

The Family Courts (Calcutta High Court) Rules, 1990

WEST BENGAL

India

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Rule

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The Family Courts (Calcutta High Court) Rules, 1990 By The High Court of Calcutta Appellate Side Notification No. 2072-A, dated the 19th March, 1991. - In exercise of the powers conferred by section 21 of the Family Courts Act, 1984 (No. 66 of 1984) the High Court of Calcutta hereby makes the following rules for the Family Courts in the State of West Bengal. This is in supersession of the Family Courts Rules, 1988, as published under High Court's Notification No. 1476-A dated 19.2.1988.

1. Short title, commencement and application

. - These rules may be called the Family Courts (Calcutta High Court) Rules, 1990.

2.

These rules shall come into force on the date of their publication in the Official Gazette.

3.

These rules shall apply to the Family Courts established in the State of West Bengal under the Family Courts Act, 1984.

4. Definition

. - In these rules, unless the context otherwise requires, -(a)"Act" means The Family Courts Act, 1984;(b)"Centre" means a Counselling Centre and includes office of the organisation/institution which the Counsellor represents;(c)"Court" means the Family Court established under section 3 of

the Act;(d)"Petition" shall include an application under Chapter IX of the Code of Criminal Procedure;(e)"Principal Counsellor" means the Principal Counsellor appointed by the High Court and where such Counsellor is not appointed, it shall include counsellor or counsellors as the case may be;(f)"Registrar" means Registrar appointed under the West Bengal Family Court Rules, 1994.

5. Panel of Counsellors

. - For preparing a panel of the counsellors the High Court will empanel voluntary organisations/social action groups/welfare agencies who will maintain Family Counselling Centre with minimum infrastructure within the jurisdiction of the respective Court. The names and addresses of the representatives of such approved agencies shall be empanelled by the High Court within January every year and the High Court will maintain a register of the Counsellors whose term will expire till name(s) of the successor(s) are forwarded by the organisation concerned for the subsequent year.

6. Amicus curiae

. - The court may appoint a lawyer amicus curiae to extend legal aid to the parties who will also assist the Court in the discharge of its duties as contemplated in section 13 of the Act. Institution of Proceedings And Service

7. Institution of proceedings

. - All proceedings instituted before the Family Court will be by way of a petition. However, in respect of applications under Chapter IX of the Code of Criminal Procedure, 1973, the provisions of that Code will apply.

8. Filing of petitions in duplicate

. - A petition or any other application will be filed in duplicate. One copy of such petition or application will be forwarded by the Registrar of the Family Court to the Principal Counsellor.

9. Summons to respondent

. - In all matters other than those under Chapter IX of the Code of Criminal Procedure, 1973, the writ of summons to appear and answer shall be in Form No. 1 with such variations as the circumstances of the case may require.

10. Name and address of the party to be stated in every process

. - The name and address of the party shall be stated in every Writ of Summons, Witness Summons, Interim Application Notice, Warrant and every process of the court issued at the instance of such party.

11. Summons, etc. how attested and signed

. - All Writs of Summons, Rules, Orders, Warrants and other mandatory processes shall be sealed with the seal of the court and shall be signed by the Registrar adding thereto the date of signing.

12. Sealing of summons, rules, decrees

. - The seal of the court shall not be affixed to any Writ of Summons, Rules, Order, Warrant or other mandatory process, unless the same is signed by an officer of the court to be called the Sealer and unless the name of the party is subscribed thereto. The date of the sealing shall be inserted below the signature of the Sealer.

13. Returnable date of summons

. - Unless otherwise ordered, the writ of summons shall be made returnable three weeks after the date of the filing of the petition, if the respondent resides within the local limits of the court, and five weeks after the date of the filing of the petition, if the respondent resides outside the said limits. The returnable date will be fixed on the day of the week fixed for giving directions as provided in Rule 24.

14. Returnable date of summons in petition to be on the day fixed for giving directions

. - The writ of summons shall be made returnable on the day on which the petition is to be placed on board for directions as herein provided in Rule 23.

