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PART-IVA

PROVINCIAL ASSEMBLY OF SINDH
NOTIFICATION
KARACHI, THE 08TH NOVEMBER, 2018.

NO.PAS/Legis-B-01/2018-The following Bill is hereby published for general information as required by Rule 98 of Rules of Procedure of the Provincial Assembly of Sindh.

THE CODE OF CIVIL PROCEDURE (SINDH AMENDMENT) BILL, 2018.

SINDH BILL NO. 01 OF 2018.

A BILL

Further to amend the Code of Civil Procedure Act (Act No. V of 1908).

WHEREAS it is expedient further to amend the Code of Civil Procedure Act (Act No. V of 1908), for the purpose herein after appearing;

1. (1) This Act may be called the Code of Civil Procedure (Sindh Amendment) Act, 2018.

Short title and commencement:

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(2) It shall come into force at once.

(3) It shall extend to the whole of Sindh.

2. In the Code of Civil Procedure (Act No. V of 1908), hereinafter referred to as the said Act, in section 2, the following additions and amendments shall be made:-

Insertion in section 2, Code of Civil Procedure Code (Act No. V of 1908).

(1) Before sub-section (1), the following shall be inserted:

[SLUS]

"(A) "Alternative Dispute Resolution" means procedure for settling disputes without court trial, namely arbitration, mediation, conciliation or negotiation."

(2) After sub-section (1), the following shall be inserted

"(1A). "Conciliation" means a process which is conducted confidentially in which a neutral person (conciliator) actively assists parties in working towards a negotiated agreement of a dispute or difference, putting forward proposals for the settlement with the parties in ultimate control of the decision to settle the terms of resolution, the conciliator having no decision-making power or authority to impose solutions on the parties or force settlement between the parties."

(3) After sub-section (1), the following shall be inserted

"(11A) "Mediation" means a process which is conducted confidentially in which a neutral person (mediator) actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle the terms of resolution, the mediator having no decision-making power or authority to impose solutions on the parties or force settlement between the parties."

3. In the said Act, for section 89-A, the following shall be substituted, namely:

Substitution of section 89-A, Code of Civil Procedure (Act No. V of 1908).

"89-A. Alternative Dispute Resolution: (1) Notwithstanding any other laws for the time being in force, the court may use Alternative Dispute Resolution (ADR) methods to resolve cases of civil or commercial matters:

Provided that for the purposes of this section, ADR refers to mediation, conciliation and negotiation.

Provided that in all cases of arbitration, the Arbitration Act 1940 shall apply.

(2) That by submitting to the jurisdiction of the Court, the court shall presume that parties by mutual consent agree to refer the dispute for ADR if so ordered by the Court for securing expeditious disposal.

(3) That a case may be forwarded for ADR by referral of the cases to a mediator/conciliator as identified under Order X, Rule 1C of this Code, in the following circumstances:-

- (i) Upon presentation of a plaint, the court shall at the first instance, examine and assess the possibility of resolving the case in a way which is to the advantage of all parties under one of the methods of ADR;
- (ii) If at any stage of the case, before or after the recording of admissions and denials, the court considers there is a possibility of resolving the case in a way which is to the advantage of all parties under one of the methods of ADR;
- (iii) Upon consent of all the parties.

(4) The court shall employ the following process in the circumstances identified under sub-section (3)(i) and (ii):-

- (i) Upon the conclusion of the court to refer the case to ADR, the court shall issue notice to the parties to make submissions upon the next date of hearing as to why their case should not be referred to ADR;
- (ii) Where no sufficient cause is shown, the Court shall refer the case for ADR to a mediator/conciliator identified in Order X Rule 1C; and
- (iii) If any of the parties fails to make a submission as under sub-section 4(i), the court shall proceed to refer the case to ADR."

Provided, that the entire process, as stated in sub-section (4) shall be completed within fifteen days by the Court.

4. In the said Act, after section 89-A, the following shall be inserted:-

Insertion of Section 89-B, Code of Civil Procedure (Act No. V of 1908).

"89-B Reference by Parties: Parties who have resolved any dispute of civil or commercial nature through the use of an ADR method before initiating any legal proceeding may file an application alongwith settlement duly signed by the parties and other relevant documents in the court having jurisdiction which shall be registered as a "Judicial Miscellaneous" matter. The court after hearing the parties shall pass judgment and decree as under this Code."

5. In the said Act, for Order X, Rule 1A, the following shall be substituted:

Substitution of Order X Rule 1A, Code of Civil Procedure (Act No. V of 1908).

"1A.- The Court may adopt any lawful procedure not inconsistent with the provisions of this Code and adopt any method of Alternative Dispute Resolution (hereinafter referred to as "ADR") under Section 89A of this Code."

6. In the Code of Civil Procedure Act (Act No. V of 1908), the following shall be inserted after Order X Rule 1A:-

Insertion of Order X Rules 1B, 1C and 1D in Code of Civil Procedure (Act No. V of 1908).

"1B. - When a court refers a plaint or case to ADR under Section 89-A of this Code, the following process shall be employed:-

(i) Appointment of Mediator/Conciliator.- The Court shall nominate a mediator/conciliator as identified under Order X Rule 1C.

(ii) Fixing of Date and Time.- Upon referring the case for ADR, the court shall direct the parties to appear before the appointed mediator/conciliator on the date and time fixed by the court and shall set a time for returning of the reference which shall not be more than sixty (60) days from the date of reference. The mediator/conciliator may submit a written request for extension of time period which may be extended for no longer than thirty (30) days by the Court, on showing good cause which shall be noted in a court order.

