

Special Marriage (High Court) Rules, 1955

RAJASTHAN

India

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Rule SPECIAL-MARRIAGE-HIGH-COURT-RULES-1955 of 1955

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Special Marriage (High Court) Rules, 1955Published vide Notification No. 16/S.R.O. dated, June 1, 1955, Published in Rajasthan Rajasthan Patra, dated 16.7.1955 in Part 4-C, at page 273In exercise of the powers conferred by section 41 of the Special Marriage Act, 1954 (Act XVIII of 1954), the Hon'ble the Chief Justice and Judges are pleased to make the following Rules for carrying out the provisions of Chapters V, VI and VII of the Act.

1. Short title and commencement.

- (i) These rules may be called the Special Marriage Rules, 1955.(ii)The Rules shall come into force from the date of publication.

2. Definitions.

- (i) 'Act' means the Special Marriage Act, 1954 (Act XLIII of 1954).(ii)'Code' means the Code of Civil Procedure, 1908.(iii)'Court' means the District Court.

3. Petition.

- Every petition made under the Act, shall be accompanied by a certified copy of the certificate from the Marriage Certificate Book about the solemnization of the marriage under the Act.

4. Contents of petitions.

- (i) In addition to the particulars required to be given under Order VII, Rule I, of the Civil Procedure Code, every petition for judicial separation, nullity of marriage and divorce shall contain the following particulars:-(a)The place and date of marriage;(b)The name, status and domicile of the wife and husband before the marriage;(c)The principal permanent address where the parties cohabited including the address where they last resided together;(d)Whether there is living any

issue of the marriage and if so, the names and dates of birth, or ages of such issues;(e)Whether there have been in any Court in India, and if so, what previous proceedings with reference to the marriage by or on behalf of either of the parties and the result of such proceedings;(f)The matrimonial offence charged, set out in separate paragraphs with the time and places of either alleged commission;(g)The claims for damages, if any, with particulars;(h)If the petition is one for a decree of dissolution of marriage, or of nullity or annulment of marriage or for Judicial Separation, it shall further state that there is no collusion or connivance between the petitioner and the other parties to the marriage or alleged marriage;(i)The relief or reliefs prayed for.(ii)In Every petition presented by a husband for divorce or judicial separation, on the ground that his wife has committed adultery with any person or persons the petitioner shall state the name, occupation and place of residence of such person or persons so far as they can be ascertained.(iii)In every petition presented by a wife for divorce or Judicial separation, on the ground that her husband has committed adultery with any woman or women; the petitioner shall state the name, occupation and place of residence of such person or women, so far as they can be ascertained.

5. Co-respondent in husband's Petition.

- In any petition resented by a husband for divorce or Judicial reparation on the ground that his wife has, since the solemnization of the marriage, been guilty of adultery, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing by an order of the Court which may be made on any one or more of the following grounds which shall be supported by an affidavit in respect of the relevant facts:-(i)That the respondent is leading the life of a prostitute, and that the petitioner knows of no persons with whom the adultery has been committed.(ii)That the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts for discovery:(iii)That the alleged adulterer is dead;(iv)For any other sufficient reason that the Court may deem fit to consider.

6. Verification of petition.

- Statements contained in every petition shall be verified by the petitioner or some other competent person in a manner required by the Code of Civil Procedure for the time being in force for the verification or plaints.

7. Forms of petition.

- The petitions made under the Act, shall, so far as possible, be made in the forms prescribed in the Schedule to the Indian Divorce Act, 1869, (IV of 1869).

8. Petitions on behalf of lunatics.

- When a husband or a wife is a lunatic or an idiot, any petition under the Act, other than the petition for restitution of conjugal rights, may be brought, on his or her behalf, by the person entitled to his or her custody.

