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Conciliation as an Effective Mode of Alternative Dispute Resolving System

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Abstract: *In the last two or three decades, Alternative Dispute Resolving System i.e. ADR initiatives have mushroomed in developing and developed countries alike. But despite their popularity, many questions remain unanswered regarding their actual success in increasing efficiency and in broader access to justice. Recent research on ADR in the United States and also our own observations in some ADR methods as adopted in India suggests that participants are generally pleased with the conciliatory, comprehensible, and flexible procedures of ADR. Arbitration as one of the modes of ADR was considered to be a cheap and efficacious remedy. Now the situation is completely reversed. Arbitration proceedings have become too technical and expensive. It is not only the fees of lawyers but also of the arbitrators, which have started pinching the parties. Through this paper I am emphasizing that, resort to conciliation, directly or through a trusted common person/ institution, is the only remedy to achieve early success. The basic aim is there should be settlement between the parties & no party should feel as aggrieved instead of lost & win situation, there should be won - won situation for both Parties.*
Keywords: *adr, arbitration, access to justice ,conciliation,remedy*

I. Introduction

Conciliation means 'the settling the disputes without litigations'. It is a process in which independent person or persons are appointed by the parties with mutual consent by agreement to bring about a settlement of their dispute through consensus or by using of the similar techniques which is persuasive.

In the HALSBURY'S LAWS OF ENGLAND, the terms 'arbitration' and 'conciliation' have been differentiated as under:

"The term 'arbitration' is used in several senses. It may refer either to a judicial process or to a non-judicial process is concerned with the ascertainment, declaration and enforcement of rights and liabilities, as they exist, in accordance with some recognized system of law. An industrial arbitration may well have for its function to ascertain and declare, but not to enforce, what in the parties, and such a function is non- judicial. Conciliation is a process of persuading parties to reach agreement, and is plainly not arbitration; nor is the chairman of a conciliation board an arbitrator"

Confidence, trust & Faith are the essential ingredients of conciliation. This effective means of ADR is often used for domestic as well as international disputes. Some Significant difference is there while using it for domestic or international disputes.

1.1 How conciliation is better than other alternative modes of dispute resolution?

Gone are the days when arbitration was considered to be a cheap and efficacious remedy. Now the situation is completely reversed. Arbitration proceedings have become too technical and expensive. In this context, reference may be made to judgment of the Supreme Court of India. In *Guru Nanak Foundation V. Rattan Singh & Sons,* it was observed:

"Interminable, time consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal more effective and speedy for resolution of disputes avoiding procedural claptrap and this led to Arbitration Act, 1940. However, the way in which the proceedings under the Act are conducted and without an exception challenged in the courts has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Informal forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the court been clothed with" legalese' of unforeseeable complexity."

Broadly speaking, there are at least three advantages if the parties are able to reasonable settlement of their disputes through conciliation, viz.

1) Quickness. The parties can devote their time and energy for better and useful work.
2) Economic. Instead of spending hard earned money on litigation, one can invest it for better dividends.
3) Social. The parties go happily to their respective places and stand relieved from bickering, enmity, which in certain cases might have lingered on for generations.

There is a growing feeling amongst the litigants that they would have been better off if there had been no arbitration clause so that they could file civil suit, which entails only three steps, viz.
(i) Filing of the pleadings;
(2) Conduct of the proceedings; and,
(3) Judgment.

As against three stages involved in a civil suit, there are as many as six in an arbitration matter, viz.
(1) appointment of the arbitrator either by the parties or by the court;
(2) pleadings before the arbitrator;
(3) proceedings before the arbitrator;
(4) award;
(5) filing of the award in the court; and,
(6) recourse to a court against arbitral award.

To overcome the ordeals involved, the best course available to the parties is to look to reasons, appreciate the viewpoint of the opposite party, not to stand on false prestige and resolve the controversy in an amicable manner. It does not help either party to pursue litigation – Whether in courts or before an arbitral tribunal. Both parties are losers, at least in terms of time, at the time of final outcome of litigation. It is at this stage the parties appreciate that they would have been better off had they taken the path of conciliation.

It is not only the fees of lawyers but also of the arbitrators, which have started pinching the parties. Though presently the number is small but nevertheless a serious beginning has been made in some cases to settle the matter outside arbitration to avoid unnecessary expense. The resort to conciliation, directly or through a trusted common person/ institution, is the only remedy to achieve early success.

