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LAW DEPARTMENT

NOTIFICATION

24th October 2008

No. B/Estt.(H.C.)-06-03/2008/5251/J Whereas the draft of the following rules which the High Court of Patna proposed to make was published as required by sub-section (1) of Section-122 of the Code of Civil Procedure, 1908 (Act 5 of 1908) in Notification No. 4235 dated 05th September, 2008 in Bihar Gazette dated 05th September, 2008 inviting objections or suggestions from the persons likely to be affected thereby and notice was given that the said draft rules will be taken into consideration on or after fifteen days from the date of its publication in the Official Gazette.

AND WHEREAS, the said copy of the Gazette Notification was made available to the publication 05th September, 2008.

AND WHEREAS, no objections or suggestions have been received to the said draft rules by the High Court of Patna.

NOW, THEREFORE, in exercise of the powers conferred by Section-89 and Section-122 read with Section-126 and 127 of the Code of Civil Procedure, 1908 (Act 5 of 1908) the following rules made by the High Court, Patna and approved by the State Government is hereby published namely:-

Bihar Civil Procedure (Mediation) Rules, 2008.

By the order of Governor of Bihar,
RAJENDRA KUMAR MISHRA,
Sec-cum-legal Remembrancer.

BIHAR CIVIL PROCEDURE (MEDIATION) RULES, 2008

1. Title and Commencement--(i) These Rules shall be called the **Bihar Civil Procedure (Mediation) Rules, 2008.**

(ii) They shall come into force from the date of publication in the Official Gazette.

2. *Appointment of Mediator--* Mediator or Mediators shall be appointed as follows:

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

(b) Where there are two sets of parties and are unable to agree on a sole mediator, each set of parties shall nominate a mediator.

(c) Where parties agree on a sole mediator under Clause (a) or where parties nominate more than one mediator under Clauses (b) the mediator need not necessarily be from the panel of the mediators referred to in Rule-3 nor should possess the qualifications referred to in Rule-4 but should not be a person who suffers from the disqualification referred to in Rule-5.

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

3. *Panel of Mediators—*

(a) The High Court shall for the purpose of appointing mediators between parties in suits filed on its original side prepare a panel of mediators and publish the same on its Notice Board, within thirty days of the coming into force of these Rules with a copy to the Bar Association attached to the original side of the High Court-

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

(ii) Copies of the said panel referred to in Clause (i) shall be forwarded to all the Courts of equivalent jurisdiction or Courts Subordinate to the Courts referred to in Sub-Clause (i) and to the Bar Association attached to each of the Courts.

(c) The consent of the persons whose names are included in the panel shall be obtained before empanelling them.

(d) The panel of names of mediators shall be accompanied by an annexure giving details of the qualification of the mediators and their professional or technical experience in different fields.

4. Qualifications of persons to be empanelled under Rule-3—The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under Rule 3, namely :

(a) *(i)* Retired Judges of the Supreme Court of India.

(ii) Retired Judges of the High Court.

(iii) Retired District & Sessions Judges and retired Judges of equivalent status.

(b) Legal Practitioners with at least fifteen years standing at the Bar at the level of the Supreme Court or the High Court or the District Courts or Courts of equivalent status.

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

(d) Institutions which are themselves expert in mediation and have been recognized as such by the High Court provided the names of its members are approved by the High Court initially or whenever there is change in membership.

5. Disqualifications of persons — The following persons shall be deemed to be disqualified for being empanelled as mediators :-

(i) Any person who has been adjudged as insolvent or is declared of unsound mind, or

(ii) Any person against whom criminal charged involving moral turpitudes are framed by a Criminal Court and are pending, of

(iii) Any person who have been convicted by a criminal courts for any offence involving moral turpitude;

(iv) Any person against whom disciplinary proceedings or charges, relating to moral turpitudes have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment.

(v) Any person who is interested or connected with the subject matter or dispute or is related to any one of the parties or to those represent them, unless such objection is waived by all the parties in writing.

(vi) Any legal practitioner who has or is appearing for any of the parties in the suit or in any other suit or proceedings.

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

6. Venue for Conducting Mediation—The mediator shall conduct the mediation at one or other of the following places:-

(i) Venue of the Lok Adalat or Permanent Lok Adalat.

(ii) Any place identified by the District Judge within the Court precincts for the purpose of conducting mediation.

(iii) Any place identified by the Bar Association or State Bar Council for the purpose of mediation, within the premises of the Bar Association or the State Bar Council, as the case my be.

(iv) Any other place as may be agreed upon by the parties subject to the approval of the Court.

7. Preference —The Court shall, while nominating any person from the panel of mediators referred to in Rule (3), consider his suitability for resolving the particular class of dispute involved in the suit and shall give performance to those who have proven record of successful mediation or who have special qualification or experience in mediation.

