

TAMIL NADU MEDIATION RULES, 2010

(Roc. No.194-A/2010/F1)

[HIGH COURT – MADRAS – TAMIL NADU MEDIATION RULES, 2010 – RULES FRAMED BY THE HIGH COURT UNDER SECTION 122 OF CODE OF CIVIL PROCEDURE, 1908 – APPROVED BY THE GOVERNMENT – PUBLICATION AS JUDICIAL NOTIFICATION.]

[G.O. MS. No.833. Home (Courts-IV), 22nd September 2010.]

No.SRO C-3(a)/2010.

In exercise of the powers conferred by Section 122 of the Code of Civil Procedure, 1908 (Central Act V of 1908) and clause (d) of sub-section (2) of Section 89 of the said Code, the High Court of Madras hereby makes the following Rules – the same having been previously published as required by the said Section 122 of the said Code:-

RULES

1. *Short Title.*— These Rules may be called the Tamil Nadu Mediation Rules, 2010.

2. *Definitions.*- In these Rules, unless the context otherwise requires -

- (a) “Centre” means the Tamil Nadu Mediation and Conciliation Centre at Chennai.
- (b) “Court” means the Madras High Court, Civil Courts and such other adjudicatory forums to which the Code of Civil Procedure may be applicable in the State of Tamil Nadu and the Union Territory of Pondicherry.
- (c) “Mediator” means a person who is on the panel of Mediators of the Centre or any Court as the case may be after undergoing the prescribed training.
- (d) “Rules” means the Tamil Nadu Mediation Rules, 2010.

3. Appointment of mediator. – (1) (a) Parties to a suit or other proceeding may all agree for appointment of one or more mediators for mediating between them. Such mediator may be an institution of experts in mediation recognized by the High Court or any individual.

- (b) Where the parties agree on one or more mediators as per clause (a), such mediator or mediators need not necessarily be from the panel in rule 4 and need not possess the qualifications referred to in rule 5, but should not suffer from the disqualifications referred to in rule 6.
- (c) Where there are two or more sets of parties, who are unable to agree on a sole mediator, the Court may require each party to nominate a mediator and may appoint a mediator from among the names nominated by each party as it deems fit.

(2) Where any of the parties fail to nominate the mediator as per sub-rule (1) the Court shall appoint a person qualified to be a mediator or an institution of experts in mediation, which institution shall thereafter appoint a mediator or mediators from its panel of members. Where the appointment of mediator is made as above, the mediator shall possess the qualifications specified in rule 5 and shall not suffer from any of disqualifications specified in rule 6:

Provided that where such institution of experts is not available, or where the Court considers it necessary so to do, the Court may appoint a mediator or mediators from the panel mentioned in rule (4) failing which, a mediator possessing the qualifications specified in rule 5, who is not subject to any of the disqualifications specified in rule 6, may be appointed by the Court.

4. Panel of mediators. – (1) The High Court shall, for the purpose of appointing the mediators, prepare a panel containing the names of mediators and recognized institutions and publish the same on its notice board, within 30 days from the date of coming into force of these Rules, and furnish a copy of the same to the Bar Association of Advocates of the High Court.

(2) (i) The Courts of the Principal District and Sessions Judge in each district or the Courts of the Principal Judge of the City Civil Court or Courts of equal status shall, for the purpose of appointing mediators in the proceedings before them, prepare a panel of mediators, within a period of sixty days from the date of coming into force 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 panels referred to in clause (i) –

shall be forwarded to all the Courts of equivalent jurisdiction or courts subordinate to the courts referred to in clause (i) and to the Associations of Advocates of the respective Courts.

(3) The Consent of the persons, whose names are included in the panel shall be obtained before empanelling them.

(4) The panel of the names shall contain a detailed annexure giving details of the qualifications of the mediators and their professional or technical experience in different fields including their training and experience in mediation.

5. *Qualifications of persons to be empanelled under Rule 3.*— (1) The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under rule 4, namely:--

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

(ii) Retired Judges of the High Court.

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

(b) Legal practitioners with atleast fifteen years standing at the Bar, provided that in appropriate cases, the Court may relax this requirement to ten years standing at the Bar.

(c) Experts or other professionals with atleast fifteen years experience, or retired senior bureaucrats or retired senior executives.

(2) A person other than those specified in sub-rule(i), for being a person, empanelled as a mediator, should have undergone the training in the Centre or shall be a member of any institution recognized by the High Court as experts in mediation and training mediators.

6. *Disqualifications of persons.*— The following persons shall be deemed to be disqualified for being empanelled as mediators, namely:-

- i. any person who has been adjudged as insolvent or declared to be of unsound mind; or
- ii. any person against whom criminal charges involving moral turpitude have been framed by a criminal court and are pending; or
- iii. any person who has been convicted by a criminal court for any offence involving moral turpitude; or
- iv. any person against whom disciplinary proceedings or charges relating to moral turpitude have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment; or
- v. such other categories of persons as may be notified by the High Court.

