



Uma Ramanathan
*Senior Trainer &
Mediator*

Challenges and Consensus in TNMCC

Human nature and inter-personal interactions are so confounding that every dispute and the process of unravelling how the disputants managed to get so tangled often results in a voyage of discovery about thought processes. Mediation though often called a win-win is more than that. It is enabling parties to find solace in the discovery of possibilities and coming to terms with the situation. The spectrum of emotions and reactions are often astounding. Commercial and personal disputes at some level means interactions and thought processes attached to the interactions. A few cases handled in our centre have led to equipping ourselves with different skills.

1. 278 Cases Worth of Rs. 165 Crores - Settled in Mediation

1990 became the year when two warring group of companies started litigation. Two suits were filed on the Original Side of the High Court, Madras, 4 criminal complaints came up in various courts, 257 Trademark applications with oppositions were filed before the Registrar of Trade Marks and 24 cases were before the Intellectual Property Appellate Board when the matter was referred to mediation. The parties had disputes to the value of Rs. 165 Crores which was waiting to come to court. The matter related to a well known and established trademark in the field of electrical motor pumps, starters and allied products. Different prefixes and suffixes were used for different products by the different companies of the group. The Directors of the companies were related and so there were property disputes on the periphery.

Though mediation took a long time, ultimately a mediated agreement resulted in a partition deed in respect of properties worth Rs. 165 crores and 5 Land disputes between Directors. These disputes had not yet come to court but were settled as part of the holistic settlement between the parties. It could not have been possible elsewhere. The plaintiffs withdrew 148 cases [applications with oppositions] pending before the Trade Mark Registry and the defendants withdrew 99 cases (applications with opposition) pending before the Trade Mark Registry. Also, 10 Oppositions were withdrawn by the defendants and 24 Rectification applications pending before the Intellectual Property Appellate Board were agreed to be withdrawn.

In all, about 287 present cases and a future litigation worth about Rs. 165 Crores were settled in a single mediation case. This case is also a standing example where the settlement was effected with a great effort from both side counsels who negotiated hard for their respective clients, while the mediator was just a fly on the wall in these mediation sessions. The mediator encouraged the counsels to find a way out of this network of disputes and gave them space to make their own decisions. Once parties realised the cost of litigation in terms of time, money and prospects, they acknowledged the possibilities and came to mutually satisfactory terms which led to cases pending in courts and those awaiting going into courts to get settled.

2. Cardiologist – Contribution Acknowledged

The dispute between a famous Cardiologist and the hospital had been pending in the Original Side of the High Court, Madras for nearly 14 years when it was referred to mediation. Cardiologist was known to do nearly ten open heart surgeries every day. And the hospitals in which he worked soon made a lot of money. He got his as his fame spread and he got more patients, he realised that the hospital was making a lot of money and so he got his community members together and asked them to form a society and started a hospital. His contact with the rich and politically strong men got all sanctions and clearances and soon the hospital boasted of a well set cardiac unit.

Once the hospital grew in terms of size and workload, differences arose between the Board of Directors and Cardiologist as he chose to start his hospital on the same road and also got the sanction to start a medical college and hospital in another city based on his achievements. The hospital believed that he was working against the interest of the hospital and voted for cancelling his primary membership and asked him to leave. Cardiologist challenged his removal and asked for damages of Rs. 2 Crores and the hospital filed for damages against him demanding Rs. 5 Crores. Both the cases came to mediation.

In mediation, once Cardiologist had vented out his angst and made it clear that his way was absolutely the right way, the mediator asked the doctor– “Dr. at one point you and the hospital complemented each other and needed each other. Now, both of you have grown beyond needing each other and so what would be the best way out of this situation?” Cardiologist immediately said – “let them take me back as a member, I shall resign immediately. Let them give also they have to give a letter acknowledging my contribution to the growth of the hospital and I will withdraw my claim.” The hospital agreed and both suits were withdrawn. In this case, though Cardiologist wanted to have his say, once his achievements were acknowledged, his anger dissipated. The hospital also being deeply indebted to his contribution accepted his contribution.

3. Breach of Trust – Compromised Reached

A criminal complaint of breach of trust and damage to reputation was filed by one ‘A’, the father of a lady one ‘X’. A’s wife had left him with his two year old daughter and he was inclined to follow an ascetic life. So when ‘X’ turned 16 years he decided to get her married and then go on his way. A matrimonial advertisement by ‘B’, the father of ‘Y’, seeking alliance for his son who was a haemophilia patient, to take care of ‘Y’ with prospects of studying in UK attracted ‘A’. Soon the marriage was fixed as ‘B’ said that they had no demands but when demands started coming, ‘A’ sent an e-mail to ‘Y’s’ mother and this became a cause for ‘B’ to take offence and cancel the wedding.

‘X’ had just finished her school and had been sent to ‘Y’s’ aunt to get trained in their way of life for 6 months and when they cancelled the wedding ‘X’ went into depression. ‘X’s’ father [i.e. ‘A’] filed a complaint of breach of trust and fraud and damages.

Once parties had clarity on how the differences had arisen, ‘Y’s’ father [i.e. ‘B’] offered to pay Rs.25 lakhs to ‘X’ for her studies. ‘X’s’ father even wished ‘Y’ a healthy life and said ‘chiranjee bhava’ and requested ‘Y’ to help ‘X’ if she went to UK for higher education. ‘X’ said only after mediation, she was able to sleep peacefully and concentrate on her studies. ‘X’s’ father withdrew his complaint. Once ‘B’ realised how ‘X’s’ education had suffered, he agreed to pay for that. ‘A’ had no ill feelings against ‘Y’ and wholeheartedly wished him good health.

4. Recovery of Possession Suit – Recovered the Relations

‘X’ filed a suit for recovery of possession against his father-in-law ‘A’. ‘X’, a software engineer working in Singapore and ‘Y’ a lady lawyer from Madurai got married and she motivated him to start a restaurant in Singapore. Soon it became a chain in Hong Kong

and Penang and 'Y' moved to Coimbatore to expand their chain. On the eve of the 1st successful year in Coimbatore she met with a fatal accident. 'X' was in Hong Kong and went into deep anguish and drinking binge for the next two years.

'A' had worked in a chit fund company and so managed their investments. He bought lands from the money they sent and changed them into Mango groves and coconut cultivations. With his meagre savings and money sent by 'X' and loans taken, he bought some of the lands in his name, some in the name of 'Y' and some in the name of 'Z', his other daughter. 'A' son education was also taken care of by 'Y'. After 'Y's' demise, the relationship became strained and when 'A' asked for his share with an intention to sell and start afresh, 'A' purposely created a mortgage and made it impossible for them to come to acceptable terms. Hence, 'X' filed the suit for recovery of possession.

During discussions, it came to light that 'A' had always treated 'X' as his elder son and 'X' also had great regard for 'A'. In caucus, 'Z' revealed that though 'X' was good to her family initially, the fact that he did not come for the funeral of 'Y' showed how much regard he had for 'Y' and her family. 'X', on the other hand, said that it was difficult for him to accept 'Y's' death and he did not want to see her body. Both 'A' and 'X' then turned towards each other and comforted each other. Immediately, 'A' wanted 'X' to repay his debt of Rs. 25 lakhs incurred for developing the property. 'X' offered to bring a good buyer so that both of them could sell at a good price. 'X' withdrew the suit agreeing to pay Rs. 25 lakhs to 'A'. 'A' agreed to cooperate in selling the land. Allowing parties to vent their emotions and getting them to face the cause of the differences between them helped in this resolution.