

THE HINDU MARRIAGE (DELHI HIGH COURT RULES), 1980

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Noti. No. 262/GAZ/OSD (R), dated 6th October, 1980- In exercise of the powers conferred by Sections 14 and 21 of the Hindu Marriage Act, 1955 (Central Act No. 25 of 1955) and all other powers enabling in this behalf, the High Court of Delhi hereby makes the following rules to regulate the proceedings under the said Act.

1. Short Title

These rules may be called the Hindu Marriage Rules, 1980.

2. Commencement

These rules shall come into force from the date of their publication in the Delhi Gazette.

3. Definitions

In these rules, unless there is anything repugnant in the subject or context-

(a) “Act” means the Hindu Marriage Act, 1955 (No.25 of 1955) as amended from time to time.

(b) “Code” means the Code of Civil Procedure, as from time to time modified or

amended.

- (c) "Court" means the Court mentioned in Section 3 (b) of the Act.
- (d) "Form" means a form appended to these rules.
- (e) "Section" and "sub-section" means, respectively, section and sub-section and sub-section of the Act.
- (f) All other terms and expressions used herein but not defined shall have the meaning, respectively, assigned to them in the Act.

4. Petitions

(a) Every petition under the Act shall be accompanied by either a certified extract from the Hindu Marriage Register maintained under Section 8 of the Act, where the marriage has been registered under the Act or in the absence of the same, an affidavit to the effect that the petitioner was married to the respondent (unless the certificate or affidavit is already on the record or is for sufficient cause dispensed with by the Court.)

(b) Every petition for divorce on any of the grounds mentioned in clauses (i) and (ii) of sub-section (1-A) of Section 13 of the Act shall be supported by a certified copy of the decree for judicial separation or for restitution of conjugal rights, as the case may be.

5. Forms of proceedings

The following proceedings under the Act shall be initiated by petitions :

- (i) under Section 9 for restitution of conjugal rights;
- (ii) under sub-section (1) of Section 10 for judicial separation;
- (iii) under sub-section (2) of Section 10 for rescinding a decree for judicial separation;
- (iv) under Section 11 for declaring a marriage null and void;
- (v) under Section 12 for annulment of marriage by a decree of nullity.
- (vi) under Section 13 for divorce;
- (vii) under Section 13-B for divorce by mutual consent;
- (viii) under Section 14 for leave to present a petition for divorce before the expiration of one year from the date of marriage;
- (ix) under Section 26 for making, revoking, suspending or varying orders and provisions with respect to the custody, maintenance and education of minor children.

6. Petition by or against a person suffering from mental disorder

A person suffering from mental disorder will be treated in all respects as a person of unsound mind for the purpose of Order XXXII of the Code.

7. Contents of petition

In addition to the particulars required to be given under Order VII, Rule I of the Code

and Section 20 (1) of the Act, all petitions under Secs.9 to 13 shall state—

- (a) the place and date of marriage;
- (b) whether the petitioner and the respondent were Hindu by religion at the time of the marriage and whether they continue to be so up to the date of filing of the petition;
- (c) the name, status and domicile of the wife and the husband before the marriage and at the time of filing the petition;
- (d) the address where the parties of the marriage reside at the time of the presentation of the petition and last resided, together;
- (e) the names of children, if any, of the marriage, their sex and their dates of birth or ages;
- (f) if prior to the date of the petition there has been any proceeding under the Act between the parties to the petition, full particulars thereof;
- (g) the matrimonial offence or offences alleged or other ground, upon which the relief is sought, setting out with sufficient particularity the time and places of the acts alleged and other facts relied upon, but not the evidence by which they are intended to be proved , e.g.—
 - (i) if the petition is for restitution of conjugal rights the-date on or from which and the circumstances under which the respondent withdraw from the society of the petitioner;
 - (ii) if the petition is for a decree of nullity of marriage on the grounds specified in clauses (c) and (d) of sub-section (1) of Section 12 of the Act, the particulars of force or fraud and the circumstances in which force or fraud had been practised along with the time when the facts relied upon ~ were discovered and whether or not marital intercourse with the consent of the petitioner took place after the discovery of the said facts;
 - (iii) in every petition for judicial separation/divorce by either the husband or the wife on the ground that the other party has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse, the petitioner shall state the name, occupation and place of residence of such person or persons so far as they can be ascertained, the specific acts of sexual intercourse and the occasion when and the place where such acts were committed;
 - (iv) in the case of alleged desertion, the date and the circumstances in which it began, in the case of cruelty the specific acts of cruelty and the occasion when and the place where such acts were committed;
 - (v) in the case of unsoundness of mind or mental disorder the time when such unsoundness of mind or mental disorder began to manifest itself and the nature and the period of the curative steps taken;

(vi) in the case of virulent and incurable form of leprosy or venereal disease in communicable form, when such ailment began to manifest and the nature and the period of the curative steps taken;

(vii) if the petition is on the ground specified in Section 13 (1), the date of renunciation and the particulars of the religious order which the respondent has entered into;

(viii) if the petition is on the ground specified in Section 13 (1) (vii), the date and the place where “the respondent was last seen or heard of alive and the steps, if any, taken to ascertain his or her whereabouts;

