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**SIGNIFICANCE OF SECTION 89, ORDERS X,X1,X11,X111 ETC.,  
OF CODE OF CIVIL PROCEDURE**

Section 89 of the Code of Civil Procedure : which gives

I) the power to the court to refer the dispute for settlement or conciliation was introduced with a purpose of amicable, peaceful and mutual settlement between parties without intervention of the court. However, the issue is that even after more than a decade of its implementation, the provision provided for ADR under Section 89 suffers from many anomalies.

II) The provision under Section 89 is an attempt to bring about resolution of disputes between parties, minimize costs and reduce the burden of the courts. It is provided for with the sole objective of blending judicial and non-judicial dispute resolution mechanism and bringing alternate dispute mechanism to the center of the Indian Judicial System.

III) Delay, one of the major inadequacies present in our legal system, is said to have been overcome by ADR. ADR was formulated with a purpose of reducing the burden of the burdened system and render expeditious justice. Section 89 was introduced to empower different forums and was more practically applicable than any other option of reducing judicial lag, such as increasing number of judges or infrastructure.

IV) **Section 89 of the Code of Civil procedure** was introduced with a purpose of amicable, peaceful and mutual settlement between parties without intervention of the court. The case/ dispute between parties shall go to trial only when there is a failure to reach a resolution. Section 89 of the Code of Civil Procedure deals with 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.

(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.

V) Section 89 of the Code of Civil Procedure does not create an obligation for the Court to necessarily conduct arbitration, but merely permits the Court to refer the dispute to arbitration or conciliation, where it is satisfied with respect to a reference to the dispute in a pending suit that there is a possibility of settlement of the same by way of arbitration or conciliation.

However, The Government of India or any party can create a compulsion or obligation on the Civil Court to necessarily arbitrate the matter between the parties depending upon the nature of the agreement entered by the parties. The fact that Government is one of the parties to the arbitration agreement makes no difference. The mandate under Section 89 ought to be made to settle the matter and every endeavor should be made for amicable settlement. It appears from Section 89(1) of the code of Civil Procedure that a duty is cast upon the court to refer the dispute either by way of arbitration, conciliation, judicial settlement including settlement through Lok Adalats or mediation if it appears that there are elements of settlement.

VI) In Jagdish Chander vs. Ramesh Chander & ors., the Hon'ble Supreme Court of India in Civil Appeal No.4467 of 2002, held that ;

“ The existence of an arbitration agreement as defined under [section 7](#) of the Act is a condition precedent for exercise of power to appoint an Arbitrator/Arbitral Tribunal, under [section 11](#) of the Act by the Chief Justice or his Designate. It is not permissible to appoint an Arbitrator to adjudicate the disputes between the parties, in the absence of an arbitration agreement or mutual consent. The designate of the Chief Justice of Delhi could not have appointed the Arbitrator in the absence of an arbitration agreement”.

VII) In Sukanya Holdings Pvt. Ltd., vs. Jayesh H.Pandya and another , wherein the Hon'ble Supreme Court of India, in Civil Appeal No.1174 of 2002 held that ;

“ considering the language used in Section 8, in our view, it is not necessary to refer to the decisions rendered by various High Courts interpreting Section 34 of Indian Arbitration Act, 1940 which gave a discretion to the Court to stay the proceedings in a case where the dispute si required to be referred for arbitration”.

VIII) In Salem Bar (1) , the Hon'ble Supreme Court of India, held that ;

"It is quite obvious that the reason why [Section 89](#) has been inserted is to try and see that all the cases which are filed in court need not necessarily be decided by the court itself. Keeping in mind the law's delays and the limited number of Judges which are available, it has now become imperative that resort should be had to alternative dispute resolution mechanism with a view to bring to an end litigation between the parties at an early date. The alternative dispute resolution (ADR) mechanism as contemplated by [Section 89](#) is arbitration or conciliation or judicial settlement including settlement through Lok Adalat or mediation. If the parties agree to arbitration, then the provisions of the Arbitration and [Conciliation Act](#), 1996 will apply and that case will go outside the stream of the court but resorting to conciliation or judicial settlement or mediation with a view to settle the dispute would not ipso facto take the case outside the judicial system. All that this means is that effort has to be made to bring about an amicable settlement between the parties but if conciliation or mediation or judicial settlement is not possible, despite efforts being made, the case will ultimately go to trial."

it was further held by Hon'ble Supreme Court,

(Emphasis supplied) 24.2) In Salem Bar - (II), this Court held :

"Some doubt as to a possible conflict has been expressed in view of used of the word "may" in [Section 89](#) when it stipulates that "the court may reformulate the terms of a possible

settlement and refer the same for" and use of the word "shall" in Order 10 Rule 1-A when it states that "the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of [Section 89](#)".

The intention of the legislature behind enacting [Section 89](#) is that where it appears to the court that there exists an element of a settlement which may be acceptable to the parties, they, at the instance of the court, shall be made to apply their mind so as to opt for one or the other of the four ADR methods mentioned in the section and if the parties do not agree, the court shall refer them to one or the other of the said modes. [Section 89](#) uses both the words "shall" and "may" whereas Order 10 Rule 1-A uses the word "shall" but on harmonious reading of these provisions it becomes clear that the use of the word "may" in [Section 89](#) only governs the aspect of reformulation of the terms of a possible settlement and its reference to one of ADR methods. There is no conflict. It is evident that what is referred to one of the ADR modes is the dispute which is summarized in the terms of settlement formulated or reformulated in terms of [Section 89](#).

