The Asia Foundation



MEDIATION LAW

HANDBOOK

on

'MEDIATION LAW'

by

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Handbook
on
“Mediation Law”

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MESSAGE FROM THE DIRECTOR GENERAL



Hon'ble Mr. Justice Muhammad Ali Mazhar,
Judge, High Court of Sindh,
Acting Director General, Sindh Judicial Academy.

Pakistan's Justice System faces many challenges and one of them is an excessive backlog of cases. There have been an endless number of suggestions on how to deal with this backlog. These range from increasing the number of Judges, to encouraging lawyers to adopt scheduling practices so as to avoid unnecessary adjournments to the establishment of an e-court system. Whilst these suggestions may reduce the existing backlog, they do not account for the constant influx of cases which will further increase case pendency. I believe that Lawyers and Judges can play a key role in encouraging litigants or potential litigants to opt for mediation, eventually leading to a trend that curtails this large amount of backlog.

This would require lawyers to persuade their clients to, where suitable, consider Mediation. This is a two-part task; the first involves convincing themselves to act selflessly, without regards to personal financial interests, and to encourage parties towards a quick and amicable settlement through Mediation away from litigation. The second part is, learning to effectively persuade clients to go for Mediation. The proposed rationale could focus on the cost saving aspect of Mediation, the time saving aspect of Mediation, or even at times, the face-saving aspect of Mediation.

What this would require from Judges is learning to recognize, first upon presentation of the Plaint, and then further as a continuing obligation that runs throughout the entirety of the case, whether or not a case is suitable for Mediation. This must be done by considering the stage the case is at, whether an interim order is needed, if any complex law or complex facts are involved, whether there are any Quasi-Criminal allegations imbedded in the Civil case and evaluating if the relationship between Parties is salvageable. Once these matters have been considered, a Judge must be able to come to a decision and, wherever possible refer the case for Mediation.

This handbook has been designed to facilitate such Judges and Lawyers. It will serve as a guideline and discuss the exact scenarios that Judges and Lawyers face in Civil Courts daily, guiding them on how to proceed according to the new amendments in the Sindh Law relating to Alternative Dispute Resolution.

I personally believe that Mediation is the best alternative to Litigation, however, I know that change will not be seen in one day. In this new era, everyone will have to play their part to the best of their abilities to work towards a system that reduces the burden on courts.

OBJECTIVES OF THE HANDBOOK

Objectives of the handbook are to:

- *Familiarize readers with the newly amended Sindh law, i.e., Section 89-A & B, and Order X of the Code of Civil procedure, 1908.*
- *Develop an understanding on how to assess whether or not a plaint is suitable for mediation.*
- *Understand the procedure for referring cases for mediation.*
- *Identify the situations where cases should be referred for mediation.*
- *Familiarize readers with the procedure to be followed where matters are referred to the Court from Mediation Centers.*
- *Familiarize readers with the procedure of handling applications filed under section 89-B of the Code of Civil Procedure, 1908.*

HOW TO USE THIS HANDBOOK?

HOW TO USE THIS HANDBOOK

Sindh Judicial Academy in collaboration with The Asia Foundation arranged a series of training programs for lawyers, prosecutors, and sitting Judges on ADR. This handbook is the outcome of the training programs conducted; combining the knowledge aspect of the recently amended law with real life scenarios - analyzing how the amendments can be implemented in practical terms.

The handbook is intended to serve as a reference document for judges, lawyers and the police, outlining the conditions, process and protocols of referring a case for mediation.

The first section outlines the amendments made in the Code of Civil Procedure, down to the exact wording. The second section examines the amendments and the referral mechanism in particular. It not only explains the current amendment but attempts to fill in possible gaps which may hamper an understanding of the legal clauses. A flowchart has been included at the end to help illustrate the mechanisms of ADR's referral mechanism.

The third section discusses conditions that might arise in light of the recent amendment, including scenarios from a Party's point of view, a Lawyer's point of view and a Judge's point of view. It presents a set of hypothetical situations and then elaborates on how every stakeholder must proceed in each event. This elaboration also includes templates of the necessary applications Parties mus10t file, the applications Lawyers must file, the Letters Judges must draft, the Case Diaries Judges must write and the relevant Orders Judges must pass.

The fourth section attempts to convey information in an engaging format by offering step-by-step pictorials, and storyboards to guide readers through, real-life scenarios that might arise in light of the recent amendments and how to best proceed in them.

The fifth section includes templates of:

- Forms required for registering a Private Mediation Centre and those for registering an individual as a Mediator.
- Documents a Private Mediation Centre may use for Monitoring & Evaluation.
- List of registered Mediators along with their contact information.

THE CODE OF CIVIL PROCEDURE (SINDH AMENDMENT) ACT, 2018

SINDH ACT NO. IV OF 2019

AMENDMENT MADE IN SECTION 89-A C.P.C.

PROVINCIAL ASSEMBLY OF SINDH NOTIFICATION

KARACHI, THE 25TH FEBRUARY 2019

NO.PAS/LEGIS-B-01/2019- The Code of Civil Procedure (Sindh Amendment) Bill, 2018, passed by the Provincial Assembly of Sindh on 30th January 2019 and assented to by the Governor of Sindh on 12th February 2019 is hereby published as an Act of the Legislature of Sindh.

THE CODE OF CIVIL PROCEDURE (SINDH AMENDMENT) ACT, 2018

SINDH ACT NO. IV OF 2019

AN

ACT

Further to amend the Code of Civil Procedure Act (Act No. V of 1908)

Preamble

WHEREAS it is expedient further to amend the Code of Civil Procedure Act (Act No. V of 1908), for the purpose hereinafter appearing.

1. Short title and commencement:

(1) This Act may be called the Code of Civil Procedure (Sindh Amendment) Act, 2018.

(2) It shall come into force at once

(3) It shall extend to the whole of Sindh.

2. Insertion in section 2, Code of Civil Procedure Code (Act No. V of 1908)

In the Code of Civil Procedure (Act No. V of 1908), hereinafter referred to as the said Act, in section 2, the following additions and amendments shall be made:

Before sub-section (1), the following shall be inserted:

"(*A) "Alternative Dispute Resolution" means procedure for settling disputes without court trial, namely arbitration, mediation, conciliation or negotiation."*

(2) After sub-section (1), the following shall be inserted:

"(1A) *"Conciliation" means a process which is conducted confidentially in which a neutral person (conciliator) actively assists parties in working towards a negotiated agreement of a dispute or difference, putting forward proposals for the settlement with the parties in ultimate control of the decision to settle the terms of resolution, the conciliator having no decision-making power or authority to impose solutions on the parties or force settlement between the parties."*

(3) After sub-section (11), the following shall be inserted: -

"(11A) "Mediation" means a process which is conducted confidentially in which a neutral person (mediator) actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle the terms of resolution, the mediator having no decision-making power or authority to impose solutions on the parties or force settlement between the parties."

3. Substitution of section 89-A, Code of Civil Procedure (Act No. V of 1908)

In the said Act, for section 89 A, the following shall be substituted, namely:

"89-A, Alternative Dispute Resolution: (1) Notwithstanding any other laws for the time being in force, the court may use Alternative Dispute Resolution (ADR) methods to resolve cases of civil or commercial matters:

Provided that for the purposes of this section, ADR refers to mediation, conciliation, and negotiation.

Provided that in all cases of arbitration, the Arbitration Act 1940 shall apply.

(2) That by submitting to the jurisdiction of the Court, the court shall presume that parties by mutual consent agree to refer the dispute for ADR if so, ordered by the Court for securing expeditious disposal.

(3) That a case may be forwarded for ADR by referral of the cases to a mediator/conciliator as identified under Order X, Rule 1C of this Code, in the following circumstances:

(i) Upon presentation of a plaint, the court shall at the first

instance, examine and assess the possibility of resolving the case in a way which is to the advantage of all parties under one of the methods of ADR.

(ii) If at any stage of the case, before or after the recording of admissions and denials, the court considers there is a possibility of resolving the case in a way which is to the advantage of all parties under one of the methods of ADR;

(iii) Upon consent of all the parties.

(4) The court shall employ the following process in the circumstances identified under sub-section (3)(i) and (ii):

(i) Upon the conclusion of the court to refer the case to ADR, the court shall issue notice to the parties to make submissions upon the next date of hearing as to why their case should not be referred to ADR;

(ii) Where no sufficient cause is shown, the Court shall refer the case for ADR to a mediator/conciliator identified in Order X Rule 1C; and

(iii) If any of the parties fails to make a submission as under sub-section4(i), the court shall proceed to refer the case to ADR."

Provided, that the entire process as stated in sub-section (4) shall be completed within fifteen days by the Court.

4. Insertion of Section 89-B, Code of Civil Procedure (Act No. V of 1908

In the said Act, after section 89-A, the following shall be inserted:

> *"89-B Reference by Parties: Parties who have resolved any dispute of civil or commercial nature through the use of an ADR method before initiating any legal proceeding may file an application along with settlement duly signed by the parties and other relevant documents in the court having jurisdiction which shall be registered as a "Judicial Miscellaneous" matter. The court after hearing the parties shall pass judgment and decree as under this Code.".*

5. Substitution of Order X Rule 1A, Code of Civil Procedure (Act No. V of 1908)

In the said Act, for Order X, Rule 1A, the following shall be substituted:

> *"1A .- The Court may adopt any lawful procedure not inconsistent with the provisions of this Code and adopt any method of Alternative Dispute Resolution (hereinafter referred to as "ADR") under Section 89A of this Code.".*

6. Insertion of Order X Rules 1B, 1C and 1D in Code of Civil Procedure (Act No. V of 1908)

In the Code of Civil Procedure Act (Act No. V of 1908), the following shall be inserted after **Order X Rule 1A(III):**

"1B. – When a court refers a plaint or case to ADR under Section 89-A of this Code, the following process shall be employed:

(i) Appointment of Mediator/Conciliator. - *The Court shall*

nominate a mediator/conciliator as identified under Order X Rule 1C.

(ii) Fixing of Date and Time. - *Upon referring the case for ADR, the court shall direct the parties to appear before the appointed mediator/conciliator on the date and time fixed by the court and shall set a time for returning of the reference which shall not be more than sixty (60) days from the date of reference. The mediator/conciliator may submit a written request for extension of time period which may be extended for no longer than thirty (30) days by the Court, on showing good cause which shall be noted in a court order.*

(iii) Determination of Fee. - *The Court, upon deciding to refer a case to ADR, may determine the amount of fee, if any, to be paid to the mediator/conciliator by the party or parties.*

(iv) Appearance of Parties. - *The parties to the case shall take part in the ADR proceedings in person or through an authorized representative empowered to settle the matter.*

(v) Procedure of ADR. - *In dealing with the case referred to him, the mediator/conciliator may follow such a procedure, as may be appropriate in the circumstances of the case.*

(vi) Settlement. - *If a settlement is reached between the parties, the mediator/conciliator shall prepare a deed of settlement containing terms of such settlement, signed by the parties and submit it to the Court on the day fixed by the Court together with a certificate that the settlement between the parties was voluntary.*

(vii) Preparation of Decree. - *Upon the receipt of the deed of settlement and after hearing the parties the court may pass judgment and decree in terms of the settlement.*

(viii) Failure of Settlement.- *If no settlement is reached between the parties, including if any of the parties refuses to participate in the process, the mediator/conciliator shall record the statement of the fact and submit it to the Court on or before the date fixed.*

(ix) Commencement of trial. - *If no settlement is reached within the allocated time period, the case shall proceed in Court without delay on a day to day basis.*

(x) Exclusion of Qanun-e-Shahdat, 1984 and Code of Civil Procedure (Act V of 1908).- *Save as otherwise provided, this Code and the Qanun-e-Shahadat, 1984 shall not apply to ADR proceedings under Section 89A of this Code.*

1-C Mediator/ Conciliator

Subject to any standard prescribed by special law the following organizations and persons shall be eligible to be Mediators/Conciliators under Section 89-A and Order X:

(a) Organizations / institutions / Court-annexed mediation centers established or recognized by the Sindh High Court that specialize in ADR methods and maintain a list of mediators or conciliators with training as required under sub-clause (b);

(b) Persons, who have undergone a minimum of 40 hours' skills-based training in mediation and/or conciliation and have been accredited as mediators or conciliators by a reputable organization or institution.

