



# **FACULTY OF JURIDICAL SCIENCES**

**COURSE: B.A.LL.B.**

**Semester: VIII**

**SUBJECT: Alternative Dispute**

**Resolution**

**SUBJECT CODE: BAL803**

**NAME OF FACULTY: Mohammad Aqib**

# Lecture-26



## LECTURE 26: Termination of Conciliation Proceedings and power of High Court and Central Government to make rules

### **Termination of Conciliation Proceedings [Section 76]:**

Section 76 lays down four ways of termination of conciliation proceedings. These are:

- 1) The conciliation proceedings terminate with the signing of the settlement agreement by the parties. Here the date of termination of conciliation proceedings is the date of the settlement agreement [Section 76(a)].
- 2) The conciliation proceedings stand terminated when the conciliator declares in writing further efforts at conciliation are no longer justified. Here the date, of termination of conciliation proceedings is the date of the declaration. [Section 76(b)].
- 3) The conciliation proceedings are terminated by written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated. Here the date of termination of conciliation proceedings is the date of the declaration [Section 76(c)].
- 4) The conciliation proceedings are terminated when a party declares in writing to the other party and the conciliator, that the conciliation proceedings are terminated. Here the date of termination of conciliation proceedings is the date of the declaration [Section 76(d)].

In a case before the Supreme Court the facts were that the conciliator drew up the settlement agreement himself in secrecy and sent the same to the court in a sealed cover. The court to which it was sent refused even to entertain objections against the settlement. The Supreme Court held that the conciliator committed an illegality. The Bombay High Court was not correct in confirming the settlement paper received from the conciliator. The court set aside the settlement. The reason is that under Section 76 (a) a settlement proceeding comes to an end only when the settlement agreement is signed by the parties, whereas in this case the settlement was filed in the court without the signature of the parties. The court surveyed the totality of the provisions on conciliation and said:

**Resort to Arbitral or Judicial Proceedings (Section 77):** As a general rule, the Parties cannot initiate arbitral or judicial proceedings during the conciliation proceedings in respect of a dispute which is the subject-matter of the conciliation proceedings. But in exceptional cases a party may initiate arbitral or judicial proceedings if in his opinion such proceedings are necessary for preserving his rights.

## **POWER OF HIGH COURT AND CENTRAL GOVERNMENT TO MAKE RULES (SECTION 82 AND 84)**

Section 82 confers on the High Court the rule making power. Accordingly, the High Court may make rules consistent with the Act as to all proceedings before the court under this Act.

"Section 72 of the 1996 Act gives the High Court power to make rules consistent with the Act. All the High Courts have not so far made rules. Whereas Section 84 gives the Central Government power to make rules to carry out the provisions of the Act, the High Court should also, wherever necessary, make rules. It would be helpful if such rules deal with the procedure to be followed by the courts while exercising jurisdiction under S. 9 (Interim relief) of the Act. The rules may provide for the manner in which the application should be filed, the documents which should accompany the same and the manner in which such applications will be dealt with by the courts. The High Courts are, therefore, requested to frame appropriate rules as expeditiously as possible so as to facilitate quick and satisfactory disposal of arbitration cases."

**Power of Central Government to make Rules (Section 84):** Section 84 empowers the Central Government to make rules for carrying out the provisions of the Act. Accordingly, the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of the Act.