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ALTERNATIVE DISPUTE RESOLUTION UNDER CODE OF CIVIL PROCEDURE, 1908

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Abstract

Even in the traditional adjudicatory process, i.e., under Code of Civil Procedure there is scope for settlement of dispute by using ADR Mechanism. After the presentation of the suit in the competent court, it is left to sweet will and wishes of the parties to compromise or adjust or settle it by an agreement or compromise. The object behind this provision is to avoid multiplicity of litigation, save valuable time, money and expenses and permit parties to amicably come to a settlement which is lawful, is in writing and is a voluntary act on the part of the parties. Further to reduce burden of the court. The general principle is that all matters, which can be settled in a suit, can also be settled by means of compromise. This implies that parties can settle any lawful matter/pending case/s out of the court which a civil court is empowered to adjudicate it. The 1999 amendment to the CPC, 1908 is latest Parliamentary effort at making litigation in the country more effective and speedy. The Act of 1999 has introduced a new provision , section 89 where the court may by itself, proactively refer a dispute for ADR methods if it appears that elements of settlement, which may be acceptable to the parties to the dispute. This provision section 89 compels and encourages settlement of disputes out of the court in case, where it appears to the court that there exists an element of a settlement which may be acceptable to the parties by using ADR mechanisms. This research paper is based on doctrinal research by referring periodicals, books, statutes.

Introduction

Even in the traditional adjudicatory process there is scope for alternative dispute resolution under Code of Civil Procedure. Under Order 23 Rules 3, 3A, 3B, Section 80 and Order 27 Code of Civil Procedure, 1908, and recently by amending Code of Civil Procedure, 1908 Section 89 is inserted and all these Sections and Orders encourage settlement of disputes out of the court hall. Order 23 Rules 3, 3A, 3B of Code of Civil Procedure, 1908 encourages the parties after instituting suit in the appropriate court, to settle the dispute out of the court.

Consent decree under Order 23 Rule 3:

After the presentation of the suit in the competent court, it is left to the parties to compromise, adjust or settle it by an agreement or compromise[1]. The object behind this provision is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful, is in writing and is a voluntary act on the part of the parties[2].

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[1] *Motilal v. Mohmood,* AIR 1968 SC: (1968) 3 SCR 158.

[2] *Chand Kour v. Raj kou* AIR 1997 Patna and Haryana p 155.

The general principle is that all matters, which can be adjudicated by civil court, can be settled by means of compromise.[3] This implies that parties can settle any lawful matter/pending case/s out of the court which a civil court is empowered to adjudicate it.

The agreement, compromise or satisfaction intended by this rule may: (1) relate to the whole suit, or (2) relate only to part thereof, or (3) also compromise matters that do not relate to the suit. When the agreement relates to the whole suit, the court must, on being invited by the parties, record the agreement, and pass a decree in accordance with the agreement, the suit is said to be disposed off. Where the agreement relates to a part of the suit only, the court must, on the application of the parties, pass a decree in accordance with the agreement and the suit may be proceeded with the rest of the matter. But the court is not obliged to pass a decree as soon the compromise is recorded. In the case of a compromise of a part of a suit which did not include a party whose interest could not be separated, the court was held to be justified in postponing passing a decree until the termination of the suit[4]. It is pertinent that under this rule consent decree can be passed only after an order is made directing the compromise to be recorded.

Satisfaction of the court:

The court while passing consent decree is performing a judicial act but not a ministerial act. Therefore, court shall be very cautious. It must take into consideration whether the settlement agreement is lawful or not. It should also examine whether the consent decree is executable against all parties to the settlement agreement. In order to satisfy itself that the settlement agreement is lawful one the court may adopt following procedure, viz,

1) It may take evidence or
2) It may ask to file affidavits or
3) The court can otherwise compel the parties to prove that the agreement is lawful.