(c) A judge nominated by the Court to conduct ADR who has been certified as a mediator/conciliator by the Sindh Judicial Academy or is accredited as under sub-clause (b);

(d) Salis appointed under the Small Claims and Minor Offences Ordinance 2002; and

(e) Any other person agreed to by the parties and upon approval of the Court in accordance with the law.

1D. Prohibtions.

(i) Prohibition of mediator/conciliator appearing in proceedings or as witness.– *The mediator/conciliator shall not act in any capacity on behalf of any of the parties in connection with the case in other proceedings nor shall he be called as a witness in such proceedings except to attest to the authenticity of the settlement agreement.*

(ii) Prohibition of making record.- *Any information, statement, document and anything disclosed to the mediator/conciliator during ADR proceedings shall be kept confidential, and no document including any transcript, formal record or audio-visual recording shall be made of the proceedings except with written approval of the mediator/conciliator and consent of the parties.*

(iii) Prohibition of production of the document in any proceedings. - *No communication or any kind of documentation made during the ADR process can be produced in court with regards to the case or any other related proceedings.*

(iv) Prohibition of using information*. - No communication made in the ADR proceedings including information disclosed and views expressed*

shall be used in any other related proceedings whatsoever."

BY ORDER OF THE SPEAKER
PROVINCIAL ASSEMBLY OF SINDH

G.M. UMAR FAROOQ
SECRETARY
PROVINCIAL ASSEMBLY OF SINDH

REFERRAL MECHANISMS

REFERRAL MECHANISM AS PROVIDED UNDER SECTION 89 – A OF THE CODE OF CIVIL PROCEDURE, 1908

Guidelines for the Trial Court Judges

The concept of Alternative Dispute Resolution (ADR) is not new to our legislative documents; however, it has been revisited by legislators and a few new concepts to do with resolving disputes through ADR have been introduced. Courts have been given powers to take decisions on whether a case is appropriate for referral to Alternative Dispute Resolution or not. Additionally, parties have been given an opportunity to resolve their disputes with the assistance of a mediator/conciliator/negotiator. These parties may thereafter file a copy of any settlement reached before a Court having jurisdiction with the request that it may be converted into Judgment and decree. These guidelines below aim to facilitate trial court Judges so that they may be able to make the appropriate decision regarding referring cases for Alternative Dispute Resolution.

1. Reference By Court

Stage 1

As per Section 89-A (2), simply by submitting a case to the jurisdiction of the Court, a presumption arises that two conflicting parties, through mutual consent, agree that their dispute may be referred to for Alternative Dispute Resolution so that an expeditious disposal may be secured[1].

[1] S89-A (2), the Code of Civil Procedure, 1908

Stage 2

At the first instance, when a plaint is presented to the Court, the Court may assess a possibility of the case being resolved through Alternative Dispute Resolution in a way that is advantageous to all parties[2].

Stage 3

Once the Court decides to refer the case for Alternative Dispute Resolution, the Court shall issue a notice to the parties to make submissions on the next date of hearing, if they so desire, as to why their case should not be referred to Alternative Dispute Resolution[3]. If after hearing the submissions, the Court finds that no sufficient cause has been shown[4], or, if any of the parties fail to make submissions at all[5], the Court shall proceed to refer the matter for Alternative Dispute Resolution in a way which shall be binding upon the parties.

Stage 4

If at first instance, when a plaint is presented to the Court, the Court assesses that the matter is not suitable for Alternative Dispute Resolution, the Court shall carry out standard instructions including issuing summons against the Defendant/s for filing Written Statements etc. However, the duty to consider whether a matter is suitable for Alternative Dispute Resolution is a continuing one, and as such, the Court must at the subsequent stage of the case, assess whether the matter could then be resolved through Alternative Dispute Resolution[6]. If, upon such assessment, the Court at that point

[2] S89-A(3)(i), the Code of Civil Procedure, 1908
[3] S89-A(4)(i), the Code of Civil Procedure, 1908
[4] S89-A(4)(ii), the Code of Civil Procedure, 1908
[5] S89-A(4)(iii), the Code of Civil Procedure, 1908
[6] S89-A(3)(ii), the Code of Civil Procedure, 1908

finds the case suitable for Alternative Dispute Resolution, the Court must again issue a notice to the parties to make submissions on the next date of hearing, if they so desire, as to why their case should not be referred to Alternative Dispute Resolution[7].

Stage 5

The Law also provides an option for the Court to refer a case for Alternative Dispute Resolution simply owing to the consent of all the parties[8] regardless of whether the Court finds the case suitable for Alternative Dispute Resolution,

2. Reference by Parties

Stage 1

Parties may without intervention of the court, decide to resolve a dispute of a Civil or Commercial nature through the use of Alternative Dispute Resolution before initiating legal proceedings of any kind.[9]

Stage 2

Parties may then file an application along with an amicable settlement duly signed by the parties, with the assistance of a neutral person and accompanied by all relevant documents in a Court having jurisdiction. This will be registered as a "Judicial Miscellaneous" matter.[10]

Stage 3

The Court after hearing the parties and viewing the settlement, may pass judgment and decree thereby enforcing the settlement.[11]

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[7] The Code of Civil Procedure, S89-A (4)(i)
[8] S89-A(3)(iii), the Code of Civil Procedure, 1908
[9] S89-B, the Code of Civil Procedure, 1908
[10] Ibid
[11] Ibid

Factors to take into account when assessing the possibility of Alternative Dispute Resolution

1. **Jurisdiction:** If both parties are not based in a single jurisdiction, consideration will need to be on which jurisdiction would be appropriate for litigation and the substantive law will apply to the case. Such issues can be wholly or partly avoided by using Alternative Dispute Resolution and the process can be carried out within any geographical territory that is mutually acceptable to the parties.
2. **Appropriate:** It might simply be that a case is not suitable for Alternative Dispute Resolution. For example, where:
    a. A Court Order is needed for precedent.
    b. A matter requires interim orders such as an urgent stay which cannot be obtained through Alternative Dispute Resolution.
3. **Time:** The Law itself sets a 60-day time limit from when the Court refers a matter for Alternative Dispute Resolution, to when the return of the reference is expected. As such, the Court may be expected to recognize cases for which time is of essence and where Alternative Dispute Resolution may provide a speedy and satisfactory result.
4. **Cost:** Drawing from the matter concerning time, a case that is being drawn out over years is undoubtedly going to cost more than the time-limited process of Alternative Dispute Resolution.
5. **Complex Law:** The Court should consider whether a clarification of the law is required, in which case Alternative Dispute Resolution would not be appropriate.
6. **Great Animosity Between Parties:** The Court should recognize situations in which there is a great deal of animosity between the parties and where it is unlikely that any form of Alternative Dispute Resolution would prove successful.
7. **Privacy:** Most civil trials are held in public, whereas Alternative Dispute Resolution processes are agreed and carried out privately.

e Court may be able to recognize a situation where parties express a desire to avoid publicity to protect information.

8. **Future Relationships:** Litigation is an adversarial procedure based on a contest between parties often seeking to allocate blame. Alternative Dispute Resolution can prove a creative forward-looking process focusing on future relationships. As such, the Court may be expected to identify a situation in which the preservation of a future relationship is a necessary requirement. In such a case, a Court is expected to refer the matter for Alternative Dispute Resolution.
9. **Stage of Proceedings:** Most forms of Alternative Dispute Resolution are likely to achieve best results if commenced at an early stage. Judges are expected to be mindful of the possible implications of referring matters late into proceedings for Alternative Dispute Resolution.

Factors to take into account when referring a case for Alternative Dispute Resolution:

Appointment of Mediator / Conciliator

The following organisations and persons may be eligible to become Mediators and Conciliators:

a) Organizations/ Institutions/ Court-annexed mediation centers established or recognized by the Sindh High Court that specialize in Alternative Dispute Resolutions methods and maintain a list of mediators or conciliators with the required training mentioned below[12].
b) Persons who have undergone a minimum of 40 hours of skills-based training in mediation/conciliation/negotiation, and who

[12] Order X, (1C)(a), the Code of Civil Procedure, 1908

have been accredited as mediators/ conciliators/negotiators by a reputable organization or institution[13].

c) A judge nominated by the Court to conduct Alternative Dispute Resolution, who has either been certified as a mediator/conciliator/negotiator by the Sindh Judicial Academy or has met the criteria mentioned above in (b)[14].
d) A *Salis* appointed under the Small Claims and Minor Offences Ordinance, 2002[15]. A *Salis* has been defined in the Ordinance as a person acting as conciliator, mediator or arbitrator.[16]
e) Any other person agreed to by the parties and approved by the Court in accordance with the Law[17].

Fixing of Date and Time

a) Upon referring a case for Alternative Dispute Resolution, the Court will direct the parties to appear before the appointed mediator/conciliator/negotiator on a specific date and time fixed by the Court.
b) The Court will also set a timeline of sixty (60) days from when the case is referred for Alternative Dispute Resolution to when the reference must be returned.
c) The mediator/conciliator/negotiator may submit a written request to the Court for this period to be extended for a maximum of thirty (30) days.
d) The Court may only grant such extension upon being shown good cause.
e) Such extension shall be noted in a Court order. [18]

[13] Order X, (1C)(b), the Code of Civil Procedure, 1908
[14] Order X, (1C)(c), the Code of Civil Procedure, 1908
[15] Order X, (1C)(d), the Code of Civil Procedure, 1908
[16] S2(1)(g) Small Claims and Minor Offences Ordinance, 2002
[17] Order X, (1C)(e), the Code of Civil Procedure, 1908
[18] Order X, (1B)(ii), the Code of Civil Procedure, 1908

Determination of Fee

Upon deciding to refer a case for Alternative Dispute Resolution, the Court may determine the amount of fee, if any, to be paid to the mediator/conciliator/negotiator. The Court may determine the fee be paid either by one party or both the parties.[19]

Appearance of Parties

Parties to a case shall take part in the Alternative Dispute Resolutions either in person or through an authorized representative empowered to settle the matter[20], such as a lawyer, accountant etc.

Procedure

When dealing with the case referred to him, the mediator/conciliator/negotiator may follow the procedure that seems appropriate in the circumstances of that case[21].

Settlement

a) If a settlement is reached between the parties, the mediator/conciliator/negotiator shall prepare a deed of settlement.
b) This deed of settlement shall contain the terms of the settlement and must be signed by all parties.
c) The deed of settlement must then be submitted to the Court together with a certificate confirming that the settlement was voluntary, on a date fixed by the Court[22].

[19] Order X, (1B)(iii), the Code of Civil Procedure, 1908
[20] Order X, (1B)(iv), the Code of Civil Procedure, 1908
[21] Order X, (1B)(v), the Code of Civil Procedure, 1908
[22] Order X, (1B)(vi), the Code of Civil Procedure, 1908

Preparation of Decree

After receiving the deed of settlement, and after hearing the parties, the Court may pass Judgment and Decree in terms of the settlement. [23] This would in turn enforce the settlement, meaning parties cannot disobey or modify it without the Court's approval.

