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IMPETUS OF ADR IN TENANCY DISPUTES

[1]Author 1: S. Abhijeet Krishna, V Year, B.Com-LLB (Hons.) SASTRA Deemed to be University, Thanjavur, Tamil Nadu.
Author 2: Sathiya CA, Assistant Professor, SASTRA Deemed to be University, Thanjavur, Tamil Nadu.

Abstract

The concept of tenancy is not new to the Indian legal system. A tenant is a person who occupies/enjoys the property of another person (called the landlord), on payment of a certain amount of money called rent. Tenancy is the best alternative way of housing for people who cannot afford to have a place of residence of their own. In most of the cases, written tenancy agreements are entered into by the landlord and the tenant. Like any other contract, tenancy is not free from disputes. Those may be with respect to payment of rent, enhancement of rent, repairs and maintenance, return of security deposits, eviction, easementary rights, etc. This paper explores alternative dispute resolution (ADR) methods as a viable solution for resolving tenancy disputes. It also presents an overview of the current state of tenancy disputes and the shortcomings of traditional litigation methods. It then examines various forms of ADR, such as mediation, arbitration, conciliation and negotiation, and their potential benefits in the context of tenancy disputes. The paper also analyzes the legal framework surrounding ADR and the role of the court system in facilitating ADR in tenancy disputes. The author has referred to some articles in this regard. Finally, the paper highlights the importance of educating tenants and landlords about ADR and promoting its use as a more cost-effective and efficient means of resolving disputes. Overall, this paper suggests that ADR can serve as a valuable tool in addressing tenancy disputes and promoting harmonious tenant-landlord relationships.

IMPETUS OF ADR IN TENANCY DISPUTES

Tenancy disputes are one of the many legal disputes where alternative dispute resolution (ADR) is becoming more and more well-liked as a technique of dispute resolution. ADR allows the parties to settle their disputes through various forms such as negotiation, mediation, and arbitration, rather than going through traditional Court practises and procedures. The application of ADR to tenancy disputes and its possible advantagesand disadvantages will be discussed in this paper.

Tenancy disputes can arise for a variety of reasons, such as disputes over rent, repairs and maintenance, easementary rights, the return of a security deposit, etc. When these disputes do not come to an end through simple and direct negotiation between the landlord and tenant, the parties may knock the doors of a court to seek redressal. However, litigation can be time-consuming, expensive, and often leads to an adversarial litigation between the parties. ADR has a number of potential advantages over the traditional litigation. It is often expeditious and less expensive than regular trial before a court. ADR sessions can be dated more quickly than court hearings, and it is possible to resolve the disputes and settle the matter within a couple of hearings. This saves both time and money for all parties involved. In addition, ADR has greater flexibility in terms of the outcome. In a court proceeding, the Court's judgment, whatsoever it may be, is final and binding on all parties. However in ADR, it is possible for the parties to decide and arrive at an outcome as can work together more effectively for a mutually agreeable solution. This can be particularly helpful in tenancy disputes, where the parties may have ongoing legal relationships and might plan for future also, where the tenant plans to renew their lease or rental agreement with the same landlord. ADR can help to preserve relationships between the parties. Not only does it resolves disputes between landlords and tenants but also makes the dispute resolution process simple and concludes the matter with neither party being a looser. Litigation can be emotionally attached and it often leads to a breakdown in the cordial relationship and hinders communication between the landlord and the tenant. To prevent such unpleasant happenings, ADR is designed to be more collaborative and cooperative, which can help to maintain a positive relationship between the landlord and tenant even after the dispute has been resolved.

There are different types of ADR mechanisms that can be used to resolve tenancy disputes, which includes negotiation, mediation, and arbitration. Negotiation is the direct communication between the parties themselves, trying to arrive at an amicable solution on their own. Mediation involves the use of a neutral third party (the mediator) to facilitate discussion and negotiation between the parties. Arbitration proceedings involve hearing and appreciating evidence of both sides by a neutral third party (called the arbitrator) and a final decision is arrived at (called award) which is binding on the parties. The decision on the choice of method ADR depends upon the specific facts and circumstances of the case and the preferences of the parties involved. However, in general, ADR offers a number of benefits for resolving tenancy disputes in an efficient, cost-effective, and collaborative manner. By avoiding traditional litigation and preserving relationships between the parties, ADR can help to create a more positive and productive outcome for everyone involved.