8. Duty of mediator to disclose certain facts—

(i) When a person is approached in connection with his possible appointment as mediator, the person shall disclose in writing to the parties, any circumstances likely to give rise to justifiable doubt as to his independence or impartiality.

(ii) Every mediator shall, from the time of his appointment and throughout continuance of the mediation proceedings, without delay, disclose to the parties in writing about the existence of any of the circumstances referred to in Sub-Rule (i).

9. Cancellation of Appointment .—upon information furnished by the mediator under Rule-8 or upon any other information received from the parties or other persons, if the Court, in which the suit is filed, is satisfied, after conducting such enquiry as it deems fit, and after giving a hearing to the mediator, that the said information has raised a

justifiable doubt as to the mediators independence or impartiality, it shall cancel the appointment by a reasoned order and replace him by another mediator.

10. Removal or Deletion from Penal —A person whose name is placed in penal referred to in Rule-3 may be removed or his name be deleted from the said penal, by the Court which empanelled him, if :-

(i) He resigns or withdraws his name from the penal for any reason;

(ii) He is declared insolvent or is declared of unsound mind;

(iii) He is a person against whom criminal charges involving moral turpitude are framed by a Criminal Court and are pending;

(iv) He is a person who has been convicted by a Criminal Court for any offence involving moral turpitude;

(v) He is person against whom disciplinary proceedings on charges relating to moral turpitudes have been initiated by appropriate disciplinary authority which are pending or have resulted in a punishment

(vi) He exhibits or displays conduct, during the continuance of the mediation proceedings, which is unbecoming of a mediator;

(vii) The Court which empanelled, upon receipt of information, if it is satisfied, after conducting such enquiry as is deemed fit, is of the view, that it is not possible or desirable to continue the name of that person in the penal.

Provided that before removing or deleting his name under Clauses VI and VII the Court shall hear the mediator, whose name is proposed to be removed or deleted from the penal and shall pass a reasoned orders.

11. Procedure of mediation—

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

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

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

(ii) He shall hold the mediation conference in accordance with the provisions of Rule-6.

(iii) He may conduct joint or separate meetings with the parties.

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

(v) Each party shall furnish to the mediator, copies of the pleadings or documents or such other information as may be required by him in connection with the issue to be resolved.

Provided that where the mediator is of the opinion that he should look into the original document the court may, permit him to look into the original document before such Officer of the Court and on such date or time as Court may fix.

(vi) Each party shall furnish to the mediator, copies of the pleadings or documents or such other information as may be required by him in connection with the issues to be solved.

(c) Where there is more than one mediator, the nominated by each party shall first confer with the party that nominated him and shall thereafter interact with the other mediator, with a view to resolving the dispute.

12. Mediator not bounded by Evidence Act, 1872 or Code of Civil Procedure 1908 —The Mediator shall no be bound by the Code of Civil Procedure, 1908 or the Evidence Act, 1872 but shall be guided by principles of fairness and justice have due regards to the rights and obligations of the parties, usages of trade, if any and the nature of the dispute.

13. Non-attendance of parties at Sessions or Meetings on due dates.—

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

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

(iii) The parties not resident in India, may be represented by their counsel or power of Attorney holders at the Sessions or Meetings.

14. Administrative Assistance—In order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the party, may arrange for administrative assistance by a suitable institution or person.

15. Offer of Settlement by parties —

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

(b) Any party to the suit may make a "with prejudice" offer, to the other party at any stage of the proceedings, with the notice to the mediator.

16. Role of Mediator.—The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute, emphasizing that it is the responsibility of the parties to take decision which effect them, he shall not impose any terms of settlement on the parties.

17. Parties alone responsible for taking decision—The parties must understand that the mediator only facilitates in arriving at a decision to resolve dispute and that he will not and can not impose any settlement nor does the mediator give any warranty that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.

18. Time limit for completion of mediation —On the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless the Court, which referred the matter, either suo motu, or upon request by the mediator or any of the parties, and upon hearing all the parties is of the view that extension of time is necessary or may be useful, but such extension shall not be beyond a further period of thirty days.

19. Parties to act in good faith—While on one can be compelled to commit to settle his case in advance by way of mediation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute, if possible.

20. Confidentiality, disclosure and inadmissibility of information—

(i) When a mediator receives confidential information concerning the dispute from any party, he shall disclose the substance of that information to the other party, if permitted, in writing by the first party.

(ii) When a party gives information to the mediator subject to a specific condition that it is to be kept confidential, the mediator shall not disclose that information to the other party, nor shall the mediator voluntary divulge any information regarding the documents or what is conveyed to him orally as to what transpire during the mediation.

