

Section 89 CPC- Settlement of Dispute Outside of Court

The provision under Section 89 CPC 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 centre of the Indian Judicial System. The long-drawn process of litigation, the costs incurred by both parties for the same have and limited number of adjudicators have made Alternate Dispute Resolution an important aspect of the Judicial system to ensure swifter and speedier justice.

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. In countries all of the world, especially the developed few, most of the cases (over 90 per cent) are settled out of 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 States that:

(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 affect a compromise between the parties and shall follow such procedure as may be prescribed.]

Section 89 came into being in its current form on account of the enforcement of the CPC (Amendment) Act, 1999 with effect from 1/7/2002. At the commencement of the Code, a provision was provided for Alternate Dispute Resolution. However, the same was repealed by the enactment of the Arbitration Act (Act 10 of 1940) under Section 49 and Sch. 10. The old provision had reference only to arbitration and its procedure under the Second Schedule of the Code. It was believed after the enactment of the Arbitration Act, 1940, the law had been consolidated and there was no need of Sec 89.

However, the Section was revived with new alternatives and not only restricted to arbitration. A new Section 89 came to be incorporated in the Code by Section 7 of the CPC Amendment Act, 1999 to resolve disputes without going to trial and pursuant to the recommendations of Law Commission of India and Malimath Committee report[4].

Section 89 along-with rules 1A, 1B and 1C of Order X of First schedule have been implemented by Section 7 and Section 20 of the CPC Amendment Act and cover the ambit of law related to Alternate Dispute resolution. The clauses under Order X are specified to ensure proper exercise of jurisdiction by the court. Sub-Section (1) refers to the different mediums for alternate resolution and sub-section (2) refers to various Acts in relation to the mentioned alternate resolutions.

The changes brought in by the CPC Amendment Act, 1999 have no retrospective effect and shall not affect any suit in which issues have been settled before commencement of Section 7 of CPC Amendment Act, 1999 and shall be dealt as if Section 7 and 20 of CPC Amendment Act never came into force.

The decision of the forums specified under Section 89 shall be as effective, having same binding effect, as court orders/decrees and arrived at a relatively cheaper cost and within a short span of time[5]. The rules inserted under Order X provide for when court may direct to take recourse to alternate means to resolve

disputes, the duty of parties to appear before such forums and the responsibility of the presiding officer to act in interest of justice and return the suit if better suited for the court.

The legal position with regard to ADR practices was cleared in the case of Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd. Arbitration was referred to as a means of ADR is undertaken on account a prior agreement between parties to resolve disputes by arbitration or by filing an application/joint memo before the court, the latter occurs in the case of no arbitration agreement beforehand. The award of the Arbitrator, the presiding officer, is binding as a decree of the court or any settlement arrived at by parties during arbitration proceedings shall also have the same effect.

The Code of Civil Procedure (Amendment) Act, 1999 by which Section 89 was amended into the Code also amended a new Section 16 in the Court Fees Act, 1870 which states the following:

Refund of fee: Where the court refers the parties to the suit to any one of the modes of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, 1908 the plaintiff shall be entitled to a certificate from the court authorizing him to receive back from the Collector, the full amount of the fee paid in respect of such plaint.