

COLLOQUIUM ON MEDIATION HELD AT MADRAS HIGH COURT

KEYNOTE ADDRESS BY HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI ACTING CHIEF JUSTICE, HIGH COURT OF MADRAS

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My Lord Hon'ble Mr.Justice Surinder Singh Nijjar, Judge, Supreme Court of India, my esteemed brother Judges of this High Court, President, Madras High Court Advocates Association, Secretary, Madras Bar Association, learned senior advocates, Registrar General, Judicial Officers, learned advocates, Media, ladies and gentlemen,

It is a matter of great pleasure for us that Hon'ble Mr.Justice S.S. Nijjar, before demitting office, has chosen Madras High Court as the last destination to share his experiences on Mediation, with all of us. My Lord has wide experience. After having studied in United Kingdom and also having practised for some time in Britain, My Lord switched over to Indian judiciary and started practise at the grassroot level and thereafter to the High Court and, at an early age, was

elevated to the High Court of Punjab & Haryana and as such, My Lord has very wide experience in the field.

Mediation is not a new concept. It is true that other countries like America and other European countries have taken a lead in the Mediation process. But if you look at mythological background of India, you will find that the Great Saint Narad Muni was the first Mediator between the Gods and Goddesses. If there was any dispute among the Gods and Goddesses in respect of superior position or otherwise, i.e. who is bigger; who is smaller, Narad Muni used to act like facilitator – today's Mediator. Why we have forgotten Mediation we do not know. Now, we have realised the importance of Mediation. Mediation is the best method of conflict resolution. Though there are four methods – you all know very well – Mediation is the only process where the conflicting parties themselves have to resolve their *inter se* conflicts unlike Arbitration, Lok Adalat or Conciliation. But Conciliation is involved in Mediation also. An elderly man, a person well versed, who has social background, psychological instinct, sits and facilitates and then parties decide themselves to resolve their disputes. In other

methods, the disputes continue thereafter. Arbitration is one aspect – after Arbitration, nobody is happy, one goes on from Court below to the highest court. But in Mediation, it speaks about happiness. That is the beauty of Mediation. You can say, it is a part of adjudication also but it does not require any judicial pronouncement. Mediation has another aspect also but there is no claim or liability. It is not win-lose position. It is win-win position. It has a flexible process, there is no weakness only strength in this process. I tell you one classical example – you all know. Senior Mediators are here. They all have dealt with several critical problems. In one of the cases, a case was filed in the High Court between two ladies. They were fighting for a share of a deceased husband's property. One was claiming to be the legal owner being the first wife and nominee in some of the accounts. While the other was claiming pensionary benefits being the last person to be with the deceased husband. A case was filed. It was very difficult for Judge to decide. No adjudication was possible because you have to decide first who is the legally wedded wife. The Judges thought why not refer it to Mediation and the matter was referred to mediation. A lady trained Mediator had two sittings

and in two sittings, the dispute was resolved. Two ladies – two widows – fighting each other, became thereafter sisters and they embraced each other. Their children became brothers and sisters with a new life, new family was developed and that relationship continued forever thereafter. This is the beauty of Mediation. Had it been decided by a Court, even after dividing the share, they would not have been satisfied. There could not have been any social reform, they could not have been one family. They could have been two families; they would have lost time, money and everything. That is why, we have to take recourse to Mediation first, before going for litigation. Mediation also helps in reduction of docket explosion. Before going to litigation, it is better to go for Mediation. Learned advocates are here, social workers are here. It has to be published widely so that people can know about it to take recourse to Mediation before taking the last recourse to litigation.

Today, we have assembled here in a very short time. I am glad and thankful to all the stakeholders, advocates, Mediators, Judges, as within no time, they are here. I do not wish to say more today. I will be here interacting with all of you regularly. I

also want to hear My Lord Mr.Justice Nijjar today, his experiences.

With this, thank you. Nandri. Vanakkam.