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Law Department

NOTIFICATION
24th October 2008

No. B/Estt.(H.C.)-06-03/2008/5252/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. 4236 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:-

Civil Procedure (Alternative Dispute Resolution) (Bihar) Rules, 2008.

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

Civil Procedure (Alternative Dispute Resolution) (Bihar) Rules, 2008

1. Title and Commencement:-

(i) These rules may be called **Civil Procedure (Alternative Dispute Resolution) (Bihar) Rules, 2008.**

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

2. Procedure for directing parties to opt for alternative mode of settlement:-

(a) The Court shall, after recording-admissions and denials at the first hearing of the suit under rule 1 of Order X, and where it appears to the Court that there exists elements of settlement which may be acceptable to the parties, formulate the terms of settlement and give them to the parties for their observations under sub-section (1) of Section 89, and parties shall submit to the Court their responses within thirty days of the first hearing.

(b) At the next hearing, which shall be not later than thirty days of the receipt of responses, the Court may reformulate the terms of a possible settlement and shall direct the parties to opt for one of the modes of settlement of disputes outside the Court as specified in clauses (a) to (d) of sub-section (1) of Section 89 read with Rule 1A of Order X in the manner stated hereunder.

"Provided that the Court, in the exercise of such power, shall not refer any dispute to arbitration or to judicial settlement by a person or institution without the written consent of all the parties to the suit".

3. Persons authorized to take decision for the Union of India, State Government and others:-

(i) For purpose of Rule 2, the Union of India or the Government of a State or a Union Territory, all local authorities, all Public Sector Undertakings, all statutory corporations and all public authorities shall nominate a person or persons or group of persons who are authorized to take a final decision as to the mode of Alternative Dispute Resolution in which it proposes to opt in the event of direction by the Court under Section 89 and such nomination shall be communicated to the High Court within the period of three months from the date of commencement of these Rules and the High Court shall notify all the Subordinate Courts in this behalf as soon as such nomination is received from such Government or authorities.

(ii) Where such person or persons or group of persons have not been nominated as aforesaid, such party as referred to in clause(1) shall, if it is a plaintiff, file along with plaint or if it is a defendant file, file along with or before filling of the written statement, a memo into the Court, nominating a person or persons or group of persons who is or are authorised to take a final decision as to the mode of Alternative Dispute Resolution which the party prefers to adopt in the event of the Court directing the party to opt for one or other mode of Alternative Dispute Resolution.

4. Court to give Guidelines to parties while giving direction to opt:-

1. Before directing the parties to exercise option under clause (b) of Rule 2, the Court shall give such guidance as it deems fit to the parties, by drawing their attention to the relevant factors which parties will have to take into account before they exercise their option as to the particular mode of settlement, namely:

(i) That it will be to the advantage of the parties, so far as time and expense are concerned, to opt for one or the other of these modes of settlement referred to in section 89 rather than seek a trial on the disputes arising in the suit.

(ii) That, where there is no relationship between the parties which requires to be preserved, it may be in the interest of the parties to seek reference of the matter of arbitration as envisaged in clause (a) of sub-section (1) of section 89.

(iii) That where there is a relationship between the parties which requires to be preserved, it may be in the interest of parties to seek reference of the matter to conciliation or mediation, as envisaged in clause (b) or (d) of sub section (1) of Section 89.

Explanation: Dispute arising in matrimonial, maintenance and child custody matters shall, among others, be treated as cases where a relationship between the parties has to be preserved.

(iv) That, where parties are interested in a final settlement wich may lead to a compromise, it will be in the interests of the parties to seek reference of the matter to Lok Adalat or to judicial settlement as envisaged in clause (c) of sub-section (1) of Section 89.

(v) The difference between the different modes of settlement namely, arbitration, conciliation mediation and judicial settlement as explained below:-

Settlement by "Arbitration" means the process by which an arbitrator appointed by parties or by the Court, as the case may be, adjudicates the disputes between the parties to the suit and passes an award by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996), in so far as they refer to arbitration.