15. Mode of service of summons

. - A writ of summons shall be served in the manner prescribed in the Code of Civil Procedure, 1908, save and except in proceedings under Chapter IX of the Code of Criminal Procedure, 1973, where the provisions of that Code will apply and such summons shall be served on a respondent personally.

16. Writ of summons and other process may be served on Saturdays, Sundays and Holidays

. - Writ of summons or other process may be served even on Saturdays, Sundays or on holidays notified by the court.

17. Copy of petition to be furnished to the respondent

. - Any respondent applying to the petitioner for a copy of the petition and exhibits annexed thereto

shall be furnished with the same but where there are several respondents, it shall be sufficient to supply one copy of the petition and exhibits to the party/parties: Provided that if the application is made after the passing of a decree in a petition, such copy need only be furnished to the respondent on payment of the copying charges.

18. Power to direct issue of fresh summons

. - Whenever upon further amendment of any writ of summons the Registrar is of opinion that a fresh writ of summons should be substituted, he shall direct it to be done and such fresh writ of summons shall be prepared by the petitioner and be examined, signed and sealed by the proper officer.

19. Proof of service of summons

. - Unless the court shall otherwise order, the service of a summons to appear and answer shall be proved by evidence showing that the summons was served in the manner provided by the Code of Civil Procedure, 1908. Such proof shall ordinarily be by the affidavit of the bailiff and (as to such matter as the bailiff cannot speak to of his knowledge) of the person who attended the bailiff for the purpose of identification at the time of service, or of such other person or persons as can speak to the identification of the person served or as to other matters necessary to be proved in respect of the service.

20. When service through Court

. - When the summons has been served through another court, the service may be proved by deposition made before the court through which the service was effected.

21. Substituted service

. - Application for substituted service of the writ of summons shall be made to the Registrar. The application shall be supported by an affidavit, and in the case of service through another court, by the deposition of the officer who attempted to make the service, and of such other person or persons as may have accompanied him for the purpose of pointing out the party to be served, stating when, where and how such service was attempted to be made. Proceedings In Court

22. Directions on the returnable date

. - On the returnable date of the summons, the petition will be placed for directions before a Judge of the Family Court to whom this work may be assigned by the Principal Judge of the Family Court.

23. Date of giving directions

. - One day in a week may be designated by the Principal Judge for giving of such directions.

24. Presence of Counsellor in court

. - On the date fixed for giving directions, the Principal Counsellor or such other Counsellor designated by him shall attend the court of the Judge giving directions.

25. Direction to attend Counsellor

. - When giving such directions, the Judge shall, in consultation with the Principal Counsellor or such other Counsellor who may be present in court, direct the parties to attend a specified Counsellor for the purpose of counselling.

26. Selection of Counsellor

. - Such Counsellor will be chosen bearing in mind the convenience of the parties, their special requirements and the area in which the unit to which that Counsellor is attached is located.

27. Counsellor to fix place, time and date for counselling

. - The Counsellor appointed to counsel the parties will fix the place, time and date of appointment. The parties shall be bound to attend the Counsellor at the place, date and time so fixed.

28. Failure to attend counselling

. - If one of the parties fails to attend the Counsellor on the date and at the time so fixed, the Counsellor may fix another date and time and inform the absentee party accordingly by registered post. If the said party does not attend the counselling centre on such adjourned date, the Counsellor may, unless he gives further opportunity, make a report to the court stating that one or both the parties have failed to attend the counselling centre. On such report being made, the court may proceed with the matter without prejudice to other powers of the court to take action against a defaulting party.

29. Functions of Counsellor

. - Counsellor entrusted with any petition shall assist and advise the parties regarding the settlement of the subject-matter of dispute between the parties or any part thereof. The Counsellor shall also help the parties in arriving at reconciliation.

30. Home visits

. - The Counsellor in the discharge of his duties will be entitled to pay home visits to the homes any of the parties.

31. Interview

. - The Counsellor in the discharge of his duties will be entitled to interview relatives, friends and acquaintances of parties or any of them.

32. Information from employer

. - The Counsellor in the discharge of his duties may seek such information as he may deem fit from the employer of any of the parties.