One of the modes to which the dispute can be referred is "arbitration". [Section 89\(2\)](#) provides that where a dispute has been referred for arbitration or conciliation, the provisions of the Arbitration and [Conciliation Act](#), 1996 (for short "the 1996 Act") shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of the 1996-6-

Act. [Section 8](#) of the 1996 Act deals with the power to refer parties to arbitration where there is arbitration agreement. As held in [P.Anand Gajapathi Raju v. P.V.G. Raju](#) [2000 (4) SCC 539] the 1996 Act governs a case where arbitration is agreed upon before or pending a suit by all the parties. The 1996 Act, however, does not contemplate a situation as in Section 89 of

the Code where the court asks the parties to choose one or other ADRs including arbitration and the parties choose arbitration as their option. Of course, the parties have to agree for arbitration."

IX) In *Afcons Infrastructure Limited and another v. Cherian Varkey Construction Co. ( P) Ltd.& Ors*, the Hon'ble Supreme Court of India held that ;

“ A civil court exercising power under Section 89 of the Code cannot refer a suit to arbitration unless all the parties to the suit agree for such reference”.

X) Whether the reference to ADR Process is mandatory?

. [Section 89](#) starts with the words "where it appears to the court that there exist elements of a settlement". This clearly shows that cases which are not suited for ADR process should not be referred under section 89 of the Code. The court has to form an opinion that a case is one that is capable of being referred to and settled through ADR process. Having regard to the tenor of the provisions of Rule 1A of Order 10 of the Code, the civil court should invariably refer cases to ADR process. Only in certain recognized excluded categories of cases, it may choose not to refer to an ADR process. Where the case is unsuited for reference to any of the ADR process, the court will have to briefly record the reasons for not resorting to any of the settlement procedures prescribed under section 89 of the Code. Therefore, having a hearing after completion of pleadings, to consider recourse to ADR process under section 89 of the Code, is mandatory. But actual reference to an ADR process in all cases is not mandatory. Where the case falls under an excluded category there need not be reference to ADR process. In all other case reference to ADR process is a must.

XI) **The following categories of cases are normally considered to be not suitable for ADR process having regard to their nature :**

(i) Representative suits under Order 1 Rule 8 CPC which involve public interest or interest of numerous persons who are not parties before the court. (In fact, even a compromise in such a suit is a difficult process requiring notice to the persons interested in the suit, before its acceptance).

(ii) Disputes relating to election to public offices (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, association etc.).

(iii) Cases involving grant of authority by the court after enquiry, as for example, suits for grant of probate or letters of administration.

(iv) Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion etc.

(v) Cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against government.

(vi) Cases involving prosecution for criminal offences.

XII) **All other suits and cases of civil nature in particular the following categories of cases (whether pending in civil courts or other special Tribunals/Forums) are normally suitable for ADR processes.**

(i) All cases relating to trade, commerce and contracts, including

- disputes arising out of contracts (including all money claims);
- disputes relating to specific performance;
- disputes between suppliers and customers;
- disputes between bankers and customers;
- disputes between developers/builders and customers;
- disputes between landlords and tenants/licensor and licensees;
- disputes between insurer and insured;

(ii) All cases arising from strained or soured relationships, including

disputes relating to matrimonial causes, maintenance, custody of children;

disputes relating to partition/division among family members/co-parceners/co-owners; and

- disputes relating to partnership among partners.

(iii) All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes, including

- disputes between neighbours (relating to easementary rights, encroachments, nuisance etc.);

- disputes between employers and employees;

- disputes among members of societies/associations/Apartment owners Associations;

(iv) All cases relating to tortious liability including

claims for compensation in motor accidents/other accidents; and

(v) All consumer disputes including - disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or `product popularity.

XIII) [Section 89](#) has to be read with Rule 1-A of Order 10 which requires the court to direct the parties to opt for any of the five modes of alternative dispute resolution processes and on their option refer the matter. The said rule does not require the court to either formulate the terms of settlement or make available such terms of settlement to the parties to reformulate the terms of possible settlement after receiving the observations of the parties. Therefore the only practical way of reading [Section 89](#) and Order 10, Rule 1-A is that after the pleadings are complete and after seeking admission/denials wherever required, and before framing issues, the court will have recourse to section 89 of the Code. Such recourse requires the court to consider and record the nature of the dispute, inform the parties about the five options available and take note of their preferences and then refer them to one of the alternative dispute resolution processes.

Rule 1A of Order 10 requires the court to give the option to the parties, to choose any of the ADR processes. This does not mean an individual option, but a joint option or consensus about the choice of the ADR process. On the other hand, [section 89](#) vests the choice of reference to the court. There is of course no inconsistency. Section 89 of the Code gives the jurisdiction to refer to ADR process and Rules 1A to IC of Order 10 lay down the manner in which the said jurisdiction is to be exercised. The scheme is that the court explains the choices available regarding ADR process to the parties, permits them to opt for a process by consensus, and if there is no consensus, proceeds to choose the process.

XIV) Order 10 Rule 1A. Direction of the Court to opt for any one mode of alternative dispute resolution.--After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in sub-section (1) of section

. On the option of the parties, the Court shall fix the date of appearance before such forum or authority as may be opted by the parties.

Order 10 Rule 1B. Appearance before the conciliatory forum or authority.--Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

Order 10 Rule 1C. Appearance before the Court consequent to the failure of efforts of conciliation.--Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it."

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