

CHAPTER XLIV

RULES UNDER THE INDIAN DIVORCE ACT, 1869 (ACT No. 4 OF 1869)

804. Contents of petition and prayer – (1) Every petition under section 10,18,23,27,32 or 34 of the Indian Divorce Act, 1869(hereinafter in this chapter referred to as “the Act”) shall state (a) whether the petitioner professes the Christian religion; (b) the place and date of the marriage and the name, status and domicile of the wife before marriage; (c) the status of the husband and his domicile at the time of the marriage and at the time when the petition is presented, and his occupation and the place or places or residence of the parties at the time of the institution of the suit; (d) the principal permanent addresses where the parties have cohabited, including the address where they last resided together in India; (e) whether there are living any issue of the marriage, and if so the name and dates of birth or ages of such issue; (f) whether there have been in any Court in India or outside India any, and if so what previous proceedings with reference to the marriage by or on behalf of either of the parties to the marriage, and the result of such proceedings; (g) the matrimonial offences charged set out in separate paragraphs with the times and places of their alleged commission; (h) the claim for damages, if any; (i) the ground on which the petitioner claims that the High Court has jurisdiction to determine the petition, and if the petition is one for a decree of dissolution of marriage or of nullity of marriage or of judicial separation, it shall further state that there is no collusion or connivance between the petitioner and the other party to the marriage.

(2) The petition shall conclude with a prayer setting out particulars of the relief claimed, including the amount of any claim for damages and any order for custody of children which is sought, and shall be signed by the petitioner: Provided that where the petitioner is, by reason of absence or for other good cause, unable to sign the petition, it may be signed by any person duly authorized by him or her to sign the same or to sue on his or her behalf.

805. Marriage certificate to be annexed to petition - Every such petition shall be accompanied by a certified copy of the certificate of marriage, if such a certificate is available to the petitioner.

806. Verification of petition – The statement contained in every petition shall be verified by the petitioner or some other competent person in the manner required by the Code of Civil Procedure for the verification of plaints.

807. Co-respondent in husband's petition – In every petition presented by a husband for the dissolution of his marriage the petitioner shall make the alleged adulterer a co-respondent in the suit, unless the Court shall otherwise direct under section 11 of the Act.

808. Intervener in wife's petition – Where a husband is charged with adultery with a named person, a certified copy of the pleading containing such charge shall, unless the Court for good cause otherwise directs, 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. The notice shall be in Form No. 86.

809. Notice to appear and answer – The notice to appear and answer shall require the respondent or the co-respondent, as the case may be, to enter an appearance in person or a vakalatnama within fourteen days from the service of the notice and to make answer to the charges in the petition within fourteen days thereafter and unless otherwise ordered, the notice shall be made returnable eight weeks after the date of the filing of the petition, if the respondent and the co-respondent reside within the local limits of the Court and ten weeks after the date of the filing of the petition if either the respondent or the co-respondent resides outside the said limits. The notice shall be in Form No. 85

810. Service of petition and notice – Every petition or notice under the Act shall be served on the party to be affected thereby, either within or without India, by serving him, in the manner prescribed by the Code of Civil Procedure for the service of the summons with a certified copy of the petition or of the notice, as the case may be;

Provided that, unless the Court for good cause otherwise directs, service of all such petitions and notices shall be effected by delivery of the same of the party to be affected thereby, and the Court shall record that it is satisfied that the service has been so effected:

Provided also that the Court may dispense with such service altogether in case it seems necessary or expedient to do so;

Provided further that no service shall be necessary of any petition or notice to make a decree absolute.

811. Answer to the petition – A respondent or co-respondent, or a woman to whom leave to intervene has been granted under rule 808 may file in the Court an answer to the petition.

812. Answer to be verified and to be served on parties concerned – (1) An Answer to the petition shall be verified by the respondent or co-respondent or the intervener, as the case may be, in the manner required by these rules for the verification of petitions and when the respondent is husband or wife of the petitioner, the answer shall contain a declaration that there is not any collusion or connivance between the parties.

(2) Where the answer of a husband alleges adultery and prays for relief, a certified copy thereof shall be served upon the alleged adulterer, together with a notice to appear in like manner as in a petition. When in such a case no relief is claimed, the alleged adulterer shall not be made a co-respondent, but a certified copy of the answer shall be served upon him together with a notice as provided under rule 808 that he is entitled within the time therein specified to apply for leave to intervene in the suit, and upon such application he may be allowed to intervene, subject to such direction as shall then be given by the Court.

813. Suit may be stayed or proceeded with – (1) If appears to the Court that proceedings for the dissolution of the marriage have been instituted in any other Court in India or outside India before the date on which the petition was filed in the Court, the Court may stay further proceedings thereon until such time as the court may direct or proceed with the trial of the suit or pass such other order as it may deem fit.

