

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF AUGUST, 2021

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

**WRIT PETITION NO.51491 OF 2016 (GM - CPC)**

**BETWEEN:**

1. SMT. AMALAPOOH MARY  
W/O. LATE SRI. P.M.VENKATSWAMY  
@ BERNARD VENKATASWAMY  
AGED ABOUT 71 YEARS  
NO.52, DHARMAR STREET, NEW TOWN,  
VANIYAMBADI - 635752  
(BENEFIT OF SENIOR CITIZENSHIP NOT CLAIMED)
2. SMT. CECILIA SHEELA  
W/O. SRI. D.JAGADEESAN  
& D/O. LATE SRI. P.M.VENKATSWAMY  
@ BERNARD VENKATASWAMY  
AGED ABOUT 44 YEARS  
NO.52, DHARMAR STREET, NEW TOWN,  
VANIYAMBADI - 635752
3. SRI. CECIL PINTO  
S/O. LATE SRI.P.M.VENKATSWAMY  
@ BERNARD VENKATASWAMY  
AGED ABOUT 42 YEARS  
R/AT I.Q.EDUCATIONAL INSTITUTE,  
AL-HUMRA BUILDING,  
M-1-FLOOR, DUBAI, U.A.E  
P.O.BOX - 81355

BOTH REPRESENTED BY HER  
GENERAL POWER OF ATTORNEY HOLDER  
SMT. AMALAPOOH MARY

...PETITIONERS

(BY SRI B.C.THIRUVENGADAM, ADVOCATE FOR  
SRI. MANIK.B.T., ADVOCATE)

**AND:**

1. SRI V.RAVINDRA  
FATHER'S NAME NOT KNOWN TO THE  
PETITIONERS  
AGE NOT KNOWN  
RESIDING AT NO.3,  
CHINNAMMA GARDEN,  
OPP. AYYAPPA TEMPLE,  
SUBBAIHANAPALYA,  
BENGALURU - 560033
2. LATE BERNARD VENKATASWAMY  
S/O. LATE PILLAIAH  
SINCE DECEASED BY LEGAL REPRESENTATIVES
  - i) CHINAMMA  
W/O. NOT KNOWN TO PETITIONERS  
AGED ABOUT 76 YEARS  
R/AT NO.3, CHINAMMA GARDEN  
OPP. AYAPPA TEMPLE  
SUBBAIAHANAPALYA  
BENGALURU - 33.
  - ii) NAGARATHNA  
W/O. KRISHNAPPA  
AGED ABOUT 56 YEARS  
R/T NO.139, JANAKIRAM LAYOUTS,  
LINGARAJAPURAM SLUM  
BENGALURU - 560 033.
  - iii) ANUSUYA  
W/O. MUNIYAPPA  
AGED ABOUT 54 YEARS  
R/AT NO.156, 5TH CROSS  
KAVALBYRASANDRA  
R.T.NAGAR,  
BENGALURU - 560 032.
  - iv) VASANTHA  
W/O. LATE JAYANNA  
SINCE DECEASED BY L.R'S
    - a) VENUGOPALA  
S/O. JAYANNA  
AGED ABOUT 39 YEARS

b) CHANDRA  
S/O. LATE JAYANNA  
AGED ABOUT 36 YEARS

BOTH R/AT NO.139, 3RD CROSS,  
1ST MAIN LINGARAJPURAM  
BENGALURU - 33.

v) SARASWATHI  
W/O. GANESH  
AGED 51 YEARS  
NO.156, 5TH CROSS,  
KAVALBYRASANDRA,  
R.T.NAGAR,  
BENGALURU - 560 032.

vi) JAYALAKSHMI  
W/O. K.P.VENKATARAMAIAH  
AGED ABOUT 50 YEARS,  
NO.1650, 6TH MAIN,  
VINAYAKANAGAR,  
BEHIND COD QUARTERS,  
KENGARI SATELLITE TOWN.

...RESPONDENTS

(BY SRI. N.R.JAGADEESHWARA, ADV. FOR R1;  
R2(1)(3)(5) AND (6) ARE SERVED BUT UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE  
CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER  
DATED 18.8.2016 PASSED BY THE HON'BLE I ADDL. CITY CIVIL  
AND SESSIONS JUDGE, BENGALURU CITY IN O.S.NO.872/1994  
VIDE ANNEX-B AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS THIS DAY,  
THROUGH VIDEO CONFERENCE THE COURT MADE THE  
FOLLOWING:

### **ORDER**

1. The petitioners are before this Court seeking for  
setting aside the order dated 18.08.2016 passed by

the I Additional City Civil & Sessions Judge, Bangalore City in O.S.No.872/1994.