TENANCY DISPUTES

Rent Disputes:

One of the most common landlord-tenant disputes in India is unpaid rent. It can arise from a tenant's failure to pay rent on time or disagreement regarding the revision in the rent. A tenant's failure to pay rent on time may cause financial hardship to the landlord. The tenant is required to pay the rent on or within a specified time, in full, as per the terms of the rental agreement. Failure to pay rent can give rise to legal consequences whereby the landlord may seek for eviction of the tenant too. Rental disputes are simple and does not require lengthy adjudication. In most cases, rent disputes could be resolved through a simple *negotiation* between the landlord and the tenant. However, if no solution is arrived at, it may need to be taken to court. Even in such cases, the Court need not resort to trial. Instead, the matter could be referred to *Arbitration* or *Mediation.* This mode of ADR has proven to be most effective in resolving minor disputes and small cause matters.

Maintenance and Repairs:

Maintenance and repair issues are also one of the most common sources of conflict between landlords and tenants. Generally, the landlords are responsible for maintaining the property in a proper condition. However, the tenant is responsible for maintaining the property and reporting the maintenance/repair issues to the landlord promptly. Tenants may complain that landlords are lethargic in keeping up with the maintenance and repairs of the rented property, while landlords argue that tenants are responsible for certain damages and repairs. Day-to-day fixtures are taken care by the tenant whereas anything that affects the super-structure should be looked after by the landlord.

Eviction:

Eviction means removing a tenant from a property which has been in his possession, legally or illegally. A landlord can evict a tenant if the tenant violates the lease agreement, fails to pay rent, or engages in any illegal activities on the premises. This process is governed by the Buildings and Rent Control laws of various States in India. It involves serving the tenant with a notice to vacate the premises, followed by legal proceedings in the event the tenant does not comply with the notice. Eviction can also be processed through a court order, with both parties presenting their cases before the court and the court deciding the matter. In cases where the tenant is found to be in unauthorized possession of the property, the court may order the eviction of the tenant.

Security Deposits:

Landlords may try to withhold security deposits for repairs or unpaid rent, while tenants may argue that the security deposit was not used appropriately. Nowadays, landlords demand huge amounts of money in security disputes to avoid such disputes in the future. At the start of a tenancy, the landlord may ask the tenant to provide a security deposit as a guarantee for rent payment and property maintenance. The amount of the security deposit and the conditions for its return should be clearly defined in the leave and lease agreement. Property damage often, the Tenant's mishandling of the landlord's property can lead to damage and give rise to disputes between the two, as there have been numerous occurrences of such instances. Usually, if the landlord agrees to resolve this issue, he will demand the tenant to pay the repair costs incurred by the damage. Nonetheless, if the tenant refuses to take responsibility for the damage, denies giving the repair costs, and asserts that the damage was not caused by her/his carelessness, a serious dispute will arise

Privacy and Access:

Privacy and access in a rental house in India are important considerations for both the tenant and the landlord. While the property belongs to the landlord, a tenant has the right to acquire easements once he or she takes possession of the property. Tenants have the right to privacy and security in their rental property, which means that landlords must respect the tenant's right to privacy and not intrude unless it is necessary. It is infringing on the tenant's right to privacy and his right to easement if the landlord enters the premises now and then or suddenly without serving any reasonable notice. This includes but is not limited to entering the property without permission, taking photographs without consent, and sharing personal information with third parties. Access is also an important consideration in a rental house in India. Landlords must provide tenants with access to the property, including keys and locks, and should ensure that common areas are adequately monitored and maintained. Furthermore, tenants should expect their landlords to respond to maintenance requests promptly.

Subletting

Subletting is a common practice in India, whereby a tenant rents out part or all of the property they have been renting to another individual, without the knowledge or consent of the landlord. This practice is generally done without the landlord's permission and can lead to several issues. First, subletting can lead to a violation of the rental agreement between the landlord and the tenant, resulting in the tenant being evicted from the property.Second, it may also result in an additional financial burden on the tenant since they may be responsible for paying the rent of the subletting tenant if they fail to do so. Finally, it may also lead to disputes between the landlord and the tenant regarding the condition of the property, as well as the payment of rent.