9. Petition by minors.

(1)Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under the Act shall be filed until the next friend has undertaken in writing to be answerable for costs. Such undertaking shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit. (2)The next friend shall file an affidavit alongwith the petition which shall state the age of the minor, that the next friend has no adverse interest to that of the minor and that the next friend is otherwise a fit and proper person to act as such. (3)The Court may be on considering the affidavit and such other material as it may require, record its approval to the representation of the minor by the next friend or pass such other orders as it may deem fit.

10. Notice.

- The Court shall issue notice to the respondent and correspondent, if any. The notice shall be accompanied, unless otherwise directed by the Court, by a certified copy of the petition. The notice shall also require, unless the Court otherwise directs, the respondent or co-respondent to file his or her statement in court within a period of four weeks from the service of the notice and to serve a copy thereof upon each of the other parties to the petition, within the aforesaid period.

11. Service of petition.

- Every petition and notice under the Act shall be served on the party affected thereby in a manner provided for service of summons under Order V of the Civil Procedure Code: Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do.

12. Written statements in answer to petitions by respondents.

- The respondent may and if so, required by the Court, shall present a written statement in answer to the petition. The provisions of Order VIII of the Code shall apply mutatis mutandis to such written statements. In particular, if in any proceedings for divorce the respondent opposes the relief sought in the petition on the ground of the petitioner's adultery, cruelty or desertion, the written statement shall state the particulars of such adultery, cruelty or desertion as required in the case of petition under clauses (d), (e) and (f) of sub-rule (i) Rule 4 - and sub-rule (ii) and (iii) of the same rule and the particulars of any relief which he claims on the said grounds.

13. Intervation in wife's petition costs regarding intervention.

(1)Unless the Court of good cause shown otherwise directs:-(a)Where the husband is charged with adultery with a named female person a certified copy of pleading or material portion thereof containing such charge shall be served upon the person with whom adultery is alleged to have been committed, accompanied by a notice that such person is entitled within the time therein specified to apply for leave to intervene in the cause. (b)Where the written statement of the respondent alleges

adultery by the petitioner with a named man or woman as the case may be, a certified copy of such statement or such material portion thereof containing such allegation shall be served on such man or woman, accompanied by a notice that such person is entitled within the time therein specified to apply for leave to intervene in the cause.

2. (a) Costs regarding intervention. - Whenever the court finds the an intervener has no sufficient grounds for intervening, it may order the intervener to pay the whole or any part of the costs occasioned by the application to intervene.

(b) Whenever the court finds that the charge or allegation of adultery against the intervener made in any petition or written statement is baseless or not proved and that the intervention is justified, it against the may order the person making such charge or allegation aga intervener to pay to the intervener the whole, or any part of the costs of intervention.

14. Answer.

A person to whom leave to intervene has been granted may file in the Court an answer to the petition or written statement containing the charges or allegations against such intervener.

15. Intervention by third party.

- During the progress of the petition under Chapter V or VI of the Act any person suspecting that any parties to the petition are or have been acting in collusion, or the petitioner has committed fraud or he has concealed some material facts from the Court for the purpose of obtaining the decree prayed for, shall be at liberty to apply to the Court stating the circumstances and facts of such collusion, fraud and concealment, as the case may be. The application shall be supported by an affidavit. When such application is filed, the Court shall give notice thereof to the parties concerned and after hearing them and taking necessary evidence pass the necessary orders:-(i) If the Court comes to the conclusion that such collusion, fraud or concealment of material fact is proved, then the original petition shall be dismissed and the intervening third party shall be awarded his costs from the parties, guilty of such collusion, fraud or concealment of facts. (ii) Whenever such application is made and the Court come to the conclusion that the intervening third party had no grounds or no sufficient grounds for intervening, it may order him to pay the whole or any part of the costs occasioned by his intervention.