Settlement by "Conciliation" means the process by which a conciliator who is appointed by parties or by the Court, as the case may be, conciliates the disputes between the parties to the suit by the Application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) in so far as they relate to conciliation, and in particular, in exercise of his power under sections 67 and 73 of that Act, by making proposals for settlement of the dispute and by formulating or reformulating the terms of a possible settlement and has a greater role than a mediator.

Settlement by "Mediation" Means the Process by which a mediator appointed by parties or by the Court, as the case may be, mediates the disputes between the parties to the suit by the application of the provisions of the Mediation Rules, 2003 in Part II, and in particular, by facilitating discussion between the parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasizing that it is the parties own responsibility for making decisions which affect them.

Settlement in "Lok Adalat" means settlement by Lok Adalat as contemplated by the Legal Services Authority Act, 1987.

"Judicial Settlement" means a final settlement by way of compromise entered into before a suitable institution or person to which the court has referred the dispute and which institution or persons are deemed to be the Lok Adalats under the provisions of the Legal Services Authority Act, 1987 (39 of 1987) and where after such reference, the provisions of the said Act, apply as if the dispute was referred to a Lok Adalat under the provisions of that Act.

5. Procedure for reference by the Court to the different modes of settlements:-

(i) Where all parties to the suit decide to exercise their option and to agree for settlement by arbitration, they shall apply to the Court, within thirty days of the direction of the Court under clause (b) of Rule 2 and the Court shall, within thirty days of the said application, refer the matter to arbitration and thereafter the provisions of the Arbitrations and Conciliation Act, 1996 (26 of 1996) which are applicable after the stage of

making of the reference to arbitration under that Act, shall apply as if the proceedings were referred for settlement by way of arbitration under the provisions of that Act.

(ii) Where all the parties to the suit decide to exercise their option and to agree for settlement by the Lok Adalat of where one of the parties applies for reference to Lok Adalat the procedure envisaged under the Legal Services Act, 1987 and in particular by section 20 of that Act, shall apply.

(iii) Where all the parties to the suit decide to exercise their option and to agree for judicial settlement, they shall apply to the Court within thirty days of the direction under clause (b) of rule 2 and then the court shall, within thirty days of the application, refer the matter to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and thereafter the provisions of the Legal Services Authority Act, 1987 (39 of 1987) which are applicable after the stage of making of the reference to Lok Adalat under that Act shall apply as if the proceedings were referred for settlement under the provisions of that Act.

(iv) Where none of the parties are willing to agree to opt or agree to refer the dispute to arbitration, or Lok Adalat, or to judicial settlement, within thirty days of the direction of the Court under clause (b) of rule 2, they shall consider if they could agree for reference to conciliation or mediation, within the same period.

(v)(a) Where all the parties opt and agree for conciliation, they shall apply to the Court, within thirty days of the direction under clause (b) of rule 2 and the Court shall, within thirty days of the application refer the matter to conciliation and thereafter the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) which are applicable after the stage of making of the reference to conciliation under that Act, shall apply, as if the proceedings were referred for settlement by way of conciliation under the provisions of that Act.

(b) Where all the parties opt and agree for mediation, they shall apply to the Court, within thirty days of the direction under clause (b) of Rule 2 and the Court shall, within thirty days of the application, refer the matter to mediation and then the Bihar Civil Procedure (Mediation) Rule, 2008 in part II shall apply.

(vi) where under clause (d) all the parties are not able to opt and agree for conciliation or mediation, one or more parties may apply to the Court within thirty days of the direction under clause (b) of rule 2, seeking settlement through conciliation or mediation, as the case may be, and in that event, the Court shall within a further period of thirty days issue notice to the other parties to respond to the application, and

(a) in case all the parties agree for conciliation, the court shall refer the matter to conciliation and thereafter, the provision of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to conciliation under that Act, shall apply.

(b) in case all the parties agree for mediation, the court shall refer the matter to mediation in accordance with the Bihar Civil Procedure (Mediation) Rules, 2008 in part II shall apply.

(c) in case all the parties do not agree and where it appears to the court there exists elements of a settlement which may be acceptable to the parties and that there is a relationship between the parties which has to be preserved, the Court shall refer the matter to conciliation or mediation, as the case may be, in case the dispute is referred to Conciliation, the provisions of Arbitration and conciliation Act, 1996 which are applicable after the stage of making of the reference to

Conciliation under that Act shall and in case the dispute is referred to mediation, the provisions of the Bihar Civil Procedure (Mediation) Rules, 2008 shall apply.