7. *Venue for conducting mediation.*— The mediator shall conduct the mediation at any one of the following places, namely:-

- (i) The premises of the Centre
- (ii) Any place identified by the Court within the Court precincts
- (iii) Venue of the Lok Adalat
- (iv) Any place identified by the Bar Association or State Bar Council within the premises of the Bar Association or State Bar Council, as the case may be.

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

8. Preference.— The Court shall, while appointing any person from the panel of mediators referred to in rule 4, consider his suitability for resolving the particular class of disputes involved in the legal proceeding and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in mediation.

9. Duty of mediator to disclose certain facts.— (1) When a person is approached in connection with his possible appointment as a mediator, he shall disclose in writing to the parties, any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality including:--

- (a) any interest or connection which he may have with the subject matter of the dispute

- (b) any relationship with any one of the parties or their representatives in the mediation

- (c) his appearance, as a legal practitioner for any of the parties in any legal proceeding and shall withdraw himself from the appointment.

(2) Every mediator shall, without delay, from the time of his appointment and throughout the continuance of the mediation proceedings, disclose in writing to the parties, about the existence of any of the circumstances referred to in sub-rule (i) and shall withdraw from the mediation proceedings:

Provided that, if, on receipt of such disclosure specified in sub-rules (1) or (2), all the parties express in writing their consent to his acting as the mediator, the person may act as mediator.

10. Cancellation of appointment.— If the Court, upon information furnished by the mediator under rule 9 or upon any other information received from the parties or other person, and after conducting such inquiry, as it deems fit, and after giving a hearing to the mediator, finds that there is a justifiable doubt as to the mediator's independence or impartiality and that

his appointment should be cancelled, it shall cancel such appointment and replace him with another mediator.

11. *Role of Mediator in other proceedings.*—Unless otherwise agreed by the parties,--

- (a) a mediator shall not act as arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute which is the subject of the mediation proceedings:
- (b) a mediator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

12. *Removal or deletion from panel.*— A person whose name is placed in the panel referred to in rule 4 may be removed from the said panel by the Court which empanelled him, if,--

- i. he resigns or withdraws his name from the panel for any reason;
- ii. he suffers from any of the disqualifications specified in rule 6.
- iii. he exhibits or displays, conduct during the continuance of the mediation proceedings, which is contrary to the ethics to be followed as per rule 28 and unbecoming of a mediator;
- iv. the Court is satisfied, after conducting such inquiry as it deems fit, that it is not possible or desirable to continue that person in the panel.
- v. Provided that, before removing him the Court shall hear the mediator.

13. *Procedure of mediation.*— (1) The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.

(2) 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:-

- (a) he shall fix, in consultation with the parties, a schedule, containing the date and the time of each mediation session, where all parties have to be present.
- (b) he shall hold the mediation at the place prescribed by the Court or the place where the parties and the mediator jointly agree;
- (c) he may conduct joint or separate meetings with the parties;
- (d) each party shall furnish to the mediator copies of pleadings or documents or such other information as may be required by him in connection with the dispute to be resolved:

Provided that where the mediator is of the opinion that he should look into any original document, he may do so, with the permission of the Court.

14. Mediator not bound by the Evidence Act, 1872 or the Code of Civil Procedure, 1908.— The mediator shall not be bound by the Code of Civil Procedure, 1908 (Central Act V of 1908) or the Evidence Act, 1872 (Central Act I of 1872), but shall be guided by the principles of fairness and justice, having regard to the rights and obligations of the parties, usages of trade and the nature of the dispute.

15. Attendance of parties at sessions or meetings on due dates.— (1) The parties shall be present in person or may be accompanied by their counsel at the sessions notified by the mediator:

Provided that, where it is not possible for a party to be present at the mediation session, such party may be represented by his counsel or power of attorney holder.

(2) Where a party is a body corporate, it shall ensure that its representative is empowered to take decisions on its behalf in the mediation proceedings.

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

17. *Role of the 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, emphasising that it is the responsibility of the parties to take decisions which affect them.

18. *Parties alone responsible for taking decision.*— The parties alone have the power to decide on the terms of settlement. The mediator shall not impose any terms of settlement on the parties.

19. *Time-limit for completion of mediation.*— (1) In the absence of the parties for three consecutive meetings or during the period of sixty days, whichever is earlier, the mediation shall stand terminated and the matter shall be listed before the Court concerned.

(2) On the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator, the proceedings shall be posted before the Court for further orders of extension, upon the request of the mediator or any of the parties.

