

Adjudication Procedure in Civil Court

Prof. Y.F. JAYAKUMAR

Dean, Doctoral & Post-Doctoral Council

Maharashtra National Law University, Aurangabad

Email: yfjayakumar1957@gmail.com

Procedure - Overview

- Filing of a Plaint
- *Vakalatnama*
- Court Fee
- Written Statement
- Conduct of Proceedings
- Replication
- Filing of Documents
- List of Witnesses
- Examination of Witnesses
- Judgement
- Certified Copies of Judgement
- Appeal



Civil Litigation

Plaint

- A plaint is a statement of claim, a document or a written memorial, by the presentation of which a suit is instituted.
- It contains the grounds on which the assistance of the court is sought by a Plaintiff.
- It is the plea of the Plaintiff.
- It should contain the names and addresses of the Plaintiffs and Defendants, cause of action, limitation, jurisdiction, details of court fee, specific remedy sought and verification.
- The Plaintiff shall file documents relied by him along with list of documents.

In the Court of **Civil Judge Class - I** at Indore

Suit No. / 20.....

A. B. s/o B. C.

123, M G Road, Indore, MP

..... Plaintiff

Vs.

M. N. s/o O. P.

456, M G Road, Indore, MP

..... Respondent

Plaint under Order 7 Rule 1 for Compensation for Defamation

The plaintiff respectfully states as follows : -

O.S. No. _____ of 2007

Mr.Rama Rao,
S/o..... Aged years,
Occ:
R/o. Hyderabad ... Plaintiff

Mr.Appa Rao,
S/o....., Aged Years,
Occ:.....
R/o.Hyderabad. ...Defendant

I) DESCRIPTION OF THE PLAINTIFFS:

II) DESCRIPTION OF THE DEFENDANTS:
The address for service of all summons, notices and process on the defendants is as stated above in 'Cause Title'.

1. It is submitted that the Defendant having an acquaintance with the plaintiff approached him and requested to advance a hand loan of Rs.25,000/- (Rupees twenty five thousand Rupees only) to meet his son's education needs. The Defendant also proposed to execute a Promissory Note for the said amount and with a simple interest @ 18% p.a. Due to that acquaintance, the Plaintiff agreed for the same and thus, the defendant has borrowed a sum of Rs.25,000/- as hand loan on 1st January, 2005 from the Plaintiff at the Plaintiff's home situated at Hyderabad and executed a Promissory Note for the said amount in favour of the Plaintiff and promised to repay the said hand loan within a period of 2 years from the date of execution of the promissory note. It is respectfully submitted that in spite of repeated oral demands made by the Plaintiff, the Defendant did not bother to repay the said hand Loan amount.

3. The Plaintiff submits that the Defendant having borrowed the amount of Rs.25,000/- (Rupees Twenty Five Thousand only) as hand loan and having executed the promissory not is bound to repay the same to the Plaintiff who is entitled for interest on the suit amount from the date of demand i.e. 1st January, 2007 till realisation @ 18% p.a. As the Defendant is avoiding payment, the Plaintiff has left with no option except to approach this Hon'ble Court by way of this suit. In view of the above said facts, the Plaintiff is entitled to sue the defendant.

4. The Plaintiff submits that The Defendant is liable to pay the following outstanding amount:

(i)	Promissory Note Amount	: 25,000.00
(ii)	Interest on 25,000 @ 18% p.a. From 01.01.2005 as on date filing of the suit	: 9,000.00
		----- 34,000.00 -----

Therefore, the Defendant has to pay a total sum of Rs.34,000/- (Rupees Thirty Four Thousands Only) to the Plaintiff as on the date of filing of the present suit. Hence, this suit.

IV. CAUSE OF ACTION : The cause of action for the suit arose on 01.01.2005 when the Defendant borrowed the amount and executed pro-note and on 01.01.2007 when the Plaintiff got issued a legal notice to Defendant calling upon defendant to repay the amount and still subsists.

V. VALUATION: The relief of recovery of money under Sec. 20 of APCF & SV Act and CF of Rs is paid thereon and the same is sufficient.