In the event that the consent decree is not lawful, the court can recall an order recording consent decree[5]. Therefore, when one of the parties raises a objection in respect of settlement agreement, at the first instances, the court shall enquire and decide the issue. It can pass consent decree only when all parties are satisfied and do not have any objection to it. If the court acknowledges and admits the compromise reached by the parties, the memorandum and terms of compromise becomes part of the order of the court. The courts should honour and implement compromise reached by the parties otherwise rule of law

[3] *K.K.Chari v. Sheshadri,* (1973) 1 SCC 761 (777): AIR 1973 SC 1311 (1323): (1973) 3 SCR 691*: Hiralal v. Barot Raman Lal,* (1993) 2 SCC 458: AIR 1993 SC 1449: *Prithvichand v. Shinde,* (1993) 3 SCC 271: AIR 1993 SC 1929.

[4] *Kumar Abayanand v Maharajdhiraj Rameshwar* (1930) ILR 9 Pat 314, 125 IC 521, AIR 1930 Pat 395.

[5] *Banwari Lal v. Chando Devi,* (1993) 1 SCC 581: AIR SC 1139.

will certainly become a casualty in the process[6]. Once the compromise is required to be in writing, naturally it must be signed by the parties.[7] The courts power to pass the consent decree is subjected two conditions. One is that settled compromise between the parties must have been lawful and second one is that such compromise should not have been contrary to the law time being in force.[8]Validity of consent decree wholly depends on legal validity of agreement on which it rests[9]. Since consent decree is creature of parties but not of court; therefore, it has the status of contract as per the Indian Contract Act, 1872. Hence, it is crystal clear that the agreement or compromise which is void or voidable under the Indian Contract Act, 1872, can not be deemed to be lawful within the meaning of Rule 3[10].

Compromise by Minor's Guardian:

Even though the settlement agreement is for the benefit of minor, the next friend or guardian of the suit, with the leave of the court, enter into any lawful agreement or compromise on behalf of a minor with reference to the suit, unless such leave is expressly recorded in the proceedings.[11]Hence court while passing consent decree on behalf minor should be very cautious.

Compromise by Pleader:

A counsel stands in the same position as his client with regard to his authority to compromise the suit. Such compromise suit can be signed by the parties or counsels or their agents, however, the counsel must act in good faith and for the benefit of his client[12]. Since the client has given a written authority to his counsel in the form of Vakalatnama to conduct the case,[13] therefore a counsel appearing for his client has always an implied authority to enter into a compromise on behalf of his client. In fact the court could also pass consent decree according to terms of the compromise agreement.

Provisions of Res judicat do not apply to consent decree:

A consent decree is not based upon the adjudication process of court. It is lawful compromise reached by the parties to the suit which has been accepted and acted upon it by the court. In the consent decree the court merely puts the seal on the lawful agreement of the parties. The court neither adjudicates nor decides the subject matter of compromise settlement. Hence the consent decree cannot operate as res judicata[14], since in such cases

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[6] *Salkia Businessmen's Association v. Howrah Municipal Corporation,* AIR, 2001 SC 248.
[7] *Dwaraka Prasad v. Mohan Bai,* 1983 (2) Civil LJ 254 at p. 261(Raj): AIR 1983 AP 32.
[8] *Keshav v. Yamunabai,* 1986 (1) Civil SCD 241; AIR, 1930 PC 158.
[9] *Union Carbide Corporation v. Devoki Nandan Nagpal,* 1970 SCD 241: AIR, 1970 SC 669.
[10] Explanation to R. 3. : *Banawari Lal v Chando Devi (supra): Ruby sales and Services v. State of Maharashtra* (1994) 1 SCC 531.
[11] Order 32 Rule 6.and 7.
[12] *Jamilabibi v Shankerlal* AIR 1975 SC 2202.
[13] AIR, 1991 SC 2234.
[14] *Subha Rao v. Jagannadaha Rao,* AIR 1967 SC 591 (594-95) : (1964) 2SCR 310.

the court does not decide the suit on merits. Nevertheless, such a consent decree may operate as estoppel against each parties of the compromise.[15]

Representative suit:

In 'Representative Suit' there is no scope for compromise agreement by the parties unless the court grants leave for such compromise. However before the court could sanction such leave, it must have served notice to the all interested persons.[16]

Execution of consent decree:

A consent decree is executable in the same manner as an ordinary decree executable. On the other hand, consent decree which gives effect to an unlawful compromise or passed by the court which has no jurisdiction to pass it. Under such situations the consent decree is null and void. Even its validity can be questioned at the time of execution of such decree.[17]Since a defect of jurisdiction strikes at the very root of the authority of the court which cannot be cured even by the consent of parties. Prior to the Amendment Act of Civil Procedure Code 1976, a consent decree could be passed only in respect of the subject matter of suit, but after the Amendment of the Act, it is specifically provided that parties to the suit can compromise any matter whether related suit or not subjected to condition that it must be lawful one otherwise court can not pass consent decree.[18]

Bar to the suit:

Once the consent decree is passed by the court, thereafter parties are not allowed to file a suit to set aside such consent decree on the ground that it is not lawful[19] and even it is not appealable also.[20] The term 'not lawful' under the rule has a wider meaning than same words used in the explanation to the proviso to rule 3 as it bars a suit to set aside a compromise decree on the ground that the compromise on which the decree is based was not lawful not only on the grounds contained in the contract, Act, but also otherwise such as want of authority to make the compromise[21]. Nevertheless Rule 1-A (2) of Order 43 authorizes person to file an appeal against a decree passed after recording or refusing to record a compromise. But such appeal can question only court's acceptance of compromise or refusal to accept the compromise. A party challenging the compromise can file an appeal under section 96(1) of the Code and section 96(3) shall not bar such an appeal[22]. On the other hand, aggrieved party can challenge such consent decree even on

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[15] *Ibid,* and also see *Sailendra v. State of Orissa,* AIR 1956 SC 346: SCR 72: *Mohanlal v. Benoy Krishna, A*IR 1953 SC 65: SCR 377: *Byram Pestongi v. Union of India,* (Id).

[16] Rule 3-B

[17] *Ferozi Lal Jain v. ManMal,* (1970) 3 SCC 181: AIR 1970 SC 794: *Roshan Lal v. Madan Lal,* (1975) 2 SCC 785: AIR 1975 SC 2130: (1976) SCR 878: *Nai Bahu (Smt) v. Lala Ramanarayan,* (1978) 1 SCR 58 AIR 1978 SC 22: (1978) 1 SCR 723.

[18] Rule 3 *Thimmappa v. Anantha,* AIR 1986 Kant 1.

[19] Rule 3-A See also Rule 3 *Thimmappa v. Anantha,* AIR 1986 Kant 1: *Banwari Lal v. Chando Devi (supra): Ruby Sales and Services v. State of Maharashtra. (Supra)*

[20] Section 96 (3) see also Part III, Chapter 2, (infra).

[21] *Anant v Achut* AIR 1981 BOM 357.

[22] *Banwari Lal v. Chando Devi,* (1993) 1 SCC 581; AIR 1993 SC 1139.

the ground of fraud, undue influence or coercion.[23]Thus, compromise agreement reached by the parties outside the court, must be based on the premise of mutual consent and free negotiations. However, this does not mean that the court has authority to compel or insist the parties to go for settlement outside the court unless the parties are expressed their desire to settle the suit outside the court.

Suit by or against government or public servant:

Section 80 of CPC makes provision for the settlement of dispute before the party could file the suit before the competent court. Under such circumstances, the first and second stages of alternative dispute resolution process could be adopted in order to resolve the dispute. Nevertheless, section 80 of CPC mandates the private parties to issue compulsory two months notice to the government or public servant in respect of any act done by the authority in discharge of his official duty before they could file case against them in court. The object of this rule is to promote justice and achieve the public good by discouraging the filling of unnecessary litigation. Thus, valuable time and unnecessary expenses of parties as well of court could be saved.

Section 79 of CPC provides that when the suit has to be filled by the Central Government or against the Central Government, the authority to be named as plaintiff or defendant should be Union of India because Article 300 of the Indian Constitution says that government of India may be sued or sue by the name of the Union of India. For this reason both under section 79 of Code of Civil Procedure and under Article 300 of the Constitution of India the Union of India should be made a party to the suit and in the absence such party the suit must fail.[24]The same formalities have to be complied in case of suit by or against the State Governments.[25]

Generally in the suits by the persons against the private persons, the plaintiff has the option of either issue or not to issue notice to the opponent prior to filling the case before the competent court.