(vii) (a) where none of the parties apply for reference either to arbitration, or Lok Adalat, or judicial settlement or for conciliation or mediation, within thirty days of the direction under clause (b) of rule 2, the Court shall, within a further period of thirty days, issue notices to the parties or their representatives fixing the matter for hearing on the question of making a reference either to conciliation or mediation.

(b) After hearing the parties of their representatives on the day so fixed the Court shall, if there exists elements of a settlement which may be acceptable to the parties is relationship between the parties which has to be preserved, refer the matter to conciliation or mediation. In case the dispute is referred to conciliation, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of the making of the reference to Conciliation under that Act shall and in case the dispute is referred to mediation, the provisions of the Bihar Civil Procedure (Mediation) rules, 2008, shall apply.

(viii) (a) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings of the Court, opt for any one of the modes of alternative Dispute Resolution nor shall enter into any settlement on behalf of a minor or person under disability with reference to the suit in which he acts as mere friend or guardian.

(b) Where an application is made to the Court for leave to enter into a settlement initiated into in the Alternative Dispute Resolution Proceedings on behalf of a minor or other persons under disability and such minor or other person under disability is represented by Counsel or Pleader, the Counsel or Pleader shall file a certificate along with the said application to the effect that the settlement is, in his opinion, for the benefit of the minor or other person under disability. The decree of the Court-based on the settlement to which the minor or other person under disability is a party, shall refer to the sanction of the Court thereto and shall set out the terms of the settlement.

6. Referral to the Court and appearance before the court upon failure of attempts to settle disputes by conciliation or judicial settlement or mediation:-

(i) Where a suit has been referred for settlement for conciliation, mediation or judicial settlement and has not been settled or where it is felt that it would not be proper in the interests of justice to proceed further with the matter, the suit shall be referred back again to the Court with a direction to the parties to appear before the Court on a specific date.

(ii) Upon reference of the matter back to the Court under sub-rule (1) or under sub-section (5) of section 20 of the Legal Services Authority Act, 1987, the Court shall proceed with the suit in accordance with law.

7. Training in alternative methods of resolution of disputes, and preparation of manual:-

(i) The High Court shall take steps to have training courses conducted in places where the High Court and District Courts or Courts or Courts of equal status are located, by requesting the bodies recognized by the High Court or Universities imparting legal education or retired Faculty Members or other person who, according to the High Court are well

versed in the techniques of alternative methods of resolution of dispute, to conduct training courses for lawyers and Judicial Officers.

(ii)(a) The High Court shall nominate a Committee of Judges, faculty members including retired persons belonging to the above categories senior members of the Bar, other members of Bar specially qualified in the techniques of Alternative Dispute Resolution, for the Purpose referred to in clause (i) and for the purpose of preparing a detailed manual of procedure for Alternative Dispute Resolution to be used by the Court in the State as well as by the arbitrators or authority or person in case of judicial settlement or conciliators or mediators.

(b) The said manual shall described the various methods of alternative dispute resolution, the manner in which any one of the said method is to be opted for, the suitability of any particular method for any particular type of dispute and shall specifically deal with the role of above persons in disputes which are commercial or domestic in nature or which relate to matrimonial, maintenance and child custody matters.

(iii) The High Court and the District Courts shall periodically conduct seminars and workshops on the subject of Alternative Dispute Resolution procedure throughout the State or States over which the High Court has jurisdiction with a view to bring awareness of such procedures and to impart training to lawyers and Judicial Officers.

(iv) Persons, who have experience in the matter of Alternative Dispute Resolution Procedures and in particular in regard to conciliation and mediation, shall be given preference in the matter of empanelment of purposes conciliation or mediation.

8. Applicability of this rules to other proceedings:-The Provisions of these Rules may be applied to proceeding before the Courts, including Family Courts constituted under Family Courts Act (66 of 1984), while dealing with matrimonial, maintenance, and child custody disputes, wherever necessary, in addition to the rules framed under the Family Courts Act (66 of 1984).

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