Unauthorized Alterations:

Doing alterations in your rental house outside the permitted capacity is called unauthorized alterations. Often it is seen tenants make unauthorized alterations without the landlord’s permission, such as painting the walls, changing fixtures, or making structural changes and when landlords find that their leased property has been changed without their consent, affecting the value of the property, it will be a matter of dispute or potential legal issues. Both tenants and landlords need to be aware of their rights and responsibilities when it comes to unauthorized alterations. If the tenants wish to get any modifications in the property they should always seek the consent of the owner, while the landlords should make sure that they understand the terms of the rental agreement and take action in case any unauthorized alterations are done to their property.

Illegal Activities:

Rental properties should always be used for the purpose they are being rented for. It is strictly prohibited for tenants to engage in any illegal or unlawful activity on the property. As a result, the landlord is always in the driver's seat and tenants can forfeit their security deposits.

SHORTCOMINGS IN THE TRADITIONAL LITIGATION SYSTEM

Traditional litigation includes approaching a civil Court for getting a decree. Before rise of ADR, the landlords or the tenants had to knock the doors of the jurisdictional civil Courts to seek remedy against the other party. A suit is filed to that effect. After pleadings and trial, the court would decide in favour of either party. However, it is to be noted that, mere decree is not enough. After the judgment and decree have been passed, the decree-holder must approach an executing court seeking to execute the decree passed by the Trial Court.

Duration of the civil litigation is one of the major shortcomings in the traditional litigation system. When a suit would be decreed is an unanswerable question. This is because, the civil Courts are already burdened with voluminous matters for adjudication.

In order to lessen the burden of Civil Courts, each State enacted their respective tenancy laws under which separate Courts were established to adjudicate upon matters involving tenancy disputes. However, even after different States established Rent courts under their respective tenancy statutes, this situation did not change. The Rent courts also have to resort to complex procedures before passing the final order/decree. All the difficulties faced in a regular Civil Court started becoming common in these special Courts too.

In these circumstances, the need for out of court settlement is heavily felt. Considering the nature of tenancy disputes and the nature of rights involved therein, the authors suggest that resorting to 'out of court settlement' will be the best possible way to resolve such disputes in a peaceful manner, that will preserve the cordial relationship between the landlord and the tenant.

APPLICATION OF ADR MECHANISMS IN TENANCY DISPUTES

At the very outset, it must be noted that settling of disputes outside the court must not be construed to be demeaning the powers of the Courts. It should be seen as a way to lessen the burden of the Courts. The Code of Civil Procedure, 1908 recognises the need for out-of-court settlement. Section 89 of the CPC states that a Court may refer a matter to arbitration, conciliation, mediation or judicial settlement including Lok Adalat.

I. Arbitration: In India, arbitration proceedings are governed by the Arbitration and Conciliation Act, 1996. Part I of the Act deals with Arbitration. It is a formal adjudicatory process where by a arbitrator is appointed to hear the matter and appreciate evidence. After hearing the parties, the arbitrator gives his decision called the award.

Tenancy disputes can be referred to arbitration by the Courts. Arbitration makes it simpler and easier to resolve the disputes between the landlords and the tenants. Claims relating to payment/arrears of rent are best suitable for adjudication under arbitration. This is because, rent matters are to be adjudicated on the basis of ascertainment of claims. Arbitration involves placing of claim before the arbitration tribunal and adjudication of the claim.

The Hon'ble Supreme Court of India in ***Vidya Drolia vs Durga Trading Corporation,*** ruled that tenancy disputes are arbitrable unless protected by special laws and under special tribunals. The Court observed that tenancy matters are not action in rem but action in personam. They are governed under the Transfer of Property Act, 1882 and therefore, there is no bar in referring the matter to arbitration.

Under the 1996 Act, a brief arbitration process.

