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HIGH COURT OF ORISSA, CUTTACK

NOTIFICATION

The 16th May 2019

No. 939-R.---In exercise of the rule making power under Part-X of the Code of Civil Procedure, 1908(Act No-5 of 1908) read with clause (d) of sub-section (2) of Section 89 of the said Code and pursuant to the direction of Hon'ble the Supreme Court of India, Dtd.22.02.2013 in Civil Appeal No.1794/2013 (K. Srinivas Rao Vrs. D.A. Deepa) for setting up pre-litigation desks/clinics; in all the Mediation Centres, the High Court of Orissa do hereby make the following rules for amendment of the Civil Procedure Mediation Rules, 2007, namely:-

PART-II

1. Title:-

- (a) These rules shall be called the Civil Procedure Mediation (Amendment) Rules, 2019.
- (b) They shall come into force on the date of their publication in the *Odisha Gazette*.

2. In the Civil Procedure Mediation Rules, 2007, in sub-rule (5) of rule 26, after Sl. No-4, the following honorarium structure for Mediators shall be inserted, namely;-

Sl.No	Nature of Cases	Honorarium to be paid to the Mediators
5.	Pre-litigation matter	Rs 2000 for successful mediation No honorarium for unsuccessful mediation

3. In the Civil Procedure Mediation Rules, 2007, after rule 28, the following rule shall be inserted, namely;-

29. Pre-Litigation Mediation:-Settlement of Pre-Litigation disputes at the High Court/District Court Mediation Centres are to be made in the following manner:-

- (i) There shall be pre-litigation desks/clinics at all the Mediation Centres, to make efforts for settlement of matrimonial disputes and other disputes including Commercial disputes at pre-litigation stage.
- (ii) As per concept of pre-litigation Mediation, disputes which arise out of legal relationship, matrimonial disputes, matters of civil disputes, money matters, contractual disputes, and commercial disputes etc., prior to filing of FIR or filing of cases in any court of law may be received in the Pre-Litigation desks/clinics of the Mediation Centres.
- (iii) A party to a pre-litigation dispute, shall make an application in the Form-1 specified in Schedule-I to the Coordinator of the Mediation Centre by submitting at the pre-litigation desk/clinic either by post or by hand mentioning his/her grievance in details.

Provided that in case of domestic violence disputes, the Protection Officer may if he/she considers appropriate refer the grievance of the aggrieved person to pre-litigation desk/clinic of the respective Mediation Centres with reasons in writing by annexing the grievance with Form-1 prior to filing complaint in Court of law.

- (iv) The pre-litigation commercial disputes shall be governed and dealt with as per the provisions of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018.
- (v) The pre-litigation applications of the parties shall be entered in a Registrar maintained for the purpose by the pre-litigation desks/clinics of the Mediation Centres.
- (vi) After receipt of such application, the Coordinator of the Mediation Centre shall broadly examine the basis and prospect of the claim. If he/ she feels just to proceed ahead having regard to territorial jurisdiction and nature of dispute, shall issue notice to the adversary as per Form-2 specified in Schedule-I either through registered/speed post or electronic means including e-mail and like to appear on the date mentioned and give consent to participate in the mediation process.

- (vii) Where the notice issued under sub-rule(vi) remains unacknowledged or where the opposite party refuses to participate in the mediation process, the Coordinator shall treat the mediation process to be a non-starter and make a report as per Form No-3 specified in Schedule-I and endorse the same to the applicant and the opposite party.

Provided that in case where the opposite party(s), after receiving the notice under sub-rule (vi) seeks further time for appearance by making a request in writing at least two days before the scheduled date of appearance, the Coordinator may if it thinks fit, fix an alternate day not later than 10 (ten) days from the date of receipt of such request from the opposite party.

- (viii) Where both the parties to the dispute appear before the Coordinator and give consent to participate in the mediation process, the Coordinator shall assign the pre-litigation dispute to a Mediator and fix a date for their appearance before the said Mediator and ensure that the mediation process is completed within a period of three months from the date of application unless the period is extended for further two months with the consent of the applicant and the opposite party.
- (ix) Where both the parties reach at a mutually agreed settlement in regard to all or some points of dispute, the same shall be reduced in to writing by the Mediator and shall be 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. The Mediator shall sign the agreement endorsing the result of mediation and submit the same to the Coordinator. Thereafter the Coordinator shall endorse the nature of disposal of the application and the result of the mediation thereon and give true copy of the same to the parties. Such settlement agreement shall be as per Form-4 specified in Schedule-I.
- (x) Where no settlement is arrived at between the parties within the time specified in sub-rule(viii) or where the Mediator is of the opinion that the settlement is not possible, the Mediator shall submit a report to the Coordinator, with reasons in writing as per Form-5 specified in Schedule-I. Then the mediation process be treated as unsuccessful and accordingly closed. Copy of the report shall be given to the parties.