16. Competence of husband and wife to give evidence as to cruelty or desertion or Judicial Separation.

- On any petition presented by a wife, praying of divorce or Judicial separation by reason of her husband having been guilty of adultery coupled with cruelty or oi adultery coupled with desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

17. Mode of taking Evidence.

- The witnesses in all proceedings before the Court, where their attendance can be had, shall be examined orally, and any party may offer himself, or herself as a witness, and shall be examined, and may be cross-examined and re-examined like any other witness: Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the petition of the opposite party be subject to the cross-examination by the Court, or by direction of the Court by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

18. Damages.

- Any husband may, either in a petition for Divorce or Judicial separation, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner:-(i) Such petition shall be served on the alleged adulterer and the wife unless the Court dispenses with such service in accordance with the provisions of Rule No. 11.(ii) The damages to be recovered on any such petition shall be ascertained by the said Court, although the respondent or either of them may not appear. After the decision has been given the Court may direct in what manner the damages shall be paid or applied.

19. Costs.

- Whenever in any petition presented by a husband the alleged adulterer has been made a co-respondent and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the costs of the proceeding: Provided that the co-respondent shall not be ordered to pay the petitioner's costs:-(i) If the respondent was at the time of the adultery living apart from her husband and leading the life of a prostitute; or, (ii) if the co-respondent had not, at the time of adultery reason to be live the respondent to be a married woman.

20. Taxation of Costs.

- Unless otherwise directed by the Court, the costs of the petition under the Act shall be costs as taxed in suits under the Indian Divorces Act, IV of 1869.

21. Order as to costs.

- The award of costs shall be within discretion of the Court and the Court shall make an order about the same while passing the decree.

22. Power to adjourn.

- The Court may from time to time adjourn the hearing of any petition under the Act, and may require further evidence thereon if it seems fit so to do.

23. Transmission of certified copy of the Decree.

- The Court shall send a certified copy of every decree for divorce or nullity or dissolution of marriage to the Marriage officer appointed under section 3 of the Act. (Their Lordships are further pleased to direct that a new Chapter XXXIV - A be inserted, after Chapter XXXIV in the Rajasthan High Court Rules, containing the above Rules).

of Forms

No. 1 Petition by Husband for a dissolution of Marriage with damages against co-respondent by reason of Adultery. (See sections 10 and 34) In the High Court of To the Hon'ble Mr. Justice [or To the Judge of] The day of The petition of A.B. of Sheweth,

1. That your petitioner was on the day of one thousand nine hundred and lawfully married to C.B., the C.D., spinster, at.....

2. The form his said marriage, your petitioner lived and cohabited with his said wife at and at in , and lastly at in and that your petitioner and his said wife have had issue of their said marriage, five children, of whom two sons only survive, aged respectively twelve and fourteen years.

3. That during the three years immediately preceding the day of one thousand nine hundred and X.Y., was constantly, with few exceptions, residing in the house of your petitioner at aforesaid, and that on divers occasions during the said period, the dates of which are unknown to your petitioner, the said C.B., in your petitioner's said house committed adultery with the said X.Y.

4. That no collusion or convenience exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose.

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a dissolution of the said marriage, and that the said X.Y., do pay the sum of rupees 5,000 as damages by reason of his having

committed adultery with your petitioner's said wife, such damages to be paid to your petitioner, or otherwise paid or replied as to this (Hon'ble) Court seems fit. (Signed A. B. 1. Form of Verification

1. A.B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

No. 2 Respondent's Statement In Answer To No. 1 In the Court of The..... day of Between A.B., petitioner. C.B. respondent, and X.V., co-respondent C.B., the respondent, by D.E., her attorney (or vakil,) in answer to the petition of A.B., says that she denies that she has on divers or any occasion committed adultery with X.Y., as alleged in the third paragraph of the said petition. Wherefore the respondent prays that this (Hon'ble) Court will reject the said petition. (Signed) C.B. No. 3 co-respondent's Statement in Answer to No. 1 In the (High) Court of The..... day of Between A.B., petitioner, C.B., respondent, and X.Y., co-respondent. X.Y., the co-respondent, in answer to the petition filed in this cause, saith that he denies that he committed adultery with the said C.B. as alleged in the said petition. Wherefore the said X.Y., prays that this (Hon'ble) Court will reject the prayer of the said petitioner and order him to pay the costs of and incident to the said petition. (Signed) X.Y. No. 4 Petition for Decree of Nullity of Marriage (See section 18) In the (High) Court of To the Hon'ble Mr. Justice [or To the Judge of] The..... day The petition of A.B., falsely called A.D., Sheweth.