1. **Agreement to arbitrate:** A dispute can only be resolved through arbitration if all parties to it consent to that course of action. A contract's clause or a separate agreement (Section 7) may contain a provision that accomplishes this.
2. **Appointment of the arbitrator:** The arbitration will be conducted by one or more arbitrators chosen by the parties. The court may be consulted for advice (Section 11) if the parties are unable to agree on an arbitrator.
3. **Commencement of the arbitration process:** According to Section 21 of the Arbitration Act, the respondent must receive the request to submit the matter to arbitration no later than the date on which the arbitration process officially begins.
4. **Procedure management:** The arbitrator(s) oversee the case management and render a judgement. The proceedings might be conducted in a way that is agreed upon by the parties and are less formal than court proceedings (Section 19).
5. **Award:** The decision reached by the arbitrator(s) in the dispute is referred to as an award. According to Section 31, the award is enforceable in court.
6. **Court involvement:** Parties may ask the courts to intervene in the arbitration process in certain situations, such as when they need temporary relief (Section 9) or to vacate an award (Section 34).

The author opines that though arbitration is one of the most effective means of resolving disputes out side the court, it has proved to be a costly affair and suitable for high value commercial transactions only. The parties have to pay the fees to the arbitrator, as prescribed by the Court. Likewise, the cost of hosting the proceedings in the specially established arbitration centers are also borne by the parties only. Moreover, procedures similar to that of a Civil Court, like appreciating evidence, formal adjudication, passing of formal award and the award being binding on the parties, are applied in the arbitral tribunal. All these procedures make the proceedings an adversarial one and many a times does not bring a peaceful and amicable conclusion. This makes it a technical process, thereby making it to look similar to a Civil Court. Moreover, since there is provision for setting aside arbitral awards, under Section 34 of the Act, majority of the cases come back to the Courts.

The Hon'ble Supreme Court in ***Guru Nanak Foundation V. Rattan Singh & Sons***[1], made the following observations:

"Interminable, time consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal more effective and speedy for resolution of disputes avoiding procedural claptrap and this led to Arbitration Act, 1940. However, the way in which the proceedings under the Act are conducted and without an exception challenged in the courts has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Informal forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the court been clothed with 'legalese' of unforeseeable complexity."

II. Conciliation: Conciliation is a mechanism of ADR whereby disputes between the parties are resolved, with the assistance of a neutral third party called the *Conciliator*, to arrive at an amicable solution. It is the prime duty of the conciliator to facilitate communication between the parties, avoid misunderstandings, and identify areas of grievance and suggesting an amicable solution. The aim of conciliation is to help the parties arrive at a solution that meets their needs and interests, rather than imposing a decision on them. Conciliation is often used as an alternative to litigation or arbitration, as it is a faster, less formal, and less expensive way of resolving disputes. Conciliation is

[1]Guru Nanak Foundation V. Rattan Singh & Sons (1981) 4 SCC 634

governed under Part III of the Arbitrartion and Conciliation Act, 1996[2]. Section 61 of the Act states that conciliation shall be applicable only to legal relationships, whether contractual or not. Cases may be referred to conciliation only with the consent of both the parties.
Tenancy disputes including maintanance and repairs, and security deposits can be referred to conciliation. It gives the landlords and the tenants to settle the matter with a mutually agreeable solution.

Brief Conciliation Process under the 1996 Act

1. Commencement of proceedings: Under Section 62 of the 1996 Act, either party must send a written representation to the other party, inviting him to conciliation. The other party mus accept the invitation to conciliation within thirty days of sending the notice. If the said notice is not accepted within the specified time, it shall be considered as invitation not accepted.

2. Appointment of conciliators: Section 64 of the Act is the provision for appointment of conciliators. The parties are free to appoint any person as a conciliator.

3. Submission of written statement to the conciliator: The conciliator may seek for written submissions from both the parties to the conciliation, about the facts relating to the case. Both parties must necessarily submit written statements on their behalf, to the conciliator. A copy of the written statement must be sent to the other party also.

4. Conduct of the conciliation proceedings: Sections 67(3) and 69(1) are the procedural provisions governing the conduct of conciliation proceedings. A conciliator may decide to talk to the parties oraly or through written communication. He may also meet the parties separately or together. He may conduct the proceedings in a manner in which he deems fit and proper to the case in hand.

5. Administrative assistance: Section 68 of the Act deals with administrative assistance. Under this provision, the parties or the conciliator himself may seek administrative assistance from any institution or a person if required. In order for seeking for administrative assistance, the consent of the parties are required.