33. Reference to experts

. - The Counsellor may refer the parties to an expert in any other area such expert in medicine or psychiatry except when specific directions are given by court.

34. Panel of experts

. - The Principal Judge in consultation with the Principal Counsellor of the Family Court shall prepare a panel of such experts.

35. List of institutions, agencies, etc

. - The Principal Judge in consultation with the Principal Counsellor shall also prepare a list of institutions, organisations or agencies working in the area of family welfare, child guidance, employment or in any other area that he may deem fit, in order to enable a Counsellor or parties to obtain the assistance of such an institution, organisation or agency.

36. Assistance of other organisations etc

. - The Counsellor may take the assistance of such an organisation, institution or agency in the discharge of his duties.

37. Confidentiality of information

. - Information gathered by the Counsellor, any statement made before the Counsellor or any notes or report prepared by the Counsellor will be treated as confidential. The Counsellor shall not be called upon to disclose this information, statements, notes or report to any court except with the consent of both the parties.

38. Counsellor not to give evidence

. - The Counsellor shall not be permitted to give evidence in any court in respect of this information, statements, notes or report.

39. Report relating to home environment

. - The Counsellor will submit to the court a report within such time as may be specified by the court relating to home environment of the parties concerned, their personalities and their relationship with their child and /or children in order to assist the court in deciding the question of custody or guardianship of any child or children of the marriage.

40. Report relating to income etc

. - The Counsellor will also submit to the court a report within such time as may be specified by the court relating to income or standard of living of the party or parties concerned in order to assist the court in determining the amount of maintenance and/or alimony to be granted to one of the parties.

41. Report on any other subject

. - The court may also request the Counsellor to submit to it a report within such time as may be specified by the court probably within six months on any other subject in order to assist the court in adjudicating upon the matter before it or any part thereof.

42. Parties' right to make submission

. - The parties will be entitled to make their submissions on the report.

43. Counsellor not to be cross-examined

. - The Counsellor shall not be asked to give evidence, and shall not be cross-examined in any court in respect of the report so made.

44. Submission of memorandum

. - Save as aforesaid, the Counsellor will submit a brief memorandum to the court informing the court of the outcome of the proceedings before him.

45. Settlement before Counsellor

. - When the parties arrive at a settlement before the Counsellor relating to the dispute or any part thereof such settlement shall be reduced to writing and shall be signed by the parties and countersigned by the Counsellor. The court shall pronounce a decree or order in terms thereof

unless the court considers the terms of the settlement unconscionable or unlawful. Hearing Of Petitions In Court

46. Filing memorandum in court

. - On the proceedings before the Counsellor coming to an end and on the Counsellor filing memorandum in the petition setting out the outcome of the proceedings before him, the Registrar shall call a meeting of the parties to fix a date of hearing of the petitions. Intimation of such meeting shall be given to the parties by registered post or personally.

47. Meeting before Registrar

. - At the meeting so fixed the Registrar shall fix a date of hearing after consulting both the parties.

48. Ascertaining time to be taken up in hearing

. - Registrar will also ascertain from the parties the approximate time to be taken by each party before the court for the hearing of the matter on the date of hearing and the time so ascertained shall be kept free for the disposal of the matter. Such time will be kept available on the following consecutive working days also if the matter is likely to take more than a day.

49. Consequence of absence before the Registrar

. - In the event of any party remaining absent at the meeting called by the Registrar, the Registrar shall fix a date of hearing as he may deem fit and such date shall be fixed at least 4 weeks after the date of the meeting.

50. Placing the petition on the board of the court

. - On the dates so fixed by the Registrar the petition shall be placed on the board of the court for hearing and final disposal.

51. Adjourned date of hearing

. - Any party finding the date fixed by the Registrar unsuitable for any reason may get it altered by the Registrar after notice to the other side but at least two weeks before it is placed on the daily board.

52. Registrar not to alter date

. - Registrar will not ordinarily alter the date when the date has been fixed in the presence of both the sides.