VI. JURISDICTION: The Plaintiff is residing at Hyderabad and the Defendant borrowed the said loan amount from the Plaintiff at the residence of the Plaintiff and hence this Hon'ble Court is having territorial & pecuniary Jurisdictions to entertain the present suit.

VII. DECLARATION : The Plaintiff has not filed any suit against the Defendant and no suit is pending between the parties in respect of the relief being claimed in this suit.

VIII. LIMITATION : The Defendant borrowed the said hand loan amount on 01.01.2005 and the legal notice issued to the Defendant on 01.01.2007 and therefore the present suit is within the limitation.

IX. PRAYER :

Hence, the plaintiff herein prays that this Hon'ble Court may be pleased to pass Order and Decree in favour of the Plaintiff and against the Defendant.

- (a) To direct the Defendant to pay a sum of Rs. 34,000/- together with future interest thereon, from the date of this suit, till the date of realization of the entire suit claim;
- (b) To award the costs of this suit;

and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case in the interest of Justice.

Plaint

VERIFICATION

I, Mr. Rama Rao, S/o.-----, Age __ years, Occ:_____. R/o.Hyderabad do hereby declare that the contents of Para III are true and correct to the best of our knowledge and believed to be true and correct, and the rest of the paras are on the basis of information and legal advice and verified on this the day of June, 2007 at Hyderabad .

PLAINTIFF

LIST OF DOCUMENTS FILED BY PLAINTIFFS

Sl. No.	Date	Parties	Description of Document	Page No.
1.	01.01.2005	Defendant & Plaintiff	Promissory Note in Original.	
2.	01.01.2007	Plaintiff & Defendant	Office copy of the Legal Notice.	
3	01.01.2007	Plaintiff & Defendant	Proof of sending Legal Notice.	
4.		Plaintiff & Defendant	Acknowledgements in receipt of the notice served on the defendant.	

PLAINTIFF

Written Statement

- Written Statement is a reply of defendant to the Plaint filed by the Plaintiff.
- The Statement should specifically deny the allegations.
- It should be verified by the Defendant.
- It should be made within the limitation period (90 days from receipt of summons).
- The Defendant shall file the documents relied by him along with Written Statement.

IN THE COURT OF THE III ADDITIONAL JUNIOR CIVIL JUDGE :
CITY CIVIL COURT : AT HYDERABAD.

O.S. No. _____ of 2007

Between:-

Mr.Rama Rao,
S/o..... Aged years,
Occ:
R/o.Hyderabad

... Plaintiff

And

Mr.Appa Rao,
S/o....., Aged Years,
Occ:.....
R/o.Hyderabad.

...Defendant

WRITTEN STATEMENT FILED BY THE DEFENDANT
UNDER ORDER VIII, RL.1, C.P.C.

IN THE COURT OF THE III ADDITIONAL JUNIOR CIVIL JUDGE :
CITY CIVIL COURT : AT HYDERABAD.

Between:-

... Plaintiff

And

Mr.Appa Rao,
S/o....., Aged Years,
Occ:.....
R/o.Hyderabad.

...Defendant

WRITTEN STATEMENT FILED BY THE DEFENDANT
UNDER ORDER VIII, RLJ, C.P.C.

1) It is submitted that the defendant has gone through the averments made in the plaint and affidavit filed in support of the plaint. The averments, which are not specifically admitted, are denied. The Plaintiff is put to strict proof of the same. Most of the averments are not correct and false and the suit is not maintainable.

2) In reply to Para III (1) of the plaint, it is submitted that I have no acquaintance with the plaintiff and did not approach at any point of time for hand loan to meet my son's education and executed promissory note in favour of the plaintiff. I have sufficient means to support my family. Hence, there is no question of taking hand loan from the plaintiff and execution of promissory note in favour of the plaintiff.

3) In reply to para III (2) of the plaint, it is submitted that the notice issued by the plaintiff was received by me on..... The contents of the notice are vague and false. Since I did not approach the plaintiff for any hand loan and executed promissory note, I did not choose to reply the notice. Hence, the allegations in the notice are denied.

4) In reply to para III (3) of the plaint, it is submitted that I did not borrow any amount from the plaintiff and executed promissory note in favour of him. The allegation of the plaintiff is false and I need not bound to pay any amount to the plaintiff. It is not correct to say that I have borrowed a sum of Rs.25,000/- from the plaintiff and executed a promissory note in favour of him.