2. O.S.No.872/1994 has been filed seeking for partition and separate possession of the suit schedule property. By way of the impugned order dated 18.08.2016, the trial Court has refused to extend the time period of Mediation, and it is aggrieved by the same; the petitioners are before this Court.
3. By an order dated 27.07.2016, the trial court taking into account the submissions made by the learned counsel for the plaintiffs and defendants, as well as plaintiffs and defendants who had personally appeared, had referred the matter to Mediation to the Bangalore Mediation Centre on the ground of the submission made that the matter could be settled and adjourned the matter to 18.08.2016. On 18.08.2016, when the defendants had filed a memo for an extension of time, the same was

refused. It is aggrieved by the same that the defendants are before this Court.

4. Sri B.C. Thiruvengadam, learned counsel for the petitioners, submits that:

4.1. The order dated 18.08.2016 is neither in compliance with the decision of the Apex Court in the case of ***Afcons Infrastructure Limited and another Vs. Cherian Varkey Construction Company Private Limited and Others*** reported in ***(2010) 8 SCC 24*** nor in compliance with the Karnataka Civil Procedure (Mediation) Rules, 2005 (for short 'the Mediation Rules, 2005).

4.2. As regards the decision in the case of ***Afcons (Supra)***, he relied upon the para-26, which is reproduced hereunder:

***Whether the reference to ADR process is mandatory?***

***26. Section 89 starts with the words "where it appears to the court that there exist elements***

*of a settlement". This clearly shows that case which are not suit for ADR process should not be referred under Section 89 of the Code. The Court has to form an opinion that a case is one that is capable of being referred to and settled through ADR process. Having regard to the tenor of the provisions of Rule 1-a of Order 10 of the Code, the civil Court should invariably refer cases to ADR process. Only in certain recognised excluded categories of cases, it may choose not to refer to an ADR process. Where the case is unsuited for reference to any of the ADR processes, the Court will have to briefly record the reasons for not resorting to any of the settlement procedures prescribed under Section 89 of the Code. Therefore, having a hearing after completion of pleadings, to consider recourse to ADR process under Section 89 of the Code, is mandatory. But actual reference to an ADR process in all cases is not mandatory. Where the case falls under an excluded category there need not be reference to ADR process. In all other cases reference to ADR process is must.*

- 4.3. By relying on the said paragraph, the learned counsel for the petitioners submits that the Civil Court should invariably refer cases to ADR process. Thereby he submits that all cases would be required to be submitted to the ADR process subject to the exceptions and excluded categories as observed by the Hon'ble Supreme Court.

4.4. The excluded categories are more fully detailed in para-27 of the said judgment which is reproduced hereunder:

**27.** *The following categories of cases are normally considered to be not suitable for ADR process having regard to their nature:*

*(i) Representative suit under Order 1 Rule 8 CPC which involve public interest or interest of numerous persons who are not parties before the Court. (In fact, even a compromise in such a suit is a difficult process requiring notice to the persons interested in the suit, before its acceptance).*

*(ii) Disputes relating to election to public officers (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, association, etc.).*

*(ii) Cases involving grant of authority by the Court after enquiry, as for example, suits for grant of probate or letters of administration.*

*(iv) Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion, etc.*

*(v) Cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against the Government.*

*(vi) Cases involving prosecution for criminal offences.*

4.5. It is only in cases under the Arbitration and Conciliation Act, 1996 the consent of both the

parties are required in terms of Section 89 of the Code of Civil Procedure (for short 'of CPC').

- 4.6. There are three other ADR processes that are available, namely, Lok-Adalath, Mediation and Judicial Settlement, which do not require the consent of the parties for reference, and as such, the trial court is bound by the provision of Section 89 of CPC to refer all cases to the three ADR processes referred above.
- 4.7. The trial court did not have any discretion as such in doing so but ought to have in any and all matters referred in para-28 of the **Afcons judgment (supra)** bound to refer the same to the three ADR processes.
- 4.8. He relies upon para- 28 and 36 of the **Afcons judgment (supra)** which is reproduced hereunder in this regard.



