

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **O. Ref. No. 01/2016**

% **12th November, 2018**

ROHIT KUMAR Appellant

Through: Ms. Avani Malik, Mr. Deepak
Narayan and Mr. Yuvraj
Mishra, Advocates
(8800994493)

versus

SUNIL TYAGI Respondent

Through: Mr. Shlok Chandra, Advocate
(Amicus Curiae) (9999670588)

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This is a Reference under Section 113 of the Code of Civil Procedure, 1908 (CPC) by the Court of Sh. Rakesh Kumar Singh, Civil Judge-11, Central District, Tis Hazari Courts, Delhi whereby the learned trial court has framed the following questions for being answered by this Court.

- “i. The manner in which Mediation Rules 2004 were framed in Delhi.
- ii. Does Affcons judgment affect the above position?
- iii. Can Rule-25 be justified under general rule making power?
- iv. When will an Institution or person become Lok Adalat?
- v. What are the relevant provisions of LSA Act applicable to mediation?
- vi. Can it be said that provisions of LSA Act will not apply to mediation?
- vii. Section-89(2)(c) is an illustration of legislation by reference.
- viii. Whether contrary observation of Affcons is a binding precedent.
- ix. Observations of second Salem Bar case regarding visible record of mediation.
- x. Affcons vs. second Sale Bar case: a legal dichotomy.
- xi. Rules vs. statutory enactment: which one will prevail?
- xii. Validity of Rule 25 of Mediation Rules 2004.
- xiii. Can mediation rules talking about procedure of pre referral court related matter be justified?
- xiv. Can mediation rules related to actual mediation be justified to some extent?
- xv. Can criminal compoundable cases be sent for mediation?”

2. Very frankly in my opinion, none of the aforesaid questions which have been sent as Reference to be answered by this Court really need to be answered, because the admitted position of facts on the basis of which the above-stated questions have been framed to be answered by this Court under Section 113 CPC are that there existed an agreement in writing between the parties to the suit before the Mediation Centre. This agreement in writing was also signed by the parties. Once that is so then the requirements of Order XXIII Rule 3 CPC are satisfied and which provides that a court can

dispose of a suit once it is found that the parties by a written agreement signed by them have agreed to settle the disputes which are subject matter of the suit in a particular manner. Order XXIII Rule 3 CPC does not require filing of a joint application signed by the parties and supported by their affidavits, and all that is required is that there should be an agreement in writing signed by the parties, and which is an admitted position in this case because parties have entered into a settlement in writing under the signatures before the Mediation Centre, and which is sufficient for disposal of the suit under Order XXIII Rule 3 CPC. No other aspect therefore was required to be looked into by the trial court for disposing of the suit and no issue therefore arises with respect to any of the questions framed by the trial court for being answered by this Court under Section 113 CPC.

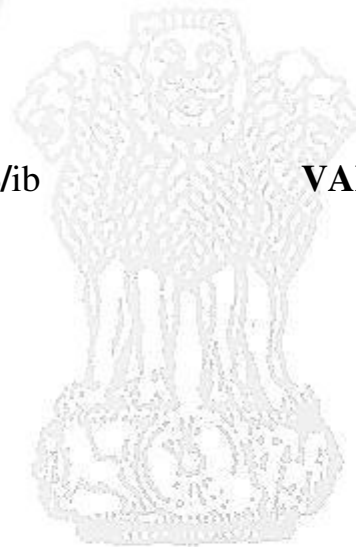
3. The Reference is accordingly disposed of by observing that once there is an agreement in writing signed by the parties settling the disputes which are subject matter of a suit, whether such written signed agreement is entered into by means of an application signed by the parties filed in Court, or the written signed agreement is entered into outside the Court including in mediation proceedings, then the

requirements of Order XXIII Rule 3 CPC are satisfied, and the Court in such a situation has to dispose of a suit in terms of the aforesaid agreed written settlement agreement between the parties signed by them, which falls under Order XXIII Rule 3 CPC.

4. The Reference is answered accordingly and be sent by the Registry of this Court to the concerned court.

NOVEMBER 12, 2018/ib

VALMIKI J. MEHTA, J



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