5) In reply to Para III (4) of the plaint, it is submitted that since there is no amount is borrowed from the plaintiff and executed pro-note, the figures of outstanding stated in para therein is false and fabricated one.

Written Statement

6) It is submitted that I have never approached the plaintiff for any amount said to have been borrowed by me and executed pro-note. Since we reside in the same street and due to rivalry between our two families regarding some disputes relating to colony problems, the plaintiff has fabricated the pro-note and filed the present suit alleging that I have borrowed a sum of Rs.25,000/- from plaintiff and executed a pro-note. The plaintiff is trying to mislead this Hon'ble Court and made false allegations in the plaint.

7) The other allegations of the plaint which are not specifically admitted herein are denied. The plaintiff is put to strict proof of the same.

Hence, it is prayed that this Hon'ble Court may be pleased to dismiss the suit with costs.

Counsel for the Defendant

Defendant

Verification

I, Appa Rao, S/o _____ aged about _____ years, Occ: Employee, do hereby declare that the facts stated in paras 1 to 7 are true and correct to the best of my knowledge, information and belief and I believe the same to be true and correct. Hence, verified on this the _____ day of June, 2007 at Hyderabad.

Defendant

Vakalatnama

- A document by which a party authorizes the advocate to represent in the court of law.
- Client will not hold the advocate responsible for any decision.
- The client will bear the expenses.
- The client will pay the necessary court fee.
- The advocate will have the right to take decision.

Vakalatnama

IN THE COURT OF THE.....

..... At

No Of 201

Between :

Plaintiff
Petitioner
Appellant
Complainant

And

Defendant
Respondent
Accused

I/We

Do hereby appoint and retain

To appear for me/us in the above suit/case and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application for execution of any decree or order passed therein. I/We empower my/our Advocates to appear in all miscellaneous proceedings in the above suit or matter till all decrees or orders are fully satisfied or adjusted to compromise and to obtain the return of documents and draw any moneys that might be payable to me/us in the said suit or matter (and I/We do further empower my/our Advocates to accept on my/our behalf service of all or any appeals or petitions filed in any court of Appeal. Reference or Revision with regard to the said suit or matter before the disposal of the same in this Honourable court)

Signature:

Name:

Certified that the executant who is well acquainted with English and this Vakalatnama/the contents of the Vakalatnama were read out and explained in Telugu/Urdu to the executant as he/she/they being unacquainted with English and who appeared perfectly to understand the same and signed/put his/her/their name or mark in my presence.

Identified by

Executed on this the day of 201

Advocate

Replication by Plaintiff

- It is a reply to Written Statement
- It specifically denies the allegations
- Verification is required
- Once replication is filed, pleadings are stated to be complete

