

Jammu and Kashmir Arbitration and Conciliation Rules, 1998

JAMMU & KASHMIR

India

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Rule

JAMMU-AND-KASHMIR-ARBITRATION-AND-CONCILIATION-RULES-1 of 1998

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Jammu and Kashmir Arbitration and Conciliation Rules, 1998(Published vide Notification No. 160, dated 8.7.1999)In exercise of powers conferred by Section 65 of the Jammu and Kashmir Arbitration and Conciliation Act, 1997 (Act No.)(XXV of 1997) and all other powers enabling it in this behalf, the High Court of Jammu and Kashmir hereby makes the following Rules namely, The Arbitration and Conciliation Rules, 1999:-

1. Short title and commencement

The following rules made by the High Court of Jammu and Kashmir under the Arbitration and Conciliation Act of 1997 (Act No. 35 of 1997) hereinafter to be called "the Act" shall be called the Jammu and Kashmir Arbitration and Conciliation Rules, 1998 and shall come into force with effect from the date these are published in the Jammu and Kashmir Gazette.(Published in Government gazette dated 16th August, 1999)

2. Preliminary

The scheme of the Act incorporates provisions for the arbitral award in Section 1 to 43 including the provisions in case of insolvency under Section 41. Part-I of the Act has to be construed as the Domestic Award. Section 44 to Section 64 relate to procedure of conciliation of disputes arising out of legal relationship, whether contractual or not, and to all proceedings relating thereto. This is second part of the Act. So each part has to be taken separately in the rules hereto.Part-IArbitral Award

3. Title and presentation of application under Part-I Domestic Award

All applications, affidavits and proceedings under Part-I of the Act for an arbitral award shall be made only to the Principal Court of original Civil Jurisdiction of the district which includes the High Court in exercise of its ordinary Civil Jurisdiction to decide the question forming the subject matter of arbitration. The jurisdiction of courts inferior to the Principal Court of the district and the Court of Small Causes have been excluded.[An application under Section 11 of the Act can only be filed before the Chief Justice of the High Court and to no one else, which may be dealt with by the Chief Justice of the High Court or by a Judge of the High Court nominated by the Chief Justice.] [Inserted by Notification No.662 dated 05-11-2009,High Court of Jammu and Kashmir.]

4. Mode of the application

All applications shall be made by petitions and shall be presented before the Court in the same manner as a plaint. The application shall be signed and verified in the manner of Rule 15 of Order VI of the Code of Civil Procedure, 1977, or by an affidavit if the Court so directs.

5. Entitlement of application, affidavit and proceedings

(1) (a) Save as hereinafter provided all applications, affidavits and proceedings under this Act shall be entitled "In the matter of the Arbitration and Conciliation Act, 1997 and in the matter of arbitration (State the proceedings and its number) u/s for".Note : All the applications u/s 8(1), 9, 11(4), (5), (6), 14(2), 27, 34 and 36 shall be titled as above by inducting relevant section and purpose as follows in the above title:-Under Section 8(1) for reference to Arbitration.Under Section 9 for interim measure (e.g. appointment of guardian).Under Section 11(4) (5) (6) for appointment of an arbitrator.Under Section 14(2) for termination of the mandate of an arbitrator. Under Section 27 for Court assistance in taking evidence.Under Section 34 for setting aside arbitral award.Under Section 36 for enforcement of arbitral award.(b)An appeal under section 37 shall be entitled " In the matter of the Arbitration and conciliation Act, 1997 and in the matter of arbitration (State the proceedings and its number), appeal u/s 37 against (State the section under which and the nature of impugned order. e.g. Order u/s 34 setting aside arbitral award.)"

6. Contents of the application

The petition shall be divided into paragraph as numbered consecutively and shall contain the name, description and place of residence of the petitioner and that of the opposite party along with a statement in summary form:-(i)of all material facts including those constituting cause of action;(ii)of the facts showing that the court to which the application is presented has jurisdiction to deal with it;(iii)the nature of relief asked for;and(iv)The extent of relief claimed must be clearly specified against each respondent where there are more than one to the dispute.