But in case where the plaintiff wants to file a suit against Government or against a public servant in respect of any act done or purporting to be done by such public officer in his official capacity, two months notice under section 80 is a precedent condition except where an urgent or immediate relief is required to be obtained.[26]The plaintiff is required to wait till the completion of those two months notice before he could file the case. The words 'two months' do not necessarily mean exact 60 days. The period has to be calculated on month wise[27].

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[23] Rule 3 *Thimmappa v. Anantha,* AIR 1986 Kant 1: *Gasto Behari v. Malati Sen,* AIR Cal 379: *Banwari Lal v.Chando Devi (supra): Ruby Sales and Services V. State of Maharashtra. (Supra)*

[24] *General Manager, Eastern Railway v. Satyanand Singh,* 1987 (2) Civil LJ 317 at p. 318 (Pat): AIR 1976 SC 2538.

[25] S. 79, Order. 27, Rule 3.

[26] Section 80 (1) and (2).

[27] *Laxmi Lal Adukia v. Union of India,* AIR 1990 SC 104.

Scope of Section 80:

Sections 79 and 80 merely incorporate the rules of procedure and do not in any way affect the claims and liabilities enforceable by or against the government. The claims and liabilities of government are to be determined in accordance with Articles 294 to 300 of the Constitution of India.[28] Section 80 deals with two classes of cases:

(1) suits against government: and
(2) suits against public officers in respect of acts purporting to be done by such public officers in their official capacity**.**

In respect of the first categories, the notice shall be issued in all cases. But in respect of second categories, notice is essential only where the suits are in respect of acts purporting to be done by those public officers in their official capacity. Section 80 of CPC without any exception, explicitly expressed that serving two months notice is mandatory which is not repugnant to Article 14 of the Constitution[29]. The phrase "act" also includes illegal omissions and no distinction can be made between: (1) acts have done illegally in bad faith, and (2) acts done bona fide in official capacity. Section 80 has no application, in the situation where the suit, does not relate to an act or omission purported to be done by a public officer in his official capacity and notice is not necessary[30]. For example, if any public officer uses any defamatory language or commits act of force, criminal force, assault etc., it would not amount to an act purporting to be done by him in his official capacity.[31] This explanation makes it clear that notice is a condition precedent only when the public officers acting in respect of acts purporting to be done by those public officers in their official capacity, but not in those matters when they are acting contrary to the law.

Object of notice:

The purpose of issuance of notice, is to give the government or the public servant concerned, an opportunity to reconsider its or his legal position and, if that course is justified, to make amendments or settle the claim out of the court. Hence its object is to alert the government to negotiate a just settlement or at least have the courtesy to tell the aggrieved person why the claim is being resisted. The Apex Court[32]explained the underling object of section 80 of the CPC in the following words,

> *"When we examine the scheme of the section it becomes obvious that the section has been enacted as a measure of public policy with the object of ensuring that before a suit is instituted against the government or a public officer, the government or the officer concerned is afforded an opportunity to scrutinize the claim in respect of which the suit is proposed to be filed*

[28] *Ibid*, Biharii Chawdhary v. State of Bihar. (1984) 2 SCR 627 AIR SC 1043; (1984) 3 SCR:309; *Ghanishyam Das v Dominion of India,* AIR 1984 SC 1004.
[29] *State of Madras v. Chittori Venkatadurga Prasad, A*IR, 1957 AP 65.
[30] *Amalgamated Electricity Co v. Ajmer Municipality,* AIR 1969 SC 227: (1969) 1 SCR 559
[31]*Pukhraj v. State of Rajasthan (1*973) 2 SCC 701: AIR 1973 SC 2591; (1974) 1 SCR.
[32] (1984) 2 SCC 627; AIR 1984 SC 1043: (1984) 3 SCR 309.

*and if it be found to be a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person, who has issued the notice, to institute the suit involving considerable expenditure and delay. The government, unlike private parties, is expected to consider matter covered by the notice in a most objective manner, after obtaining such legal advice as they may think fit, and take a decision in public interest within the period of two months allowed by the section as to whether the claim is just and reasonable and the contemplated suit should, therefore, be avoided by frightening out the suit if and when it is instituted. There is clearly a public purpose underling the mandatory provision contained in the section insisting on the issuance of a notice setting out the particulars of the proposed suit and giving two months time to government or a public officers before a suit can instituted against them. The object of the section is the advancement of justice and the securing of public good by avoid*ance of unnecessary litigation"[33].

The philosophy of Section 80 of CPC may become an empty formality because many times administration authorities are not responsive and hardly lives up to the expectation of Parliamentarian in continuing section 80 in the Code, despite the Law Commission of India's recommendation for its repeal.[34]Fourteenth Report of the Law Commission of India has made the following observations for the repeal of section 80 of the code:

"The *evidence disclosed that in a large majority of cases, the government or the public officer made no use of the opportunity afforded by the section. In most cases the notice given under section 80 remained unanswered till the expiry of the period of two months provided by the section. It was also clear that in a large number of cases, government and public officer utilized the section merely to raise technical defenses contending either that no notice had been given or that the notice actually given did not comply with the requirements of the section. These technical defenses appeared to have succeeded in a number of cases defeating the just claims of the citizen".*

Supreme Court has laid down certain guidelines to make section 80 more meaningful and effective. Thus, courts must put the following questions in order to ascertain whether mandatory provisions of the code are complied with substantially or not, viz,

[33]See also *Dhian Singh v. Union of India,* AIR, 1958 SC 274: 1958 SCR 781*: Union of India v. Jeewan Ram,* AIR 1958 SC 905: *Ratan Lal v. Union of India,* (1989) 3 SCC 537: AIR 1990 SC 104.
[34]*State of Punjab v. Geeta Iron And Brass Works,* (1978) 1 SCC 68 (69): AIR 1978 SC 1608 (1609) 1 SCR 746

(1) whether the name, description and residence of the plaintiff are given so as to enable the authorities to identify the person serving the notice:
(2) whether the cause of action and the relief which the plaintiff claims are set out with sufficient particularity:
(3) whether the notice in writing has been delivered to or left at the office of the appropriate authority mentioned in the section: and
(4) whether the suit is instituted after the expiry of the two months notice, and the plaint contains a statement that such a notice has been so delivered or left[35].

The norms contained in section 80 must be strictly adhered. This does not, however, mean that the notice must be construed in a pedantic manner or in a manner divorced from common sense.[36] It must be reasonably construed. Every venial error or defect cannot be permitted to be treated as an excuse to defeat a just claim.[37] If on a reasonable reading, but not so as to make undue assumptions, the plaintiff is shown to have given the information which the statute requires him to give, any incidental defects or errors may be ignored[38].

Effect of technical defect in notice:

Section 80 of the code is to provide the regulation and machinery, by means of which the courts may do justice between the parties. It is, therefore, merely a part of the adjective law and deals with procedure alone and must be interpreted in a manner so as to sub serve and advance the cause of justice rather than to defeat it[39]. In the year 1976 Code of Civil Procedure, 1908 was Amended and incorporated section 80 (3), in order to make safe that the just claims of the aggrieved persons shall not be defeated on technical grounds. Therefore, inserted section 80(3) suggested that the suit against the government or public officers shall not dismissed merely on account of a technical defect or error in notice or an irregularity in the service thereof[40].

Urgent or immediate relief:

Section 80(3) provides that a suit may be instituted with the leave of the court for obtaining an urgent or immediate relief against the Government or any public officer in respect of any act purporting to be done by such public officer in his official capacity without serving a statutory notice. Nevertheless in such cases, the court shall not grant relief, whether interim or otherwise, unless notice is served to the government or the

[35] *State of A. P v. Suryanarayan* AIR 1965 SC 11 (15) 4 SCR 945: *B.R.Sinha v. State of M.P.*
[36] *Raghunath Dass v. Union of India (supra): State of Madras v. C.P. Agencies (Supra): Dhian Singh v. Union of India,* AIR 1958 SC 274: SCR 781
[37] *S.N.Dutta v. Union of India,* AIR 1958 SC 1449; (1962) 1 SCR; *State OF A.P. v. Surynarayan* AIR, 1965 SC 11 (15): (1964) 4 SCR 945.
[38] *State of A.P. v. Surynarayan* AIR, 1965 SC 11 (15): (1964) 4 SCR 945.
[39] *Ghanshyam Das v. Dominion of India,* AIR 1984 SC 1004 at p. 1010.
[40] Statement of Objects and Reasons

public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit. Reality presents contrast scenario, generally courts are reluctant to grant an urgent or immediate relief without issuing notice to the government. Dealing with such case the Apex Court observed[41] that:

> *"Before parting with the case we consider it necessary to refer to one more aspect. It has frequently come to our notice that the strict construction placed by Privy Council in Bhagchand case, which was repeatedly reiterated in subsequent cases, has led to a peculiar practice in some courts. Where urgent relief is necessary, the practice adopted is to file a suit without notice under section 80 and obtain interim relief and thereafter to serve a notice, withdraw the suit and institute a second suit after expiry of the period of the notice. We have to express our strong condemnation of this highly objectionable practice. We expect that the High Courts will take necessary steps to put a stop to such practice".*

Exclusion of period of statutory notice:

In computing the prescribed period of limitation for presenting the suit, the statutory notice issued under this section must be excluded[42]. Hence two months statutory notice period shall not be taken into consideration in counting the prescribed period of limitation under Section 15 (2) the *Limitation Act, 1963.*

Waiver of notice:

This section intended to help the defendant and save the public money. Therefore the legislatures compelled to issue statutory notice to the defendant, but there is nothing wrong on the part of defendant to waive the service of notice.[43] Whether there is a waiver or not depends on the facts of each case and it has to be determined by the same court before which the case is filled.[44] Where the plaint is amended by including matters not mentioned in the notice and no objection is raised to the amendment, it amounts to a waiver of notice[45].

The plaintiff must file the suit after the expiry of statutory two months notice, and it shall contain a statement that the notice as required by section 80 has been so delivered or left as required. On the other hand, if the plaint does not reflect this statement, it would be the duty of court to reject plaint.[46] Any authorized person of the government and who is

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[41] (1984) 3 SCR 46: AIR SC 1004: (1984) 3 SCR 229. ID., at p. 58 (SCC); 1011 (AIR).
[42] S. 15 (2) Limitation Act, 1963: *Jai Chand v. Union of India*, (1969) 3 SCC 642: *Amar Chand v Union of India,* 1973 1 SCC 115: AIR 1973 SC 313: (1973) 3 SCR 684
[43] *Dhian Singh v. Union of India,* AIR 1958 SC 274: 1958 SCR 781.
[44] *Vasant v. Bombay Municipal Corporation* AIR, 1981 Bom 394 (FB)
[45] *Lakshmi Narain v Union of India,* AIR 1958 Pat 486: *Union of India Jyotimoyee Sharma* AIR 1967, AP 338.
[46] *State of A.P. v. Surynarayan* AIR, 1965 SC 11 (15): (1964) 4 SCR 945. *Ganagappa v. Rachawwa,* (1970) 3 SCC 716 (721) AIR SC 442 (446): (1971) 2 SCR 690

well versed with facts of the case shall sign and verify plaint or written statement in case suit by or against government.[47] Under Order 3 persons authorized to act on behalf of the government shall be deemed to be recognized agents. For the purpose of receiving summons, process, etc., the government pleader is the agent of government. Reasonable time to file the written statement should be given to the government.[48] State Counsel need not file Vakalatnama.[49]

Privileges of government and public officers:

Rule 5-A provides that when a suit is filed against a public officer in respect of any act alleged to have been done by him in his official capacity, the government should have been made as necessary party to the suit. Rule 5-B casts statutory duty upon the court to assist in arriving at just settlement in suits against government or public officer. Rule 7 provides for extension of time to enable the public officer to make reference to government where he is the defendant.

Rule 8-A provides that no security shall be required to be deposited by the government or from any public officer sued in respect of an act alleged to have been done by him in his official capacity. Section 81 provides the exemption for the personal appearance by the public officer where his appearance is likely to cause inconvenience or detriment to his discharge of public duties. He shall not liable to be arrested, nor shall his property be liable to be attached otherwise than in execution of a decree. Section 82 provides that no execution shall be issued on any decree passed against the government or a public officer unless it remains unsatisfied for three months from the date off decree.

From the above explanation, it is clear that these provisions insist on settlement of disputes out of the court by adopting ADR mechanisms. In the First instance, after serving statutory notice to the defendant (i.e., Govt. or Public Servant), the government may avoid the dispute when it comes to the conclusion that there is no meaning in continuing the dispute. In the Second instance, the Govt. may with the assistance of the plaintiff by way of negotiation where there is no violation of any legal or Constitutional rights; thereby it can avoid useless litigation. Thus, it can save public money and valuable time. In fact the intention of the legislature is very good, but the authorities of the government are not utilizing the provision in its proper sprit and letter. Moreover, in most of the cases before the court the government is party to it.

[47] Order 27 Code of C.P.C, 1908
[48] Order 27, Rules 1, 2, 3, 4,5, 6, 8 and 8-B of C.P.C.
[49] *Dy. Collector, Northern Sub-Division v. Comunidale,* (1995) 5 SCC 333.

Encouragement of settlement of dispute out of court by resorting to ADR'S mechanisms

In order to appreciate and further to find out whether ADR process can substitute the formal process of settlement of disputes within the framework of formal procedures conceived in CPC and other enactments, the government asked the Law Commission to look into the matter. Besides this, Justice Malimath Committee was also asked to study the subject. The Malimath Committee found out the lacunae that there is no provision in the Code of Civil Procedure, 1908, compels the parties to settle the matter out of the court by resorting to arbitration or conciliation and mediation. The Committee after carefully observing the 124th and 129th Reports of the Law Commission of India, made recommendations for incorporation of new provision in CPC to overcome that defects because it not only reduces work load of trial courts, but also the appellate and revision courts.[50]

The 1999 amendment to the Code of Civil Procedure, 1908 is latest Parliamentary effort to make litigation in the country more effective and speedy. The Amendment Act of 1999 has introduced a new provision, section 89 where the court may by itself, proactively refer a dispute for alternative dispute resolution methods if it appears fair and amicable settlement is possible between the parties to the dispute. The Provision is a laudable. It provided that it does not in any way prevent the parties themselves from withdrawing the case so that they may settle through any mode of alternate dispute resolution that is acceptable to the parties.

In *Salem Bar Association vs. Union of India*[51], the Supreme Court of India requested this committee to prepare a draft model rules for Alternative Disputes Resolution (ADR) and also draft rules for mediation under section 89(2)(d) of the Code of Civil Procedure, 1908. Pursuant to the said judgment, they are in two parts – the first part consisting of the procedure to be followed by the parties and the Court in the matter of choosing the particular method of ADR. The second part consists of draft rules of mediation under section 89 (2) (d) of the Code of Civil Procedure, 1908. In the first part it contains Alternative Dispute Resolution Rules, under which where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give it to the parties for their observations and after receiving the observation of the parties, the court may reformulate the terms of a possible settlement and refer the same for arbitration, conciliation, mediation and settlement including Lok Adalat[52].

[50] Report of Justice Malimath on Alternative Modes and Forums for Dispute Resolution, Para 8.75.
[51] AIR, 2003 SC 189.
[52] Section 89 (1) of Code of Civil Procedure, 1908.

Conclusion

From the above it can be concluded that section 89 compels and encourages settlement of disputes out of the court in case, where it appears to the court that there exists an element of a settlement which may be acceptable to the parties by using ADR mechanisms. This provision prompts the courts to seek the assistance of the ADR mechanisms while the case is still pending before the court in order to reduce the burden of the courts and it can concentrate on very important cases.