Conciliation is a better alternative to the formal justice system. For selecting the mode of the conciliation it is not necessary to enter into a formal agreement. Because where arbitration clause is included in the agreement it is implied that the matter would be refereed for conciliation first & if amicable settlement fails then only, it is referred to the arbitration. The other advantage of choosing conciliation is that though the amicable settlement in conciliation could not be reached then the evidence leaded, the proposal made during the conciliation proceedings cannot be disclosed in any other proceedings (in arbitration also) This protection has been provided by the Arbitration & Conciliation Act itself. Therefore parties can attempt Conciliation without any risk.

It is a non-binding procedure in which an impartial third party assists the parties to a dispute in reaching a mutually agreed settlement of the dispute. For effective conciliation, it is necessary that the parties to dispute should be brought together face to face at a common place where they can interact with each other & with the conciliator to arrive at a settlement of the dispute. The importance of conciliation is that in other proceeding decision is given by the presiding authority & it is binding accordingly. But in conciliation there is amicable settlement where parties themselves have reached to the decision i.e. settlement & which is binding as per their decision. Third party i.e. conciliator is just helping to arrive at settlement & not dictating the term or decision.

II. American judicial system and Conciliation

Conciliation is now institutionalized in America and other countries too. Conciliation court is a place where people can go to resolve legal disputes in a simple and informal manner. There are no jury trials in conciliation court and also there is no adjudication or judicial verdict. Each person involved in the case tells his or her side of the story to a judge or referee who then makes a decision about the dispute. In American judicial system conciliation court is often referred as 'small claims court' or 'The people's courts' Conciliation courts are used to decide civil (non -Criminal) disputes. Each county has its own conciliation court. According to American judicial system it is necessary to pay a filing fee to bring an action in conciliation court. First party will get its money back if it wins the case. It is interesting to note that if party cannot afford to pay the filing fee, the court can allow proceeding without payment on filling the additional form to show inability to pay the filing fee. Evidence also can be leaded in conciliation court. If any of the party is disagreeing with the decision of the conciliation court, party has right to appeal to district court.

In American judicial system many times conciliation & mediation terms are used with the same meaning. The line of technical or legal differences between mediation & conciliation is very thin. Mediation & Conciliation are interchangeable expressions. In both the procedures, successful completion of the proceedings results in a mutually agreed settlement of dispute between the parties though, in some jurisdictions, mediation is treated as distinct from conciliation inasmuch as in mediation the emphasis is on more positive role of the neutral third party than in conciliation. However, this factor should not make mediation distinct from conciliation because the scope of the role that a neutral third party can play depends on the nature of the dispute the degree of willingness of the parties & the skill of the individual neutrals.

The General Assembly of the United Nation has adopted Rules of Conciliation through a Resolution on 4th Dec.1980 & also recommended for the use of the Conciliation Rules in international commercial dispute. Most of the countries have adopted the model law prepared by United Nations Commission on International Trade Law (UNCITRAL), on International commercial Arbitration, as well as Rules of Conciliation & on that basis only in India 'The Arbitration & Conciliation Act 1996' has been enacted. The Inter-National Chamber of commerce has promulgated ICC Rules of optional conciliation in which rules are set out for the amicable settlement.

III. Conciliation Procedure

Either party to the dispute can commence the conciliation process. When one party invites the other party for resolution of their dispute through conciliation, the conciliation proceedings are said to have been initiated. When the other party accepts the invitation, the conciliation proceedings commence. If the other party rejects the invitation, there are no conciliation proceedings for the resolution of that dispute. Generally, only one conciliator is appointed to resolve the dispute between the parties. The parties can appoint the sole conciliator by mutual consent. If the parties fail to arrive at a mutual agreement, they can enlist the support of any international or national institution for the appointment of a conciliator. There is no bar to the appointment of two or more conciliators. In conciliation proceedings with three conciliators, each party appoints one conciliator. The third conciliator is appointed by the parties by mutual consent. Unlike arbitration where the third arbitrator is called the Presiding Arbitrator, the third conciliator is not termed as Presiding conciliator. He is just the third conciliator. The conciliator is supposed to be impartial and conduct the conciliation proceedings in an impartial manner. He is guided by the principles of objectivity, fairness and justice, and by the usage of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties. The conciliator is not bound by the rules of procedure and evidence. The conciliator does not give any award or order. He tries to bring an acceptable agreement as to the dispute between the parties by mutual consent. The agreement so arrived at is signed by the parties and authenticated by the conciliator. In some legal systems, the agreement so arrived at between the parties resolving their dispute has been given the status of an arbitral award. If no consensus could be arrived at between the parties and the conciliation proceedings fail, the parties can resort to arbitration.