7. Registration of cases

(a) If the application be found in order, it shall be numbered and registered as a suit and the other side would be issued the copies of the application, the documents, statements, including any expert report or evidentiary document on which the arbitral tribunal may rely in making his decisions. For service of any communication to the other side, if not, personally present in the court at the time the applicant presented this application, guidance can be had from section 3 of the Act. (b) Any other application under section 9 of the Act for an ad-interim relief for the preservation of the subject matter of arbitration or for any other equitable relief in the case shall be registered as a miscellaneous judicial case. (c) Rejection of application in limine. After a petition for arbitration has been presented the Court may, if it is not in order or according to law, reject it after allowing the petitioner time to remove the defect which he fails to rectify. If it is not so rejected, the Court shall direct notice thereof to be given to all persons mentioned in the petition and to such other persons as may seem to it to be likely effected by the proceedings, requiring all or any of such persons to show cause within the time specified in the notice, why the relief prayed for in the petition be not granted. Such a notice shall be accompanied by copies of the petition, the affidavit, the documents and all other information in support of petitioner's claim or defence.

8. Proceedings before the arbitral authority

The principle of equality binds the discretion of the arbitral tribunal or umpire in conducting the proceedings. The provisions of Civil Procedure Code and the Evidence Act do not bind the tribunal. The arbitral tribunal may follow such procedure in conducting the proceedings as may be agreed by the parties. Where, however, the two sides differ on an issue the discretion of the tribunal or umpire comes to play in appropriate situations visualised under the provisions of the Act. The statements of the parties to arbitration and the witnesses appearing before the Tribunal shall be recorded after administration of oath unless a different intention is expressed in the arbitral agreement.

9. Court fees and process fees

(a) The petitioner shall have to deposit the necessary process fee as provided under law in force for service of notice on the other concerned parties likely to be affected by the proceedings, within seven days of the order or within such further time as may be allowed on the furnishing of circumstances having provided sufficient cause for delay. (b) The process fees and court fees as provided under law in force shall be deposited in advance by the concerned party for service of process on opposite party or for service on his witnesses in the case. The prescribed fee shall be according to scale prescribed under Court Fee Act and rules framed thereunder. (c) The expression "process" includes summons and commissions for the examination of witnesses and summon to produce documents under section 27(5) of the Act.

10.

(a) Compliance with the notice If the respondent turn up in response to the initiation of proceedings

whether by mutual consent or otherwise in response to the notice of the court, he has to prefer his claim or defence in the proceedings. Should the respondent fail to do the needful, the arbitral tribunal may take it as waiver of his claim, or counter claim, or any kind of objections to the application as provided under section 4.(b) Applications to the arbitral tribunal/Umpire by the sole or more respondents in the petition who consent to the application of the petitioner shall be signed by the party or parties so consenting. But, where a party is, by reason of absence or for any other cause unable to sign the same, it may be signed by any person duly authorised by him to sign the same.(c) Default and amendment of claim or defence: Default on the part of the claimant or to communicate his statement of claim under section 23(1) empowers the Tribunal to terminate the proceedings. The failure of the respondent to communicate his defence would be taken as admission of the claim of the petitioner and the proceedings would continue to its logical end. There is, however, provided in the provision under section 23 that either party may amend or supplement his claim or defence during the course of the proceedings unless otherwise agreed by the parties.

11. Appointing Judges as Arbitrators

The system of appointing Judges as arbitrators though legal and convenient, is open to objection. A party may some times be compelled against his wishes to agree to such an arbitration, and it may be difficult for a litigant to raise objections successfully to an award on the ground of erroneous procedure or technical misconduct of the arbitrator before the Court when the presiding officer was himself the arbitrator. Further, it is undesirable that Judges who have given awards as arbitrators should be subject to reckless personal charges at the instance of suitors disappointed by an award. The practice, therefore, of presiding Judges acting as arbitrators is undesirable.

12. Cost of copies

Copies of pleadings and issues in cases of suits referred to arbitration should be prepared at the cost of the parties.