53. Adjournment by the court

. - A petition so fixed on the daily board will not be adjourned by the court unless there are exceptional circumstances justifying such adjournment and unless they are such as could not have been foreseen when the date of hearing was fixed before the Registrar. The court shall record its reasons for adjourning a matter.

54. Independent legal representation of a minor

. - It will be open to the court to appoint any person individually or person/ persons representing any approved voluntary registered organisation/ social action group/registered and established welfare home capable of protecting the interests of a minor as his/her representative to represent independently the minor affected by litigation before the court. The court shall endeavour to safeguard that such representative should not derive any undue pecuniary advantage out of this appointment. The court may appoint a representative amicus curiae to assist the court in the discharge of its duties.

55. Memorandum of evidence

. - The court shall prepare a memorandum of substance of what the witness deposes as prescribed under section 15 of the Act.

56. Provision of C.P.C. and Cr.P.C. to apply

. - Save as aforesaid, the provisions of the Code of Civil Procedure, 1908, or the Code of Criminal Procedure, 1973, as the case may be, shall apply to the proceedings before the Family Court.

57. Working hours and place of sitting of court

. - (i) The court shall normally sit between 10-30 a.m. and 4-30 p.m. with a break of half an hour from 1-30 p.m. to 2-00 p.m. The court may close at 2 p.m. on Saturday, if the state of work permits.(ii)The court shall normally hold its sitting at the place/places as fixed by the Government in consultation with the High Court as contemplated in sub-section (2) of section 3 of the Act:Provided that the court may hold its sitting at places other than the ordinary place of sitting on such days including Sundays and holidays as it deems fit.Interim Applications

58. Interim applications

. - All interim applications to the court will be separately numbered as 'Interim Application'.No._____ In Petition No._____

59. Interim applications while matter is pending before counsellor

. - An interim application may be made even while the matter is pending before a Counsellor.

60. Report from the Counsellor

. - The court may ask the Counsellor to submit an interim report for the purpose of such application before deciding an interim application.

61. Direction for accommodation in a short-stay home

. - Upon consideration of such application the court may pass orders as it may think fit including direction on the authority of a short-stay home attached to any registered voluntary organisation/social organisation/ organisation rendering legal aid and advice to the vulnerable section of the community, to arrange accommodation for the applicant before it for a temporary period with or without any charge.

62. Direction for payment of board and lodging charges

. - The court may while disposing of such application direct payment of a portion of the maintenance if so granted, towards the cost of board, lodging, etc., during the period of short-stay of the applicant in a short-stay home. Guardianship

63. Applications for guardianship

. - All applications for guardianship under the Act other than applications over which the High Court has jurisdiction, will be filed in duplicate before the Family Court.

64. Form

. - Such applications will be in the form of a petition.

65. Assistance of social welfare agency

. - In deciding a guardianship petition, the court may take the assistance of a social welfare agency for the scrutiny of the petition. The court may also ask such an agency for its report thereon.

66. Fees

. - The court may prescribe fees to be paid to the said agency for its work.

67. Application to be accompanied by Home Study Report

. - Every application for guardianship, when it is by a person other than the natural parent or natural guardian of the child will be accompanied by home study report of the persons asking for such guardianship and his/her spouse, if any, prepared by an approved family welfare agency or a suitably trained social worker. A list of such agencies and persons shall be prepared by the Principal Judge and Principal Counsellor in consultation with the High Court. Such list shall be forwarded to the High Court every two years for review.

68. Report from welfare agency

. - In deciding an application under Rule 67 the court shall also seek report from an approved Welfare agency for providing information which will form a basis for the selection of the prospective guardian for the child as prescribed in form No. 2 of these rules.

69. Home Study Report in applications by foreigners

. - When the petition for guardianship is filed by a foreigner the court may accept a home study report prepared by a recognised family welfare agency of the country where the foreigner resides.

