

JPP. No. 1/2025

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2025:KER:9755

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

TUESDAY, THE 4TH DAY OF FEBRUARY 2025 / 15TH MAGHA, 1946

JPP NO. 1 OF 2025

PETITIONER/S:

SUO MOTU JPP INITIATED BY THE HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031.

RESPONDENT/S:

NIL

OTHER PRESENT:

SRI. V. TEKCHAND, SENIOR GOVERNMENT PLEADER

THIS JUDICIAL PRACTICE AND PROCEDURE HAVING COME UP
FOR ADMISSION ON 04.02.2025, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

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“C.R.”

ORDERDated this the 4th day of February, 2025.**Nitin Jamdar, C.J.**

This *suo motu* petition has been initiated by the Registry to establish a uniform practice and procedure for preparing judgments, decrees, and orders in cases settled by compromise, whether through mediation or otherwise.

2. A representation was received by the Director of the Alternative Dispute Resolution (ADR) Centre, High Court, requesting that the terms of a mediation settlement be incorporated into the judgment as a self-contained document. This request aims to address practical difficulties faced by litigants working abroad due to the non-inclusion of mediation settlement terms in judgments. The representation was placed before the Board of Governors of the Kerala State Mediation and Conciliation Centre (KSMCC), which passed a resolution on 22 August 2024, directing that the matter be referred to the Registrar General of the High Court. The resolution recommended that the Chief Justice consider evolving a uniform practice for incorporating the terms of compromise into judgments, decrees, and orders. Consequently, the resolution was forwarded to the Registrar General and has now been placed on the judicial side under the roster "Judicial Practice and Procedure (JPP)" for registering *suo motu* proceedings.



3. Court-annexed mediation under Section 89 of the Code of Civil Procedure, 1908, is conducted under the control and management of the KSMCC. The conduct of mediation and preparation of mediation settlement agreements are governed by the Civil Procedure (Alternative Dispute Resolution) Rules, 2008 ("Rules of 2008"). Section 89 of the CPC provides that if the court finds that a settlement acceptable to the parties is possible, it shall formulate the terms of settlement and refer the matter for arbitration, conciliation, judicial settlement (including settlement through Lok Adalat), or mediation. If referred to mediation, the court shall facilitate a compromise between the parties and follow the prescribed procedure.

4. The Rules of 2008, framed by the Government of Kerala, define key terms in Rule 2. Rule 6 provides for the appointment of arbitrators, conciliators, judicial settlement authorities, and mediators. Part II of the Rules governs mediation procedures, with Rule 13 detailing the mediation process. Rule 24 addresses settlement agreements, requiring that an agreement reached between the parties on all or some issues be reduced to writing, verified, and signed by the parties or their power of attorney holders. These signatures must be attested by respective counsel or any authority specified in Rule 27 of the Kerala Civil Rules of Practice.

5. Sub-rule (2) of Rule 24 of the Rules of 2008 states that the signed and attested agreement shall be submitted to the mediator, who shall



forward it to the court with a covering letter. Sub-rule (3) provides that if no agreement is reached within the stipulated time, or if the mediator determines that no settlement is possible, the mediator must report this to the court in writing. Under Rule 25(a), within seven days of receiving a settlement agreement, the court must issue notice to the parties for recording the settlement. Rule 25(b) allows the court to pass a decree in accordance with the recorded settlement. However, neither Section 89 of the CPC nor the Rules of 2008 mandate that consent terms be included within the judicial order.

6. The Registry has observed that the prevailing practice in the High Court and District Judiciary is to pass judgments, decrees, and orders recording the compromise reached through mediation with a statement that the written agreement signed by the parties forms part of the judgment, decree, or order. However, the terms of the agreement are not incorporated within the body of the judgment and orders.

7. The representation highlights the challenges faced by litigants abroad in explaining and proving that the settlement deed referred to in the judicial order is the same document. While incorporating settlement terms in judgments may benefit certain litigants, such a requirement would need statutory backing. The question arises whether the format of judgments can be prescribed through judicial orders. Since no statutory provision mandates a specific format, issuing judicial directions on this matter may not be feasible.



8. Undoubtedly, incorporating settlement terms in judicial orders offers various advantages. For instance, attaching a scanned copy of the signed settlement agreement can prevent disputes over the authenticity of the signatories. A single, comprehensive judicial order incorporating settlement terms would also reduce future litigation and aid litigants, particularly those residing abroad. However, there are potential disadvantages, such as privacy concerns. In some cases, parties may not wish to disclose the terms of their settlement in a judicial order for privacy reasons. Further, once settlement terms are incorporated into a judicial order, any modifications may require fresh judicial orders.

9. The nature of the case may determine whether settlement terms should be incorporated into the judicial order. For example, commercial and business disputes may require different considerations compared to family or personal relationship matters, where confidentiality could be more important. Therefore, each judge must decide, with the consent of the parties, whether to include the settlement terms in the judgment or order. If the parties oppose inclusion, it would be appropriate not to include the terms of settlement, particularly when there is no mandate governing the matter. Conversely, if the parties consent to inclusion and there is no legal impediment, the judges may incorporate the terms at their discretion.

10. Accordingly, in the absence of a statutory mandate, the inclusion of settlement terms in judicial orders will depend on the nature of the

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case and the consent of the parties. It is not possible to issue an omnibus judicial order that the terms of settlement must be included in all cases, regardless of subject matter and opposition of parties. However, if the parties do not object and no legal impediment exists, it would be preferable to incorporate the settlement terms, ideally in a scanned copy with signatures, as it will aid the litigants, especially those living abroad, to produce and rely upon only one document.

11. With these observations, the *suo motu* proceedings stand closed.

Sd/-
NITIN JAMDAR,
CHIEF JUSTICE

Sd/-
S. MANU,
JUDGE

krj/-

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APPENDIX

PETITIONER'S ANNEXURES:-

ANNEXURE 1 LETTER FROM ADV. SRI. A. RAJASIMHAN DATED
18.07.2024.

ANNEXURE 2 LETTER NO.1430/2024/KSMCC DATED 24.09.2024.

ANNEXURE 3 OFFICE NOTES AND ORDERS OF THE HONOURABLE CHIEF
JUSTICE.

RESPONDENT'S ANNEXURES:- NIL

//TRUE COPY//

P.A. TO C.J.