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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 6197/2019**
SH. CHHATTER PAL & ORS.

..... Petitioner

Through:

versus

STATE & ANR.

..... Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER
27.02.2024

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1. The present matter was listed for compliance on 13.02.2024.
2. *Vide* judgment dated 16.05.2023 passed in the above-captioned matter, this Court had issued detailed Guidelines apropos drafting a settlement agreement in matrimonial disputes with special reference to clauses dealing with criminal cases, which read as under:

(i) Specify Names of Parties: The agreement must specifically contain names of all the parties to the agreement.

(ii) Avoid Ambiguous Terms: The terms such as 'respondent', 'respondents', 'petitioner' or 'petitioners', in absence of their names in the agreement must be avoided in an agreement as it leads to ambiguities and further litigation.

(iii) Include All Details: The terms and conditions of the agreement reached between the parties, howsoever small and minute they may be, must be incorporated in the agreement.



(iv) **Timeline For Compliance:** The timeline of the fulfilment of terms and conditions as well as their execution must be clearly mentioned. There should be no tentative dates as far as possible.

(v) **Default Clause:** A default clause should be incorporated in the agreement and the consequences thereof should be explained and enlisted in the agreement itself.

(vi) **Mode of Payment:** In case any payment is to be made as per settlement, the agreement should specify the method of payment agreed upon between the parties which should also be as per their convenience i.e. electronic mode, by way of a Demand Draft or FDR and the necessary details for fulfilment of this condition.

(vii) **Follow-Up Documents:** The agreement should also stipulate as to which Follow-up documents are to be prepared and signed by which party. It may also be mentioned as to when, where, how and at whose cost such documents are to be prepared in furtherance of the terms of the agreement, as far as possible.

(viii) **Cases involving 498A IPC:** Further, especially in cases of matrimonial disputes, where one of the conditions in the Agreement is to cooperate in quashing of FIR, such as those under Section 498A IPC, and filing of affidavit and appearing in the Court for the purpose of the same, it is advisable that the agreement must stipulate the names of all the parties concerned who have been named in the FIR specifically and the fact that the claims have been settled in totality for quashing of entire FIR and proceedings emanating therefrom qua all persons named in the FIR. It is also clarified specifically that the FIR will be quashed in totality against all the persons arrested, not arrested, chargesheeted, not chargesheeted, with their names and whether the entire FIR will be quashed against all of them upon payment by husband or any other person on behalf of the husband.

(ix) **Criminal Complaints/Cross-cases:** Criminal Complaints filed by parties against each other, pending trial or investigation should also find specific mention with names of all the parties, the Court concerned, and as to how the parties intend to deal with them. The number/details of the complaint, FIR, Sections under which they have been filed, should also be mentioned specifically.



(x) Read and Understood: The agreement should necessarily mention that all the parties have read and understood the contents of the settlement agreement in their vernacular language.

(xi) Signing of Agreement: In case only one or some parties are present during mediation proceedings and only their signatures are obtained on the agreement, it be clearly mentioned and clarified that the agreement is being signed on behalf of those relatives or parties also even in case they are not present, in case the agreement is qua them too and they are not present in person due to age, ailment, distance or any other reason. It is important to do so since in matrimonial offences, the near and distant relatives may, due to above reasons, not be present in person but agreements are reached in totality, especially regarding quashing of FIRs and criminal proceedings and withdrawal of complaints.

(xii) Clarity of Language: At last, the language used in a settlement agreement must be definite enough to understand the real intention of the parties and the goals they wish to achieve by entering into the agreement.

3. An additional direction *qua* preparation of mediated settlement agreements in Hindi also was issued by this Court, whereby it was directed that such agreements be also prepared in Hindi, in addition to English language in cases where parties do not comprehend English language and their spoken language/mother tongue is Hindi.

4. The aforesaid judgment dated 16.05.2023 was directed to be forwarded to In-Charge, Delhi High Court Mediation and Conciliation Centre (SAMADHAN) as well as concerned In-charge of all Mediation Centres in District Courts of Delhi.

5. A report dated 23.02.2024 has been filed by learned Organizing Secretary of SAMADHAN, whereby it has been stated as under:

"The said Judgment was circulated through WhatsApp groups of Samadhan to all the mediators on its panel for their reference and necessary action in terms thereof"



6. In this Court's opinion, the aforesaid compliance report placed on record is glaringly insufficient. The compliance of judgments passed by Courts should not only be on paper but also in spirit, since the essence of an order passed by a Court, especially in cases where directions are issued or guidelines are laid down, lies in its effective compliance which has to be done by the parties concerned.