(ix) where the petition is founded on the ground of rape or sodomy, the occasion when, the place where and the names and the addresses of persons with whom, such acts were committed. In case of conviction for committing rape or sodomy, the particulars thereof;

(x) where the petition is founded on the ground of bestiality, the occasion when, the place where and the particulars, of the beast with whom, the husband had been guilty of bestiality;

(xi) in the case of divorce under Section 13(2) (xiii) of the Act, particulars of the decree under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 or of order under Section 125 of the Code of Criminal Procedure, 1973 (or under the corresponding Section 488 of the Code of Criminal Procedure, 1998), together with an affidavit that since the passing of such decree, or order, cohabitation between the parties has not been resumed for one year or upwards;

(xii) in the case of divorce under Section 13(2) the date and the place of birth of the wife together with the date and the place of reputation and its mode;

(h) the property mentioned in Section 27 of the Act, if any; (i) the relief or reliefs, prayed for.

8. Affidavit of non-collusion

Every petition excepting petitions under Section 11 shall be accompanied by an affidavit to the effect that it is not presented or prosecuted in collusion with the respondent. In the petition seeking judicial separation/divorce on the ground that the party has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse, it will also state that the petitioner has not, in any manner, been accessory to or connived at the acts complained of.

9. Affidavit of non-condonation

Where the ground of the petition is the ground specified in clause (i) of sub-section (1) of Section 13 or where the ground for the petition is cruelty, the petition shall be accompanied by an affidavit to the effect that the petitioner has not condoned the act or acts complained of or not in any manner condoned the cruelty.

10. Affidavit of non-cohabitation

Every petition under Section 13 (1) (i) of the Act shall be accompanied by an affidavit made by the petitioner that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties.

11. Affidavit of non-restitution of conjugal rights

Every petition under Section 13 (1-A) (ii) of the Act shall be accompanied by an affidavit made by the petitioner of the fact that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

12. Necessary parties

(a) In every petition for divorce/judicial separation on the ground that the respondent has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse, the petitioner shall make the alleged adulterer or adulteress a co-respondent to the petition. The petitioner may, however, apply to the Court, on application supported by affidavit for leave to dispense with the joinder of such person as a co-respondent on any of the following grounds;

(i) that the name of such person is unknown to the petitioner although he/she has made due efforts for discovery;

(ii) that such person is dead;

(iii) that the respondent being the wife is leading a life of a prostitute and that the petitioner knows of no person with whom voluntary sexual intercourse has been committed; or

(iv) any other reason that the Court considers sufficient.

(b) In every petition under Section 13 (2) (i) of the Act the petitioner shall make the “other wife” mentioned in that Section a co-respondent.

(c) In every petition under Section 11 of the Act on the ground that the condition in Section 5 (i) is contravened the petitioner shall make the spouse alleged to be living at the time of the marriage a co-respondent.

13. Application for leave under Section 14 of the Act

(1) In support of an application for leave under Section 14 of the Act there shall be filed an affidavit by the applicant stating the grounds on which the application is made, the particulars of the exceptional hardship or exceptional depravity alleged, whether there has been any previous application under the said Section, whether there are living any children of the marriage, if so, the names and dates of birth or ages of such children, their sex, where and with whom they are residing, whether any and, if so, what attempts at reconciliation have been made under any circumstances which may assist the Court to determine the question whether there is reasonable probability of a reconciliation between the parties.

(2) Notices of the application shall be given to the respondent who may contest the

same by filing affidavit in opposition.

(3) In exceptional circumstances the Court may, if necessary, order a deponent to be cross-examined on his or her affidavit.

(4) The application shall be accompanied by the petition intended to be filed.

(5) When the Court grants leave, the petition shall be deemed to have been duly filed on the date of the said order, provided proper Court-fee thereon is paid within the time allowed by the Court.

14. Notices

The Court shall issue notice in Form 'A' accompanied by a copy of petition to the respondent and the co-respondent, if any. The notice shall require, unless the Court otherwise directs the respondent or correspondent to file his or her written statement in Court on or before the date fixed in the notice.

15. Written statement in answer to petition

Where a counter-claim is made in terms of Section 23-A, it shall comply with the Rules applicable to petitions on the like grounds.

16. Application for alimony and maintenance

Every application for maintenance pendente lite, permanent alimony and maintenance, or for custody, maintenance and education expenses of minor children, shall be supported by an affidavit and shall state the average monthly income of the petitioner and the respondent, the sources of their income, particulars, of other movable and immovable property owned by them jointly or severally, the details of their liabilities, if any, along with the number of their dependents, if any, and the names and ages of such dependents.

17. Supply of certified copy of the decree to the parties

(1) In every cause where a marriage is dissolved by a decree of divorce, the Court passing the decree shall give a copy thereof free of cost to each of the parties. The copy so supplied shall be authenticated as 'true copy' by the Court passing the decree.

(2) The Court shall maintain a register where the particulars of the decree shall be incorporated and signatures of the parties or their Advocates or agents shall be obtained in token of their having received a copy of the decree.

18. Forms

The forms given in the Appendix to these rules with such variations as the circumstances of each case may require, shall be used.