20. *Parties to act in good faith.*— Parties shall participate in the proceedings in good faith with the intention to settle the dispute, if possible.

21. *Confidentiality, disclosure and inadmissibility of information.*—
(1) Where a party gives information to the mediator subject to a specific condition that it shall be kept confidential, the mediator shall not disclose that information to the other party.

(2) 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 the information regarding the documents or the oral information or as to what transpired during the mediation.

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

- (a) views expressed by a party in the course of the mediation proceedings;
- (b) documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators;
- (c) proposals made or views expressed by the mediator;
- (d) admission made by a party in the course of mediation proceedings;
- (e) the fact that a party had or had not indicated willingness to accept a proposal.

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

22. Privacy.— Mediation sessions and meetings are private. Only the parties or their counsel or power-of attorney-holders concerned can attend the meetings. Other persons may attend only with the permission of the parties and the mediator.

23. Immunity.— No mediator shall be held liable for anything done or omitted to be done by him in good faith 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.

24. *Communication between mediator and the Court.*— (1) In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there shall be no communication between the mediator and the Court, except as stated in sub-rules (2) and (3).

(2) 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.

(3) Communication between the mediator and the Court shall be limited to communication by the mediator:--

- a. with the Court about the failure of a 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.

25. *Settlement agreement.*— (1) Where an agreement is reached between the parties in regard to all the issues in the suit or part of the issues, the same shall be reduced to writing and signed by the parties or their power of attorney holders. If counsels have represented the parties, they shall attest the signatures of their respective clients.

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

(3) Where no agreement is arrived at between the parties, before the time-limit specified in rule 19 or where, the mediator is of the

view that no settlement is possible, he shall report the same to the said Court in writing.

26. Court to order of decree.— (1) On receipt of the agreement between the parties and the letter of the mediator's the Court shall, after due intimation to the parties, record the settlement, if it is not collusive.

(2) The Court shall then pass an order or decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the legal proceedings.

(3) If the settlement disposes of certain issues arising in the legal proceeding, the Court shall record the settlement and –

- a. If certain issues are severable from other issues and if an order or decree is possible to be passed to the extent of the settlement covered by those issues, the Court may pass an order or decree 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 the Court on the other issues, which are not settled.

27. Fee for the mediator and costs.— (1) When the mediator is appointed by the parties under rule 3 (1)(a) the fees payable to the mediator shall be as agreed between the parties and the mediator.

(2) When the mediator is appointed by the Court under rule 3(2) the fee payable to the mediator shall be as follows:-

- (a) The Court shall take into consideration the nature of the dispute and the economic capacity of the parties and fix a nominal fee to be paid to the mediator which shall be borne equally by the parties.

(b) In matters where the Court is of the opinion that the number of sessions, the complexity of the case and other factors justify a larger amount to be fixed as the fee, the Court may, in its discretion and after consulting the parties or their counsels, fix such fee at the conclusion of the mediation or at any time prior thereto. The Court may also specify the proportion in which such fee is to be borne by the respective parties. The amount so fixed shall be paid by the parties to the mediator to whom the reference has been made by the Court.

(3) If the expenses of mediation including fee is not paid by the parties, the Court shall, on the application of the mediator, direct the parties concerned 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.

(4) Where a party is entitled to legal aid under Section 12 of the Legal Services Authorities Act, 1987 (Central Act 39 of 1987), the amount of fee payable to the mediator and costs shall be paid by the Legal Services Authority concerned under that Act.

28. Duties of the mediator.—The mediator shall:-

- (a) follow and observe these Rules strictly and with due diligence;
- (b) not carry on any activity or conduct which may reasonably be considered as a conduct unbecoming of a mediator.
- (c) uphold the integrity and fairness of the mediation process;
- (d) ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process;

- (e) satisfy himself that he is qualified to undertake and complete the assignment in a professional manner;
- (f) disclose any interest or relationship likely to affect impartiality or which might indicate or appear to indicate an appearance of partiality or bias;
- (g) avoid any impropriety or appearance of impropriety;
- (h) be faithful to the relationship of trust and confidentiality imposed in the office of mediator;
- (i) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;
- (j) recognise that mediation is based on the principles of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;
- (k) maintain the reasonable expectations of the parties as to confidentiality; and
- (l) refrain from promises or guarantees of results.

29. *Transitory provisions.*— Until a panel of mediator is prepared by the High Court and the District Court, the Courts referred to in rule 4 may nominate a mediator of their choice, if the mediator belongs to various classes of persons referred to in rule 5 and is duly qualified and is not disqualified, taking into account the suitability of the mediator for resolving the particular dispute.

30. The High Court may frame such Regulations, as it considers necessary for giving effect to these Rules.

High Court, Madras,
23rd September 2010.

Sd/- S.VIMALA,
Registrar General.