1. That on the..... day of..... one thousand nine hundred and....., your petitioner, then a spinster, eighteen years of Age, was married in fact, though not in law, to C.D., then a bachelor of about thirty years of age, at (some place in India).

2. That from the said day of..... one thousand nine hundred and until the month of....., one thousand nine hundred and....., your petitioner lived and cohabited with the said C.D., at divers places and particularly at..... aforesaid.

3. That the said C.D., has never consummated the said pretended marriage by copulation.

4. That at the time of the celebration of your petitioner's said pretended marriage, the said C.D., was, by reason of his impotence or malformation, legally incompetent to enter into the contract of marriage.

5. That there is no collusion or connivance between her and the said C D., with respect to the subject of this suit.

Your petitioner therefore prays that this (Hon'ble) Court will declare that the said marriage is null and void. (Signed) A.B. Form of Verification : See No. 1 No. 5 Petition by Wife or Judicial Separation on the Ground of her Husband's Adultery (See section 22) In the (High) Court of To the Hon'ble Mr. Justice (or to the Judge of) The day of The petition of C.B., of, the wife of A.B. Sheweth

- 1. That on the.....day of....., one thousand nine hundred and....., your petitioner, then C.D., was lawfully married to A.B. at the Church of.....in the.....**
- 2. That after her said marriage, your petitioner cohabited with the said A.B.....at and at.....and that your petitioner and her said husband have issue living of their said marriage, three children, to with etc., etc.**
- 3. That on divers occasions in or about the months of August, September and October, one thousand nine hundred and....., the said A.B. at aforesaid, committed adultery with E.F., who was then living in the service of the said, A.B., and your petitioner at their said residence.....aforesaid.**
- 4. That on divers occasions in the month of October, November and December, one thousand nine hundred and....., the said A.B., at aforesaid, committed adultery with G.H., who was then living in the service of the said A.B., and your petitioner at their said residence aforesaid.**
- 5. That no collusion or connivance exists between your petitioner the said. A.B., with respect to the subject to the present suit.**

Your petitioner therefore prays that this (Hon'ble) Court will decree a judicial separation to your petitioner from her said husband by reason of his aforesaid adultery. (Signed) C.B. Forms of Verification : See No. 1 No. 6 Statement in Answer to No. 5 In the (High) Court of B. against B. The day of The respondent, A.B., by W.Y., his attorney (or vakil), saith, -

- 1. That he denies that he committed adultery with E.F., as in the third paragraph of petition alleged.**
- 2. That the petitioner condoned the said adultery with E.F., if any.**
- 3. That he denies that he committed adultery with G.H., as in the fourth paragraph of the petition alleged.**

4. That the petitioner condoned the said adultery with G.H., if any.

Wherefore this respondent prays that this (Hon'ble) Court will reject the prayer of the said petitioner, (Signed) A. B. No. 7 Statement in Reply to No. 6 In the (High) Court of B. against B. The day of The petitioner, C.B., by her attorney (or vakil), says, -

- 1. That she denies that she condoned the said adultery of the respondent with E.F., as in the second paragraph of the statement in answer alleged.**
- 2. That even if she had condoned the said adultery, the same has been received by the subsequent adultery of the respondent with G.H., as set forth in the fourth paragraph of the petition.**

(Signed) C. B. No. 8 Petition for a Judicial Separation by Reason of Cruelty (See Section 22) In the (High) Court of To the Hon'ble Mr. Justice [or To the Judge of] The day of The Petition of A.B., (Wife of C.B.) of Sheweth.