Failure of Settlement

In the event that parties are unable to reach a settlement, or if they simply refuse to participate in the process, this statement of fact shall be recorded by the mediator/ conciliator/ negotiator and submitted to the Court on the date fixed by the Court or before it[24].

Commencement of Trial

If no settlement is reached within the allocated time period and no extension has been requested and granted, the case shall proceed to Court as per the regular process[25].

Exclusions

The Qanun-e-Shahadat, 1984 and the Code of Civil Procedure, 1908 shall not ordinarily apply to the Alternative Dispute Resolution proceedings.

Prohibitions

a) The mediator/conciliator/negotiator shall not act in any capacity on behalf of any of the parties in connection with the case in other proceedings, whilst the process of Alternative

[23] Order X, (1B)(vii), the Code of Civil Procedure, 1908
[24] Order X, (1B)(viii), the Code of Civil Procedure, 1908
[25] Order X, (1B)(ix), the Code of Civil Procedure, 1908

Dispute Resolution is ongoing. Similarly, the mediator/conciliator/negotiator shall not be called as a witness once the Alternative Dispute Resolution settlement reaches Court except to attest to the authenticity of the settlement agreement[26].

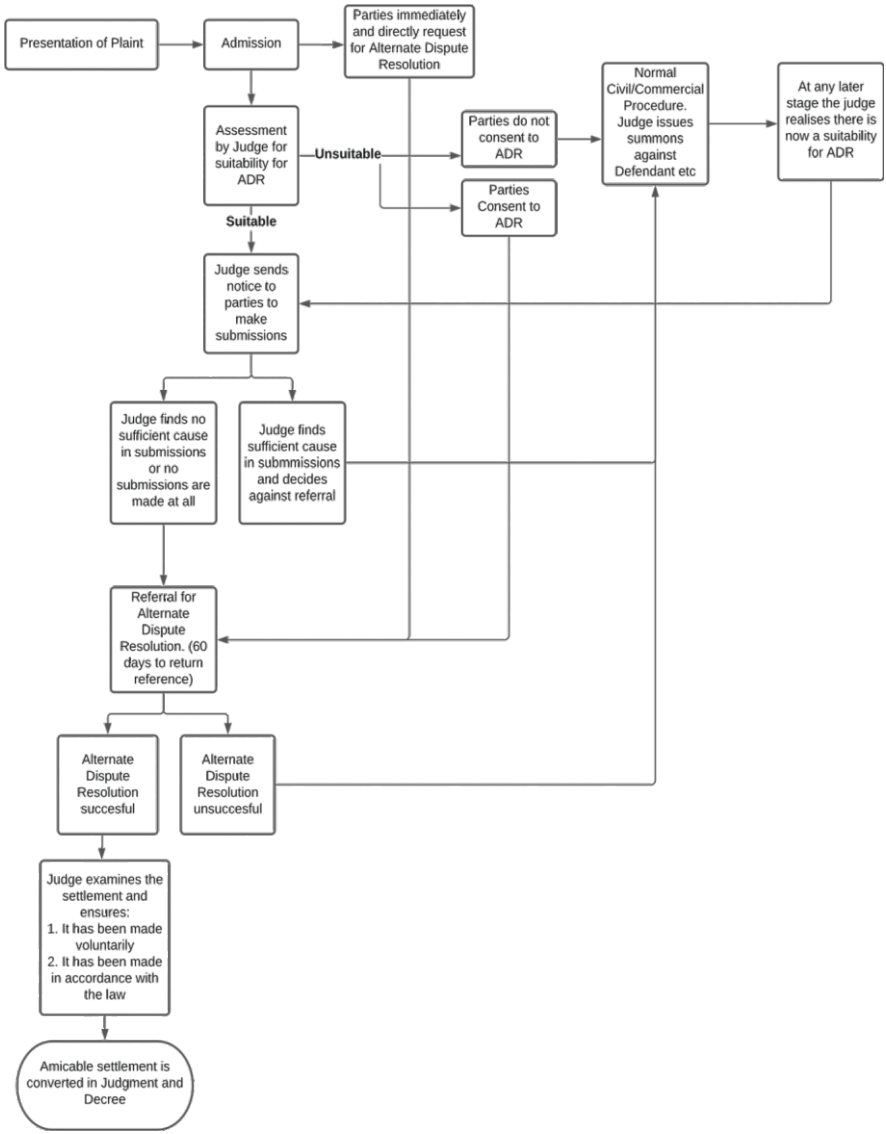
b) Any information, statement, document, or any other material disclosed to the mediator/conciliator/negotiator during the Alternative Dispute Resolution proceedings shall be kept confidential. As such, no document including any transcript, formal record or audio-visual recording shall be made of the proceedings except with the written approval of the mediator/conciliator/negotiator and the mutual consent of the parties[27].

c) No communication or any kind of documentation made during the Alternative Dispute Resolution proceedings can be produced in court with regards to the case or any other related proceedings[28],whatsoever.

d) No communication made in the Alternative Dispute Resolution proceedings including information disclosed and views expressed shall be used in any other related proceedings whatsoever. [29] This is to ensure that both parties feel comfortable while negotiating and bargaining, knowing that any concessions they make will not be brought up in court. If these concessions were mentioned in Court, it could present the impression that the party making the concession views its case as being weak.

[26] Order X, (1D)(i), the Code of Civil Procedure, 1908
[27] Order X, (1D)(ii), the Code of Civil Procedure, 1908
[28] Order X, (1D)(iii), the Code of Civil Procedure, 1908
[29] Order X, (1D)(iv), the Code of Civil Procedure, 1908

REFERRAL FLOWCHART



CASE LAW

CASE LAW

"Trial Court with consent of both parties referred the suit/case for mediation to a Centre for Dispute Resolution and both parties were directed to approach the Centre for Dispute Resolution for further proceedings but the suit continued to be fixed in Court and ultimately in absence of the parties it was dismissed for non-prosecution. Plaintiff then filed an application for restoration of the suit, which was dismissed up to the High Court.

Admittedly the dispute between the parties was referred for mediation to a Centre for Dispute Resolution. Such order of the court remained in field until suit came to be dismissed for non-prosecution. The very fact that parties were directed to appear before the Centre for Dispute Resolution for further proceedings apparently showed that no proceedings in the suit was to take place rather it was to be done at the Centre for Dispute Resolution. Once the suit was referred for mediation, there was no report as to what had transpired in the proceedings before the Centre for Dispute Resolution. Court was not justified in dismissing the suit for non-prosecution as for doing so in the first place the court was required to have applied its conscious mind to the facts and circumstances of the case and not just to pass a mechanical order. It was apparent that suit was dismissed for non-prosecution when none of parties appeared before the Court. Defendant also did not inform the court of the proceedings before the Centre for Dispute Resolution nor anything in writing seemed to be available before the Court. There was no intimation by the Court fixing the case for hearing and requiring the plaintiff to appear before it along with its evidence. Thus, while matter remained pending before the Centre for Dispute Resolution for further proceedings in terms of order if court itself, it could not be said that when suit was dismissed for non-prosecution, it was fixed for hearing before the Court and therefore, such order of the Court, was altogether without jurisdiction and void ab initio.

What can be drawn from this Judgment is the legal recognition Court's place in the procedure of Mediation, where the non-appearance and absence of Parties was excused by the Court due to the fact that they were engaging in the process of Mediation. Nevertheless, this case also provides guidance on what is good practice when Mediation is involved, which includes reporting to the Court timely as to the status of ongoing Mediation, if any, so as not to leave the Court completely in the dark." ***Messrs Transglobe Shipping Service versus WAPDA and another*** **(2016 SCMR 2023)**

"It may be observed that, even after dismissal of the application under section 34 of the Arbitration Act, law does not prohibit to resort to any method of alternate dispute resolution including and not limited to mediation or to arbitration at any stage of the proceedings. Needless to say that even at one point of time the party had not agreed to arbitration will not be a bar in perpetuity to subsequently resort to such arrangement. Even under section 21 of the Arbitration Act, parties to the suit may any time before the judgment is announced apply in writing to the court for order of reference to arbitration. Recently section 89 read with Rule IA to Order X, C.P.C. has been added in C.P.C., the Court to bring an end to the controversy and for expeditious disposal of case by consent of the parties may adopt any alternate method of dispute resolution including mediation, conciliation or any other means, which invariably includes arbitration." ***U.I.G. (PVT) Limited through Director Vs Muhammad Imran Qureshi*** **(2011 CLC 758 Karachi)**

"Alternate mode of settlement of dispute is not only allowed under section 89-A, C.P.C. but is an effective and preferable mode of settlement of disputes, as it normally puts a led on the controversy and do not normally generate further litigation. In the case in hand also the controversy has effectively been resolved in the best interest of justice and I do not find any injustice causing to any of the party. Further agitating the same before This Court by both the parties was not an appreciable act as a controversy which could

have been finalized with the judgment of the learned appellate Court is being needlessly dragged on." ***Nisar Khan and 7 others Versus Swal Faqir and another*** **(2020 CLC 923 Peshawar)**

"The petitioners as well as the respondent No.1 although agreed to the appointment of Muhammad Afzal son of Slabat Khan as the Referee for the decision of their cases upon his statement but before any statement was got recorded by Muhammad Afzal, the appointed Referee, the respondent No.1 expressed distrust upon him. The learned Civil Judge accordingly was left with no option but to cancel the appointment of the Referee Muhammad Afzal. The orders passed by the two courts below do not suffer from any illegality." ***Muhammad Iqbal and another Versus Mumtaz Bibi and 2 others*** **(2012 YLR 1797 Lahore)**

"The crux of the precedents is the preference of the parties to resort to amicable means for dispute resolution in such-like matters. Such clauses as to negotiations etc. for amicable resolutions of disputes are finding place in almost all commercial contracts. The Courts are also expected to encourage the parties to adopt such modes in view of provisions of S.89-A and Order X, R.1(1-A) of the Code of Civil Procedure, 1908. It is now a universally accepted method being followed as a less expensive less time consuming, less cumbersome, and ultimately a fruitful and beneficial mode, commonly known as ADR (Alternative Dispute Resolution). Since the essence of the prayer in the petition has been acceded to, the same has borne fruit and is disposed of accordingly." ***Messrs Alstom Power Generation through Ashfaq Ahmad Versus Pakistan Water and Power Development Authority through Chairman and another*** **(PLD 2007 Lahore 581)**

"Since settlement of disputes through compromise and amicable means is one of the recognized modes there is no factual or legal impediment in disposing of the matter in such a way. Recently added section 89-A of the Code of Civil Procedure, 1908 also empowers the

Court to enable and encourage the parties to adopt ways and means for settling the disputes through Alternative Disputes Resolution (ADR) methods. Dispute resolution in such a way not only relieves the parties of expensive and lengthy agonizing litigation it also saves the valuable time of the Court. It may be observed that in disputes relating to evacuee properties compromise have been allowed by the Courts. For instance reference may be made to Muhammad Aslam v. Member Board of Revenue (Settlement and Rehabilitation Wing) Chief Settlement Commissioner and 6 others PLD 1980 SC 45 and Mst. Zahida Nasreen v. Chief Settlement Commissioner and others 2004 SCMR 323. In the instant matter even Settlement Department (respondents Nos. 1 to 3) cannot have any legitimate grievance as the price of the disputed C property already stand paid by both the parties. Let therefore, the parties be considered bound by the compromise arrived at between them. They may approach the Department, for necessary amendment in their title documents." ***Dr. Mrs. Yasmeen Abbas Versus Rana Muhammad Hanif and others*** **(PLD 2005 Lahore 742)**

"Even after dismissal of the application under section 34 of the Arbitration Act, law does not prohibit to resort to any method of Alternative Dispute resolution including and not limited to mediation or to arbitration at any stage of the proceedings. Needless to say that even at one point of time the party had not agreed to arbitration will not be a bar in perpetuity to subsequently resort to such arrangement. Even under section 21 of the Arbitration Act, parties to the suit may any time before the judgment is announced apply in writing to the court for order of reference to arbitration. Recently section 89 read with Rule IA to Order X, C.P.C. has been added in C.P.C., the Court to bring an end to the controversy and for expeditious disposal of case by consent of the parties may adopt any alternate method of dispute resolution including mediation, conciliation or any other means, which invariably includes arbitration. Therefore contention of learned counsel for the appellant that once an application under section 34, C.P.C. has been dismissed no resort to arbitration can be had is not sustainable." ***Messrs U.I.G. (PVT.) Limited through Director and***

3 others Versus Muhammad Imran Qureshi **(2011 CLC 758) [Karachi**

SCENARIOS

SCENARIO - I

An applicant, named Hafsa, files an application under **section 89-B** of the Code of Civil Procedure, 1908 praying therein to convert the amicable settlement into a Judgment and Decree.