6. Suggestions by parties for settlement of dispute: Section 72 of the Act states that the parties may, either at their own instance or as and when required by the conciliator, submit suggestions to the conciliator for the speedy settlement of the disputes.

7. Settlement Agreement: When the conciliator is of the opinion that there is possibility of settlement, he shall formulate the settlement agreement and submit them to the parties for their consideration. If all the parties assent to the agreement, it shall become final and binding on the parties.

The settlement agreement approved by the conciliator has the same status and effect which an arbitral award passed under Section 30 of the Act, shall have.

The author opines that conciliation can be an effective means for resolving tenancy disputes. The reason behind this is that a court can refer a matter to conciliation only if both the parties consent to the same. Since the parties have showed their willingness to settle the matter outside the Court, there are high chances of amicable settlement of the matter. And since the outcome is binding on the parties, failure of conciliation becomes a rare phenomenon.

III. <u>Mediation</u>: Mediation is perennial and omnipresent. Mediation is an ADR mechanism in which the disputes between the parties are resolved with the assistance of a neutral party, called the 'mediator'. It is the most informal method of resolving disputes outside the Court. Mediation, unlike arbitration and conciliation, is not an adversarial ADR. There is no contest between the parties. It allows the parties to arrive at a conclusion they mutually agree upon, which helps in resolving the disputes peacefully and amicably. It is a win-win situation aimed at. Mediation in India, is not governed by any law for time being in force. Generally, matters that could be tried as summary trials are referred to mediation by the Courts. The outcome of mediation, however, is not binding on the parties. There are Mediation Centers established at the district level. Every High Court in India have their own rules to govern Mediation. Trained mediators are appointed by the respective State Governments upon recommendations made by the High Courts in this regard. There is no specific process or procedure to be followed in mediation. It is the free will of the parties to appear before the mediator, either in person or through their counsel.
Mediation is best suitable for all cases that involve personal relationships and right in personam, where the aim is to preserve the relationship and to prevent adversarial litigation. The author opines that mediation is the best suitable ADR mechanism for tenancy disputes as it involves both contractual and personal relationship between the landlord and the tenant.
A matter can be referred to mediation if there is no consensus between the parties in opting for other mechanisms. It is the discretionary powers of the Court.

<u>CONCILIATION AND MEDIATION: SAME OR DIFFERENT?</u>

The author has referred to the article, "Mediation — its Importance and Relevance" by Hon'ble Justice R.V. Raveendran, former Judge, Supreme Court of India[3], in this regard.
His lordship, in the article, has briefly stated the difference between conciliation and mediation. He states states as follows:

"In other words, a conciliation is a negotiation process commenced with the consent of parties, where the conciliators are appointed by the parties themselves, under Section 64 of the Arbitration and Conciliation Act, 1996. When a settlement is arrived at by conciliation, it will have the status of an executable decree under Section 74 of the Arbitration and Conciliation Act, 1996. On the other hand, if a court refers a case to a mediation centre or a third party, to enable the parties to negotiate with the assistance of a neutral third party, the ADR process is a mediation. In mediation, the reference is by the court to the mediation centre or a mediator, either with or without the consent of the parties. In a mediation, the court retains control over the entire process and consequently whatever settlement is arrived at the mediation, is placed before the court and the court makes an order or decree in terms of the settlement."

[2]Arbitration and Conciliation Act, 1996 (Act 26 of 1996).
[3] 2010 PL October 10

LANDMARK JUDGMENT

The Hon'ble Supreme Court of India in ***M/s. Afcons Infra Ltd. & Anr vs M/s. Cherian Construction Company Ltd. And Ors.***[4]held that except those cases which are not suitable for being referred to ADR, Courts must invariably refer all other matters to ADR, as mandated under Section 89 read with Order X Rule 1A of the CPC.

The Court laid down a non-exhaustive list of cases which are suitable and not suitable for being referred to ADR. The relevant paras are extracted hereunder.

"27.The following categories of cases are normally considered to be not suitable for ADR process having regard to their nature :

(i) Representative suits under Order 1 Rule 8 CPC which involve public interest or interest of numerous persons who are not parties before the court. (In fact, even a compromise in such a suit is a difficult process requiring notice to the persons interested in the suit, before its acceptance).

(ii) Disputes relating to election to public offices (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, association etc.).

(iii) Cases involving grant of authority by the court after enquiry, as for example, suits for grant of probate or letters of administration.

(iv) Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion etc.

(v) Cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against government.

(vi) Cases involving prosecution for criminal offences.

28.All other suits and cases of civil nature in particular the following categories of cases (whether pending in civil courts or other special Tribunals/Forums) are normally suitable for ADR processes :

(i) All cases relating to trade, commerce and contracts, including

- disputes arising out of contracts (including all money claims);

- *disputes relating to specific performance;*
- *disputes between suppliers and customers;*
- *disputes between bankers and customers;*
- *disputes between developers/builders and customers;*
- *disputes between* ***landlords and tenants****/licensor and licensees;*
- *disputes between insurer and insured;*

(ii) All cases arising from strained or soured relationships, including

- *disputes relating to matrimonial causes, maintenance, custody of children;*
- *disputes relating to partition/division among family members/co-parceners/co-owners; and*
- *disputes relating to partnership among partners.*

(iii) All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes, including

- disputes between neighbours (relating to easementary rights, encroachments, nuisance etc.);

- *disputes between employers and employees;*
- *disputes among members of societies/associations/Apartment owners Associations;*

(iv) All cases relating to tortious liability including

- *claims for compensation in motor accidents/other accidents; and*

(v) All consumer disputes including

- *disputes where a trader/supplier/manufacturer/service provider iskeen to maintain his business/professional reputation and credibility or `product popularity.*

The above enumeration of `suitable' and `unsuitable' categorization of cases is not intended to be exhaustive or rigid. They are illustrative, which can be subjected to just exceptions or additions by the court/Tribunal exercising its jurisdiction/discretion in referring a dispute/case to an ADR process."

[4]M/S.Afcons Infra. Ltd. & Anr vs M/S.Cherian Varkey Constructions Co. Ltd and Ors (2010) 8 SCC 24

The Court also clarified as to how to decide the appropriate ADR process for the cases. It was ruled that the Civil Court must explain the choices available to the parties and seek their consensus. If there is no consensus arrived at, the court may proceed to choose the process.

The Court summarised the procedure to be adopted by the Courts under Section 89 of the CPC. The first step is to ascertain whether the case is suitable for being referred to ADR or whether it falls under the excluded category. If the later is found, the Court may proceed with the matter. If the case is found suitable for ADR reference, then, the Court should explain the choice of five ADRs to the parties.

The next step is to ascertain their willingness to go for arbitration. If not their willingness for conciliation. If the parties do not agree for the both, then the Court may exercise its discretion to refer the matter for any of the other three processes.

CONCLUSION

The author humbly opines that Alternate Dispute Resolution is the best way of resolving disputes. Tenancy disputes, straining the personal relationship between the landlord and the tenant, can be more effectively resolved without rupturing the rapport between the parties, when referred to ADR. The author opines that arbitration, conciliation and mediation being the three main pillars of ADR are the best suitable mechanisms through which tenancy disputes could be resolved. The author states that opting for 'out-of-court' settlement does not demean the powers and authority of the Courts. The ADR mechanisms have been provided only to reduce the burden of the Courts thereby enhancing the process of justice delivery. The legal system in India recognises ADR and the discretion to refer a matter to ADR has been vested with the Courts. Section 89 of the Code of Civil Procedure, 1908, gives the Court, the power to refer a matter to arbitration, conciliation, mediation or Lok Adalat, when it is satisfied that the matter is best suitable . *Justice delayed is justice denied.* ADR mechanisms are spearheaded to overcome the delayed judicial processes and to deliver speedy justice. Prolonged dispute between the landlord and the tenant does not only put them in an unpleasant atmosphere but also acts as a hurdle in future tenancy agreements. The landlords might be reluctant in letting the premises out for lease. The tenants might be adamant in their claim before vacating the premises. In order to avoid all such unwanted scenes, ADR acts as a remedy-giver to those landlords and tenants who are in conflict with each other. It is less complex, less expensive, less time consuming and more flexible than the traditional litigation. The parties are free to discuss among themselves to arrive at a mutual conclusion. This way, it helps in preserving the landlord-tenant relationship and also nurtures it.