A conciliator is not expected to act, after the conciliation proceedings are over, as an arbitrator unless the parties expressly agree that the conciliator can act as arbitrator. Similarly, the conciliation proceedings are confidential in nature. Rules of Conciliation of most of the international institutions provide that the parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, (a) the views expressed or suggestions made for a possible settlement during the conciliation proceedings; (b) admissions made by any party during the course of the conciliation proceedings; (c) proposals made by the conciliator for the consideration of the parties; (d) the fact that any party had indicated its willingness to accept a proposal for settlement made by the conciliator; and that the conciliator shall not be produced or presented as a witness in any such arbitral or judicial proceedings.

Conciliation has received statutory recognition as it has been proved useful that before referring the dispute to the civil court or industrial court or family court etc, efforts to concile between the parties should be made. It is similar to the American concept of court-annexed mediation. However without structured procedure & statutory sanction, it was not possible for conciliation to achieve popularity in the countries like USA & also in other economically advanced countries.

3.1 Reasons to uplift conciliation in India

The importance of conciliation in the present Indian court system is increased as courts are facing with the problem of mounting arrears of pending cases & there is a serious need of disposing of them & for that amicable settlement, conciliation is the best alternative. The Himachal Pradesh High court under took the project of disposing of the pending cases by conciliation & insisting on pretrial conciliation in fresh cases. This idea was based upon the mediation in Canada & Michigan. The said project had great success in Himachal Pradesh. The Law commission of India in its various reports (77th & 13th) has appreciated the project in Himachal Pradesh and recommended the other States to follow same path.

The other important point to uplift the Conciliation is that, it has got statutory recognition as included in Arbitration & Conciliation act 1996 which is based on UNCITRAL Model & because of that it has Universal familiarity & can be used for settlement of domestic disputes as well as international commercial disputes.

The Concept of conciliation has received new dimension because of successful Himachal experiment .The movement of conciliation of awareness of conciliation has started long before, the only difference is, previously parties were willingly coming together & opting for conciliation but now, the conciliation on Himachal pattern is a court induced conciliation, making it mandatory for the parties to attempt a conciliation for settlement of their dispute & approach the court if conciliation fails. In Maharashtra also Mumbai High court is taking

initiative for Himachal pattern i.e. pre- trial conciliation Therefore it is necessary to study conciliation as an organized procedure for settlement of dispute through formal proceedings.

IV. Procedure of Conciliation

4.1 Appointment & qualification of conciliator

Conciliator can be appointed by the parties themselves of their own choice with consensus i.e. both should agree upon the appointment of the conciliator. The parties follow any of the following methods.

(a) The parties themselves may name a conciliator or conciliators.
(b) Each party may appoint one conciliator & may mutually agree on the third conciliator.
(c) The parties may enlist the assistance of a suitable institution a person in connection with the appointment of conciliators.

In the case of family court, or labour court etc, before referring the matter to the court it is compulsory to consult with the councilor i.e. conciliator, who are appointed by the government for making settlement between the parties before the trial & on the report of the councilor only, matter is put forth for trial.

Here, Conciliator should not be of a specific qualification, but he should also not be ignorant of the subject matter. He can be a expert person of the subject matter of dispute for e.g. if there is a dispute regarding construction cost of a building in that case a person can be a civil engineer, who has the knowledge of building construction. The important thing, which cannot be ignored, is that conciliation is not the person who will decide the matter; rather he is a person who assists the parties to arrive at amicable settlement, where the decision is of the parties themselves.

4.2 Rules and principles of Conciliation

A conciliator is a person who is to assist the parties to settle the disputes between them amicably. For this purpose, the Conciliator is vested with wide powers to decide the procedure to be followed by him like the Code of civil Procedure or the Indian Evidence Act, 1872. When the parties are able to resolve the dispute between them by mutual agreement and it appears to the conciliator that there exists an element of settlement which may be acceptable to the parties, he is to proceed in accordance with the procedure laid down in section 73, formulate the terms of settlement and make it over to the parties for their observations; and the ultimate step to be taken by a conciliator is to the terms formulated by him. The settlement takes shape only when the parties draw up the settlement agreement or request the conciliator to prepare the same affix their signatures to it. The settlement agreement signed by the parties is final and binding on the parties and persons claiming under them.