Copy of Application filed under section 89-B C.P.C. reads as under:

IN THE COURT OF SENIOR CIVIL JUDGE ___ KARACHI

J. Miscellaneous Application. _____ of 2020

Hafsa……..…….…… Applicant

Versus

Saleem Khan…….……Respondent

APPLICATION UNDER SECTION 89-B OF THE CODE OF CIVIL PROCEDURE, 1908

For the reason disclosed in the accompanying affidavit; it is respectfully prayed to this Hon'ble Court to please convert the amicable settlement/Agreement in Judgment & Decree. It is signed by the parties and attested by the Mediator.

The prayer is made in the interest of justice.

-sd-
PLAINTIFF

-sd-
DEFENDANT

Dated:23-07-2020

Applicant Hafsa files an affidavit in support of her application. Similar affidavit has also been filed by the respondent. Affidavit reads as under:

IN THE COURT OF SENIOR CIVIL JUDGE
DISTRICT EAST KARACHI

J. Misc. Application No. _____ of 2020

Hafsa…….Applicant

Versus

Saleem khan…… Respondent

AFFIDAVIT

I, Hafsa, daughter of Sultan Khan, Muslim, adult, resident of Karachi do hereby state on oath as under:

1. That I am the applicant in the above matter and as such well conversant with the fact of the case.

2. That the accompanying application has been drafted under my instruction and it may be treated as part of this affidavit.

3. That the applicant abovenamed approached the Court Annexed Mediation Center, SJA on 01-06-2020 by making an application under section 89-B CPC whereby request was made to Mediate the dispute by calling the respondent.

(Copy of the application as attached and marked as Annexure "A.")

4. That on 10-06-2020, the Respondent attended the Mediation Center and accordingly, mediation proceeding was initiated.

5. That after about four sittings, on 20-07-2020, the parties, with the assistance of the Mediator were able to reach an amicable settlement which was signed by the parties and attested by the mediator.

(Copy of the settlement is attached and marked as Annexure "B.")

6. I pray that this application may be allowed, and the settlement may be converted in Judgment and Decree.

7. That whatever stated above is true and correct to the best of our knowledge and belief.

DEPONENT

Respondent Saleem Khan has filed an affidavit in support of his application. Similar affidavit has also been filed by the applicant. Affidavit reads as under:

IN THE COURT OF SENIOR CIVIL JUDGE DISTRICT EAST KARACHI

J. Misc. Application No. _____ of 2020

Hafsa……Applicant

Versus

Saleem Khan……Respondent

AFFIDAVIT

I, Saleem Khan S/o of Akram Khan, Muslim, adult, resident of Karachi do hereby state on oath as under:

1. That I am the respondent in the above matter and as such well conversant with the fact of the case.

2. That the accompanying application has been drafted under my instruction and it may be treated as part of this affidavit.

3. That the applicant abovenamed approached the Court Annexed Mediation Center, SJA on 01-06-2020 by making an application under section 89-B CPC whereby request was made to Mediate the dispute by calling the Respondent.

Copy of the application as attached and marked as Annexure "A."

4. That on 10-06-2020, the Respondent attended the Mediation Center and accordingly, mediation proceeding was initiated.

5. That after about four sittings, on 20-07-2020, the parties, with the assistance of the Mediator were able to reach an amicable settlement which was signed by the parties and attested by the mediator.

Copy of the settlement is attached and marked as Annexure "B."

6. I pray that this application may be allowed, and the settlement may be converted in Judgment and Decree.

7. That whatever stated above is true and correct to the best of our knowledge and belief.

DEPONENT

Annexure 'A'

The Applicant while approaching Court Annexed Mediation Centre files an application and necessary supporting documents relating to her claim which may be seen hereunder.

Application Under Section 89-B Cr.P.C.

BEFORE COURT ANNEXED MEDIATION CENTRE,

SINDH JUDICIAL ACADEMY

Mediation Case No. 564 of 2020

Hafsa…… Applicant

Versus

Saleem Khan…..…… Respondent

APPLICATION U/S 89-B OF THE CODE OF CIVIL PROCEDURE, 1908

I am the applicant in the case and respectfully submit as under:

1. That I entered into an agreement to sell with the respondent on 01-01-2020.

   (Copy of the agreement is annexed herewith and marked as 'B/1')

As per agreement house bearing No.3, Street 11, Block 5, Gulshan-e-Iqbal, Karachi was purchased by me from respondent against sale consideration of Rs.30 Million and at the same time part payment was made in the same of Rs.1 Million through cross cheque No. PB1053456 against the receipt dated 01-01-2020.

(Copy of cheque and receipt annexed herewith and marked as 'B/2 & B/3')

2. The respondent at the time of signing sale agreement provided me with a copy of the sale deed of his house.

   (Copy of sale deed is annexed herewith and marked as 'B/4)

3. That as per agreement, the payment was to be made within 60 days and accordingly possession was to be handed over to me by the respondent after receiving outstanding amount. Further on the same day property was to be transferred in my name but the respondent failed to fulfill performance of contract that was due on his part.
4. After expiry of 60 days, I served a notice, but he failed to respond.

   (***Copy of notice is annexed herewith and marked as B/5)***

5. Prayer is made to initiate mediation proceeding by calling the other side in a manner as provided under section 89-B, C.P.C.

Karachi
Dated: 01-06-2020 **APPLICANT SIGNATURE**

Copies of Documents

Annexure 'B/1'

Note: This is an agreement to sell executed between parties.


SALE AGREEMENT

Annexure 'B/2'

Note: A Cheque was issued at the time of execution of argument.


Allied Bank
0010026225040011 0948 13 25286882
PAY Cash
RUPEES Fifty thousand rupees Only
OR BEARER
Rs. 50,000/-
MUHAMMAD SHAHID SHAFIQ

Annexure 'B/3'

Note: This is a receipt showing acknowledge of down payment in the sum of Rs. 50,000/-


Dated:01-01-2020.

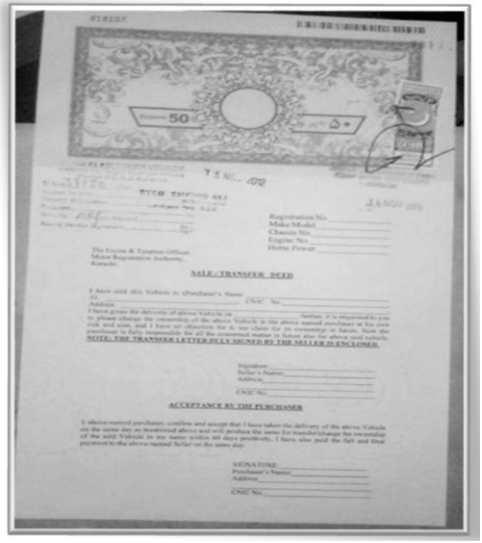
Receipt

Acknowledge the receipt of Rs.50,000/- (Fifty Thousands Only) as part payment in respect of sell of House No.3, street 11, Block 5, Gulshan-e-Iqbal, Karachi.

SALEEM KHAN

Annexure 'B/4'

Note: It is showing ownership of the defendant.



SALE / TRANSFER DEED

ACCEPTANCE BY THE PURCHASER

Annexure 'B/5'

Note: The legal notice has been sent to the respondent whereby request has been made to receive remaining amount of sale consideration and transfer the property.

Dated 03-03-2020

To Hafsa,

Ref: Transfer of Possession still not carried through and Property still not transferred into my name

I am filing this notice as a last resort. I have made payment as per our agreement, however, you are still to hand over possession to me and transfer the property into my name. This was to be done within 60 days which expired on the first (1st) of this month. This letter is being sent out a further two (2) days after expiry and all of the actions mentioned above have yet to be carried out. Please take this as a final notice after which I will be forced to undertake legal actions.

Awaiting your reply,

Saleem Khan

Annexure 'C'

This is an amicable settlement to which parties signed.

OFFICE OF THE COURT ANNEXED MEDIATION CENTRE AT

SINDH JUDICIAL ACADEMY, KARACHI

Mediation Case No. 564 of 2020

Hafsa …..…..……..…… Applicant

Versus

Saleem Khan.…….…….. Respondent

AMICABLE SETTLEMENT

The applicant namely Hafsa filed an application praying therein to resolve the dispute by adopting the process of mediation through neutral persons.

2. On receipt of application, the respondent was called by serving a notice. On his appearance, with the consent of parties, the proceedings were initiated. The dispute was over an agreement to sell of an immovable property bearing No.3, Street 11, Block 5, Gulshan-e-Iqbal, Karachi.

The parties have reached at an Amicable Settlement on following terms:

i. The remaining amount of sale consideration viz. Rs. 4 Million will be paid by the applicant within 7 days from the date of this agreement.

ii. Respondent will hand over possession of the property on the day of payment in the office of Registrar Properties where the process of transfer will also be completed.

iii. The parties would not have any claim against each other after execution of this agreement with regard to sale agreement.

3. This agreement has been prepared with the consent of the parties and they signed it after understanding its clauses.

-Sd-	-Sd-
FIRST PARTY Hafsa	**SECOND PARTY** Saleem Khan

-Sd-

MEDIATOR
Court Annexed Mediation Centre
Sindh Judicial Academy

On the filing application under section 89-B Code of Civil Procedure, 1908 following procedure will be followed by the Court:

After receiving the application filed under section 89-B of the Code of Civil Procedure, 1908 in the first instance, the application will be admitted, second party will be called by serving a notice and on his appearance both the parties will be directed to appear in person along with necessary documents annexed to the application. On the date of the hearing, parties will be heard, and the Court will ensure that the parties have signed the amicable settlement with their consent and that the agreement is based on substantial documentary evidence which create parties' legal right and character. Thereafter, the application will be allowed, and the compromise/amicable settlement will be converted in judgment and decree.

Case Diary

If application under section 89-B is filed through advocates and the parties are not in attendance, the following case diary will be written by the Judge:

First diary (23-07-2020)

Mr. Jaffar advocate filed an application under Section 89-B of the Code of Civil Procedure, 1908 along with a copy of the settlement. It is admitted and registered. Learned advocate for the applicant is directed to call the parties along with original documents, annexed to the application. Adjourned to 05-08-2020 for hearing.

-sd-
Judge

On the second date when parties have been called, the court after hearing the parties shall write following diary.

***Second diary* (05-08-2020)**

Matter called. Parties along with their counsel are in attendance. They are heard. Application filed under section 89-B of the Code of Civil Procedure is allowed. Order passed on it. Amicable settlement is converted into Judgment and Decree. Let the decree be prepared. J. Misc. Application is consigned to record.

-sd-
Judge

If both parties are present and they have filed affidavit along with the application and have also responded all quires of court satisfactory; the court shall pass following order:

IN THE COURT OF SENIOR CIVIL JUDGE
DISTRICT EAST KARACHI

J. Misc. Application No. 05 of 2020

Hafsa ……..…… Applicant

Versus

Saleem Khan……..…..…….…… Respondent

Order
23-07-2020

Applicant Hafsa filed an Application under section 89-B the Code of Civil Procedure, 1908 (the Code) praying therein to convert the amicable settlement into a Judgment and Decree.

1. The Applicant, along with the application, annexed the following documents:

i. Application dated 03-02-2020 filed by the applicant to the mediation centre.
ii. Copy of sale agreement.
iii. Sale deed in favour of the respondent.
iv. Payment receipt and copy of cheque dated 01-01-2020.
v. Amicable settlement duly signed by parties and attested by Mediator.

2. Perused the documents as referred to hereinabove. Heard the parties to the J. Misc. Application. Section 89-B of the Code states

that the parties before filing suit in court may resolve their dispute by the opting process of mediation.

3. The application contains the signature of the parties, and they do admit facts of the application as well as of amicable settlement. For the sake of convenience terms of the settlement are reproduced as under:

i. The remaining amount of sale consideration viz. Rs. 4 Million will be paid by the applicant within 7 days from the date of this agreement.
ii. Respondent will hand over possession of the property on the day of payment in the office of Registrar Properties where process of transfer will also be completed.
iii. The parties would not have any claim against each other after execution of this agreement with regard to the sale agreement.

4. The Respondent owns the property bearing No. 35, street 11, Block 5, Gulshan-e-Iqbal, Karachi as is evident from the sale deed dated 01-04-2015. There was a dispute between parties over a delay in payment which was resolved with the intervention and efforts of the mediator. The court is satisfied and of the view that the settlement has been drawn with the consent of parties and the respondent being the lawful owner of the property is competent to sign and execute an agreement to sell for the subject property.

5. Under the circumstances the application is allowed; and therefore, the amicable settlement is converted in Judgment and Decree. Let the decree be prepared in terms of the amicable settlement stated hereinabove.

Announced in open court.

-sd-
Judge

SCENARIO - II

Plaintiff Sajjad Hussain **presented a plaint** captioned as "Suit for Administration", having a prayer for Injunction & Declaration as his elder brother has dispossessed him from the inherited property.

Facts of the plaint are as under:

Plaintiff Sajjad Hussain's father, Hussain Bux owned and operated a rice mill in the Manghopir area. In 2017, Hussain Bux died of Pancreatic Cancer leaving behind two children, Sajjad Hussain and his older brother Nabi Hussain.

During the last couple of years prior to Hussain Bux's death, Nabi Hussain took charge of the family business as CEO while Sajjad Hussain was away in Canada completing his degree in Business Entrepreneurship.

Sajjad Hussain graduated in 2019, a year after Hussain Bux's death, which is when he returned to Karachi from Canada. Since Sajjad Hussain was away and Nabi Hussain had already started handling the family business while Hussain Bux was alive, it was only natural that Nabi Hussain continue to operate as CEO after Hussain Bux's death.

Ever since his return to Karachi Sajjad Hussain has been politely asking his older brother Nabi Hussain for more responsibilities in the family business. Sajjad Hussain believes he can use his degree to their advantage and expand the family business. Nabi Hussain however simply tells Sajjad Hussain that he is too young, that he is not ready yet and that he needs more time to understand how business is done in Pakistan.

This back and forth has been going on for about a year now and Sajjad Hussain has grown tired of asking, he wants instead to avail the legal route and make a claim for his stake in the family business.

On filing plaint, the court shall adopt following procedure:

According to section 89-A, at the initial stage when a plaint is presented, the Court may refer a case to a Mediator. The court shall assess the plaint, and if the Court finds that the plaint is suitable for Mediation, the Court must send a notice to the parties asking them why their case may not be referred to a Mediator for an amicable settlement. Parties to the suit may give consent or object to referring the case to a Mediator. The Court after hearing the parties shall take a decision which shall be binding upon the parties. The process of hearing is to be completed within 15 Days.

The Court shall write following case diary on day of presentation of plaint:

Date: 26-08-2020

Advocate Mr. Jaffar presented a plaint which is admitted and registered. A notice is issued to the parties under section 89-A C.P.C. Case is adjourned for hearing on 01-09-2020.

-sd-
Judge

Note: However, if the court is not inclined to refer case for mediation, normal process of issuing summons for written statement will be applied.

Following order may be passed by the court on first day when plaint is presented:

26-08-2020

Plaintiff namely Sajid Hussain has presented a plaint for Permanent Injunction and Declaration/Specific Performance of Contract/Administration of Account through his counsel.

The Plaint is admitted and registered. It is apparent from the contents of the plaint that the parties are in a relationship and the issue is of such a nature which may be resolved through an amicable settlement. It is, therefore, ordered to issue a notice to the parties in a manner as provided under section 89-A-3(i) & 4(i) of the Code of Civil Procedure, 1908 with direction to make submissions upon the next date of hearing as to why their case should not be referred to ADR. The plaintiff is to deposit process fee/cost during court hours. Case is adjourned to 01-09-2020 for hearing.

-sd-
Judge

After hearing the statements of two conflicting parties, if the Court decides to refer a case to a mediator, an order is passed along the format of the sample order given below:

IN THE COURT OF 1st SENIOR CIVIL JUDGE & RENT CONTROLLER
KARACHI SOUTH

Before: Sohail Ahmed Mashori

Civil Suit No.735 of 2020

Kashif Farooq . . . . . Plaintiff

Versus

Aftab Ahmed Bajwa . . . . . Defendant

ORDER

Whereas on the presentation of plaint order was passed in view of Section 89-A (3)(i) CPC inserted through the Code of Civil Procedure Code (Sindh Amendment) Act, 2018, at very initial stage when plaint is presented, the Court may refer a case to Mediator for Court annexed mediation etc.

On service of such notice defendant has appeared in person and submitted statement wherein he has given his consent if the matter is referred to mediator for amicable settlement.

In view of foregoing, the subject matter dispute is referred to Sindh Judicial Academy Bath Island for Court annexed mediation. Parties have been directed to appear on 12-10-2020 at 10:00 a.m. at Sindh Judicial Academy, Bath Island, Karachi, for mediation.

Given under my hand and the seal of the Court this 07th day of October, 2020.

7/10/20

(SOHAIL AHMED MASHORI)
1ST Senior Civil Judge & Rent Controller
Karachi South

The court while passing an order for referring case for mediation will write a letter which may read as unde

IN THE COURT OF 1ST SENIOR CIVIL JUDGE/RENT CONTROLLER & ASSISTANT SESSION JUDGE KARACHI SOUTH

No:SCJ/RC/ASJ/1st/ /2020
Karachi: 07 day of October, 2020

Sindh Judicial Academy
Received No. 2035
Date: 08-10-2020 Time: 12:42 pm
Signature

To,

The Honourable,
Director General,
Sindh Judicial Academy,
Bath Island,
Karachi.

Subject: **Reference for court annexed mediation in Civil Suit No.725/2020 of 2020 under the title Kashif Farooq Versus Aftab Ahmed.**

Honourable sir,

Whereas on the presentation of plaint order was passed in view of Section 89-A (3)(i) CPC inserted through the Code of Civil Procedure Code (Sindh Amendment) Act, 2018, at very initial stage when plaint is presented, the Court may refer a case to Mediator for Court annexed mediation etc.

On service of such notice defendant has appeared in person and submitted statement wherein he has given his consent if the matter is referred to mediator for amicable settlement.

In view of foregoing, the subject matter dispute is referred to Sindh Judicial Academy Bath Island for Court annexed mediation. Parties have been directed to appear on 12-10-2020 at 10:00 a.m. before your good office for mediation.

With respecting regards

7.10.2020

(SOHAIL AHMED MASHORI)
1ST Senior Civil Judge & Rent Controller
Karachi South

SCENARIO - III

Given: The defendant received a summons from the court for filing a written statement in a civil suit. He engaged an advocate and filed a written statement on the fixed date.

Written statement field by the defendant is as under:

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO. 1956 OF 2020

Sajjad Hussain……Plaintiff

V E R S U S

Nabi Hussain……Defendants

WRITTEN STATEMENT
ON BEHALF OF THE DEFENDANT

PRELIMINARY LEGAL OBJECTIONS:

a. That the Suit is not maintainable as the Plaintiff has no locus standi to file the present Suit against the Defendant.

b. That no cause of action has ever accrued to the Plaintiff against the answering Defendant. Hence, the Suit is liable to be dismissed under Order VII, Rule 11, C.P.C.

c. That the Suit is not maintainable and is barred under Sections 12, 42 and 56 of Specific Relief Act and under Sections 41, 53, 54, 55 and 105 of the Transfer of Property Act as such the Suit is

liable to be dismissed under the compensatory costs to the answering Defendant No. 7

d. That there is no privity of contract between the Plaintiff and the answering Defendant whatsoever may be, hence the Plaintiff is not entitled to the relief, claimed under Sections 12, 42 and 56 of the Specific Relief Act and Sections 41, 53, 54, 55 and 105 of the Transfer of Property Act, as such liable to be dismissed with compensatory cost in favor of answering Defendant

e. That even otherwise the prayers made in the alleged present Suit are not maintainable as the Plaintiff has no cause of action against the answering Defendant.

f. That the suit is not maintainable and is liable to be dismissed either in law or facts as disclosed in the Plaint.

WITHOUT PREJUDICE to the above and while reserving all rights to file all such additional or further documents or pleadings as may be required, the para-wise reply to the Plaint is as follows:

1. The Contents of Paragraph No. 1 are formal hence not replied on. The Contents of Paragraph No. 2 are correct to the extent that the Defendant is the Plaintiff's biological, older, brother.

2. I further say that the contents of Paragraph No. 3 are correct to the extent that the Defendant and the Plaintiff's (late) father is the owner of Plot No. 36, Street 10, Industrial Area, Manghopir, Karachi Pakistan. Also, that the Defendant has taken the role of CEO of the mill which operates on the above premises. However, the remaining contents of the said paragraph are denied.

3. The contents of Paragraph 4 are also outright denied. What is pertinent to mention in fact is that the Defendant had been personally asked to take charge of the running of the mill by the Plaintiff and Defendant's late father, a fact that is not denied by

4. The Plaintiff himself. It is also pertinent to mention that after the passing away of our father I invested Rupees 65 million of my own money for the purchase of new machinery and further construction on the premises. Something that has not been equated by the Plaintiff in his demands.

5. The Contents of Paragraph 5 are completely denied as false and fabricated, the Defendant never "shut" the Plaintiff out of the business but instead merely asked him to consider gaining some market experience first, through internships and such, and then to slowly build up to the Chief Operating Officer ("COO") position he so desperately craved.

6. That the contents of the Prayer Clause of the Plaint filed by the Plaintiff are specifically and vehemently denied as malicious, false, vexatious, fabricated and based on a bundle of lies. It is submitted that the Plaintiff is not entitled to any relief as claimed by him because there is no illegality or violation committed by the Defendant.

DEFENDAT

KARACHI

DATED: 27 SEPTEMBER 2020

ADVOCATE FOR THE DEFENDANT

Process to be adopted by a judge after filing of Written Statement:

On receiving the written statement, the Court shall examine once again the pleading and assess whether the case is now appropriate for referral for Mediation. If the Judge is satisfied that the case is now suitable, a notice will be issued to the parties to make their submission upon the next date of hearing as to why their case should not be referred to a Mediation Centre for amicable settlement. In the event that the parties fail to make submissions, or the submissions do not show sufficient cause, the case shall be referred to the Mediator for mediation and parties would have no right to object. Court shall while referring the case, articulate the complete Terms of Reference aiming to facilitate the Mediator and the parties to the suit.

On the day of filling a written statement, the court may write following case diary:

28-09-2020

Case called. Parties and advocates are present. The defendant has filed a written statement and after perusal of contents of the statement; it is noticed that there is a possibility of resolving the dispute under one of the methods of ADR. Therefore, a notice is issued to both parties to make a submission upon the next date of hearing as to why their case should not be referred to ADR. Adjourned to 05-10-2020 for hearing.

-sd-
Judge

On the date of hearing and after considering submission of the parties, court may write following diary:

05-10-2020

Case called. Parties and their advocates are in attendance. They are heard. Case is referred to the Court Annexed Mediation Centre, SJA. Order passed on order sheets. Adjourned to 06-12-2020 for mediator's report.

-sd-
Judge

On the day of hearing court may pass following orders:

Order
05-10-2020

Parties and their counsel are present. A notice was issued to the parties to make their submission upon the next date of hearing, specifying why their case should not be referred to a Mediation Centre for an amicable settlement. I perused the pleading and heard the parties. I am now of the considered view that there is a possibility of resolving the case under one of the methods of ADR. The Plaintiff is willing to opt for mediation proceedings whereas the defendant is of the opposite view. It is in the interest of the parties to first try mediation for resolving their dispute. I therefore refer the matter for mediation under section 89-A(1)(ii) C.P.C. The mediator fee is fixed at rupees 10,000/- to be equally borne by both parties. The mediator is directed to submit his report within 60 days upon receiving this order. Parties are to appear at Sindh Judicial Academy's Court Annexed Mediation

Centre on 05-10-2020 at 02:00 PM. Copies of pleading and ***Wakalatnamas*** of Advocates are sent to the Mediation Centre for assistance.

-sd-
Judge

On the day of hearing and after considering submission of the parties, court may also write following diary:

05-10-2020

Case called. Parties and their advocates are in attendance. They are heard. Case is not referred to the Court Annexed Mediation Centre. An Order is passed through an order sheet. The case is adjourned to 16-10-2020 for oral examination and production of original documents.

-sd-
Judge

SCENARIO -IV

Given: Case is fixed for defendant's evidence. The parties are disputing over the installation of a plant in the factory of the defendant. Parties have filed an application requesting therein to refer the case for mediation to Professor Dr. Kamal Khan, a Ph.D. in Applied Physics.

Copy of the application is as under:

IN THE COURT OF SENIOR CIVIL JUDGE-IV KARACHI

Suit No. 156 of 2020

Hafsa…….……. Plaintiff

Versus

Saleem Khan…… Defendant

APPLICATION UNDER SECTION 89-A OF THE CODE OF CIVIL PROCEDURE, 1908

For the reason disclosed in the accompanying affidavit; it is respectfully prayed to this Hon'ble Court to please refer the case to Court Annexed Mediation Center, SJA for amicable Settlement.

The prayer is made in the interest of justice.

PLAINTIFF
Advocate for the plaintiff

DEFENDANT
Advocate for the defendant

Dated: 05-06-2020

Following process shall be observed by court on receiving application from parties for referring the case to Mediation:

As the Parties have already filed an application requesting the case to be transferred to mediation, the Court does not have to hear submissions on why the case should not be sent for referral. The Court does however need to ensure that the application is being made by both parties with their mutual consent and in accordance with the law. Additionally, the Court must also ensure that Professor Dr. Kamal Khan is eligible to be a Mediator as per the requirements outlined in Order X, (1C) (e) of the Code of Civil Procedure, 1908. Once satisfied, the Court must direct the parties to appear before the said Mediator on a specific date and time, and fix a timeline of a maximum of sixty (60) days from when the case is referred for Mediation to when the reference must be returned.

The Court shall pass an order in the following manner:

Order
01-06-2020

1. Plaintiff named Hafsa filed an application under section 89-A of the Code of Civil Procedure, 1908 and accordingly a notice was served upon the defendant who had no objection if the case is referred to Dr. Kamal Khan.

2. In the circumstances, application is allowed; the case is referred to Dr. Kamal Khan for mediation. The mediation process will be completed within 60 days as provided under Order X, Rule 1-B(iii), C.P.C. and the mediator shall return the same to this Court on or before 07-08-2020.

3. The parties must appear before the Mediator in person or through a representative empowered to settle the matter on 07-10-2020 at

01:00 PM and pay the professional fee of Mediator in the sum of Rs.20,000/- jointly.

4. A copy of the pleading along with ***Wakalatnama*** of the parties' advocate is sent to Mediation Center to facilitate the learned mediator dealing with the case.

-sd-
(Judge)

Court shall write following case diary:

01-06-2020

Case called. The matter is fixed for recording of evidence. Parties and their counsel are present. The plaintiff has filed an application requesting therein to refer the case for mediation to Dr. Kamal Khan. The defendant has consented and has no objection if the case is referred to Dr. Kamal Khan for mediation. The application is allowed and order has been passed on it. Parties are directed to participate in the mediation process. Adjourned to 07-08-2020 for mediator's report.

-sd-
(Judge)

SCENARIO -V

Given: The Court received an amicable settlement from the Court Annexed Mediation Centre, duly signed by the parties and attested by the mediator. As per records, it was referred to the Centre about 45 days ago for mediation. One of the parties have filed the settlement and prayed that in light of the terms of agreement, it may be converted into a Judgment and Decree.

Procedure to be followed by court when case is received from Mediation Centre along with settlement:

On receiving the copy of the amicable settlement from the Mediation Centre, a case diary should be written, reflecting some detail about the initial reference including the fact that the maximum time limit of 60 days has been adhered to. Next, the Court, after perusal of the settlement shall call the parties and ascertain whether the settlement has been drawn with the consent of all the parties, and in accordance with the law. Once the Court is satisfied, the terms of settlement will be converted into a Judgment and Decree.

Given: Court Annexed Mediation Centre, SJA has returned the case along with a copy of an amicable settlement which was assigned to it on 15-07-2020. A notice is issued to the parties, and their advocates are asked to appear and brief the Court with regard to this settlement.

Following case diary will be written:

01-09-2020

A report is received from the Mediation Centre. Order passed on it whereby parties have been directed to appear in person along with their advocates. Case is adjourned to 14-09-2020.

-sd-
(Judge)

On the first date when amicable settlement is received and parties with tehri advocates are in attendance; following case diary shall be written:

14-09-2020

Case called. Parties are present with their advocates. Parties reaffirmed the terms of the amicable settlement and the documents annexed with it. It is therefore accepted and converted into a judgment and decree. Order passed on separate sheet. Case is consigned to record.

SCENARIO -VI

Procedure of returning file to the Court in the circumstances when mediation proceeding is failed.

Given: Mediator on receipt of case from court for mediation; commenced proceeding and after about 30 days from the date of receipt the case returned it to the court informing failure of mediation.

Required: What would be the format of the application whereby case is to be returned to the Trial Court.

Response: Proposed application would be as under:

IN THE COURT OF SENIOR CIVIL JUDGE, KARACHI SOUTH

Suit No. 456 of 2020

Ghulam Ali ..... Plaintiff

Versus

Afzal Shiek ..... Defendant

Subject: Application under Order X, Rule 1B(ix) of the Code of Civil Procedure, 1908

It is respectfully submitted as under:

1. That titled case was referred to this Mediation Centre on 20-08-2020 for initiating proceeding under the scheme of ADR in particular Mediation. Accordingly, attempt was made to mediate the matter but the parties could not reach at some amicable settlement, hence the file is returned.
2. The Hon'ble Court may proceed with the case on day to day basis from the stage where it was fixed on the date of reference in a manner as provided under Order X, Rule (1B)(ix) of the Code of Civil Procedure, 1908.

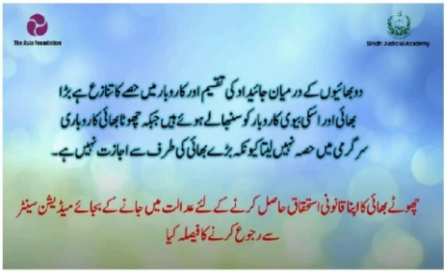
Dated: 20-09-2020

-sd-
(Mediator)

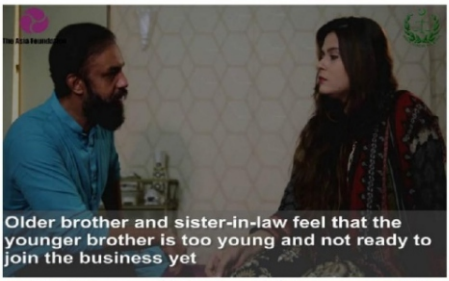
PICTORIALS

ICTORIAL – I (SCENARIO – II)









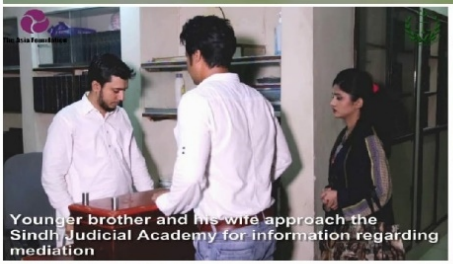






The pictorial builds on the facts described in Scenario II, however, in this Pictorial, it is not the Judge that refers the case for Mediation but the Plaintiff himself who decides on attempting Mediation before going for litigation.
















Once the parties arrive they are seated in separate rooms where the mediator goes individually to hear their side of the story and attempt to figure out their issues.
After this, if the mediator senses a possibility of a settlement being reached, he will call both parties to sit together so that they may discuss their versions with each other.
If the Parties agree on a settlement, they may sign the settlement and take it to Court to be converted to Judgment & Decree.
Who at the SJA will mediate our matter?
There are many qualified mediators currently at the SJA, the most senior mediator is Mr. Shahid Shafiq who is also a District & Sessions Judge.
Additionally, if you feel that your matter demands a specialised mediator we have specialised mediators as well.
How long will this process take
Within a maximum of 60 days the entire process of mediation may be completed. This isn't a short time but when you compare it to how long Court processes last, it is relatively shorter.


And who exactly can avail this opportunity of mediation?

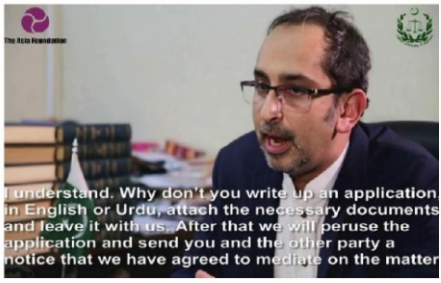

This is a free public service which anyone at all can avail to come to a settlement. However, remember this is just at SJA, other mediation centres may charge you for this service


I would just like to add that you can come to us yourself or you can even be recommended to come for mediation by a Court.


Do we have to inform the other party ourselves?


Not entirely, you can provide us with details regarding the other party and we can issue a notice inviting them to attend mediation if they please.


Actually, my brother and I have a dispute going on. I feel like he is wrongly keeping me away from our family business


I understand. Why don't you write up an application in English or Urdu, attach the necessary documents and leave it with us. After that we will peruse the application and send you and the other party a notice that we have agreed to mediate on the matter


Thank you so much, I will send you the documents as soon as possible

PICTORIAL – II















STORY BOARD

The pictorial representation above shows an example of the kind of situation litigants often find themselves in. In the given scenario, a dispute between a landlord and her tenant has been taken to Court. The landlord is a single mother who is raising a young son all by herself. Every time she has a Court date, she has no other choice but to make her son skip school and accompany her to Court. She does this only to find out that for some reason or the other, the hearing has been adjourned to another date. She is stuck in an endless cycle of court hearings.

On the other side of this legal dispute is the tenant, who is a professional with an office job. Every time he has a Court date, he must first seek permission from his boss to attend the hearing and then avail his limited annual leaves.

A friend of the landlord recommends her to approach the Sindh Judicial Academy in an attempt to have her dispute resolved quickly through mediation.

The Landlord first discusses this option with her Lawyer who further elaborates on the benefits of Mediation, and strongly advises her to try mediation. The Landlord then calls the Tenant to suggest this alternative legal route. The Tenant, who is facing the same logistical difficulties related to the legal proceedings as the Landlord, agrees almost instantly.


Both Parties approach the Judge overlooking their case and file an application under 89-A.


The Judge asks whether the Parties signed the application voluntarily


The Parties confirm that they did and the application is allowed


The Mediator has a Joint session with both Parties to explain the procedure to be undertaken that day


The Asia Foundation
Each Party returns to a separate room and the Mediator "shuttles" between both rooms and discusses their matter in private


Each Party returns to a separate room and the Mediator "shuttles" between both rooms and discusses their matter in private


The Asia Foundation
Mediator communicates the offers made in the Private Sessions and encourages the Parties towards settlement


Mediator communicates the offers made in the Private Sessions and encourages the Parties towards settlement


Once terms are agreed, the Mediator drafts an agreement which the Parties sign

STORY BOARD

Once both Parties agree to go for mediation, they contact their respective lawyers who advise them to fill out an application under Section 89 – in the presence of the Judge presiding over their case. Under this section, with the consent of the Parties, the Court may refer a case for Mediation. The Judge confirms that the decisions is one that is being made by both Parties consensually and voluntarily, upon which the application is passed.

The next pictorial representation shows the procedure that takes place during Mediation. The Mediator first holds a Joint Session with both parties where he explains that the process of Mediation is one that is carried out with utmost confidentiality. He explains that there are two stages of confidentiality; first the matters discussed between the Mediator and an individual Party will be kept confidential. Secondly, matters discussed in front of both Parties or matters that one Party allows the Mediator to disclose to the other Party, are not disclosed to any outside party.

The Mediator then makes the Parties sit in separate rooms and shuttles between them periodically to have individual discussions. He first sits with the Landlord and discusses with her the dispute as per her point of view. He also asks her for any potential settlement offers or terms of compromise she is willing to make, and whether he can mention the same to the other Party. The Mediator then repeats the same process with the Tenant. He then invites the Parties to sit together and communicates to them the offers made by both Parties. He encourages them to reach an amicable settlement.

The Parties, upon analyzing the issue from each other's perspectives, mutually agree to make some compromises in their stance and come to an amicable settlement. The Mediator then drafts the settlement exactly as agreed by the Parties and hands out a copy for both Parties to sign. After this, the Mediation is completed and the Parties take the signed settlement to Court for it to be converted into Judgment and Decree.

PICTORIAL – III

STORY BOARD

This collage of images describes a scenario in which an Advocate suggests mediation to his client in lieu of litigation. A man named Akbar Ali tells his Advocate that he has rented out the top floor of his house and that his tenant isn't allowing him to increase the rent by more than 15%. The Advocate agrees to represent Akbar Ali in Court and recommends him to serve a Legal Notice to his tenant.

A week after filing the Legal Notice, Akbar Ali's advocate gets a call from Shah, an old friend of his. Shah jokingly asks the advocate as to why he has sent such an angry Legal Notice. The advocate asks Shah to explain what he is talking about. Shah informs him that he is the Legal Counsel for Akbar Ali's tenant and that he therefore received the Legal Notice in question. Shah mentions how the Tenant is a very old client and a good friend of his, and that he would be able to persuade him to go for mediation outside the courtroom. Akbar Ali's Advocate tells Shah that he will discuss the matter with his client and then respond accordingly.

Akbar Ali's advocate calls him and narrates the conversation he has had with the tenant's lawyer. He tells Akbar Ali about how Shah recommended Mediation and that he also considers it to be a good idea. Akbar Ali accepts the offer and tells his Advocate to communicate that to the other party The parties end up going to go









to Sindh Judicial Academy's mediation center the following week to have their dispute mediated.

PICTORIAL – IV (INTRODUCTION TO MEDIATION LAW)

STORY BOARD



These screenshots have been extracted from a video which illustrates the procedure of court annexed mediation.

Some of the key points explained in the video are given below:

- "Mediation" is a process through which a neutral person in the role of a mediator, actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision.
- The mediator has no authority to impose solutions on the parties or force settlement between them.
- Upon presentation of a plaint, the court shall at the first instance, examine and assess the possibility of resolving the

case in a way which is to the advantage of all parties under one of the methods of ADR.

- If at any stage of the case, before or after the recording of admissions and denials, the court sees a possibility of resolving the case in a way which is to the advantage of all parties under one of the methods of ADR, a case is referred to ADR.
- Upon referring the case for ADR, the court shall direct the parties to appear before the appointed mediator/conciliator on the date and time fixed by the court and shall set a time for returning of the reference which shall not be more than sixty (60) days from the date of reference. The mediator/conciliator may submit a written request for extension of time period which may be extended for no longer than thirty (30) days by the Court, on showing good cause which shall be noted in a court order.
- If a settlement is reached between the parties, the mediator/conciliator shall prepare a deed of settlement containing terms of such a settlement, signed by the parties and submit it to the Court on the day fixed by the court together with a certificate that the settlement between the parties was voluntary.
- Upon the receipt of the deed of settlement and after hearing the parties, the court may pass judgment and decree in terms of the settlement.
- If no settlement is reached between the parties, including if any of the parties refuses to participate in the process, the mediator/conciliator shall record the statement of the fact and submit to the Court on or before the date fixed.
- This Code and the Qanun-e-Shahadat, 1984 shall not apply to ADR proceedings under Section 89A of this Code.
- The mediator/conciliator shall not act in any capacity on behalf of any of the parties in connection with the case in other proceedings nor shall he/ she be called as witness in such proceedings except to attest the authenticity of the settlement of an agreement.

- Any information, statement, document and anything disclosed to the mediator/conciliator during ADR proceedings shall be kept confidential and no document including any transcript, formal record or audio-visual recording shall be made of the proceedings excect with written approval of the mediator/conciliator and consent of the parties
- No communication or any kind of documentation made during the ADR process can be produced in court with regards to the case or any other related proceeding.

PICTORIAL – V

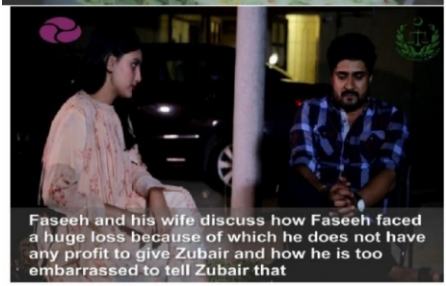

The Asia Foundation
Alternative Dispute Resolution
وکلا کا عدالت زیر سماعت کیس کو ثالثی کے
ذریعے حل کروانے کا ارادہ


Zubair discusses with Faseeh the possibility of investing 10 Lac Rupees into Fasi's business. Faseeh agrees


Faseeh sends Zubair his monthly profit from his investment


Faseeh does not send any other payment after the first month and stops answering Zubair's calls


After 3 months of the same, Zubair files a case against Faseeh, taking him to Court


Faseeh and his wife discuss how Faseeh faced a huge loss because of which he does not have any profit to give Zubair and how he is too embarrassed to tell Zubair that


Both lawyers discuss the possibility of solving the matter through mediation

STORY BOARD

This pictorial representation narrates the story of Fasih and Zubair, whose friendship has gone sour due to a business related dispute. Fasih had convinced Zubair to invest in his business stating that it would yield good financial returns for him in the long run. Zubair subsequently agreed to invest an amount of 1 million rupees in what he perceived to be a thriving enterprise. However, as fate would have it, Fasih's business hit a slump and he incurs huge losses. Embarrassed at letting down his friend, he cut of all communication with Zubair. Zubair gets the impression that his friend is not interested in paying him his due share in the business's profit. He subsequently decides to file a case against Fasih for fraud.

In this case, what is needed is a way for both Parties to be encouraged to communicate their concerns and grievances to each other in order to mend their differences.

It is pertinent to note that this example highlights the importance of lawyers in ending disputes. The parties' lawyers were able to gently nudge their clients to go for mediation after explaining the rationale to them. It is crucial to make this decision at an early stage though, as the adversarial nature of Court proceedings often leads to a level of animosity between disputing parties, that makes mediation difficult. Regarding the mentioned case, the parties finally sit across each other in a private room, in the presence of only a facilitative Mediator, and discuss their points of view. The Mediator explains that from Zubair's point of view he put his entire life savings on the line and was left in the dark about his returns, while in Fasih's case, the business slump was not in his control.

Zubair explains how he does not need the money immediately but was surprised and angry at being ghosted all of a sudden which led him to speculate foul play. Fasih underlines that he is looking at a couple of rising markets as a prospective business opportunity which would





allow him to recover some of the financial losses incurred. This he says would leave him in a better position to return some of the invested amount to Zubair. Zubair agrees to take back his case.

PICTORIAL – VI (REGISTRATION OF MEDIATION CENTRE)




You're right, but it's extremely straightforward, in fact you can find many examples online of Code of Conduct's being used by Private Mediation Centres both locally and internationally.
Some important things to include are matters related to liability, confidentiality, and how the Centre will allocate cases amongst the Mediators.
How much will it cost to register our office as a Mediation Centre?
At the moment, there is no fee for registering a Private Mediation Centre, but it is possible that a fee is set sometime in the future.
Can we decide on how much we will charge our client ourselves or is there a guideline we must follow?
The Courts have left it up to you to decide how much to charge. There are just so many different requirements that a Client may have that there cannot possibly be any such guidelines.
You may, however, wish to set your charges according to the charges of the Private Mediation Centres around you.
Having said that, if a Court refers a case to you for mediation under 89-A, the Court will set the fees themselves and will leave it to you to accept or reject the referral.

PICTORIAL – VII (MEDIATOR'S CODE OF CONDUCT)



The Official Code of Conduct of Mediators:

- A Mediator must conduct himself/herself in a way that instils confidence in the parties regarding the Mediator and the process of Mediation.

- A Mediator must provide all information about himself/herself honestly and fairly.

- Mediators must ensure that they upgrade their mediation skills from time to time.

- Mediators must also make sure that they behave in a friendly manner.

- A Mediator must explain to the Parties that he or she is only there to provide support and to facilitate the Mediation. The actual decision will be made by the Parties themselves.

- A Mediator must ensure that he/ she does not pass any legal advice, and that if he/she does feel like some legal advice is necessary, the parties should be asked to contact their respective lawyers.

- If a Mediator finds any conflict of interest, he/she must step down as Mediator unless he/she is able to explain to the Parties the conflict of interest and get permission from them to continue as Mediator

- During mediation, if the Mediator finds out about a crime that has been or is about to be committed, he/she must stop the Mediation process immediately.

PICTORIAL - VIII (INTRODUCTION TO MEDIATION CENTRE)



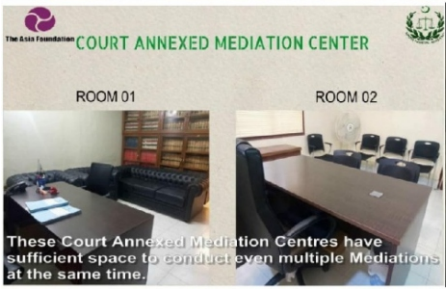














LIST OF MEDIATORS



LIST OF IBA MEDIATORS			
S. NO	**NAME**	**CONTACT**	**EMAIL**
1.	Navin Merchant	0301-8293262	merchantnavin@gmail.com
2.	Nausheen Ahmad	0300-8265326	Nausheen.Ahmad@ici.com.pk
3.	Barrister Altaf Qureshi	0300-8298721	altaf.qureshi@iaa.com.pk
4.	Yusra Arshed Gilani	0300-8259316	Yusragilani@gmail.com
5.	Sarha Rasheed	0300-2611670	sarha@aliassociates.org
6.	Talib Ali Shah	0322-2463054	tashah@aliassociates.com.pk
7.	Hanya Haroon	0322-2894562	hanya@aliassociates.com.pk
8.	Qazi Ghulam Dastgir	0333-5224438	gdqazi@valuecourt.pk
9.	Muhammad Ali Akbar	0321-2590036	aliakbar1992@hotmail.com
10.	Zameer A. Khalid	0345-8285003	zameer.khalid@gmail.com
11.	Madiha Rehman	0334-3849247	madiha.rehman.2258@gmail.com
12.	Mohammed Sohaib Saleem	0321-2427964	sohaibsaleem@iba.edu.pk
13.	Muhammad Umair Rajput	0333-7158320	umair.rajput@meezanbank.com

LIST OF PMA TRAINED MEDIATORS			
S.NO	**NAME OF MEDIATORS**	**LOCATION**	**EMAIL**
14.	Abdur Rehman	Karachi	abdur.rahman@rahman.com.pk
15.	Adnan Mufti	Karachi	adnan.mufti@shekhamufti.com
16.	Agha Zafar Ahmed	Karachi	afm@afmlaws.com
17.	Arif Dawood	Karachi	arif.dawood5@gmail.com
18.	Amin Qazi	Karachi	aminqazi.ext218@gmail.com
19.	Anwar Kashif Mumtaz	Karachi	akmpak@gmail.com
20.	Ayesha Sarfraz	Karachi	counsellor1@hotmail.com
21.	Farrukh Junaidy	Karachi	farrukh.junaidy@jsa.com.pk
22.	Fehmida Ajanee	Karachi	fehmiajanee@gmail.com
23.	Huma Shah	Lahore	ssri.law@gmail.com
24.	Isfandyar Ali Khan	KPK	isfandyaralikhan@yahoo.co.uk
25.	Ishtiaq Memon	Karachi	ishtiaqmemon@hotmail.com
26.	Jawad A. Sarwana	Karachi	info@abrahamslaw.net
27.	Justice Zafar Ahmed Khan Sherwani	Karachi	sherwanijudge@gmail.com
28.	Khalid Firoz Arfeen	Karachi	kfiroz@super.net.pk

29.	Khalid Mahmood Siddiqui	Karachi	kms_law@hotmail.com
30.	Mian Zafar Iqbal Kalanauri	Lahore	kalanauri@gmail.com
31.	Mustansir Zakir	Karachi	mustansirzakir@yahoo.com
32.	Nausheen Ahmed	Karachi	nausheen.ahmad@hbl.com
33.	Navin Merchant	Karachi	merchantnavin@gmail.com
34.	Neelofar Hameed	Karachi	neelkhan@gmail.com
35.	Omair Nisar	Karachi	omairnisar@nisarandnisar.com
36.	Raheem Hasnani	Karachi	rhasnani@yahoo.com
37.	Reshma Aftab	Karachi	RAftab@ifc.org
38.	Rubina Virani	Karachi	ruby0822@gmail.com
39.	Saadat Yar Khan	Karachi	legalsyk@hotmail.com
40.	Saeed Habib	Karachi	Saeed.Habib@nbp.com.pk
41.	Saima Amin Khawaja	Lahore	saimakh@gmail.com
42.	Salina Khalfan	Karachi	salinakhalfan@hotmail.com
43.	Shabana Ali	Karachi	shabanaali.associates@gmail.com
44.	Shaheen Premani	Karachi	shaheen.premani@live.com
45.	Sohail Khoja	Karachi	sohail_khoja@yahoo.com

46.	Syed Haider Imam Rizvi	Karachi	syedhaider2@yahoo.com
47.	Syed Sammadul Haque	Karachi	haque4@yahoo.com
48.	Tahmasp R. Razvi	Karachi	tahmasp@razvilaw.com.pk
49.	Tariq Saeed Rana	Lahore	tariqsaeed64@yahoo.com
50.	Umaimah A. Rizvi	Karachi	umaimahkhan@advomak.com
51.	Usman G. Rashid	Lahore	ugrlaw@gmail.com
52.	Yousuf Moulvi	Karachi	yousufmoulvi@yahoo.com
53.	Zia Makhdoom	Karachi	zmmbox@hotmail.com

APPLICATION TO RECOGNIZE A MEDIATION CENTRE

APPLICATION TO RECOGNIZE A MEDIATION CENTRE

Name of the Centre			
Type of Organization	Sole proprietorship ☐ Partnership ☐	Company ☐ Trust/Society ☐	
Address of the Centre			
Focal Person			
NTN Certificate			
Office Phone		Fax	
Email		Website	www.
OFFICE AND ONLINE FACILITY DETAILS **(Please provide details of the facility where the face-to-face mediation will take place along with supporting photographs in color)**			
No. of Rooms a/w color photographs of each room:		Purpose of each Room	

Head of the Centre		Qualification of the head	
Email		Mobile Phone Number	
Audio / Visual Equipment Available		Number of Computers and Printers available	
Internet / DSL Provider		Online ADR Software Platform	

List of empaneled mediators (Centre must have minimum five (5) accredited mediators)

Sr. #	Mediator Name and Cell No.	Mediator Registration No.	Date of Registration and Re-registration of Mediator	Name of Mediation Accreditation Authority of Mediator	Profession	Three Areas of Expertise
1.						
2.						
3.						
4.						
5.						

1. **Code of conduct**
   ☐ Yes ☐No If yes, please attach copy

2. **Fee structure / schedule**
   ☐ Yes ☐No If yes, please attach copy

3. **Complaints Handling and Feedback**
   ☐ Yes ☐No If yes, please attach copy of proof

4. **Guidelines for allocation of mediators**
   ☐ Yes ☐No If yes, please attach copy of proof

5. **Confidentiality Procedures**
   ☐ Yes ☐No If yes, please attach copy of proof

6. **International affiliation**
   ☐ Yes ☐No If yes, please attach copy of proof

7. **Facility Description i.e. Office, Reception/Common Area/Breakout Rooms etc. (Attach detail separately)**

8. **Support Staff Description such as case manager and other staff (Attach detail separately)**

9. **Centre's Registration Fee: _____(Attach evidence of payment Rs. 10,000/-)**

10. **Centre's Annual Re-registration Fee: _____ (Attach evidence of payment of Rs.2,000/-)**

11. **PLEASE NOTE: The Mediation Centre must demonstrate (in writing and by photographic evidence) that the physical layout of the designated mediation facility is capable of handling the mediation process and subject to a positive Site Inspection Report carried out by the concerned Officer(s) of the Competent Authority,**

Declaration by Authorized Representative of the Mediation Centre

We confirm that the information we have submitted on this form is correct and complete; and we understand that any false information could result in our application being rejected.

We further confirm that the Panel Mediators, Management and Staff at the Center have never been booked in any type of criminal case or faced contempt of court proceeding before any court of law during last five years.

Signature of duly Authorized Representative of Mediation Centre

Documents to be attached:

1. Copy of Charter Document[30] (Memorandum and Articles of Association, Partnership Deed, Trust Deed, etc.)
2. Copy of NTN[31] Certificate of Mediation Center
3. Copy of declaration by Authorized Representative of Mediation Centre
4. Copy of international affiliation certificate, if any
5. Registration Fee payment evidence
6. Mediators' Fee schedule
7. Copy of code of conduct
8. Copy of Complaints Handling and Feedback
9. Guidelines for Allocation of Mediators
10. Copy of Confidentiality Procedures

[30] Documents are needed if firm is registered entity however in case of non-register body the documents are not required.

[31] In case Centre is not registered entity; NTN of head of Centre to be provided.

For Office Use Only:

Application Received on: _____

Site Inspection of Mediation Facility carried out on:

Application status:

Granted ☐ Declined ☒ Re-apply after Six (6) Months ☐

Mediation Centre Registration No: _____

Approval Authority: _____

APPLICATION TO RECOGNIZE A MEDIATOR

APPLICATION TO RECOGNIZE A MEDIATOR

(See Order X (1-C) of the Code of Civil Procedure, 1908)

Personal information	
Applicant's Name:	
Applicant's Office Address	
PTCL Landline	
Cellphone	
Email address	
Website	
Applicant's CNIC:	
Applicant's NTN:	
Qualification:	
Profession:	
Training attended (Minimum 40 hours):	
Area of expertise:	
Experience as mediator	
Affiliation:	Organization: ☐ Independent: ☐

Name of Organizations affiliated	

OFFICE AND ONLINE FACILITY DETAILS

(In case of an Independent Mediator if mediation will either not take place at the office of the Applicant or takes place at his/her Office, please provide details of the facility where the face-to-face mediation will take place along with supporting photographs)

Address (location) of mediation facility		Contact Person Supervisor at (location of) the mediation facility	
Cellphone of Contact Person Supervisor of mediation facility:		Email of Contact Person Supervisor	

General Information:

1. **Code of conduct**
   ☐ Yes ☐No If yes, please attach copy

2. **Fee structure / schedule**
   ☐ Yes ☐No If yes, please attach copy

3. **Confidentiality Procedures**
   ☐ Yes ☐No If yes, please attach copy of proof

4. **International affiliation**
   ☐ Yes ☐No If yes, please attach copy of proof

5. **Independent Mediator Registration Fee: (Attach evidence of payment Rs. 5,000/-)**

6. **Independent Mediator Annual Re-Registration Fee: _____ (Attach evidence of payment of Rs.1,000/-)**

Applicant's declaration

I confirm that the information I have given on this form is correct and complete; and I understand that any false information could result in my application being rejected.

I further confirm that I have never been booked in any type of criminal case or faced contempt of court proceeding before any court of law during last five years.

Applicant

Documents to be attached: Copy of CNIC

1. Copy of NTN
2. Copy of professional degree
3. Copy of mediation training certificate
4. Copy of declaration
5. Copy of international affiliation certificate, if any
6. Registration Fee payment evidence
7. Fee schedule
8. Copy of code of conduct

For Office Use Only:

Application Received on: _____

Site Inspection of Mediation Facility carried out on: _____

Application status:

Granted ☐ Declined ☐ Re-apply after Six (6) Months ☐

Independent Mediation Registration No: _____

Approval Authority: _____

Monitoring & Evaluation System of Court Annexed Mediation Centre Monthly Report/Disposal Register

From ---------- to ----------

Sr. #	Mediation case #	Suit/Appeal No.	Referring court	Received on	Stage of case while referring	Result (mention date)	
						Settlement	No Settlement

Institution Register to be used by the Court Annexed Mediation Centre

2020-2021

Sr. #	Mediation case #	Suit / Appeal No.	Referring court	Received on	Stage of case while referring	Detail of documents received	Initial of official receiving	Remarks, if any

Registration & Recognition of Mediation Centre

2020-2021

Sr. #	Name of the Institution	Head of the Centre	Applied On	Approved On	Date of Re-registration	Recognition No.	Office address and contact No.	Focal person

Registration & Recognition of Mediators

2020-2021

Sr. #	Name of the mediator	Qualification	Training Institution	Certificate Number	Applied On	Approved on	Date of Re-registration	Contact information	Office address

VIDEOS & OTHER



https://www.youtube.com/channel/UCdzQxEihws2ib5Wj77Ne2Hg



https://www.facebook.com/official.sja.page/

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