13. Service of order appointing Arbitrators

An order appointing Arbitrator(s) should be served on Arbitrator(s) whether they are present in court or not and even when they are present in court and express their willingness to act as such. In all these cases, process fee should be charged for serving an order on Arbitrator(s). Where, however, a party is permitted to serve the copy of an order of reference on the Arbitrator, half the usual process fee should be charged.

14. Question of law to be referred to the Principal Court of Jurisdiction

It is possible that during the arbitral proceedings there may arise a special case on question of law involved hampering the proceedings. Section 5 of the Act, overriding any thing contained in any other law for the time being in force, in matters governed by this part of the Act, no judicial authority shall interfere except where so provided in this part. To meet this the Principal Court of

original jurisdiction in a district, where the subject matter of the arbitration or where the parties reside, is the Court to which the issue may be referred for his opinion in the matter to remove the obstacle for smooth passage to the final award. The question of law involved on which the opinion of the Court is sought for and the facts out of which the issue arises shall be distinctly stated in the reference. A copy of the arbitration agreement, if the contract is in writing, shall be annexed to such reference. The arbitral tribunal or umpire, as the case may be, making the reference shall give notice of the action taken, by them to the parties concerned. The opinion so received will become part of the file and in appropriate situations, the opinion may become the base of an interim award.

15. The award - its enforcement

Arbitral proceedings lead to the final award as drawn up at the end of the hearing. It has to be dated at the place where the proceedings were held. It must be signed by the arbitral tribunal, members or umpire as laid down in the Act. Rules under J&K Arbitration and Conciliation Act, 1997 (Under - Part-II) Conciliation of disputes between two parties has been provided as alternative remedy under sections 44-64 of the J&K Arbitration and Conciliation Act of 1997 (hereinafter referred to as the Act). The rules thereunder are framed by the High Court of Jammu and Kashmir under section 65 as under:

Rule 1: Consensus of parties to be the source of all decisions In the conciliatory process the conciliator or conciliators, as the case may be, are not bound to follow the Civil Procedure Code of 1977 (Samvat) or the Evidence Act of 1977, Samvat. The source of all decisions is held to be the consensus of the parties to the dispute.

Rule 2: Contesting parties to determine the place of sitting for Conciliation etc. The choice of place of sitting for conciliation or the medium of statements of the parties or witnesses before the conciliator is left to the discretion of the contesting parties.

Rule 3: Conciliator to abide by the principles of objectivity, fairness and justice The conciliator will have to abide by the principles of objectivity, fairness and justice, giving all consideration to the rights and obligations of the parties. He will have to find way and means by his skill and tact to bring the parties round to arrive at an amicable settlement of the disputes as between the parties to the conciliation.

Rule 4: Conciliation proceedings not to apply when barred by law Conciliation proceedings shall not apply where under any law for the time being in force the subject matter of the dispute cannot be submitted to conciliation. Violation of this rule shall render the conciliatory process null and void.

Rule 5: Beginning of conciliation process Conciliation process under the Act begins after a written request by a party inviting the other party to accept conciliation as a way to settle their dispute, is accepted in writing by the other side as received by the offering party. The invitation may be by personal delivery or through some person or by registered post. The invitation must clearly specify the dispute.

Rule 6: Termination of conciliation proceedings The Conciliation proceedings shall be terminated by signing of the settlement agreement by the parties on the date of the agreement.

Rule 7: Bar to initiate Arbitral or Judicial Proceedings The parties cannot during continuance of conciliation proceedings initiate in respect of the same dispute arbitral or Judicial proceedings except where in the opinion of the conciliator such proceedings are necessary for preserving the rights.

Rule 8: Payment to be received against proper written receipts Any payment made by the parties towards the costs of conciliator under a written notice from the conciliator shall be received against proper written receipt under the hand of the conciliator. Any excess payment by a party shall be returned by the conciliator. On failure to deposit the demanded due amount within - thirty days the conciliator may terminate the proceedings.

Rule

9: Settlement agreement to be signed by the parties The settlement agreement should be signed by the parties to dispute and the conciliator or conciliators, as the case may be, with the incorporation of date of the agreement. The status and effect of settlement agreement shall be as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30. Note: Conciliation proceedings shall be governed by these rules.