"28. All other suits and cases of civil nature in particular the following categories of cases (whether pending in civil courts or other special tribunals/forums) are normally suitable for ADR processes:

(i) All cases relating to trade, commerce and contracts, including

- disputes arising out of contracts (including all money claims),
- disputes relating to specific performance;
- disputes between suppliers and customers;
- disputes between suppliers and customers;
- disputes between bankers and customers;
- disputes between developers /builders and customers;
- disputes between landlords and tenants/licensor and licensees;
- disputes between insurer and insured;

(ii) All cases arising from strained or soured relationships, including

- disputes relating to matrimonial causes, maintenance, custody of children;
- disputes relating to partition/division amount family members/coparceners/co-owners; and
- disputes relating to partnership among partners.

(iii) All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes, including

- *disputes between neighbours (relating to easementary rights, encroachments, nuisance, etc.);*
- *disputes between employers and employees;*
- *disputes among members of societies/associations/apartment owner's associations;*

*(iv) All cases relating to tortious liability, including*

- *disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity.*

*The above enumeration of "suitable" and "unsuitable" categorisation of cases is no intended to be exhaustive or rigid. They are illustrative, which can be subjected to just exceptions or additions by the court/tribunal exercising its jurisdiction/discretion in referring a dispute/case to an ADR process.*

### **The Other three ADR processes**

**36.** *If the parties are not agreeable for either arbitration or conciliation, both of which require consent of all parties, the Court has to consider which of the other three ADR processes (Lok Adalat, Mediation and judicial settlement) which do not require the consent of parties for reference, is suitable and appropriate and refer the parties to such ADR process. If mediation process is not available (for want of a mediation centre or qualified mediators), necessarily the Court will have to choose between reference to Lok Adalat or judicial settlement. If the facility of Mediation is available, then the choice becomes wider. If the suit is complicated or lengthy, Mediation will be the recognised choice. If the suit is not complicated and the disputes are easily sortable or could be settled by apply*

*clear-cut legal principles, Lok Adalat will be preferred choice. If the Court feels that a suggestion or guidance by a Judge would be appropriate, it can refer it to another Judge for dispute resolution. The Court has to use its discretion in choosing the ADR process judiciously, keeping in view the nature of disputes, interests of parties and expedition in dispute resolution."*

4.9. Wherever a Mediation Centre has been established, the first choice of the Court is to refer the said matter to Mediation, if not then to Lok-Adalath and if there is no Medication Centre or Lok-Adalath available, the Court should explore the possibility of Judicial Settlement.

4.10. The dicta laid down by the said judgment of the Apex Court is required to be followed by all Courts, however in the present case the said procedure has unfortunately not been followed, which has resulted in the petitioner's approaching this Court.

4.11. When the matter had been referred to Mediation on 27.07.2016, the trial Court ought

to have granted a period of 60 days for the parties to try and resolve the matter by the said process of Mediation as provided under Rule 18 of the Mediation Rules, 2005.

4.12. Instead of doing so, the trial court adjourned the matter to 18.08.2016, awaiting the mediation report, which is within the period of 60 days which is not permissible.

4.13. The mediator has sent back the file on account of the date fixed by the Court, and therefore, defendant Nos.2 to 4 had requested the file to be sent back to Mediation Centre to facilitate an amicable settlement by filing a memo stating that the parties have attended the Mediation on 03.08.2016 and 10.08.2016,

4.14. The trial Court vide its order dated 18.08.2016 rejected the memo and posted the matter for evidence of D.W.1.

4.15. It is contended that this is in violation of Rule 18 of the Mediation Rules, 2005 by the trial Court which reads as under:

**"18. Time limit for completion of Mediation.-** On the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator, the Mediation shall stand terminated, unless the Court, which referred the matter, either suo motu, or upon request by the mediator or any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of thirty days."

4.16. It was required for the trial court to provide for a minimum period of 60 days for the Mediation to be useful and effective; in the present case, the mediation process could not continue because a date was fixed by the trial Court before the expiry of 60 days and the mediator is required to send back the file to the Court.

4.17. Further more he submits that the trial Court ought to have taken into account the submission made by defendant Nos.2 to 4 that

there was a possibility of settlement and sent back the file and parties to Mediation to give more time, instead of doing so, the trial Court has refused or rejected the memo which is not in the spirit or the Mediation Rules, 2005.

4.18. In the above background, he submits that the order of the trial Court is required to be set aside and the memo to be allowed, and the matter be sent back to the Mediation.

5. Sri.N.R.Jagadeeshwara, learned counsel for respondent No.1 had earlier submitted that the respondents were not willing to participate in the mediation proceedings which submission was recorded by this Court on 06.08.2021, it is in view thereof that the above matter was heard and submissions were made by Shri B C Thiruvengadam.

6. Today Sri.N.R.Jagadeeshwara submits that in light of the submission made by the

Sri.B.C.Thiruvengadam, learned counsel for the petitioners the respondents would be willing to participate in the mediation proceedings, if the matter is sent back to the Mediation Centre.

7. Heard Sri.B.C.Thiruvengadam, learned counsel for the petitioners and Sri.N.R.Jagadeeshwara, learned counsel for the respondents and perused the petition papers.
8. Though on account of the submission made by Sri N.R.Jagadeeshwara that his clients would be willing to participate in the Mediation Centre and the matter could be disposed of on such submission; this Court is constrained to answer the submissions made by Sri.B.C.Thiruvengadam, since there are various procedural irregularities in the manner in which the trial Court has conducted the matter. It would therefore be required for this Court to observe these irregularities and to issue necessary directions to Courts in respect of how an ADR

proceedings are required to be resorted to and procedure to be followed.

9. The Apex Court in ***Afcons case (supra)*** has considered all the matters in detail and it is this decision which would be applicable to all proceedings where Section 89 of CPC is applicable. It is therefore required that all Courts apply the dicta laid down by the Apex Court in ***Afcons case (supra)*** in its entirety so as to encourage and facilitate the ADR process and provide a meaningful methodology of resolution of disputes.
10. ADR process has been introduced in our country not only to cater to the docket explosion, on account of the tremendous strain on the resources of the judiciary but also to facilitate an amicable resolution of a dispute rather than a contested dispute resolution in a Court of law.
11. In para-28 of the ***Afcons judgment (supra)***, the Hon'ble Apex Court has categorically laid down the



kind of matters which would have to be referred to the ADR process. The said para-28 has been extracted herein above for the purpose of this case, what is relevant is para-28(ii) which takes into consideration all cases arising from strained or soured relationships, including disputes relating to partition or division of family members, coparceners, co-owners etc.

12. Thus the present case eminently satisfies the requirement of the aforesaid paragraph and is eminently suitable for being referred to the ADR process.
13. In para-26 of the said judgment, the Apex Court categorically has stated that having regard to the tenor of provision Rule 1'A' of order 10 of CPC, the Civil Court "***should invariably***" refer the cases to ADR process (Emphasis supplied).
14. When the Apex Court by itself has stated and used the word 'should invariably', any Court to which

Section 89 of CPC would apply has to comply with the said mandate. The Apex Court, in the very same paragraph, has again stated that the recourse to Section 89 of CPC is mandatory.

15. Mediation Centres having been established throughout the State of Karnataka, there are mediators who have been trained and empanelled in those Mediation Centers who are preeminently suited to try and resolve any of the disputes enumerated in para-28 of the ***Afcons judgment (Supra)***.
16. Thus there would be no obstacle for a Court to refer any matter to the Mediation Centre where such Mediation Centre has been established.
17. The KSLSA has established Mediation Centers across the State, as also conducts permanent Lok-Adalath, there being members appointed to the permanent Lok-Adalath. In Bangalore there is

Bangalore Mediation Centre (BMC) which has been established.

18. Both KSLSA and BMC have developed an enviable reputation for the settlement of disputes. Thus within the State of Karnataka, the Court could either refer the matter to the Mediation Centre or the permanent Lok-Adalath depending upon the choice of the parties and the Court's opinion as to which would be the appropriate forum in that particular case.
19. In terms of para-36 of ***Afcons judgment (supra)***, the consent of the parties is not required for referring the parties to ADR process of Lok-Adalath, Mediation or Judicial Settlement. Thus it is not required for the Court to seek for and obtain the consent of either Lawyer appearing for the parties in a particular matter or the parties, but the Court ought to suo motu refer the matter to either Lok-Adalath or Mediation by virtue of the mandate of

Section 89 of CPC and dicta laid down in ***Afcons judgment (supra)***.

20. Merely because a party is not willing to participate in the proceedings before the Mediation Centre or Lok-Adalath the same will not be a ground for refusal of reference of the matter to the Mediation Centre or Lok-Adalath, which appears to be a popular misconception or which misconception was suffered by this Court also until Sri.B.C.Thiruvengadam brought to notice of this Court the provision of Rule 13 of the Karnataka Civil Procedure (Mediation) Rules, 2005. The said Rule 13 reads as under:

***"13. Non-attendance of parties at sessions or meetings on due dates.-*** (1) *The parties shall be present personally or may be represented by their counsel or power of attorney holders at the meetings or sessions notified by the mediator.*

(2) *If a party fails to attend a session or a meeting notified by the mediator; other parties or the mediator can apply to the court in which the suit is filed, to issue appropriate directions to that party to attend before the mediator and if the court finds that a party is absenting himself before the mediator without sufficient*

*reason, the court may take action against the said party by imposition of cost.*

*(3) The parties not resident in India, may be represented by their counsel or power of attorney holders at the sessions or meetings."*

21. In terms of Rule 13 of Mediation Rules, 2005, the Court has the power to direct a party to appear before the mediator, in the event of a Court finding that a party is absenting himself before the mediator without sufficient reason, costs could be imposed on such a party. The quantum of costs that could be imposed by the Court is at the discretion of the Court, which the Court could decide upon and impose depending on the nature of the matter.
22. In view of Rule 13 of the Mediation Rules, 2005, it is no longer permissible for either counsel or the party in a proceeding to refuse participation in mediation proceedings, if at all a party were to absent himself, the Court could impose costs as also repeated costs until the party were to appear and participate in the mediation proceedings. The Court is not powerless to issue appropriate

directions to the parties to attend the Mediation infact it is the bounden duty of the Court to issue necessary directions so that all the parties participate in the mediation process in terms of the Mediation Rules, 2005.

23. The other aspect which is brought to the notice of this Court by Sri.B.C.Thiruvengandam is as regards the timelines for Mediation fixed by the trial Court.
24. In the present case, the trial court referred the matter to Mediation on 27.07.2016 and adjourned the matter to 18.08.2016, awaiting the report of the mediation Centre that is less than a period of a month from the date of reference, due to which the file was sent back to the Court prior to 18.08.2016.
25. The Court would necessarily have to provide for 60 days time for effective Mediation. While referring the matter to Mediation, the Court would also have to take cognisance of the time for commencement

of Mediation to the return of the file back from the Mediation Centre to the Court.

26. This aspect has also not been taken into consideration by the trial Court.

27. Rule 18 of the Mediation Rules, 2005 extracted above is categorical in terms of 60 days time being provided for the parties to try and resolve their disputes from the date of their first appearance before the mediator, for which the file has to be sent from the Court to the Mediation Centre, the Director or Deputy Director as the case may be of the Mediation Centre has to appoint a mediator, the appointment has to be communicated to the parties, the mediator had to read the file and familiarise himself or herself with the facts and fix a date for the parties to appear before the appointed mediator. The time period of 60 days would commence only from the time of first appearance

before the mediator, after following the aforesaid procedure.

28. It is also not that the said 60 days is sacrosanct; there can be an extension of the period of 60 days. Rule 18 of the Mediation Rules, 2005 also provides for all Courts to either suo motu or upon the request of the mediator or any of the parties to extend the period of time by another 30 days, but not beyond a period of 30 days.
29. The said Rule is wide enough to cover all eventualities, the Court could by itself, if it is of the opinion that the matter could be settled or eminently suitable for settlement, extend the period of time by a period of 30 days beyond the period of 60 days, once again this period of 30 days being calculated from the appearance of the parties before the mediator upon the extension of time.
30. The Court could also take into consideration the request of the mediator to extend time since it is



the mediator who is best suited to opine as to whether the matter could be settled or there may be a possibility of settlement if the time period is extended.

31. The Court could also take into consideration the request of any of the parties to the proceedings which would not require for all the parties to make a request but even if one of the parties were to make a request for extension of time, the Court would be bound to extend the time period for Mediation by a period of 30 days.

32. The reference to Mediation and or extension of time would have to be considered in the light of any circumstances requiring emergent reliefs being considered by the Court, which would be frustrated, if the matter is referred to Mediation or time extended, this would, however, have to be left to the discretion of the Court, which would have to record its reasons as to why the matter is not being

referred to Mediation or the time not being extended.

33. In normal circumstances, the time period fixed for Mediation of 60 days plus 30 days totalling to 90 days is not long in the journey of a litigation. It is well worth that 90 days time is spent on the mediation process so as to try and resolve the issues between the parties, more so when it relates to partition or any other dispute arising out of a strained relationship as also disputes identified by the Hon'ble Apex court in paragraph 28 of the ***Afcons Judgement.***

34. In the present case, the Court having fixed less than 30 days from the date of reference and thereafter not extending the time even though a memo had been filed by some of the parties is contrary to the mandate of Rule 18 of Mediation Rules, 2005 and goes against the spirit of the

process of Mediation, more so when no reasons have been provided for such rejection of the memo.

35. The observation made above would have to be kept in mind by any Court exercising power under Section 89 of CPC to fix the time period of the Mediation as also for extension of time period for Mediation.
36. There may be several other issues which would arise during the course of Mediation. In the present case the issues which arise as regards the consent for reference and time for Mediation and participation of the parties before Mediation have only been consented.
37. The observations made herein above is restricted to only for these aspects. The Rules also provide for several other aspects so also the decision of the Apex Court in ***Afcons Judgement (supra)*** which would have to be taken into consideration as

regards all the aspects of reference to the ADR process under Section 89 of CPC.

38. Since Sri.Jagadeeshwara has now indicated that his client is willing to participate in the mediation process, hence the order dated 18.08.2016 passed by the I Additional City Civil and Sessions Judge in O.S.N.872/1994 is set aside.
39. The parties are directed to appear before the Director BMC on 03.09.2021 at 11.00 A.M. without requirement of any further notice, the director, BMC is directed to appoint the very same mediator who had been appointed earlier to mediate the disputes.
40. Since the period of 60 days has not lapsed from the date of order dated 27.07.2016 a period of 60 days is fixed from 03.09.2021 for the mediation process, if required the mediator could also request for an extension of 30 days to try and arrive at a settlement between the parties.

41. With the above observations the petition is allowed.

42. The mediation process is conducted by the Bangalore Mediation Centre and the Bangalore Mediation Centre has also resorted to virtual Mediation, the parties would also be free to appear before the mediator virtually through video conferencing mechanism established by the Bangalore Mediation Centre.

43. TO SUMMARISE:

43.1. In view of the decision in **Afcon's** case, any Court exercising powers under Section 89 of CPC would have to invariably rather mandatorily refer all matters to the mediation except those excluded in Paragraph 27 of **Afcon's** case,

43.2. The reference to be made to the Bangalore Mediation Centre, Mediation Centres established by KSLSA, the permanent Lok-

adalat, as also Lok-adalats' held from time to time depending on the choice of the parties and the Courts' opinion as to which would be the appropriate forum.

43.3. In terms of Paragraph 36 of the **Afcon's** Judgment, there is no requirement to obtain consent of either lawyers appearing for the parties or of the parties themselves.

43.4. In the event of any of the parties not presenting themselves before the Mediation Centre or the Lok-adalat, the Court could exercise powers under Rule 13 of the Karnataka Civil Procedure (Mediation) Rules 2005 and impose such costs as it may deem fit to compel the attendance of the parties before the Mediator so appointed.

43.5. While fixing the time for mediation, the Court would have to fix the time period from the date of first appearance of the parties before the Mediator

giving a clear 60 days time for mediation. While doing so, the time taken for administrative purposes like transfer of file from the Court to mediation Centre, the time taken to appoint a Mediator, information being communicated as regards the Mediator appointed, etc., has to be excluded.

43.6. In the event of the matter being again referred back to the Mediator on the basis of a report submitted by the Mediator or a request made by the parties or of the Court being of the opinion that there still exists a possibility of settlement, the matter would have to be referred back to the same Mediator and time period of 30 days to be extended. This extended period of 30 days also to be calculated from the time when the parties appear before the Mediator by excluding the time taken in administration formalities.

44. The Registrar Judicial is directed to send a soft copy of the Judgment in **Afcons'** case, as also this judgment to all Judicial Officers as also to all Mediators.

**Sd/-  
JUDGE**

GJM/In