(iii) Receipt or perusal, or preparation of records, reports or other documents by the mediator, or receipt of information orally by the mediator while serving in that capacity, shall be confidential and the mediator shall not be compelled to divulge information regarding the documents nor in regard to the oral information nor to what transpire during the mediation.

(iv) Parties shall maintain confidentiality in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to :

(a) Views expressed by a party in the course of mediation proceedings;

(b) Documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators;

(c) Proposal made or views expressed by the mediator;

(d) Admission made by a party in the course of mediation proceedings;

(e) The fact that a party had or had not indicated willingness to accept a proposal.

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

21. Privacy —Mediation sessions and meetings are private; only the concerned parties or their counsel or powers of attorney holders can attend. Other persons may attend only with the permission of the parties or with the consent of the mediators.

22. Immunity . — No mediator shall be held liable for anything bona fide done or omitted to be done by him during the mediation proceedings for civil or criminal action nor shall he be summoned by any party to the suit to appear in a court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

23. Communication between mediator and the Court . —

(i) In order to preserve the confidence of parties in the court and the neutrality of the mediator there should be no communication between the mediator and the court except as stated in clause (ii) and (iii) of this Rule.

(ii) If any communication between the mediator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their counsel or power of attorney holder.

(iii) Communication between the mediator and the Court shall be limited to communication by the mediator.

(a) With the court about the failure of party to attend;

(b) With the court with the consent of the parties;

(c) Regarding his assessment that the case is not suited for settlement through mediation;

(d)That the parties have settled the dispute or disputes.

24. Settlement of agreement—

(i) Where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced to writing and signed by the parties or their power of attorney holder. If any counsel has represented the parties they shall attest the signature of their respective clients.

(ii) The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forwarded the same to the court in which the suit is pending.

(iii) Where no agreement is arrived at between the parties, before the time limit stated in Rule 18 or where, the mediator is of the view that no settlement is possible, he shall report the same to the said Court in writing.

25. Court to fix a date for recording settlement and passing Decree—

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

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

(iii) If the settlement disposes of only certain issues arising in the suit, the Court shall record the settlement in respect of those issues settled on the date fixed for recording the settlement, and

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

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

26. (i) Fee of mediator and cost.—At the time of referring the disputes to mediation, the Court shall, after consulting the mediator and the parties, fix the fee of the mediator.

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

(iii) Where there are two mediators as in Clause (b) of the Rule 2, the Court shall fix the fee payable to the mediators which shall be shared equally by the two sets of parties.

(iv) The expense of the mediation including the fee of the mediator, costs of administrative assistance and other ancillary expenses concerned shall be borne equally by the various contesting parties or as may be otherwise directed by the court.

(v) Each party shall bear the costs for production of witnesses on his side including experts, or the production of documents.

(vi) The mediator may, before the commencement of mediation direct the parties to deposit equal sums, tentatively, to the extent of 40% of the probable costs of the mediation, as referred to in Clauses (i), (iii) & (iv). The remaining 60% shall be deposited with the mediator, after the conclusion of the mediation. For the amount of cost paid to the mediator, he shall issue the necessary receipts

and a statement of account shall be filled, by the mediator in the Court.

(vii) The expenses of mediation including fee, if not paid by the parties, the Court shall, on the application of the mediator or parties, direct the concerned parties to pay, and if they do not pay, the Court shall recover the said amounts as if there was a decree for the said amount.

(viii) Where a party is entitled to Legal Aid under Section 12 of the Legal Services Authority Act, 1987 the amount of fee payable to the mediator and costs shall be paid by the concerned Legal Services Authority under that Act.

27. *Ethics to be followed by mediator*—The mediator shall;

(i) Follow and observe these rules strictly and with due diligence.

(ii) Not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator;

(iii) Uphold the integrity and fairness of the mediation process;

(iv) Ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of procedural aspect of the process;

(v) Satisfy himself / herself that he/she is qualified to undertake and complete the assignment in a professional manner.

(vi) Disclose any interest or relationship likely to affect impartiality for which might seek an appearance of partiality of bias;

(vii) Avoid, while communicating with the parties, any impropriety or appearance of impropriety;

(viii) Be faithful to the relationship of trust and confidentiality imposed in the office of mediator.

(ix) Conduct all proceedings related to the resolutions of dispute, in accordance with the applicable law.

(x) Recognize that mediation is based on principle of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement.

(xi) Maintain the reasonable expectation of the parties as to confidentiality.

(xii) Refrain from promises or guarantees of results.

28. *Transitory Provision*— Until a panel of mediators is prepared by the High Court or the District Courts as provided under Rule-3, the Court concern may nominate a mediator of their choice, if the mediator belongs to the various classes of person referred to in Rule 4 and is duly qualified and is not disqualified, taking into account the suitability of the mediator for resolving the particular dispute.

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