70. Contents

. - Every petition for guardianship shall be accompanied by -(i)Two recommendations from respectable members of the community.(ii)A salary certificate or statement relating to the annual income of the petitioner and his/her financial position.(iii)A health certificate of the petitioner and his/her spouse signed by a medical practitioner as also a medical report regarding sterility, if any, of the petitioner and/or the spouse.(iv)A health certificate of the child proposed to be taken in guardianship signed by a medical practitioner.(v)A child study report of the child proposed to be taken in guardianship together with a photograph of the child. Such report shall be in the prescribed Form No. 2 when the child is institutionalised or committed by the court.(vi)A declaration from the proposed guardian and his/her spouse, if any, expressing their willingness to take the child in guardianship.

71. Applications by foreigners

. - When the petitioner applying for guardianship is a foreigner, the petition will also be accompanied by(i)permission from the country where the petitioner resides, for the child to enter the country; and,(ii)an undertaking by a recognised family welfare agency of the country concerned to supervise the child in the home of the petitioner until the child is legally adopted.

72. Recommendation of welfare agency

. - No application on behalf of a foreigner for being appointed guardian of the person of an Indian minor under the Guardians and Wards Act, 1890, shall be entertained unless recommended in that regard by a welfare agency licensed/recognised for the time being by the Government of the country of which the applicant is a citizen. Note : A list of agencies mentioned in Rules 71 and 72 approved by their respective Government is set out in Appendix-I to these Rules.

73. Sponsoring an application by child welfare agency

. - (i) Only a child welfare agency recognised for the time being by the Government of India can sponsor submission of an application for declaring a foreigner to be the guardian of an Indian child to the court competent to deal with it and unless so sponsored, such an application shall not be entertained. (ii) The court may cause publication of a photograph of the child in a leading newspaper and other media including television to ascertain the identity of the child and whether there is any claim by biological parents at the cost of the proposed guardian. Note : A list of agencies valid for the State of West Bengal currently recognised by the Government of India is set out in Appendix-II to these Rules.

74. Procedure for dealing with an application for guardianship

. - (1) In dealing with such an application the court may take the assistance of any of the approved welfare agencies/organisation based in West Bengal including that mentioned in Appendix II. (2) Notice of an application for declaring a foreigner to be the guardian of an Indian child shall be given in any two leading English newspapers and also to the Indian Council of Social Welfare or the Indian Council of Child Welfare or any of its State units for scrutiny of the application with a view to ensuring that it will be for the welfare of the child to be given to the foreigner whose application for guardianship is under consideration. (3) In disposing of such an application the court may make such enquiries as it may deem fit and proper for being satisfied that such appointment of a foreigner as guardian will be conducive to the interest and welfare of the child, no order for such appointment shall be made nor shall the court permit the child to be removed to the country of the applicant for eventual adoption unless the court is so satisfied and unless the applicant makes provisions by way of execution of a bond or otherwise to enable the child to be repatriated to India should it become necessary to do so for any reason. In every such enquiry, if the child is above the age of seven years, the court shall ascertain the wishes of the child. (4) In every case where such an application is made, the applicant shall deposit with the court a sum of Rs. 5001 towards the costs of scrutiny as enjoined by these rules and all costs in that regard shall first be met out of the said sum, subject to any further direction by the court for the balance. (5) Every appointment so made shall be subject to a condition to be incorporated in the order that the foreigner shall submit to the court as also to the recognised Indian agency sponsoring the application for guardianship the full details of the normal residence of the child in the foreign country where the child is to be taken and progress report of the child along with all information regarding change, if any, in the residence of the child and a recent photograph quarterly during the first two years and half yearly for the next five years. (6) The order appointing a foreigner to be the guardian of an Indian child shall carry, attached to it, a photograph of the child