(2) If it appears that such proceedings were instituted after the filing of the petition in the Court, the Court may proceed with the trial of the suit

814. Service of decree *nisi* for dissolution of marriage – A decree *nisi* for dissolution of marriage shall be served on the respondent in the manner provided by the code of Civil Procedure for the service of summons. An affidavit proving service of the decree *nisi* shall be filed before an application is made for decree absolute. Where the Court has under rule 810 above dispensed with the service of the notice altogether, it shall not be necessary to serve the decree *nisi* and to file an affidavit as provided above.

815. Service of decree containing collateral matters - Where a decree contains an order in respect of collateral matters, such as an order for the custody of children or an order for paying damages into Court etc., it shall be served on the respondent and the co-respondent in the manner provided by the Code of Civil Procedure for the service of summons. Proceedings subsequent to such decree shall not be rendered invalid by reason only of the fact that the decree is not proved to have been served.

An application to enforce an order in respect of collateral matters in a decree shall be made by Chamber Summons supported by affidavit.

816. Service of decree for judicial separation or restitution of conjugal rights. – A decree for judicial separation or restitution of conjugal rights shall be served on the respondent in the manner provided by the Code of Civil Procedure for the service of summons.

817. How cause shown after decree nisi – Any person, other than the “Officer” appointed by the State Government, wishing to show cause against making absolute a decree *nisi* shall, if the Court so permits, enter an appearance in person or a vakalatnama in the suit in which such decree *nisi* has been pronounced, and at the same time file affidavits setting forth the facts upon which he relies. Certified copies of the affidavits shall be served upon the party or the Advocate on record for the party in whose favour the decree *nisi* has been pronounced.

818. Affidavits in reply and rejoinder – The party in the suit in whose favour the decree *nisi* has been pronounced may within a time to be fixed by the Court file affidavits in reply and the person showing cause against the decree *nisi* being made absolute may within a further time to be so fixed file affidavits in rejoinder.

819. Decree absolute when to be made – No decree *nisi* for the dissolution of a marriage shall be made absolute till after the expiry of six month from the pronouncing thereof, if no appeal has been filed within that period, or if any appeal, including an appeal to the Supreme Court, has been filed, until after the decision thereof.

820. Application for decree absolute how made – (1) An application to make absolute a decree *nisi* shall be made to the Court by filing a precipe stating that the application is made for such decree absolute and requesting that a time

may be appointed for the purpose of pronouncing it in open Court. The Prothonotary and Senior Master shall then fix the time when the matter will be placed on board for decree absolute. Before the day fixed for passing the decree absolute, the application shall file an affidavit stating that no proceedings for the dissolution of the marriage have been instituted and are pending in any Court and shall also file a certificate of the Prothonotary and Senior Master certifying that an affidavit proving service of the decree *nisi* on the respondent has been filed and that no person has intervened or obtained leave to intervene in the suit and that no appearance or vakalatnama has been entered nor any affidavits filed on behalf of any person wishing to show cause against the decree *nisi* being made absolute. In case leave to intervene has been obtained or appearance or vakalatnama entered or affidavits filed on behalf of such person, the certificate shall state what proceedings, if any, have been taken thereon and what is the result thereof.

(2) If more than twelve calendar months have elapsed since the date of the decree *nisi*, an affidavit by the petitioner giving reasons for the delay shall be filed.

(3) Where under Rule 814 above, it is not necessary to file an affidavit proving service of the decree *nisi*, the applicant may not file the certificate of the Prothonotary and Senior Master regarding filing of the affidavit proving service.

821. Decree absolute, appearance not necessary – On the date appointed for the purpose the suit shall be placed on board for decree absolute, and on the suit being called on, the decree *nisi* shall be made absolute without any application being made to the Court either by the party or by his Advocate.

Alimony, maintenance and Custody of children

822. Application for alimony, custody and maintenance of children – Where there is a controversy as to alimony or the custody and maintenance of children, such matter shall be disposed of by a separate application of the Judge taking matrimonial causes in Chambers.

Removal of child outside jurisdiction – Any order relating to the custody of children shall direct that the child to remain in the custody of the party of whom such custody is given until further order of the Court and be not removed out of the jurisdiction of the Court without its sanction.

823. Provision for wife's costs – A wife, whether she be the petitioner or the respondent, may apply by Chamber Summons that provision may be made for her costs upto and of and incidental to the hearing of the suit and the Judge may on such application order the husband to pay into Court a sum sufficient to cover such costs or to give security for the same. If the sum be paid into Court, the wife may apply to the Prothonotary and Senior Master to pay the amount of costs to her or to her Advocate on record. The Court may, however, where the wife is possessed of sufficient means of her won, refuse to pass any order under this rule.

Nothing in this rule shall disentitle a wife in whose favour a decree *nisi* for dissolution of marriage or a decree for nullity of marriage is pronounced to the full costs of the suit against the respondent.

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