

The Psychology Of Litigation

Introduction

In civil cases, two major aspects of dispute resolution necessarily show up for consideration – ***Settlement and Litigation***. The most common form of dispute resolution is litigation. Litigation is initiated when one party files suit against another. The proceedings are very formal and are governed by rules, such as rules of evidence and procedure. An impartial judge based on the facts, evidence and applicable laws decides outcomes and is binding; however, both parties have the right to appeal to a higher court.

Litigation is typically adversarial in nature. Due to the adversarial nature of litigation, parties may opt for Out-of-Court Settlement by opting to solve their disputes privately. A litigant should do his best to avoid litigation wherever and whenever practicable. Whenever a controversy will admit fair settlement, the litigant should avoid or end the litigation. A litigant should explore all avenues to settle without going to court or to settle out of court. It is only when all avenues for settlement have closed that a suit should find its way to court.

Just about any legal dispute will present a litigant with many different options and choices, a litigant should always perform due diligence in evaluating every potential option and outcome at every stage. A litigant should keep in mind that the best method to evaluate his legal options is to engage the services of a lawyer, who will work to keep him informed and assist in choosing the most advantageous option.

This article examines the psychological factors in litigation, which should compel a lawyer to advise his client to explore all avenues for possible settlement before proceeding to court.

Psychology of Litigation

In civil proceedings, litigation means having recourse to the ordinary courts of appropriate jurisdiction for the resolution or determination of conflict, controversy or dispute between two or more persons as to their respective legal rights, duties or status. If that is all that litigation is, one may ask, why all the hue and cry about settlement first and litigation only as a matter of last resort? Why not go straight to court and have those legal rights decided? The answers to these questions are multitudinous, but they can be summarized in one phrase – ***The Psychology of Litigation***, which sparks fear in the average person who was forced or ill advised to have recourse to litigation in a matter that he can settle through Negotiation, Mediation or Arbitration.

The Psychology of Litigation is often made of several factors and will vary depending on the nature of the dispute. On a wide interpretation, psychology of litigation is made up of all of the factors that need to be considered when deciding whether to file or defend proceedings in the court. Some of these factors include the fear of the unknown, the fear of uncertainty, the fear of prolonged suspense, the fear of publicity, expenditure, bitterness, acrimony and disharmony, amongst others.

The Fear of the Unknown

Fear of the unknown is a powerful and paralyzing force. To many people, the legal system is an enigma that contains countless unknowns. Understandably, there can be a lot of fear and anxiety involved when one is thrust into a position that requires them to navigate the complex legal system. This fear may be compounded when terms like litigation are thrown into the mix. Nevertheless, when terms like Alternative Dispute Resolution such as Arbitration, Mediation or Negotiation are thrown into

the mix, they may serve a purpose and, when properly utilized, provide useful tools to quickly and effectively resolve legal disputes.

The courts and the entire legal process may constitute a mystery of technicalities to a man on the street. The awe that surrounds court premises, the gun-carrying police officers, the strange robes worn in some courts, the strict melancholic atmosphere creating an overcast around most court premises, amongst others are a distance way from what the ordinary man wants to encounter.

The Fear of Uncertainty

Every claim contains an element of uncertainty, the fear of what might happen at trial, poor performance of the star witness, tendering of document. It may be that the judge simply prefers the evidence of the other side's witnesses to yours. There is also the possibility that the judge simply gets it wrong.

Nobody can predict what the result of a suit would be at the beginning. The very judge who is to decide the case cannot be sure what his judgment would be at the end of the day. No litigant or Counsel can say for sure what would be achieved by litigation. No one loves uncertainty, and uncertainty is one thing which litigation brandishes most certainly before the face of the litigant. Litigation is a gamble, which may be orchestrated with uncertain factors, some of which may arise as a surprise to all concerned

The Fear of Prolonged Suspense

Suspense is the first by-product of uncertainty and when it is compounded by prolongation through countless adjournments, it is not funny. Yet, when one opts for litigation, one ipso facto, votes prolonged suspense and delay in adjudication.

Time is often considered one of the most precious commodities. Not only is litigation expensive but it is also time consuming. Time will need to be spent liaising with and providing instructions to the lawyer, gathering information and documents and attending trial. The bulk of the time and effort in litigation is also spent in preparing the case.

The Fear of Publicity or Appearance in Public

Many People are shy of appearing in court in front of people. They do not fancy the idea of moving from the shadow to the glare of public view. Having to discuss their personal affairs in public is, naturally not a

cherished venture for them. The situation is unpleasant in cases like matrimonial causes and associates. Every marriage or cohabitation enters a period of turbulence one time or another. Some enter it more than others do. However, that does not mean that the union has lost its right of existence or means of existence. In such cases in particular, the lawyer should inject extra effort to seek rather than destroy chances of reconciliation.

Expenditure

Litigation is an expensive occupation in terms of money, time, energy and resources, not only for the litigant but often also for his witnesses, friends and members of family. A party should also take into account the potential costs liability it would face if it lost at trial. Not only would it have its own costs to bear but a proportion of the other side cost as well.

Bitterness, Acrimony and Disharmony

The popular proverb '*We do not come out of court to continue as friends'* shows the amount of bitterness, acrimony and disharmony that frequently follow some court judgments. In every litigation, one side would emerge winner, the other loser. As the party that wins celebrates his victory, the bitterness of the vanquished gains both strength and size. In such cases victory is followed by absence of peace.

Conclusion

All these considerations and a lot more, make it reasonable to seek avenues of settling or negotiating where possible, and of litigating only as a matter of last resort. They are also the reason why many civil disputes never get near the courts. It is the duty of a lawyer to explore all chances of settlement although on the most favourable terms possible for the client. While choosing for settlement out of court, the lawyer should however bear in mind any special statutory provisions, which may apply to the case as to time limitation or the like.