

THE SPECIAL MARRIAGE (DELHI HIGH COURT) RULES, 1979

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Noti. No. 261/GAZ/OSD (R), dated 6th October, 1980- In exercise of the powers conferred by Sections 41 of the Special Marriage Act, 1954 (Central Act, No. 43 of 1954) 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 Special Marriage Rules, 1979.

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-

(i) “Act” means the Special Marriage Act, 1954 as from time to time modified or

amended.

- (ii) "Code" means the Code of Civil Procedure, 1908 as from time to time modified or amended.
- (iii) "Court" means the Court mentioned in section 2 (e) of the Act.
- (iv) "Form" means a form prescribed in the Act or appended to these rules.
- (v) All other terms and expressions used herein but not defined shall have the meaning respectively assigned to them in the Act.

4. Petitions to be accompanied by a certificate of marriage

Every petition made under the Act shall be accompanied by a certified copy of the Certificate of Marriage entered in the Marriage Certificate Book about the solemnization of the marriage under the Act, unless the certificate is already on the record or is, for sufficient cause, dispensed with by the Court.

5. Forms of proceedings

The followings proceedings under the Act shall be initiated by petitions:-

- (i) Under Section 22 for restitution of conjugal rights ;
- (ii) Under sub-section (1) of Section 23 for judicial separation ;
- (iii) Unless sub-section (2) of Section 23 for rescinding a decree for judicial separation;
- (iv) Under sub-section 1) of Section 24 for declaring a marriage null and void ;
- (v) Under sub-section (2) of Section 24 for declaring the registration of a marriage to be of on effect ;
- (vi) Under Section 25 for annulment of marriage by a decree of nullity ;
- (vii) Under Section 27 for divorce ;
- (viii) Under Section 28 for divorce by mutual consent ;
- (ix) Under Section 38 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 purposes of Order XXXII of the Code.

7. Contents of petition

In addition to the particulars required to be given under Order VII Rule 1 of the Code and Section 32 of the Act, every petition for judicial separation, nullity of marriage or divorce shall contain the following particulars :-

- (a) The place and date of marriage.
- (b) The name, status and domicile of the wife and the husband before the marriage and at the time of filing the petition.
- (c) The address where the parties to the marriage reside at the time o the presentation of the petition and last resided together.
- (d) Where the wife petitioner invokes Section 31(2) of the Act, the address at which she

has ordinarily resided during the three years immediately preceding the presentation of the petition, and the length of her residence at each address, and the place of residence of the husband.

- (e) The names of the 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 grounds 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 society of the Petitioner.
 - (ii) If the petition is under Section 25 (ii) of the Act, whether the Petitioner was, at the time of the marriage, ignorant of the facts alleged and whether marital intercourse with the consent of the petitioner has taken since the discovery by the petitioner of the existence of the grounds for a decree.
 - (iii) If the petition is under Section 25(iii) of the Act, the parties are of coercion or fraud and the circumstances in which coercion or fraud had been practiced along with the time when the coercion ceased or the fraud was discovered and whether or not the petitioner has with his or her free consent lived with the other party to marriage as husband and wife after the coercion had ceased or, as the case may be, the fraud had been discovered.
 - (iv) If the petition is for judicial separation/divorce on the ground of adultery, the name, occupation and place of residence of adulterer/adulteress or adulterers/adulteresses, as the case may be, so far as they can be ascertained.
 - (v) If the petition is on the ground of desertion, the date and the circumstances in which it began.
 - (vi) If the petition is on the ground of cruelty, the specified acts of cruelty and the occasion when and the place where such acts were committed.
 - (vii) If the petition is on the ground 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.
 - (viii) If the petition is on the ground of venereal disease in a communicable form or leprosy, when such ailment began to manifest itself and the nature and the period of the curative steps taken.
 - (ix) If the petition is on the ground specific in clause (h) of Section 27 of the Act,

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.

- (x) If 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 bestiality.
- (xi) If the petition is for divorce under Section 27 (1-A) (ii) of the Act, the 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, 1898) together with an affidavit that since the passing of such decree or order, cohabitation between the parties had not been resumed for one year or upwards.
- (xii) If the petition is under Section 28 of the Act, the date since when the parties have been living separately and whether, or not they have been able to live together and whether the mutual agreement dissolving the marriage is verbal or evidenced by a document in writing.
- (xiii) Every petition under Chapter V or Chapter VI of the Act shall state that there is no collusion between the petitioner and the other party to the marriage.
- (i) The claim for damages, if any, with particulars.
- (j) The relief or reliefs prayed for.

8. Affidavit of non-collusion

Every petition under Chapter V or Chapter VI of the Act shall be accompanied by an affidavit to the effect that it is not presented in collusion with the respondent. If the petition is founded on the ground specified in clause (a) of sub-section (1) of Section 27, it will also state that the petitioner has not in any manner been accessory to or connived at the act or acts of sexual intercourse complained of.

9. Affidavit of non-condonation

Where the petition is founded on the ground specified in clause (a) of sub-section (1) of Section 27 of the Act or where the ground of the petition is cruelty, the petition shall be accompanied by an affidavit to the effect that the petitioner has not in any manner condoned the cruelty.

10. Affidavit in the petition on the ground of mutual consent

Where divorce is sought on the ground of mutual consent, the petition shall be accompanied by an affidavit to the effect that such consent has not been obtained by force, fraud or undue influence.

11. Affidavit of non-cohabitation

Every petition under Section 27 (2) (i) shall be accompanied by an affidavit made by the petitioner that there has been no resumption of co-habitation as between the parties to the marriage for a period of one year or upward after the passing of a decree for judicial separation

in a proceeding to which they were parties.

12. Affidavit of non-restitution of conjugal rights

Every petition under Section 27 (2) (ii) 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.

13. Necessary parties

(a) In every position 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 petition 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 an 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 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 24 of the Act on the ground that the condition specified in clause (a) of Section 4 has not been fulfilled, the petitioner shall make the spouse, alleged to be living at the time of marriage, a co-respondent.

14. Application for leave under Section 29 of the Act

(1) In support of an application for leave under Section 29 of the Act, there shall be filed an affidavit by the applicant stating the grounds on which the application is made, 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, and if so, the names and dates of birth or ages of such children, their sex where and with reconciliation have been made and any circumstances which may assist the Court to determine the question whether there is reasonable probability of reconciliation between the parties.

(2) Notice 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.

15. Notices

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

16. Counter-claim

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

17. Damages and costs against co-respondents

(1) Whenever in any petition presented by a husband, the person alleged to have committed adultery has been made a co-respondent and the charge of adultery has been established, the court may order the co-respondent to pay the whole or any part of the costs of the proceedings :

Provided that the co-respondent shall not be ordered to pay the petitioner's costs:-

- (a) If the respondent was, at the time of adultery, living apart from her husband and was leading the life of a prostitute ; or
- (b) If the co-respondent had not, at the time of voluntary sexual intercourse, reason to believe the respondent to be a married woman.

(2) The award of costs shall be in the discretion of the Court and the court shall make an order of the same while passing the decree.

(3) Where damages are claimed, the Court shall assess the same and direct in what manner the damages, if any, awarded shall be paid or applied.

(4) The Court may assess damages and made an order for payment thereof or of costs notwithstanding that the respondent or the co-respondent or both of them have remained ex parte.

18. 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.

19. Supply of certified copy of the decree of the parties

(1) In every case 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

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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 true copy of the decree.

20. Forms

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