On the basis of notes by the conciliator during the course of conciliation proceedings held separately and jointly with each of the parties to the dispute, and also on the basis of written statements and documentary evidence produced by the parties in support thereof, the conciliator shall reduce to writing the terms of the possible settlement, if he finds that there exists the possibility of a settlement which may be acceptable to both parties. The conciliator shall send the draft settlement to both the parties. For their consideration and approval. If the parties make any observation on the draft settlement, the conciliator shall reformulate the draft settlements incorporating therein the observations made by the parties.

If, after going through the reformulated draft settlement, the parties agree thereon, they shall convey the same to the conciliator, either orally or in writing, that they have no objection to the reformulated draft settlement. They will also make a formal request to the conciliator to either himself draw up the settlement agreement, or assist the parties in drawing up the same.

It is not every agreement or arrangement between parties to the dispute arrived at in whatever manner or form during the pendency of the conciliation proceedings that automatically acquires the status of a settlement agreement so as to have the same status and effect as if it were an arbitral award for being enforced or as if it were a decree of the court. It is only that agreement which has been arrived at in conformity with the manner stipulated and form envisaged and got duly authenticated in accordance with this section, alone can be assigned the status of a settlement agreement within the meaning of and for effective purpose of the Act and not otherwise.

If the draft settlement agreement is agreed to the entire satisfaction of the parties, and thereafter they finally draw up the document and sign the same, the said document shall be final and binding, not only on the parties to the controversy, but also on the persons claiming under them.

When the parties sign the settlement agreement, the conciliator shall authenticate the same as having been executed in his presence, as a result of their free volition and the conciliator shall hand over a copy of such authenticated settlement agreement to each of the parties and retain a copy thereof in his possession for future reference, if required.

The settlement agreement arrived at between the parties, and duly authenticated by the conciliator, shall not only be final and binding on the parties, but will have the same effect as if the settlement agreement is

an arbitral award on agreed terms on the substance of the dispute rendered by a duly constituted arbitral tribunal under section 30 of the Act.

A successful conciliation comes to an end only when the settlement agreement signed by the parties comes into existence. It is such an agreement, which has the status and effect of legal sanctity of an arbitral award under this section. But if a conciliator, after holding some meetings with the parties and after having discussions with them, draws up the so-called settlement agreement by himself in secrecy and send the same to the court in a sealed cover (being without the signatures of the parties) cannot be given recognition of a settlement agreement. If a statue prescribes a procedure for doing a thing, that thing has to be done according to the prescribed procedure.

Number of conciliators can be one, or more than one. In case of more than one conciliator, it is necessary that they should all jointly, and in case of one conciliator, he should be independent & impartial and must be guided by principal of objectivity fairness & justices. He is also bound to keep confidential all matters relating to the conciliation from the other party. All the concerned evidence regarding the dispute be disclosed to the other party to enable them to present an appropriate explanation. There is no specific procedure provided for making proposal for settlement. Conciliator may seek legal opinion from any solicitors firm or lawyer on any point, which involves complicated question of law. No arbitral or judicial proceeding can be initiated in respect of a dispute, which is subject matter of conciliation proceeding between the parties.

There are restrictions on admissibility of evidence in arbitral or judicial proceedings of the proposal & suggestion made by parties of the conciliation during conciliation proceedings If such restriction is not imposed the parties may not come forward with more acceptable proposals or suggestion due to the fear of being trapped in judicial proceeding with admission made earlier. If the parties enter into agreement contrary to these provisions the agreement shall be void.

However if such agreement is for mutual advantage of the parties & is not against Public Policyis valid. In this way generally the conciliation in India works.

V. Applicability

The parties competent to contract can have the benefit of conciliation. Though the conciliator is appointed by the parties of their own choice he is an independent & impartial person, who assists the parties in independent & impartial manner in their attempt to reach an amicable settlement of their dispute He is guided by the principles of objectivity, fairness & Justice. He takes into consideration circumstance surrounding the dispute, including any previous business practices between the parties.The councilor can hold separate meeting with each party to further clarity its case & to discuss the merits of the case, & to give the clear idea to the requirement to substantiate the claims. The main aim should be to give clear idea of the lacunas in the case to each many on their side. & to encourage them for settlement .All the information received from one party, conciliation discloses that information to the other party so that it may have an opportunity to present its explanation, if any However if the party has given standing instruction not to disclose the specific information to the other party, then in that case conciliator does not disclose the same. Conciliator can hold required separate meetings as well as required joint meetings, with the consent of both the parties. If the conciliator is of the view that there is no scope for agreement i.e. settlement between the parties or there is unwillingness to pursue conciliation the conciliator terminates the proceedings.