- (xi) The disputes settled at the pre-litigation stage shall not be treated as court litigation and in terms of section 74 of the Arbitration and Conciliation Act, 1996, the settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.
- (xiii) The Mediation Centre or the Mediator, as the case may be shall not retain the hard or soft copies of the documents exchanged between the parties or submitted to the Mediator or notes prepared by the Mediator beyond a period of six months other than the application for mediation under sub-rule(iii), Notice issued under sub-rule(vi), settlement agreement under sub-rule(ix) and unsuccessful report under sub-rule(x).
- (xiv) The mediation record after its disposal shall be kept in the High Court or District Court record room as the case may be till a permanent record room is made available.
- (xv) The Legal Services Authorities shall make efforts for wide publicity of settlement of the Pre-Litigation disputes through Pre-Litigation desks/clinics of the Mediation Centres.

BY ORDER OF THE HIGH COURT

(A.K. Paschimakabat)

COORDINATOR,

MEDIATION CENTRE

SCHEHDULE-I

Form-1
Pre-litigation Mediation Application Form
[See Rule-29(iii)]

1. Name of the Applicant(s): _____

2. Address _____

Contact No. _____ E-mail:- _____

3. Name of the Opposite Party(s): _____

Address _____

Contact No. _____ E-mail:- _____

4. **Nature of Dispute:** _____

Undertaking

I, the above mentioned applicant, do hereby solemnly affirm and declare as under:

1. That the case/ dispute mentioned above, has arisen out of legal relationship.
2. That I desire to get my dispute resolved through Mediation in the Mediation Centre and would abide by the terms of settlement to be reached between the parties.
3. I also undertake to abide by the terms and conditions of Pre-litigation Mediation.

Dated:

Signature of the Applicant

Form-2
Notice to the Opposite Party(s) for Pre-Litigation Mediation
[See Rule-29(vi)]

To,

1. Whereas a pre-litigation dispute has been submitted to (Name of the Mediation Centre)_____by(Name of the applicant)_____against(Name of Opposite Party)_____requesting for pre-litigation mediation in terms of Rule 29 of the Civil Procedure Mediation Rules, 2007. A Copy of the mediation application form is attached herewith.

2. You being the Opposite Party(s) is hereby directed to appear in person or through your duly authorized representative or Counsel on _____(Date)_____(Time) at the (Mediation Centre Address) and convey your consent to participate in the Pre-Litigation Mediation process.

3. Your failure to appear before the Mediation Centre on the scheduled date and time would be deemed as your refusal to participate in the Pre-Litigation Mediation process initiated by the applicant.

4. In case, you require to reschedule the date and time of appearance, the same can be done either by you or through your authorized representative or counsel by making a request in writing at least two days prior to the scheduled date of appearance.

Date:-

Signature of the Coordinator

Form-3
Non-Starter Report
[See Rule-29(vii)]

Name and Address of the Mediation Centre: _____

1. Name of the Applicant(s): _____

2. Date of application for Pre-Litigation Mediation: _____

3. Name of the Opposite Party(s): _____

4. Date scheduled for appearance of Opposite Party(s) _____

5. Non-Starter Report

reason _____

Date:

Signature of the Coordinator

Form-4
Settlement Agreement/Report
[See Rule-29(ix)]

Name and Address of the Mediation Centre: _____

1. Name of the Mediator: _____

2. Name of the Applicant(s): _____

3. Name of the Opposite Party(s): _____

4. Date of application for Pre-Litigation Mediation: _____

5. Date(s) of
Mediation: _____

6. No. of sittings and duration of sittings: _____

7. Terms of settlement(attach separate sheets if required): _____

Date:

Signature of Applicant(s)

Signature of Opposite Party(s)

Signature of Mediator

Endorsement of

Coordinator: _____

Signature of Coordinator

Form-5
Failure/ Unsuccessful Report

[See Rule-29(x)]

Name and Address of the Mediation Centre: _____

1. Name of the Mediator: _____
2. Name of the Applicant(s): _____
3. Name of the Opposite Party(s): _____
4. Date of application for Pre-Litigation Mediation: _____
5. Date(s) of Mediation: _____
6. No. of sittings and duration of sittings: _____
7. Terms of reasons for failure (attach separate sheets if required): _____

Date:

Signature of Applicant(s)

Signature of Opposite Party(s)

Signature of Mediator

Endorsement of

Coordinator: _____

Signature of Coordinator