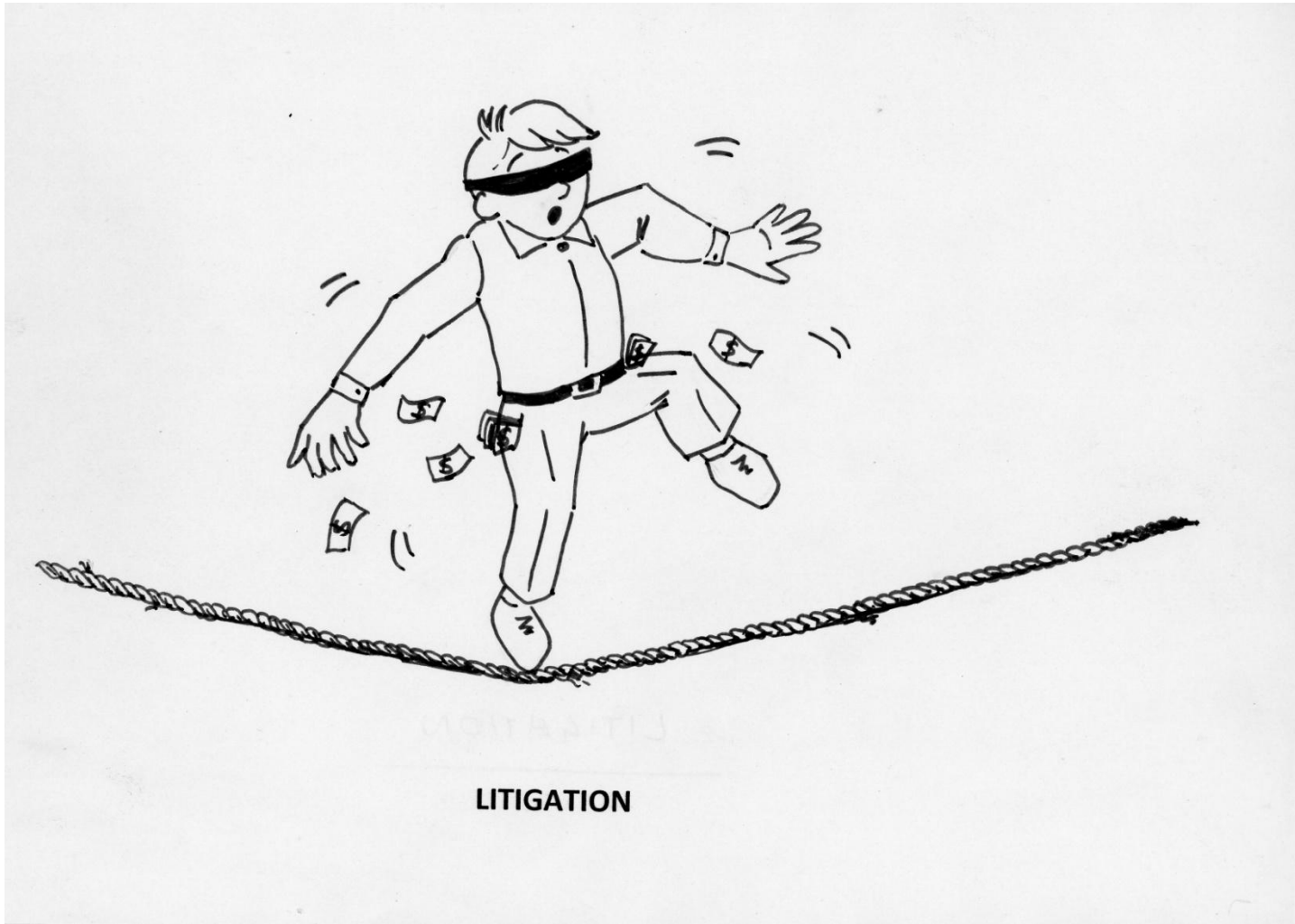
