

Chapter Eleven

ADR in the Artha Rin Adalat Ain, 2003

Synopsis:

Introduction

Modes and nature of ADR in the Artha Rin Adalat Ain, 2003

Stages of Mediation

Mediation after filling the written statement

Commencement of the Mediation by the court

Commencement of the Mediation by the party

Appointment of the mediator

Non qualification of the mediator

Restriction on the court

Time limitation for concluding the mediation process

Time limitation for communication with the court

Duties of the mediators if mediation is possible

Barriers on the procedures

Finality of the decision of the mediator

Who can be the mediators?

Who cannot be the mediators?

Mediation in the stage of pronouncement of the Judgment

Mediation at the execution stage

Mediation at the appellate or revision Stage

Special steps regarding suits of higher claims

Introduction

In 1990, at first time, the Artha Rin Adalat Ain was passed with a view to try the suit relating to the non-recovery loan of the financial institution. For this purpose a special court named Artha Rin Adalat was established bur there was no provision for the ADR. Before that the civil courts had the jurisdiction to try

this suit. But in 2003 the Artha Rin Adalat Ain 2003 was amended and the new provisions relating to ADR are inserted. The modes were settlement of conference and mediation. In the most recently, 2010, another amendment is brought and the provision relating to settlement is repealed. Now there is only one of indifferent stages is allowed.

Modes and nature of ADR in the Artha Rin Adalat Ain, 2003

Section 22 of the Act provides the mediation of ADR. This is compulsory that means after submission the written statement the court must send it to the engaged lawyers or to the parties to settle the dispute matter through mediation. This process of ADR is a court annexed ADR as here the court is involved. If the decision by mediation is not possible, the party may run the suit in the ordinary way. Section 22 -25 of the said Ain discuss the details of the mediation process.

Stages of mediation under this law (Ain)

The newly amendment in 2010 of the Act gives the opportunity to the parties to settle the dispute in four stages. Namely:

- a. Mediation after filling the written statement
- b. Mediation before the pronouncement of judgment by the consent of the parties
- c. Mediation at the execution stage and
- d. Mediation at the appellate or revision Stage.

Mediation after filling the written statement

This stage of mediation is discussed in the section 22 of the Artha Rin Adalat Ain 2003. The procedures as follows;

Commencement of the Mediation by the court

According to section 22(1) after submission of written Statement by the defendant, keeping pending all subsequent proceeding subject to the provisions of Section 24, the Court may refer the

case to the engaged lawyers or may send the dispute to the parties for settlement if no lawyers have been engaged through mediation.²¹⁷

Commencement of the Mediation by the party

If the parties submit petition to the Court and agree that they are interested to settle the case through mediation, it shall be compulsory for the Court to send the case for settling through mediating efforts.²¹⁸

Appointment of the mediator

When the suit is referred to the lawyers engaged for mediation, they on mutual consultation with the parties to the suit, may engage a lawyer who is engaged by neither of the parties or may engage any retired Judge or a retired officer of a bank or a financial institution or any other competent person as mediator in the interest of settling the dispute.²¹⁹

Non qualification of the mediator

The persons employed in any beneficial post of the Republic is barred to be appointed as arbitrator.²²⁰

Restriction on the court

The Court shall not specify any procedure for Settlement or fix any remuneration for the lawyers and when disposing any suit through mediation. The lawyers, the parties and the mediator shall finalize the system of settlement and the fee of the mediator and the lawyers on the basis of mutual discussion.²²¹

Time limitation for concluding the mediation process

The date on which, the Court shall give order, such order for settling the matter through mediation, the mediation process shall have to be completed within 60 days of passing order for

217 section 22(1) of the Artha Rin Adalat Ain 2003

218 section 22(2) of the Artha Rin Adalat Ain 2003

219 section 22(3) of the Artha Rin Adalat Ain 2003

220 section 22(4) of the Artha Rin Adalat Ain 2003

221 section 22(5) of the Artha Rin Adalat Ain 2003

settling the issue through mediation process until the Court extend time for further 30 days on persuasion by the parties or its own initiatives showing cause thereof.²²²

Time limitation for communication with the court

The parties shall communicate Court in writing within 10 days of mediation order whether they have been agreed to take step for settling the dispute through mediation who has been engaged for settling dispute. But if the parties fail to communicate the Court within 10 days of passing the order, the said order shall be cancelled and the hearing and subsequent process of the suit shall immediately be started in such manner as if no order was given for settling the matter through mediation.²²³

Duties of the mediators if mediation is possible

1. The mediator shall submit a report to the Court on his mediation activities without leaking out the secrecy of the parties.
2. If the disputing issues of the suit have been settled through arbitration, the terms and conditions of the agreement so settled, shall have to be incorporated in the aforesaid report and the parties and the lawyers shall sign or put left of thumb impression as may be applicable over the agreement as executors and the lawyers as witness,
3. The Court shall give necessary order or pronounce decree on the basis of aforesaid report as may be applicable according to the relevant rules of Order-XXIII of the Code of Civil Procedure, 1908.²²⁴

If the mediation is failed

If the mediation process for settling the dispute through mediation fails, the Court shall resume the hearing from the previous stage in such a manner that there was no attempt at all to settle the dispute by means of mediation.²²⁵

222 section 22(6) of the Artha Rin Adalat Ain 2003

223 section 22(7) of the Artha Rin Adalat Ain 2003

224 section 22(8) of the Artha Rin Adalat Ain 2003

225 section 22(9) of the Artha Rin Adalat Ain 2003

Restriction on the court

The mediation process under this Section shall be held secretly and the discussions or suggestion or the depositions of the witnesses, any admission or statement or any comments shall be treated as secret and at the later stage, at the time of hearing or at any stage, the reference of the above proceedings shall not be accepted as evidence or shall not be mentioned at any stage of proceedings of the Court.²²⁶

Finality of the decision of the mediator

No appeal or revision shall lie in the Higher Court against the order of this Court if there is a settlement through mediation.²²⁷

Who can be the mediators?

According to Section 22(2) of the Artha Rin Adalat Ain 2003 the following persons may be the mediator:

- a. Any lawyer or pleader who is not engaged in the said dispute,
- b. The retired Judge,
- c. The retired and expert officer of bank or financial institution,
- d. Any other person whom the party think to be fit.²²⁸

Who cannot be the mediators?

According to Section 22(2) of the Artha Rin Adalat Ain 2003 the following persons may not be the mediator:

- a. The engaged persons in the dispute,
- b. The persons employed in any beneficial post of the Republic is barred to be appointed as arbitrator.²²⁹

Mediation in the stage of pronouncement of the Judgment

According to section 23 of the Artha Rin Adalat Ain 2003, if the mediation efforts are failed under section 22, the parties may

²²⁶ section 22(10) of the Artha Rin Adalat Ain 2003

²²⁷ section 22(11) of the Artha Rin Adalat Ain 2003

²²⁸ section 22(12) of the Artha Rin Adalat Ain 2003

²²⁹ section 22(2) of the Artha Rin Adalat Ain 2003

with the permission of the court take resort to mediation at any stage of the suit before the pronouncement of the judgment. In this case the procedure will be same as under section 22.²³⁰

Mediation at the execution stage

According to Section 38 (i) of the Artha Rin Adalat Ain 2003, if the money court gives any judgment and it is on execution process, in this stage, the parties can settle the dispute through mediation and inform the decision to the court. If the court is satisfied with the decision, the court in execution suit shall give an order finally. In this case section 22 (2-4) shall be applicable.²³¹

Mediation at the appellate or revision Stage

According to Section 44A of the Artha Rin Adalat Ain 2003, at any stage of the appeal or revision, the parties may mediate the subject matter of the appeal or revision and if be successful shall inform to the court. The procedure shall be followed under section 22 (2-4) of the said Ain. The court being informed of the matter and being satisfied, the mentioned appeal or revision suit shall be dismissed finally and give an order.²³²

Special steps regarding suits of higher claims

According to section 25 (1) of the Artha Rin Adalat Ain 2003, if the value of the suit exceeds the Tk. 5 Crore and has been taken up for solution through alternative process of mediation, under the provision of 22, the same must be communicated to the chief Executive of the concerned financial institution in whatever name, he is designated.²³³ If the chief executive of the financial institution is informed as above, he shall give preference for settling the dispute through alternative method, subject to the prior approval in the meeting of; the Board of Directors or according to the approved policy of the financial institution, shall take necessary steps.²³⁴

230 section 23 of the Artha Rin Adalat Ain 2003

231 section 38 of the Artha Rin Adalat Ain 2003

232 section 44A of the Artha Rin Adalat Ain 2003

233 section 25(1) of the Artha Rin Adalat Ain 2003

234 section 25(1) of the Artha Rin Adalat Ain 2003