duly authenticated by an officer authorised by the court in that behalf and another copy of such photograph shall be kept on the record.(7)If the biological parents of the child are known they may be properly assisted by the social or child welfare agency /home etc., in taking a decision about the relinquishing of the child for adoption. But no notice of such an application for declaring a foreigner to be the guardian of an Indian child should be given to the child's biological parents nor should it be published in any newspaper.(8)When an order appointing a foreigner as guardian of an Indian child is made by a court an intimation shall be given by the court to the Ministry of Social Welfare, Government of India, as also to the Relief and Welfare Department, Welfare Branch, Government of West Bengal under intimation to the judicial department of the Government.(9)If due to disruption or failure of adoption in the foreign country, any alternative placement of the child is considered necessary by the recognised foreign agency, the said fact should forthwith be reported to the court making the appointment and necessary permission should be taken from the said court for such placement. Every such application shall be procured through the Indian agency which had sponsored the original appointment and notice thereof shall be given to the Ministry of Social Welfare, Government of India as also to the Relief and Welfare Department, Welfare Branch, Government of West Bengal under intimation to the judicial department of the Government.(10)The court shall review the living condition of the Indian child taken in guardianship by a foreigner under the Act through any of the approved organisations of the State of West Bengal recognised by the Ministry of Social Welfare, Government of India.

75. Consent of natural mother

. - When the child proposed to be given in guardianship is an abandoned child the court shall satisfy itself that the consent of the natural mother was taken at the time of abandonment of the child or at any time thereafter to the child's being given in guardianship to another person. Then name of the natural mother or natural father as also the consent letter from natural parent shall be treated as confidential. Consent letter shall be kept in court in a sealed cover.

76. Affidavits of the institution

. - When the child being placed in guardianship is an abandoned child from an institution for abandoned children, the institution shall file an affidavit setting out the circumstances under which the child was abandoned. The affidavit shall also set out whether the institution is agreeable to the child being given in guardianship to the petitioner.

77. Attempts for placement in India

. - The court, in its discretion may not entertain a petition for guardianship by a foreigner unless the court is satisfied that adequate attempts for at least three months or such other period as the court deem fit have first been made to place the child in an Indian Home. For this purpose the court may ask the petitioner to obtain a no-objection letter from a voluntary co-ordinating agency or any other similar organisation working for the placement of children in Indian Homes.

78. Court's power to waive the rules

. - The court shall have the power to waive the requirements for reasons to be recorded of any of the above rules relating to petitions for guardianship in a suitable case.

79. Court's power to direct a Counsellor in certain cases

. - In case of a child placed in guardianship the court may, at any time direct a counsellor attached to the court to supervise the placement of the child and submit a report thereon to the court in such manner as the court may deem fit.

80. Quarterly reports to be sent by the court

. - The court shall send quarterly reports in respect of Indian children taken abroad by a foreign national under the Act to the Secretary, Ministry of Social Welfare, Government of India and the Relief and Welfare Department of the State Government. The report shall be in respect of such quarter ending with the 31st March, 30th June, 30th September and the 31st December. The report shall be in the proforma detailed below.

1. Name of the State.

2. Number of children given in guardianship to foreign nationals during the quarter under report.

3. Country-wise break-up of the number of children in column (2).

4. Number of children permitted to be taken abroad by foreign nationals as guardians during the quarter under report.

5. Country-wise break-up of the children in column (4).

6. Number of applications of foreign nationals for guardianship of Indian children which were rejected during the quarter under report.

7. Number of applications of foreign nationals for guardianship of Indian children which were pending final disposal at the end of the quarter.

8. Remarks or comments, if any.

Form NO. 1(vide rule 9)In The Family Court AtPetition No..... of

20.....PetitionerversusTo.....(Respondent)Wherea

the abovenamed petitioner has instituted a Suit against you, as set out in the petition (annex the petition). You are hereby required to file in this Court an appearance in person within 3 weeks from the service of this summons upon you. And whereas, the petition will be placed for directions on the board of the Judge on the..... day of..... 20..... You are hereby summoned to appear before the Judge to answer the Petitioner's claim on the said..... day of..... 20..... at 11 o'clock in the forenoon, and Take notice that on the day abovementioned after hearing parties who appear, directions will be given by the Judge as to the date of hearing before a counsellor of the Family Court and other matters concerning the petition, and Take further notice that if you fail to file your appearance in person as directed above, or if you fail to appear before the Judge on the day abovementioned the petition may be ordered to be set down on Board on the same day or any subsequent day as "undefended" and you will be liable to have a decree or order passed against you. Witness..... Principal Judge at..... aforesaid, this..... day of..... 20..... Sealer. Registrar. The..... day of..... 20..... Petitioner Address: