evidence Act, 1872 or Code of Civil Procedure, 1908:**

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

13. **Non-attendance of parties at sessions or meetings on due dates:**

(a) The parties shall be present personally or may be represented by their counsel or power of attorney holders at the meetings or sessions notified by the mediator.

(b) If a party fails to attend a session or a meeting notified by the mediator, other parties or the mediator can apply to the Court in which the suit is filed, to issue appropriate directions to that party to attend before the mediator and if the Court finds that a party is absenting himself before the mediator without sufficient reason, the Court may take action against the said party by imposition of costs.

(c) The parties not resident in India, may be represented by their counsel or power of attorney holders at the sessions or meetings.

14. **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.

15. **Offer of settlement by parties:**

(a) Any party to the suit may, without prejudice, offer a settlement to the other party at any stage of the proceedings, with notice to the mediator.

(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.

16. **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 misunderstanding, clarifying priorities, exploring areas 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 terms of settlement on the parties.

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17. **Parties alone responsible for taking decision:**

The parties must understand that the mediator only facilitates in arriving at a 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. The mediator shall not impose any decision on the parties.

18. **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, which referred the matter, either *suo moto*, or upon request by the mediator or 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 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:**

(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 gives information to the mediator subject to 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 the mediator shall not be compelled to divulge information regarding the documents nor in regard to the oral information nor 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 mediation

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proceedings;

(b) documents obtained during the mediation 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 the course of mediation proceedings;

(e) the fact that a party had or had not indicated willingness to accept a proposal;

(5) There shall be no stenographic or audio or video recording of the mediation proceedings.

21. 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.

22. Immunity:

No mediator shall be held liable for anything *bona fide* done or omitted to be done by him during the mediation proceedings for civil or criminal action 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.

23. 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) and (c) 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 communication by the mediator:

(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;

(iv) that the parties have settled the dispute or disputes.

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24. **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.

(3) Where no agreement is arrived at between the parties, before the time limit stated in Rule18 or where, the mediator 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 decree:**

(1) Within **seven** days of the receipt of any settlement, the Court shall issue notice to the parties fixing a day for recording the settlement, such date not being beyond a further period of **fourteen** days from the date of receipt of settlement, and the Court shall record the settlement, if it is not collusive.

(2) The Court shall then pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.

(3) If the settlement disposes of only certain issues arising the suit, the Court shall record the settlement on the date fixed for recording the settlement and:-

(i) if the issues are severable from other issues and if a decree could be passed to the extent of the settlement covered by those issues, the Court may pass a decree straightway in accordance with the settlement on those issues without waiting for a decision of the Court on the other issues which are not settled;

(ii) if the issues are not severable, the Court shall wait for a decision of the Court on the other issues which are not settled.

26. **Fee of mediator and costs:**

(1) At the time of referring the disputes to mediation, the Court shall, after consulting the mediator and the parties, fix the fee of the mediator.

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

(3) Where there are two mediators as in clause (b) of Rule 2, the Court shall fix the fee payable to the mediators. [**Deleted vide Notification No.525-R,*

dtd.08.07.2011 of the Hon'ble Court]

(4) The expense of the mediation including the fee of the mediator, costs of administrative assistance, and other ancillary expenses concerned, shall be borne [*Substituted by Notification No. *525-R, dtd.08.07.2011 of the Hon'ble Court]* **by the Odisha State Legal Services Authority** or as may be otherwise directed by the Court.

(5)The following consolidated amount shall be paid to the mediators towards their honorarium engaged in mediation centres for mediating the cases as specified in the following structure.

Sl. No.	Nature of Cases	Honorarium to be paid to the Mediators
1.	(i) Disputes arising out of Civil Suits (ii) Suits relating to Business and Commercial Disputes, (iii) Money Suits (iv) Matrimonial disputes involving Divorce restitution of conjugal life Judicial separation/Custody of Children/Dowry/Disputes under P.W.D.V. Act etc. (v) Compoundable Criminal Cases (VI) Property disputes involving injunction, possession and partition	• Rs. 2,000(successful mediation) • Rs. 1,000(Unsuccessful mediation) • Provided the Mediation is unsuccessful in spite of three sittings
2.	Matters relating to Motor Accident Claim cases and maintenance. Permanent alimony.	• Rs. 1,000 for successful mediation • Rs.500 for unsuccessful mediation
3.	Disputes involved under N.I. Act	• Rs.500 for successful mediation • No honorarium for unsuccessful cases
4.	Pre-litigation matter	• Rs.1,000 for successful mediation • No honorarium for unsuccessful cases

The honorarium shall be paid by the Legal Services Authority from State Grant from the date of Notification of honorarium till separate funds is allotted by the State Government for the purpose or till receiving necessary instructions from the

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Government that such expenses can be met from TFC Grant.

27. Ethics to be followed by mediator:

The mediator shall:-

(1) follow and observe these Rules strictly and with due diligence;

(2) not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator:

(3) uphold the integrity and fairness of the mediation process;

(4) ensure that the parties involved in the mediation and fairly informed and have an adequate understanding of the procedural aspects of the process;

(5) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;

(6) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;

(7) avoid, while communicating with the parties, any impropriety or appearance of impropriety;

(8) be faithful to the relationship of trust and confidentiality imposed in the office of mediator;

(9) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;

(10) 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;

(11) maintain the reasonable expectations of the parties as to confidentiality;

(12) refrain from promises or guarantees of results.

28. Transitory provisions:

Until a panel of mediators is prepared by the High Court or the District Court as provided in Rule 3, the Court concerned may nominate a mediator of its choice if the mediator belongs to the various classes of persons referred to in Rule 4 and is duly qualified and does not suffer from any disqualification.

BY ORDER OF THE HIGH COURT
K. N. PANIGRAHY
Registrar (I.&E.)

Printed and published by the Director, Printing, Stationery and Publication, Orissa, Cuttack-10
Ex. Gaz. 2488—193+100

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The Odisha Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 1913 CUTTACK, FRIDAY, OCTOBER 28, 2016/KARTIKA 6, 1938

THE HIGH COURT OF ORISSA, CUTTACK

NOTIFICATION

The 22nd August 2016

No. 431—XI-38/2010-R—In exercise of the rule making power under Part X of the Code of Civil Procedure, 1908 (Act No.5 of 1908) and Clause (d) of sub-section (2) of Section 89 of the said Code, the High Court of Orissa do hereby make the following rules for amendment of the Civil Procedure Mediation Rules, 2007, namely :—

1. (a) These Rules shall be called the Civil Procedure Mediation (Amendment) Rules, 2016.

   (b) They shall come into force on the date of their publication in the *Odisha Gazette.*

2. The existing Sub-rule (5) of Rule 26 shall be substituted as follows :

"(5) The following consolidated amount shall be paid to the mediators towards their honorarium engaged in mediation centers for mediating the cases as specified in the following structure :—

Sl. No.	Nature of Cases	Honorarium to be paid to the mediators
(1)	(2)	(3)
1.	On settlement through mediation of a matrimonial case (including criminal), custody, guardianship, probate, partition and possession.	Rs. 3,000 per case (with two or more connected cases, the maximum would be Rs. 4,000).
2.	All other matters	Rs. 2,000 per case (with two or more connected cases, the maximum would be Rs. 3,000).
3.	Connected case	Rs. 500 per case subject to a maximum of Rs.1,000 (regardless of the number of connected cases).
4.	In case of no settlemnet/ unsucessful mediation.	Rs. 1,000 Provided that the concerned Mediator has held five sittings and put serious efforts to arrive at a settlement of the dispute and to that effect the mediator shall submit a detailed note as regards the efforts put in by him to persuade the parties to settle their dispute.

* The honorarium shall be paid by the Legal Services Authority from State Grant from the date of Notification of honorarium till separate funds is alloted by the State Government for the purpose or till receiving necessary instructions from the Government that such expenses can be met from TFC Grant".

By order of the High Court
G. SHARMA
Registrar General

Printed and published by the Director, Directorate of Printing, Stationery & Publication, Odisha, Cuttack-10
Ex. Gaz. 1333—173+50

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The Odisha Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 805 CUTTACK, WEDNESDAY, APRIL 13, 2022/CHAITRA 23, 1944

THE HIGH COURT OF ORISSA, CUTTACK

NOTIFICATION

The 4th April 2022

No. 762-R.—In exercise of the power under Part-X of the Code of Civil Procedure, 1908 (Act No.5 of 1908) and Clause (d) of sub-section (2) of Section 89 of the said Code, the High Court of Orissa do hereby make the following rules for amendment of the Civil Procedure Mediation Rules, 2007, namely :—

1. These Rule shall be called the Civil Procedure Mediation (Amendment) Rules, 2022

2. They shall come into force on the date of their publication in the *Odisha Gazette*.

3. In Rule 4 of the Civil Procedure Mediation Rules, 2007, after the sub-rule(a)(iii), insert the following as sub-rule (a) (iv) :

"4. (a) (iv)- All in-servics Judicial Officers irrespective of Cadre.

By order of the High Court

SOUMYAK PATRA

Co-ordinator, Mediation Centre

Printed and published by the Director, Directorate of Printing, Stationery and Publication, Odisha, Cuttack-10

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EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 350 CUTTACK, TUESDAY, FEBRUARY 7, 2023/MAGHA 18, 1944

THE HIGH COURT OF ORISSA , CUTTACK

NOTIFICATION

The 13th January 2023

No. 28/R.—In exercise of the rule making power under Part X of the Code of Civil Procedure, 1908 (Act No.5 of 1908) read with the clause (d) of sub-section (2) of Section 89 of the said Code, the High Court of Orissa do hereby make the following Rules for amendment of the Civil Procedure Mediation Rules, 2007, namely:—

1. Short Title and commencement:

   (1) These Rules shall be called the Civil Procedure Mediation (Amendment) Rules, 2023.

   (2) They shall come into force on the date of their publication in the Odisha Gazette.

2. In the Civil Procedure Mediation Rules, 2007, in sub-rule (5) of Rule-26, Sl. No.1 to Sl. No.4 shall be substituted as follows:-

1.	On settlement through Mediation	Rs.5,000/- per case
2.	Connected cases	Rs.1,000/- per case subject to a maximum of Rs.3,000/- (regardless of the number of connected cases)
3.	In case of no settlement (in case the party fail to arrive at an amicable settlement despite three effective hearings)	Rs.2,500/-
4.	All other matters	Rs.2,000/- per case (with two or more connected cases, the maximum would be Rs.3,000/-)

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