

MOTI RAM (D) THR. LRS. & ANR.

A

v.

ASHOK KUMAR & ANR.

(Civil Appeal No. 1095 of 2008)

DECEMBER 7, 2010

B

[MAKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

ALTERNATIVE DISPUTE REDRESSAL – Mediation – Landlord-tenant matter pending before Supreme Court, referred to Mediator – Mediation remained unsuccessful – Report by mediator – HELD: Unlike the proceedings in court, mediation proceedings are totally confidential proceedings – If the mediation succeeds, then the mediator should send the agreement signed by both the parties to the court without mentioning what transpired during the mediation proceedings – Otherwise, the mediator should send his report only stating that the 'Mediation has been unsuccessful', and nothing else – Code of Civil Procedure, 1908 – s.89 (2).

C

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1095 of 2008.

E

From the Judgment & Order dated 19.10.2007 of the High Court of Punjab & Haryana at Chandigarh in RSA No. 1959 of 1994 (O & M).

F

Harkesh Singh (for Kamal Mohan Gupta) for the Appellants.

Manoj Swarup, Ankit Swarup, Shivinder Swaroop, Ashok Anand (for Gagan Gupta) for the Respondents.

G

The following Order of the Court was delivered

A

ORDER

On 31st August, 2010, we had referred the matter for mediation to the Mediation Centre at Chandigarh to attempt to resolve the dispute between the parties.

B

Today, when the matter was called out, our Court Secretary placed before us the Report dated 29th September, 2010 received from the Mediator, which is as follows:

C

"Mr. Ashok Kumar states that he would be ready and willing to vacate the shop on receipt of 1/3rd of the value of the shop which according to him is worth approximately 50 Lacs and he be paid an amount of 15 Lacs (approx.). The appellant-landlord is not ready and willing to offer the said amount and has extended the concession by giving up on the pending rent only which according to him is pending for last 28 years. Tenant has also expressed his willingness to purchase the property for an amount of Rs. 30 Lacs but the landlord has refused to dispose of the same on the ground of personal necessity.

D

E

In this connection, we would like to state mediation proceedings are totally confidential proceeding. This is unlike proceedings in Court which are conducted openly in the public gaze. If the mediation succeeds, by both the parties to the Court without mentioning what transpired during the mediation proceedings. If the mediation is unsuccessful, then the mediator should only write one sentence in his report and send it to the Court stating that the 'Mediation has been unsuccessful'.

F

Beyond that, the mediator should not write anything which was discussed, proposed or done during the mediation proceedings. This is because in mediation, very often, offers, counter offers and proposals are made by the parties but until and unless the parties reach to an agreement signed by them, it will not amount to any concluded contract. If the happenings in the mediation proceedings are disclosed, it will destroy the confidentiality of the mediation process.

G

H

MOTI RAM (D) THR. LRS. & ANR. v. ASHOK KUMAR 811
& ANR.

We are compelled to observe this because the mediators should know what kind of reports they should send to the Courts. The report sent in this case should not have mentioned the proposals made by the parties, but should only have stated that the mediation was unsuccessful. A

Let a copy of this order be sent to the Supreme Court Mediation Centre and the Mediation Centres in all the High Courts and District Courts in the country, including the Chandigarh Mediation Centre B

So far as this case is concerned, at the request of the counsel for the appellants, list this matter in January 2011.

R.P.

Matter adjourned.