7. The compliance of the directions and guidelines issued in this judgment were essential for ensuring that future mediations which take place between the parties and the agreements entered into between them comply with the true intent of the process of mediation. Aim of this judgment was also to ensure that the last and the least, and those who cannot read, write or understand English language should also be able to effectively utilize the mediation process for resolution of their disputes. Further, the other directions were aimed at ensuring drafting of comprehensive mediated settlement agreements to ensure that in future, the disputes between the parties attain final quietus and the parties are not again left to defend themselves in the courts of law, thereby defeating the very purpose of a mediated settlement agreement.

8. It is recognized that both the Courts and the Government have consistently championed initiatives to promote mediation and other Alternative Dispute Resolution (ADR) mechanisms, investing valuable resources in these endeavors. However, when judgments, such as the present one which align with defining the essence of a robust mediated settlement agreement, are not effectively communicated and their directives are not adhered to, it undermines the intent and resources dedicated to the



advancement of mediation. Furthermore, the failure to effectively communicate and implement directions related to mediated settlement agreements, particularly concerning essential aspects such as language accessibility, poses a significant setback to the progress made in promoting ADR mechanisms.

9. The compliance report filed before this Court merely mentions circulation of judgment among the mediators through "*WhatsApp groups*" of mediators, which shows the indifferent and lackadaisical approach adopted *qua* the judgment of this Court as if only to meet the requirement of circulation and it cannot be termed as effective official circulation. Further, this Court cannot be expected to know about the "*WhatsApp groups*" of the mediators and cannot comment as to what is meant by it.

10. It is disheartening to note that there has been no official communication, about the directions passed by this Court, from Delhi High Court Mediation and Conciliation Centre to its mediators, except an informal circulation through the mode of "*WhatsApp*" messenger. This mode could have been used as a supplementary mode of communication and circulation, rather than being used as the "only" means of circulation. For officially circulating and communicating the contents of this judgment, formal modes of communication such as letter or an email addressed to all the learned mediators, could have been adopted

11. At the same time, it is equally a matter of grave concern that no report of compliance has been received from any of the district courts though the judgment was circulated through the registry of this Court and compliance was called from the In-charge of Mediation Centres of District Courts who



have not even bothered to file a compliance report to the directions given in this judgment.

12. Furthermore, one of the most essential directions in the judgment dated 16.05.2023 was regarding the preparation of mediated settlement agreements in Hindi, ensuring accessibility for parties who do not understand English but are fluent in Hindi, their spoken language or mother tongue. It is disappointing to note that there is not even a single line of compliance with this direction, in the compliance report dated 23.02.2024.

13. In this regard, this Court directs the In-charge/Organizing Secretary, SAMADHAN and the Principal District and Sessions Judge (Headquarter), Delhi to inform this Court through the learned Registrar General, on the next date of hearing, as to what effective steps have been taken for ensuring that the mediated settlement agreements, in addition to English language, are also prepared in Hindi language, and the compliance of other directions of this Court passed in the judgment dated 16.05.2023. **Let compliance reports be placed before this Court on or before 19.03.2024.**

14. In this Court's view, the directions passed by a Court of law have to be taken seriously by the parties concerned, as it has repercussions on the society as a whole, and are passed for larger public good of the community. **The process of mediation is a community service driven process, and it would have fulfilled the essence of the judgment passed by this Court if the same passion and zeal would have been shown for ensuring the compliance of this judgment as is intended by the judges who dreamed and brought into reality the Delhi High Court Mediation and Conciliation Centre as well as Mediation Centres in District Courts of Delhi.**



15. The real satisfaction of a judge in writing such a judgment is achieved when the directions, which when passed are mere printed letters on paper, become a reality in the form of smiles and satisfaction on the faces of those whose lives the directions are meant to touch.

16. It has become essential to pass this order since mere passing of directions by a court of law and its reporting and appreciation by few is not the goal of a judgment but a judgment is celebrated when the lives it touches are able to celebrate receiving the fruits of those directions passed for their betterment.

17. List on 19.03.2024.

18. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 27, 2024/

Click here to check corrigendum, if any