- 1. That on the day of one thousand nine hundred and your petitioner, then A.D., spinster, was lawfully married to C.B., at**
- 2. That from her said marriage, your petitioner lived and cohabited with her said husband at until the day of , one thousand nine hundred and, when your petitioner separated from her said husband as hereinafter more particularly mentioned and that your petitioner and her said husband have had no issue of their said marriage.**
- 3. That from and shortly after your petitioner's said marriage, the said C.B., habitually conducted himself towards your petitioner with great harshness and cruelty, frequently abusing her in the coarsest and most insulting language, and beating her with his fists, with a cane, or with some other weapon.**
- 4. That on an evening in or about the month of one thousand nine hundred and, the said C.B., in the highway and opposite to the house in which your petitioner and the said C.B., were then residing at aforesaid, endeavored to knock your petition down, and was only prevented from so doing by the interference of F.D., your petitioner's brother.**

5. That subsequently on the same evening, the said C.B., in his said house at aforesaid, struck your petitioner with his clenched fists a violent blow on her face.

6. That on one Friday night in the month of....., one thousand nine hundred and....., the said C.B., in....., without provocation threw a knife at your petitioner, thereby inflicting a severe wound on her right hand.

7. That on the afternoon of the day of.....one thousand nine hundred and....., your petitioner, by reason of the great and continued cruelty practiced towards her said husband, with assistance withdrew from the house of her said husband to the house of her father at, that from and after the said day of, one thousand nine hundred and, your petitioner hath lived separate and apart from her said husband, and hath never returned to his house or to cohabitation with him.

8. That there is no collusion or connivance between your petitioner and her said husband with respect to the subject to the present suit.

Your Petitioner therefore prays that this (Hon'ble) Court will decree a judicial separation between your petitioner and the said C.B., and also order that the said C.B., do pay the costs of and incident to these proceedings. (Signed) A. B. Form of Verification : See No. 1 No. 9 Statement in Answer to No. 8 In the (High) Court of The day of Between A.B., petitioner, and C.B., respondent. C.B., the respondent, in answer to the petition filed in this cause, by W.J., his attorney (or vakil), saith that he denies that he has been guilty of cruelty towards the said A.B., as alleged in the said petition. (Signed) C. B. No. 10 Petition for Reversal of Decree of Separation (See section 24) In the (High) Court of To the Hon'ble Mr. Justice [or To the Judge of] The day of The petition of A.B. of Sheweth

1. That your petitioner was on the day of.....lawfully married to

2. That on the day of..... this (Hon'ble) Court, at the petition of....., pronounced a decree affecting the petitioner to the effect following, to wit -

(Here set out the decree)

3. That such decree was obtained in the absence of your petitioner, who was then residing at

(State facts tending to show that the petitioner did not know of the proceedings; and further, that had he known he might have offered a sufficient defence) or That there was reasonable ground for your petitioner leaving his said wife or that his said wife (Here state any legal grounds justifying the petitioner's separation from his wife). Your petitioner, therefore, prays that this (Hon'ble) Court will reverse the said decree. (Signed) A. B. Form of Verification : See No. 1 No. 11 Petition for Protection Order (See Section 27) In the (High) Court of In the Hon'ble Mr. Justice [or To the Judge of] The day of The petition of C.B., of the wife of A.B. Sheweth, That on the day of she was lawfully married to A.B., at That she lived and cohabited with the said A.B. for years at and also at, and had children, issue of her said marriage, of whom are now living with the applicant, and wholly dependent upon her earnings. That on or about, the said A.B., without any reasonable cause, deserted the applicant, and hath ever since remained separate and apart from her. That since the desertion of her said husband, the applicant hath maintained herself by her own industry [or on her own property, [as the case may be] and hath thereby and otherwise acquired certain property consisting or [here state generally the nature of the property]. Wherefore she prays an order for the protection of her earnings and property acquired since the said day of from the said A.B., and from all creditors and persons claiming under him. (Signed) C. B. No. 12 Petition for Alimony Pending the Suit (See Section 36) In the (High) Court of B. against B. To the Hon'ble Mr. Justice [or To be Judge of] The day of The petition of C.B., the lawful wife of A.B. Sheweth,