(iii) Determination of Fee.- The Court, upon deciding to refer a case to ADR, may determine the amount of fee, if any, to be paid to the mediator/conciliator by the party or parties.

(iv) **Appearance of Parties.**- The parties to the case shall take part in the ADR proceedings in person or through an authorized representative empowered to settle the matter.

(v) **Procedure of ADR.**- In dealing with the case referred to him, the mediator/conciliator may follow such a procedure, as may be appropriate in the circumstances of the case.

(vi) **Settlement.**- If a settlement is reached between the parties, the mediator/conciliator shall prepare a deed of settlement containing terms of such settlement, signed by the parties and submit it to the Court on the day fixed by the Court together with a certificate that the settlement between the parties was voluntary.

(vii) **Preparation of Decree.**- Upon the receipt of the deed of settlement and after hearing the parties the court may pass judgment and decree in terms of the settlement.

(viii) **Failure of Settlement.**- If no settlement is reached between the parties, including if any of the parties refuses to participate in the process, the mediator/conciliator shall record the statement of the fact and submit it to the Court on or before the date fixed.

(ix) **Commencement of trial.**- If no settlement is reached within the allocated time period, the case shall proceed in Court without delay on a day to day basis.

Exclusion of Qanun-e-Shahdat 1984 and Code of Civil Procedure (Act V of 1908). - Save as otherwise provided, this Code and the Qanun-e-Shahadat, 1984 shall not apply to ADR proceedings under Section 89A of this Code.

7. Subject to any standard prescribed by special law, the following organizations and persons shall be eligible to be Mediator/ Conciliator. Mediators/Conciliators under Section 89-A and Order X:-

- (a) Organizations / institutions / Court-annexed mediation centers established or recognized by the Sindh High Court that specialize in ADR methods and maintain a list of mediators or conciliators with training as required under sub-clause (b);

- (b) Persons, who have undergone a minimum of 40 hours' skills-based training in mediation and/or conciliation and have been accredited as mediators or conciliators by a reputable organization or institution;
- (c) A judge nominated by the Court to conduct ADR who has been certified as a mediator/conciliator by the Sindh Judicial Academy or is accredited as under sub-clause (b);
- (d) Salis appointed under the Small Claims and Minor Offences Ordinance 2002;
- (e) Any other person agreed to by the parties and upon approval of the Court in accordance with the law.

1D. Prohibitions.

- (i) **Prohibition of mediator/conciliator appearing in proceedings or as witness.**— The mediator/conciliator shall not act in any capacity on behalf of any of the parties in connection with the case in other proceedings nor shall he be called as a witness in such proceedings except to attest to the authenticity of the settlement agreement.
- (ii) **Prohibition of making record.**— Any information, statement, document and anything disclosed to the mediator/conciliator during ADR proceedings shall be kept confidential and no document including any transcript, formal record or audio-visual recording shall be made of the proceedings except with written approval of the mediator/conciliator and consent of the parties.
- (iii) **Prohibition of production of document in any proceedings.**— No communication or any kind of documentation made during the ADR process can be produced in court with regards to the case or any other related proceedings.
- (iv) **Prohibition of using information.** — No communication made in the ADR proceedings including information disclosed and views expressed shall be used in any other related proceedings whatsoever."

STATEMENT OF OBJECTS AND REASONS

Access to justice has been a priority area for the Government of Sindh. However, Courts continue to be faced with a colossal backlog of cases in the age of increased litigation. This also has a massive impact on litigants with high costs and time required for resolution of cases, which may often take years. Amongst other issues, delays and non-resolution of cases lead to personal losses,

deaths, deprivation, and loss of billions to the economy, closure of businesses, severely damaged relationships and unrest in the society at large.

Alternative Dispute Resolution (ADR) mechanisms and measures such as mediation and conciliation are internationally recognised as a vital part of the justice system. These mechanisms support litigants in reducing conflicts between individuals/communities, reaching resolution of cases faster, thereby increasing their access to justice. These also provide support to the court system by reducing their workload and expenses, allowing for better and more expedient resolution of cases. The use of ADR mechanisms effectively within the legal framework has also resulted in improved public satisfaction with the justice system. The instant legislation will address such issues & encourage parties to resolve their issues by way of ADR.

Pakistan introduced arbitration through the Arbitration Act 1940 and provisions allowing for mediation/conciliation under Section 89-A, Code of Civil Procedure (Act V of 1908) and Order X in 2002. However, the desired objectives have not been achieved under the existing provision. Some of the gaps identified for this lack of implementation included the lack of comprehensive mechanisms, lack of standards for mediators/conciliators, thus lack of trust.

The proposed amendments seek to rectify these gaps. By placing it firmly within the existing justice framework, it is intended that ADR processes be seen and recognised as part of the system as opposed to a parallel system. The proposed amendments empower courts to refer cases for mediation or conciliation, whilst also giving parties the opportunity to register existing amicable settlements through the court for effective execution. It also sets a basic standard for the mediators/conciliators to whom courts will refer such cases in order to ensure quality and effectiveness.

MEMBER-IN-CHARGE

G.M.UMAR FAROOQ
SECRETARY
PROVINCIAL ASSEMBLY OF SINDH

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