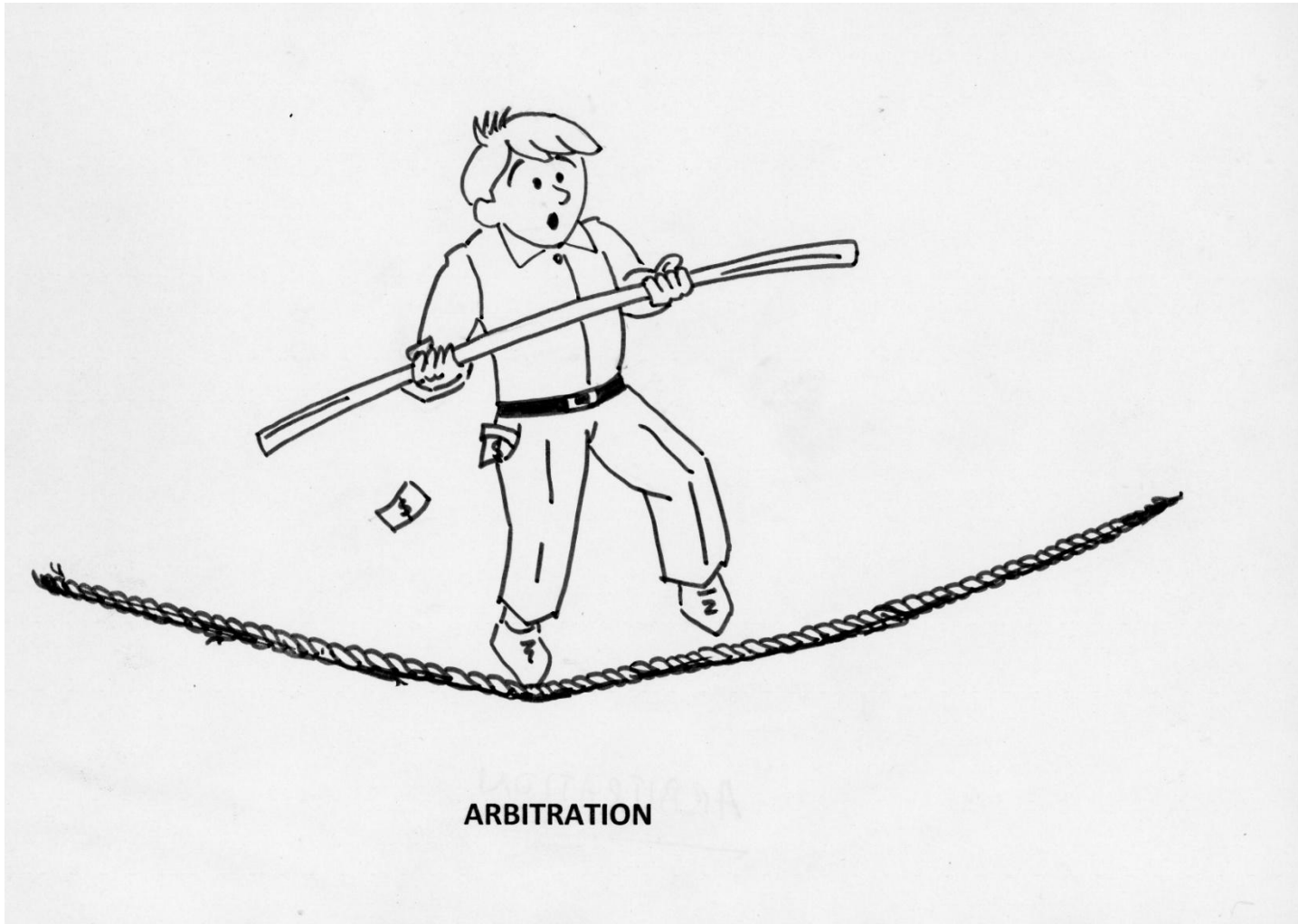


