

HIGH COURT OF JUDICATURE AT BOMBAY  
(APPELLATE SIDE)  
WRITTEN EXAMINATION  
FOR THE POST OF JUDGE, FAMILY COURT

Date: 05.04.2015

Total Marks : 100

Time : 11.00 a.m. to 2.00 p.m.

INSTRUCTIONS

1. Question Nos. 1, 8 and 9 are compulsory.
2. Attempt any five of the remaining questions.
3. Figures to the right indicate marks.
- 4.(\* ) Answers to optional questions, in excess of prescribed number, will not be assessed.

1. Write a judgment on the following facts after mentioning bare necessary facts and presuming that necessary witnesses were examined and relevant documents have been produced. (20)

The petitioner (husband) and the respondent (wife) were married as per the Hindu Vedic Rites on 19th December, 2010. Soon thereafter, differences developed between the two and they are not living together from 25th August, 2012, it is the case of the respondent that she was driven out of the matrimonial home. There is no child from this marriage. The respondent wife has her own employment and it has come in evidence that her monthly salary was Rs. 6,000/-. The Petitioner husband was working as a teacher with a salary of Rs. 3,000/-.

The petitioner husband has filed the present petition for divorce. He has raised various grounds to substantiate his case for cruelty. There are in all six instances of cruelty, they being as follows:

- (i) Refusal to do domestic work.
- (ii) Insulting and abusing.

- (iii) Insisting on having a separate residence.
- (iv) To visit the parental home and not to return on a number of days every week.
- (v) Threatening and terrorising the husband and his parents.
- (vi) Not disclosing that she had some gynecological problem prior to marriage and concealing her miscarriage which took place sometime in December, 2011.

The respondent wife denied these allegations, but over and above the denials, she made certain allegations of her own in para 5(K) and (L) of the written statement. In para 5(K), she mainly made three allegations; (i) the petitioner behaved with her perversely and harassed her sexually; (ii) he would indulge in obscene talks with his girl friends on phone and in person and would behave immodestly with the girl friends to torture the respondent, (iii) he has illicit relationship with one 'S', wife of 'Z', and in fact he wanted to marry her. In para 5(L), she made allegations against her father-in-law that his behaviour with her was improper and in that she alleged that (i) he would touch her unnecessarily and (ii) he would barge into the kitchen if she was changing her clothes.

The petitioner and the respondent examined themselves in support of their respective claims. The evidence is in the nature of the words against the words. The petitioner additionally urged for grant of divorce on the ground of cruelty resulted due to wild and unsubstantiated allegations made in the written statement. On the other hand, it was urged on behalf of the respondent that the petitioner should have amended the petition with a prayer for divorce on this additional ground. However, the respondent could not substantiate the allegations made by her in paragraph 5(K) and 5(L) of the written statement.

2. Define custom/what is custom? What are the kinds of custom? State the essentials of a valid custom. On whom burden of proof of a custom rests? When custom need not be proved? (10)

3. Explain with distinction between grant of maintenance to wife u/s. 18 of The Hindu Adoption and Maintenance Act, u/s. 25 of The Hindu Marriage Act and u/s. 125 of The Code of Criminal Procedure. (10)
4. Examine the rights of a divorced Muslim wife to seek maintenance from her husband under : (a) the provisions of section 125 of The Code of Criminal Procedure, (b) the Muslim Women (Protection of Rights on Divorce) Act 1986. (10)
5. Define domestic violence. State the powers of Magistrate of granting monetary reliefs and passing compensation orders while disposing of an application under sub section (1) of Sec.12 of The Protection of Women from Domestic Violence Act, 2005. (10)
- 6.(a) State the concept of matrimonial home. Discuss the difference between matrimonial home and shared-household. (10)
- (b) Can relief be granted against female member of family of the husband in respect of shared-household? Elaborate.
7. Whether a child is competent to testify? State value of evidence of a child witness. Whether an un-sworn testimony of a child is admissible? State legal position as to administration of an oath to a child witness. (10)
8. Write short notes on any three of the following : (15)
1. Kinds of guardians under Hindu Law.
  2. Role of counselling and mediation in matrimonial conflict resolution in the context of Sec. 89 C.P.C.
  3. Recognition of foreign divorce decrees.
  4. Orders as to disposal of property u/s. 27 of The Hindu Marriage Act.
  5. Impeaching credit of a witness in judicial proceedings.

9. Discuss any three of the following:

(15)

1. Shared household within the meaning of the provisions of The Protection of Women from Domestic Violence Act, 2005.
2. Factors to be considered while deciding an application for direction to a wife to undergo DNA/Blood Test for determination of issue of paternity in matrimonial proceedings.
3. Communications during marriage – claim for privilege under The Indian Evidence Act.
4. Powers of natural guardian of a Hindu minor and limitations thereon.
5. Does a wife have any additional grounds for divorce under the Hindu Marriage Act which is/are not available to husband? Enumerate.

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