- 1. That the said A.B., has for some years carried on the business at, and from such business derives the net annual income of from Rs. 4,000 to 5,000.**
- 2. That the said A.B., is possessed of plate, furniture, linen and other effects at his said house aforesaid, all of which he acquired in right of your petitioner as his wife, or purchased with money he acquired through her, of the value of Rs. 10,000.**
- 3. That the said A.B., is entitled, under the will of his father, subject to the life interest of his mother therein, to the property of the value of Rs. 5,000 or some other considerable amount.**

Your petitioner, therefore, prays that this (Hon'ble) Court will decree such sum or sums of money by way of alimony pending the suit, as to this (Hon'ble) Court may seem meet. (Signed) C. B. Form of Verification : See No. 12 No. No. 13 Statement in Answer to No. 12 In the (High) Court, of B. against B.A.B., of the above - named respondent, in answer to the petition for alimony, pending the suit of C.B., says -

1. In answer to the first paragraph of the said petition, I say that I have for the last three years carried on the business of..... and that, from such business, I have derived a net annual income of Rs. 900, but less than Rs. 1,000.

2. In answer to the second paragraph of the said petition, I say that I am possessed of plate, furniture, linen and other chattels and effects at my said house.....aforesaid, of the value of Rs. 7,000, but as I verily believe of no larger value. And I say that a portion of the said plate, further and other chattels and effects of the value of Rs. 1,500, belonged to my said wife before our marriage, but the remaining portions thereof I have since purchased with my own moneys. And I say that, save as hereinbefore set forth. I am not possessed of the plate and other effects as alleged in the said paragraph in the said petition, and that I did not acquire the same as in the said petition also mentioned.

3. I admit that I am entitled under the will of my father, subject to the life - interest of my mother therein, to property of the value of Rs. 5,000, with is to say, I shall be entitled under my said father's will, upon the death of my mother, to a legacy of Rs. 7,000, out f which I shall have to pay to my father's executors the sum of Rs. 2,000, the amount of a debt owing by me to his estate, and upon which debt I am now paying interest at the rate of five percent per annum.

4. And, in further answer to the said petition, I say that I have no income whatever except that derived from my aforesaid business, that such income, since my said wife left me, which she did on the..... day of..... last, has been considerably diminished, and that such diminution is likely to continue. And I say that out of my said income, I have to pay the annual sum of Rs. 100 for sum interest as aforesaid to my late father's executors, and also to support myself and my two eldest children.

5. And in further answer to the said petition, I say that, when my wife left my dwelling - house on the.....day on.....last, she took with her and has ever since withheld and still withholds from me, Tate watches and other effects in the second paragraph of this my answer mentioned, of the value of, as I verily believer, Rs. 800 at the least-and I also say that, within five days of

her departure from my house as aforesaid, my said wife received bills due to me from certain lodgers of mine, amounting in the aggregate to Rs.....and that she has ever since withheld from me the same sum.

(Signed)A. B.No. 14 Undertaking by Minors Next Friend to be Answerable for Respondents Costs(See Section 49)In the (High) Court ofI, the undersigned, A.B., of....., being the next friend of C.D., who is a minor and who is desirous of filing a petition in this court, under the Indian Divorce Act, against D.D. of.....,hereby under-take to be responsible for the costs of the said D.D., in such suit, and that, if the said D.D., fail to pay to the D.D., when and in such manner as the Court shall order all such costs of such suit the Court shall direct him (or her) to pay to the said D.D., I will forthwith pay the same to the proper officer of this Court.Dated this.....day of(Signed)A. B.