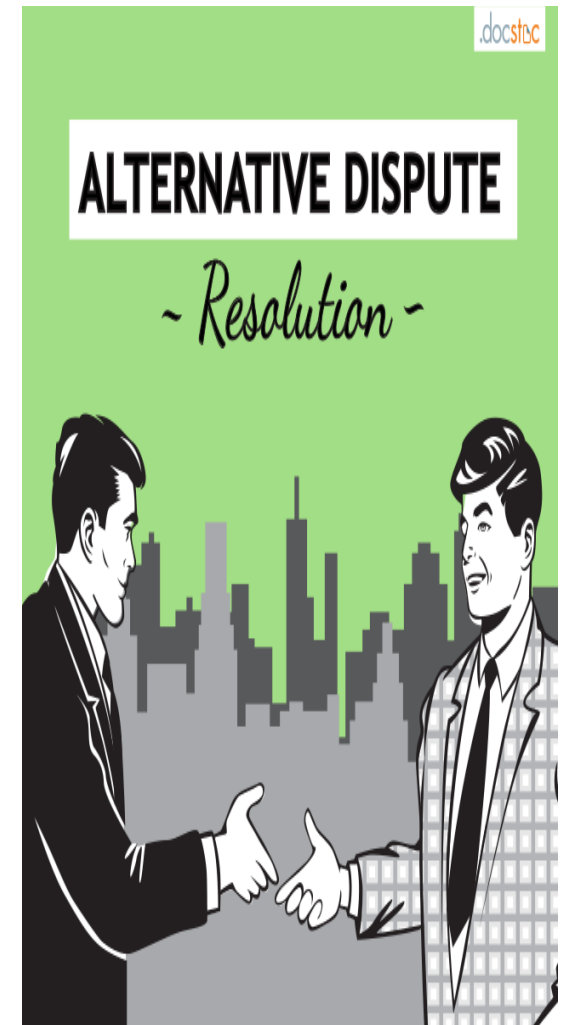


Reference to ADR

- Section 89, Order X Rules 1A, 1B & 1C of CPC

89. Settlement of disputes outside the Court.

- (1) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the court may reformulate the terms of a possible settlement and refer the same for:*
- (a) Arbitration;*
 - (b) Conciliation*
 - (c) Judicial settlement including settlement through Lok-Adalat; or*
 - (d) Mediation.*



Reference to ADR

(2) Where a dispute had been referred-

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act.

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

Framing of Issues

- Issue means a point in question.
- Affirmed by one party and denied by the other.
- Three kinds:
 - Issues of fact;
 - Issues of law;
 - Mixed issues of fact and law.
- Facts-in-issue
- Relevant Facts
- Court will deal with each issue separately in judgement.



Examination of Witnesses

- Evidence by Plaintiff followed by Defendant
- Examination-in-chief
- Marking of documents as exhibits
- Cross-examination
- Re-examination
- Power of court to examine any third party or order production of any document.



Hearing and Advancing Arguments

- Fixing dates for arguments
- Argument by Plaintiff followed by Defendant either in person or through respective counsels.
- Filing of written arguments along with precedents in support of case.
- Arguments should be confined to issues framed.



Judgment & Decree

- Judgment is final decision of Court containing grounds and reasons for the decision.
- Judgment pronounced by Court.
- Decree contains operational portion of judgment, adjudicating rights and liabilities of parties.
- Certified copies of Judgment and Decree may be obtained by either party by paying requisite fee.



FAMILY COURTS ACT, 1984

Dr.Y.F.Jayakumar
Dean, Doctoral & Post-Doctoral Council
Maharashtra National Law University, Aurangabad.

REASONS FOR ENACTMENT

- Family disputes involve serious and emotional aspects
- Family disputes involve sensitive and delicate issues
- Family disputes involve children and blood relatives issues
- Family disputes involve conjugal and privacy issues
- Family litigation needs special procedure.

- Rigid rules of procedure and evidence not suitable.
- Demand from social organizations and NGOs.
- The law commission 59th report in the year 1974.
- CPC was amended in 1976 to deal with family cases.
- In spite of amendments no progress in family dispute resolution through the special procedure

AIMS & OBJECTIVES OF THE FAMILY COURTS ACT, 1984

- To make obligatory on the state to establish number of family courts.
- To provide jurisdiction to the family courts on nullity of marriage, divorce, judicial separation, restitution of conjugal rights, validity of marriage, property disputes between members of family, legitimacy of the child, guardianship, custody of children and maintenance etc
- To make mandatory of conciliation proceedings on family courts.

- To settle family disputes through conciliation, reconciliation and settlement.
- To provide social and medical assistance to assist the parties to settle their disputes by conciliation.
- To prevent legal practitioners except as *amicus curiae*.
- To simplify the rules of evidence.

APPOINTMENT OF JUDGES

- The state government with the concurrence of the High court may appoint judges of the Family Court
- A person with seven years experience as judicial officer in India
- A person with seven years experience as advocate of High court or courts of succession
- A person who committed to the protection and preservation of family
- Preference shall be given to women
- The retirement age of the judge is 62 years

JURISDICTION OF THE FAMILY COURT

- Jurisdiction exercisable by any district court.
- Jurisdiction exercisable by subordinate civil court.
- Jurisdiction exercisable by a magistrate under section 125 Cr.P.C. ,1973.
- Jurisdiction in respect of pending proceedings.

A.P FAMILY COURTS(HIGH COURT RULES),1995

- The high court shall regulate the working hours and place of the family court.
- All proceedings in the family court shall be instituted by a petition in form no 1.
- Petitioner has the choice of language of the petition.
- No court fee shall be collected.
- Notice of the proceedings shall be issued in form no 2.
- The provisions of order¹ of C.P.C shall be applicable.
- Generally 3 weeks time is given to the parties to appear before the court

- Legal practitioners shall be allowed as amicus curiae.
- The court shall record the substance of the facts of deposition.
- Evidence shall be recorded on affidavit basis.
- The court shall supply the copy of the judgment for free of cost to the parties.
- Appeal lies to high court with free of cost.
- Division bench of the high court shall sit to hear appeals from family courts

CONCLUSION

Therefore the Family Courts Act, 1984 is fulfilling the aims and objectives of settlement of family disputes through ADR methods

Conciliation and Mediation

Prof. Y. F. Jayakumar
Dean, Doctoral & Post-Doctoral Council
Maharashtra National Law University, Aurangabad
Email: yfjayakumar1957@gmail.com

Fields of ADR

- Civil disputes
- Family disputes
- Commercial disputes
- Industrial disputes
- Banking disputes
- Disputes in respect of construction industry
- Property disputes including joint family disputes
- Disputes arising out of IPR
- Disputes arising out of Insurance
- Disputes arising out of real estates and securities
- Disputes arising out of International commercial arbitration etc



Basic Features of ADR

- Flexible – free from rigorous rules of procedure
- Expeditious
- Cost Effective
- Party Autonomy
- Win-Win situation
- Confidentiality
- Informality
- Effective Participation of Parties
- Control over the findings
- Liberty to choose the third party
- Binding Settlement/Award
- Suitable for Cross-Border Disputes

ADR - Methods

- **Arbitration** : The parties agree to refer their disputes to a neutral third party for **adjudication**, who passes an **award**, which is binding on the parties.
- **Conciliation**: An agency which enjoys the right granted under legislation or under the order of the court to assist the parties to agree upon their own solution to their problem. – **Proactive Role of the Conciliator**.
- **Mediation**: An impartial mediator (third party) assist the parties to agree upon their solution to the problem. **Facilitative Role of the Mediator**.
- **Negotiation**: It is a process initiated by the parties themselves resolving the disputes without any assistance.

Mediation v. Conciliation

- Mediation and Conciliation both are voluntary processes
- Neutral third person tries to bring about a settlement between the parties.
- The Supreme Court in the *Afcons* case has also opined that, as per Black's Law Dictionary the term 'mediation' is a synonym of 'conciliation'.
- In India, United Kingdom, and UNCITRAL Model Law, mediation is referred as facilitative process, whereas conciliator plays a pro-active, interventionist role. But, in USA mediator has a greater pro-active role and conciliator is a mere facilitator.

Mediation V. Conciliation

MEDIATION IN INDIA

- ❑ Not governed by statute, court-referred Mediation is regulated by Mediation Rules framed by High Courts.
- ❑ Court can refer to mediation either with or without consent of parties.
- ❑ Facilitative Role:
 - ❑ Assists identifying issues,
 - ❑ reducing misunderstandings,
 - ❑ clarifying priorities,
 - ❑ exploring areas of compromise,
 - ❑ generating options to solve dispute
 - ❑ emphasizes that it is own responsibility of parties for making decisions which affect them, and shall not impose any terms of settlement on the parties.
- ❑ Governed by Part-III of Arbitration and Conciliation Act, 1996.
- ❑ Court can refer a case to Conciliation only with mutual consent of the parties.
- ❑ Proactive Role:
 - ❑ Under Sections 67 and 73, tries to settle the dispute by making proposals and by formulating or reformulating the terms of possible settlement.

CONCILIATION IN INDIA

Statutory Recognition of Mediation & Conciliation

All civil disputes which involve rights *in personam* can be conciliated or mediated but criminal offences and matters involving rights *in rem* like guardianship, declaration, divorce, testamentary matters etc., cannot be mediated or conciliated.

MEDIATION:

- Section 30 of Arbitration and Conciliation Act, 1996
- Section 89 , O.X Rules 1-A to C of C.P.C.

CONCILIATION:

- Section 12 of Industrial Disputes Act, 1947
- Section 34 of Special Marriage Act, 1954
- Section 23 of Hindu Marriage Act, 1955
- Section 89 , O.X Rules 1-A to C of C.P.C.
- Family Courts Act, 1984
- Legal Services Authorities Act, 1987
- Arbitration and Conciliation Act, 1996
- Section 10 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Approach To Mediation

PRE-LITIGATION:

- **No law governing** private mediation in India
- Mediation before approaching the Court
- Mediation Settlement agreement is **enforceable as a contract**

POST-LITIGATION:

- Parties go for mediation **on their own accord**
 - Parties may withdraw case after settlement
 - Report compromise and obtain a decree under Order XXIII Rule 3 of C.P.C. for a civil case or compound the offence under Sec.320 of Cr.P.C. for a criminal case
- **By reference from Court** under Section 89 , O.X Rules 1-A to C of C.P.C.

Approach To Conciliation

Governed by **Arbitration and Conciliation Act, 1996**

PRE-LITIGATION:

- Without resorting to Court Litigation
- Settlement Agreement is **equivalent to arbitral award on agreed terms** and is like decree of court (S.30).

POST-LITIGATION:

- Parties go for conciliation **on their own accord**
 - Parties may withdraw the case after settlement
- **By reference from Court** under Section 89, O.X Rules 1-A to C of C.P.C.

Court-Referred Mediation & Conciliation u/s. 89 CPC

- After filing of Complaint and Written Statement and before issues are framed
- Court should identify whether the case is fit for reference to ADR
- Case should not fall under any excluded category
- If unfit, Court should record a brief order as to the nature of the case, and why it is unfit for ADR and shall proceed with framing of issues
- If case can be referred to ADR, the court should explain the choice of arbitration, conciliation, *lok-adalat*, judicial settlement and mediation, to the parties to enable them to exercise their option

Court-Referred Mediation & Conciliation u/s. 89 CPC

- If **all parties agree**, case may be referred to conciliation
- If parties are not agreeable to conciliation, and if the court finds the case to be suitable for mediation, the court may refer it to mediation, **with or without the consent of the parties.**
- Mediation is governed by **ADR and Mediation Rules** lay down in the case of ***Salem Advocates Bar Association v. Union of India* (AIR 2005 SC 3353)** and also observations made in ***Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.* (2010 (8) SCC 24)**
- Parties may agree to appoint a sole mediator or each set of parties may nominate a mediator, who need not necessarily be from the panel of mediators available with the Court.

Court-Referred Mediation & Conciliation u/s. 89 CPC

Disqualifications of Mediator:

- An insolvent person;
 - A person of unsound mind;
 - Any person convicted or being prosecuted by a criminal court;
 - Being tried in disciplinary proceeding for charges relating to moral turpitude;
 - Any person interested or connected with subject-matter of the dispute;
 - Related to the parties;
 - A legal practitioner who has appeared or is appearing for any of the parties
-
- Mediator shall facilitate parties to arrive at a settlement
 - Shall not be bound by CPC or Indian Evidence Act.
 - Mediation shall stand terminated after 60 days of reference, unless, the same is extended by the court either *suo moto* or on application of the parties, but the same shall not be extended beyond a further period of 30 days.

Court-Referred Mediation & Conciliation u/s. 89 CPC

- **Mediation fails** - Mediator shall report the same, and the court shall proceed with hearing of the suit.
- **Settlement**
 - Mediator shall send the settlement agreement signed by the parties and their counsels
 - Covering letter about settlement,
 - Court shall make a decree in terms of settlement as per Order XXIII Rule 3 of CPC.
- The mediator enjoys immunity, and shall not be held liable for anything done *bonafide* during the mediation proceedings, and cannot be summoned by any party to Court.

Court-Referred Mediation & Conciliation u/s. 89 CPC

- Court can **refer** parties to Conciliation **only with the consent of all the parties**. Once the Case is referred to Conciliation, it falls outside the ambit of Court and is governed by **Arbitration and Conciliation Act, 1996**.
- **Conciliation fails** - Adjudication of the case continues from the same stage where it was referred to conciliation.
- **Conciliation is successful** - Conciliation Settlement Agreement will have to be placed before the court only for recording it and disposal of the case on its terms.

Thank
You