Where there is settlement between the parties, the conciliator holds a final joint sitting for drawing up & signing a settlement agreement by the parties. The parties are bound by the settlement agreement. The dispute is resolved in terms of the agreement.

Where the settlement is reached in pretrial proceedings of the family court or labour court the settlement agreement can be enforced in the same manner as the judgment, decision of the court. In the case of a matter referred for conciliation, during the pendency of the arbitral proceedings & the law so provides the settlement agreement can be enforced in the same manner as an arbitral award on agreed terms.

The settlement agreement, notwithstanding anything contained in any law for the time being in force, shall be treated as a confidential document and all the written statements, documentary and other evidence procedure and relied upon by the parties, minutes of the conciliation meeting etc. shall also have immunity from being produced elsewhere as a piece of evidence. This element of confidentiality shall be equally binding not only on the conciliator but on the parties as well. The only situation where the confidentiality element shall not have any application is when its disclosure is necessary for the purpose of the implementation and enforcement of the settlement agreement. Thus, no reference can be made to the settlement agreement by the parties in any forum, except when its contents are required to be disclosed, neither the parties nor the conciliator can make public the contents of the settlement agreement or any other matter relating to the conciliation proceedings.

In conciliation procedure, parties & conciliator are bound by certain inherent principles & discipline. Unless all the parties otherwise agree, the conciliator is estopped from acting as an arbitrator or as a representative of a party in any judicial or other proceeding in respect of a dispute which is or has been the subject matter of

conciliation proceedings in which he acts a conciliator. The conciliator can not be presented by a party as a witness in any such proceedings Similarly, parties can not rely on the followings as evidence in arbitrate judicial or other proceedings.

a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute.
b) admissions made by the other party in the course of the conciliation proceedings
c) proposals made by the conciliator.
d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

For this confidentiality & discipline parties may enter into contractual agreement in a case where there is no provision under the Act. Parties are free to withdraw at any stage of conciliation proceedings & conciliator may also terminate the proceedings, if he finds that there is no scope for settlement. But in some cases some points of dispute are resolved, though not the whole dispute. Thus, even where an attempt to conciliate fails it helps in narrowing the issue in dispute.

VI. Termination of proceedings on settlement

As and when the parties reach an amicable settlement on the disputes which had been referred to the conciliator, and a duly authenticated copy (by the conciliator) of the settlement agreement is handed over to the parties, the conciliation proceedings shall stand terminated on that date. There is no provision in the Act for review of the settlement agreement, nor there do any provision under which any of the parties to the settlement agreement can retrace its steps and wriggle out of the written commitments in the form of a settlement agreement.

A conciliation proceeding comes to an end & stands terminated if any of the following condition is fulfilled;

(i) On signing of the settlement agreement by the parties.

(ii) If no settlement of dispute is arrived at in any of the following manner-

a) By a written declaration of the conciliator that further efforts at conciliation are no more justified.
b) By joint written declaration of the parties that the conciliation proceedings are terminated.
c) By the declaration of either party to other party & conciliator, that conciliation proceeding is terminated. It is open to the parties to terminate conciliation proceedings at any time before settlement.

The conciliation proceedings can also be terminated:

(i) When the conciliator declares, after consultation with the parties, that any further exercise on conciliation shall be an exercise in futility; or
(ii) When the parties jointly request the conciliator; or
(iii) When one party communicates to the other, with a copy to the conciliator, that no more efforts be made in the conciliation matter.

There is no bar on the number of times the efforts for conciliation can be made. Termination of conciliation proceedings can by no means be taken to be the end of the conciliation efforts for all times to come.