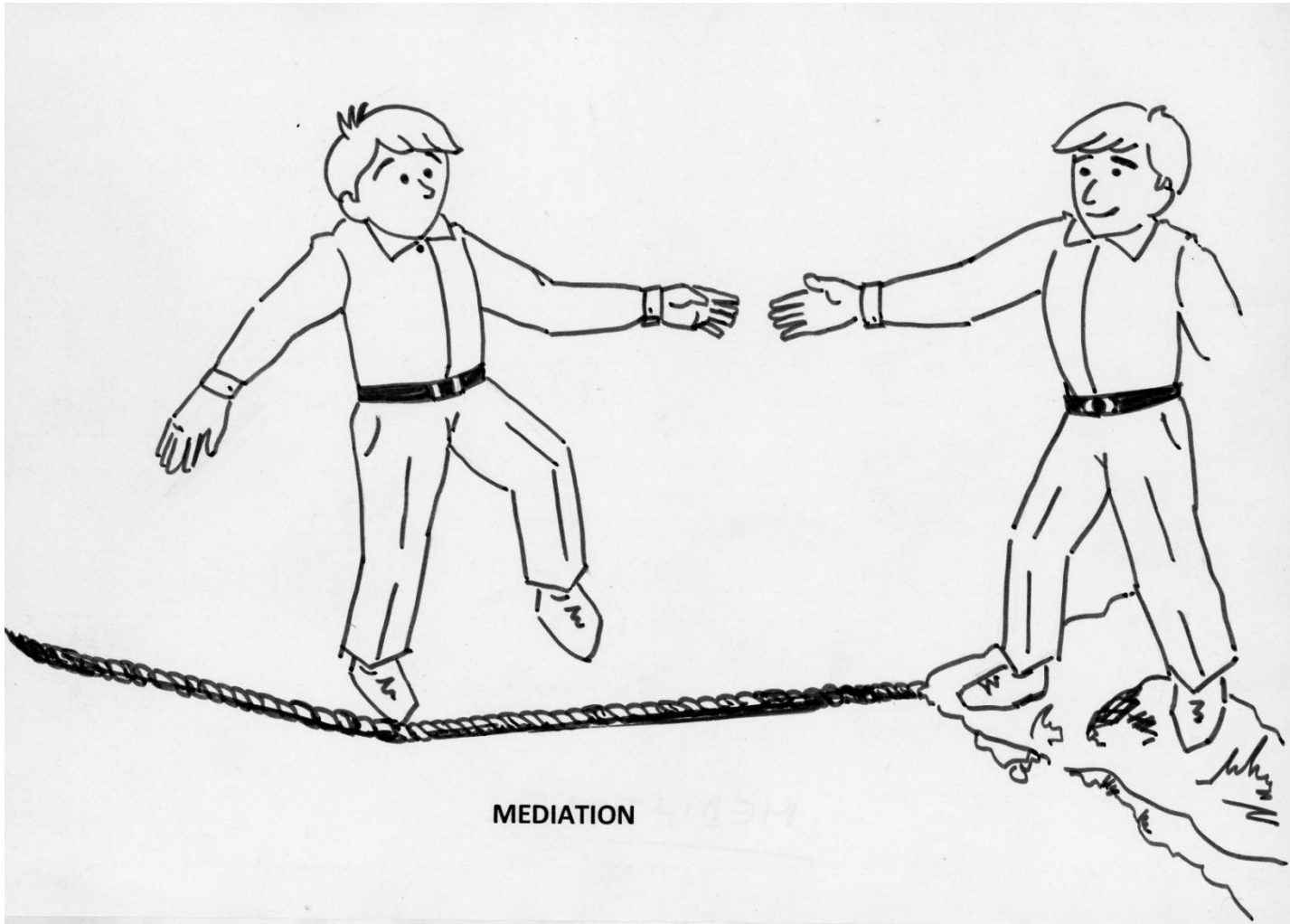
# LITIGATION



# ARBITRATION



# MEDIATION





# **WHAT ROLE HAS GOOD ADVOCACY IN MEDIATION AND ARBITRATION**

**By Rajiv Dutta, Senior Advocate**

## I. WHAT IS MEDIATION ADVOCACY:

- The term is misleading. A mediation need not be a lawyer. What it means is that a mediator should know the law or that he should be legally qualified.
- Traditionally an Advocate has to present his Client's case by marshalling the facts, evidence and the law related to the case. He then demolishes the case set up by the opponents lawyer. This leads a Judge to give a judgment.
- The traditional role then is not seeking an agreement or a settlement.
- Mediation is assisted negotiation; to negotiate and reach a deal.



## I. WHAT IS MEDIATION ADVOCACY:

- No deal can be reached by raising Arguments, it can be reached by :-
- Discussing proposals;
- exchanging views of both parties;
- By breaking communication barriers which may have developed between parties;
- Bargaining with the parties to arrive at a settlement;
- Explaining the disadvantages of adjudicating the matter before the Court;
- Time is money;
- Give a little; take a little.
- The above will disclose that Mediation has become a specialist skill.



## II. CAN THE SKILLS OF A GREAT TRIAL ADVOCATE BE USED IN THE MEDIATION ROOM

- The essence of mediation is communication
- *"The single biggest problem in communication is the illusion that it has taken place"*
  - George Bernard Shaw
- One of the advantages that a lawyer has is that he has the skill of determining the actual disadvantages of going to litigation.
- Mahatma Gandhi said :
  - " I realised the true function of a lawyer was to unite the parties driven as under - I lost nothing thereby - not even money, certainly not my soul."*



## II. CAN THE SKILLS OF A GREAT TRIAL ADVOCATE BE USED IN THE MEDIATION ROOM

- Thus a lawyer is in the best position to explain to his clients the advantages of Mediation and he can achieve this by making the Client aware of its speedy nature, being less expensive and that it will lead to maintaining good relations.
- Mediation serves the true purpose of being in the legal profession; the true purpose being conflict resolution
- A lawyer can create an atmosphere of trust/confidentiality with the client and once that is established he can work on a solution of the disputes with the Client.
- A lawyer can very successfully assist a Mediator in building consensus.





## II. CAN THE SKILLS OF A GREAT TRIAL ADVOCATE BE USED IN THE MEDIATION ROOM

- Play a major role in drafting the Settlement Agreement; essentials of the Agreement should not be missed, like who is to do what and when, etc.
- A major role that an Advocate can play is in getting the settlement enforced by legal methods and do the necessary follow up acts to do full compliance and performance.

