



Litigation & Mediation: Costing & Time Analysis

This note presents a comparison of the cost and time spent while resolving a dispute in Mediation vis-à-vis Litigation. It follows the trajectory of a typical money recovery case of INR 35 lakh in litigation and mediation.

The comparison is from the personal experience of a Senior Mediator at CAMP and Litigating Advocate at Menon & Menon Associates. Ms. Menon is an experienced legal practitioner. She considers her legal fees as falling midway in the spectrum of legal fees. The mediation fees presented are also indicative of her typical fees which falls midway in the spectrum of mediator fees.

MEDIATION

Mediation is a voluntary process, where parties have autonomy over deciding the final outcome. Although there is no guarantee of a resolution, studies show that 80% of privately mediated cases are settled and most of them are resolved in a duration of 8 to 10 hours.

Average time spent on a Mediation – 10 hours to 15 hours

Average fees – INR 50,000 Mediator fee + INR 10,000 administrative fee

Total mediation fees – INR 60,000 (30,000 per party)

+

Lawyer's fees for representation in mediation paid separately by each party could be budgeted at around INR 75,000

Total Cost to each Party INR 1 Lakh

LITIGATION

The outcomes of litigation are unpredictable and presents numerous possibilities. We attempt to outline the various scenarios and track the typical journey of a money recovery case from filing to completion.

SCENARIO 1:

Plaintiff gets a favourable order at Trial Court and the opposite party does not appeal and pays up



- Court Fee: INR 1,50,000 –Paid by the plaintiff at the time of filing of suit. This is recovered from the Defendant as costs awarded by the Court.
- Legal fees – INR 2,00,000 for each party
- Average time spent at lower court – 2.5 years to 3 years

Total Cost to Plaintiff	Total Cost to defendant
INR 2 lakh (legal fees)	INR 3.5 lakh (legal fees + court fees reimbursed to plaintiff) + interest awarded by court

SCENARIO 2:

Plaintiff gets a favourable order and the opposite party does not appeal BUT refuses to comply with the order and does not pay.

- Plaintiff may file execution proceedings for recovery of the amount.
- Legal fees – INR 1,00,000 per party + incidental expenses (INR 25,000 approx.) for decree holder.
- Average time spent on execution proceedings – 1.5 years.

Total Cost to Plaintiff – INR 4.75 lakh (Find break-up of costs below)	Total Cost of Defendant – INR 3 lakh (Find break-up of costs below)
INR 1.5 lakh (court fees which has not yet been reimbursed by the defendant although there is a favourable trial court order)	
INR 2 lakh (legal fees for trial court)	INR 2 lakh (legal fees for trial court)
INR 1.25 lakh (legal fees for Execution Petition + Incidental expenses)	INR 1 lakh (legal fees for Execution Petition)



Total Time Spent by Plaintiff	Total Time Spent by Defendant
3+ 1.5= 4.5 years	3+ 1.5=4.5 years

SCENARIO 3: (Most Likely Scenario)

Plaintiff gets a favourable order and the Defendant files an appeal.

- For filing an appeal, it is mandatory that the defendant (now the Appellant) deposits 50% of the amount (decreed to be paid to plaintiff) in court.
- Legal fees on average – INR 2,50,000 per party
- Avg. time spent on this appeal proceedings – 4 years

Total Cost to Plaintiff – INR 6 lakh (Find break-up of costs below)	Total Cost to Defendant/Appellant – INR 22 lakhs (Find break-up of costs below)
INR 1.5 lakh (court fees which has not yet been reimbursed by the defendant although there is a favourable trial court order)	50% of INR 17.5 lakh + Interest ordered (filed with the court for the filing of appeal)
INR 2 lakh (legal fees for trial court)	INR 2 lakh (legal fees for trial court)
INR 2.5 lakh (legal fees for appeal)	INR 2.5 lakh (legal fees for appeal)
Time Spent by Plaintiff	Time Spent by Defendant
3+4= 7 years	3+4=7 years



SCENARIO 4:

Plaintiff gets an unfavourable order from the lower court (claim of INR 35 lakh denied) and files an appeal before the higher court.

- Legal fees – INR 1, 50,000/- per party
- Avg. time spent on this appeal proceedings – 4 years

Total Cost to Plaintiff / Appellant– INR 5 lakh (Find break-up of costs below)	Total Cost to Defendant/Respondent – INR 3.5 lakh (Find break-up of costs below)
INR 1.5 lakh (court fees)	
INR 2 lakh (legal fees for trial court)	INR 2 lakh (legal fees for trial court)
INR 1.5 lakh (legal fees for appeal)	INR 1.5 lakh (legal fees for appeal)
Total Time Spent by Plaintiff	Total Time Spent by Defendant
3+4= 7 years	3+4=7 years

SCENARIO 5:

Appeal is filed in the Supreme Court by party who obtains the unfavourable order in the High Court

Legal Fees for Supreme Court lawyer(s) – INR 6-10 lakh

Legal Fees for Briefing Counsel – INR 2.5 lakh

Additional expense (travel and stay in Delhi) for briefing counsel – INR 2 lakh

Average time spent on SC proceedings - 7 years



Total Cost to Plaintiff / Appellant– INR 19 lakh (Find break-up of costs below)	Total Cost to Defendant / Respondent – INR 17.5 lakh (Find break-up of costs below)
INR 1.5 lakh (court fees)	
INR 2 lakh (legal fees for trial court)	INR 2 lakh (legal fees for trial court)
INR 1.5 lakh (legal fees for appeal in HC)	INR 1.5 lakh (legal fees for appeal in HC)
*INR 14 lakh (Legal Fees for appeal in SC)	* INR 14 lakh (Legal Fees for appeal in SC)
Total Time Spent by Plaintiff	Total Time Spent by Defendant
3+4+7=14 years	3+4+7=14 years

ADDITIONAL POINTS TO CONSIDER:

1. One case may result in several other interim applications and sometimes even other connected cases being filed in court. The multiplicity of cases can be both, civil and criminal.

For example: In a money recovery, there could be a connected case of cheque-bouncing, which is a criminal case. The criminal case can take 7-8 years in court, costing parties an additional approximate cost of INR 1,50,000/- per party.

2. Every case will have additional multiple interim applications (IA) filings. Typical filings with average cost for filing include:



IA for Limitation – INR 30,000

IA for Jurisdiction – INR 30,000

Counter Claims – INR 30,000

Injunction – INR 75,000

3. There are multiple layers of appeal within each Court i.e. District Court/High Court before an appeal can be filed. These can substantially add to the time and cost.

CONCLUSION:

In summary,

As mentioned above, in the most likely litigation scenario (i.e. Scenario 3):

The total costs to plaintiff is INR 6 lakh

The total costs to defendant / appellant is INR 22 lakh

The average time spent is 7 years

Whereas,

In a Mediation, if a settlement is reached, which is based on parties' mutual terms and conditions, there is no appeal, and hence:

The total costs to plaintiff is INR 1 lakh

The total costs to defendant is INR 1 lakh

The average time spent is 10-15 hours