VII. Advantages of resolution of a dispute by conciliation

In contrast to arbitration, conciliation is nonbonding and confidential. If successful, conciliation results in a settlement of the dispute. Like arbitration, conciliators are selected by and serve at the expense of the parties. Conciliation is less formal than arbitration, but is more evaluative than the facilitative process of most forms of mediation. Conciliators may be retired judges, senior advocates, or non-lawyers with expertise in the subject matter. The court plays no formal role in sponsoring conciliation. Conciliation is becoming increasingly popular, as an alternative to other formal and informal modes of dispute resolution due to its obvious advantages:

a) It offers a more flexible alternative, for a wide variety of disputes, small as well as large;
b) It obviates the parties from seeking recourse to the court system;
c) It reserves the freedom of the parties to withdraw from conciliation without prejudice to their legal position inter se at any stage of the proceedings;
d) It is committed to maintenance of confidentiality throughout the proceedings and thereafter, of the dispute, the information exchanged, the offers and counter offers of solutions made and the settlement arrived at.
e) It is cost-effective and produces quicker resolution of dispute.
f) It facilitates the maintenance of continued relationship between the parties even after the settlement or at least during the period of settlement is attempted at. This feature is of particular significance to the parties who are required to continue their relationship despite the dispute, as in the case of disputes arising out of construction contracts, family relationships, family properties or disputes between members of any business or other organizations;
g) There is no scope for corruption or bias.

h) Therefore these are the benefits of the conciliation proceeding, which are of utmost importance.

VIII. Problems faced by conciliation in India

Although conciliation services are available to civil litigants through the innovation of Lok Adalats (panels of conciliators) and Conciliation Committees, several problems remain unsolved.

First, India generally lacks obligatory mediation such as early neutral evaluation utilized in the United States which is especially useful when imposed shortly after litigation is filed. Conciliation processes in India require the consent of both parties, or the request of one party and the decision by the court that the matter is suitable for conciliation.

Second, the subject matter of disputes that may be sent to Lok Adalats is limited to auto accidents and family matters.

Third, the conciliation process normally involves the lawyers, not the disputing parties themselves. This problem is particularly acute in writ proceedings in which the government is the responding party, since counsel frequently claims to lack authority to make decisions about terms of settlement.Fourth, current conciliation processes do not require the parties to meet and confer prior to entering either traditional litigation venues or their alternatives. No joint statement of the specific points of disagreement is required. The absence of meeting, conference and/or joint statements requirement is required. The absence of meeting, conference or joint statement requirements allows competing sides to remain insulated from one another.

Fifth, the Lok Adalats themselves have experienced backlog, and some defendants agree to conciliation as a way of further delaying the litigation process.

Finally, there is no set time or point within the litigation process at which a decision is made, by the courts, the parties or otherwise regarding referral of the case to some form of alternative dispute resolution.

IX. Conclusion

However, the success of conciliation depends on the mental attitude of the parties, the skill of the conciliator and the proper environment, backed by infrastructure facilities for servicing the conciliation procedure.The mental attitude required for conciliation ranges, on the one end from the inclination of all the parties to arrive at a mutually agreed settlement, though there may be mental reservation in making the first move, to the absence of any objection to such settlement, so that the conciliator may have scope to induce the parties to attempt conciliation.

On ultimate analytical observation, reciprocity is the hallmark of conciliation process. For healthy business relationship mutual understanding & to solve the dispute through settlement are the eventual qualities or eventual base. When party is having healthy business relationship, he is bound to succeed in conciliation. The need is therefore to develop a will to accommodate other party's genuine interest, a faith in the other's objects & capacity to reason to evolve cultivates the wish to sit together & reciprocate & to solve out the difference amicably. Therefore it is always preferable to resolve the dispute by conciliation.

References

[1] Wharton's LAW LEXICON 227(14th edn,1937, Indian reprint-1993).
[2] Halsbury's Laws Of England 4th Ed, Vol. 2, paragraph 502.
[3] Guru Nanak Foundation V. Rattan Singh & Sons, AIR 1981 SC 2075.
[4] Haresh Dayaram Thakur V. State of Maharashtra, AIR 2000 SC 2281: 2000 AIR SCW 2058
[5] Mysore Cements Ltd.v. Svedala Barmac Ltd., 2003 (1) Arb LR 651 (SC).
[6] Haresh Dayaram Thakur V. State of Maharashtra, AIR 2000 SC 2281: 2000 AIR SCW 2058
[7] Fakirchand V Bancilal AIR 1955 Hyd 28FB
[8] Lachoomal V Radhey Shyam. AIR1971 SC 2213
[9] Article 39(a) of the Constitution of India.
[10] Early neutral evaluation, as currently employed in the Federal District Court, Northern District of California, has achieved notable success in helping civil litigants to reach consensual settlements.
[11] Stephen A. Mayo & Hiram E. Chodosh, Indian Civil Justice Process Modernization (Bombay, Madras), in Inst. Study &
[12] Dev. Legal Sys. (Sept. 1996), Law Review Articles NYU Journal of International Law and Politics, 1998