

Family Courts (Jharkhand High Court) Rules, 2004

THE FAMILY COURTS (JHARKHAND HIGH COURT)

RULES, 2004

THE FAMILY COURTS (JHARKHAND HIGH COURT) RULES, 2004

Noti. No. 1.A./Court Gathan 102/2003-2060/J, dated the 20th July, 2004, No. 6543, dated the 15th July, 2004. **Published in Jharkhand Gazette, Extraordinary, No.226 dated July 21st, 2004 and issued by Hon'ble Jharkhand High Court on 14.7.2004. —In exercise of the powers conferred by Section 21 of the Family Courts Act, 1984 (Central Act No. 66 of 1984), and all enabling provisions in that behalf, the High Court of Jharkhand hereby make and prescribe the following Rules to regulate the proceedings for the Family Courts in the State of Jharkhand.

In exercise of the powers conferred by Section 21 of the Family Courts Act, 1984, the High Court of Jharkhand are pleased to prescribe the following Rules for Family Courts in the State of Jharkhand.

RULES

1. Short title.—(a) These rules may be called the Family Courts (Jharkhand High Court) Rules, 2004.

(b) Commencement.—These rules shall come into force from 15th August, 2004.

(c) Application.—These rules shall apply to the Family Courts established in the State of Jharkhand under Section 3 of the Family Court Act, 1984.

2. Definitions.—In these rules, unless the context otherwise requires,—

(a) “Act” means the Family Courts Act, 1984;

(b) “Centre” means a counseling centre;

(c) “Counsellor” means a person referred to in Section 6 of the Act;

(d) “Court” means the Family Court established under Section 3 of the Act;

(e) “High Court” means the High Court of Jharkhand;

(f) “Institution” means any institution or organisation engaged in social welfare;

(g) “Petition” shall include an application under Chapter IX of the Criminal Procedure Code, unless the

subject matter or context requires otherwise;

(h) All other words and expressions used but not defined in these rules and defined in the Act, or in the Code of Civil Procedure, 1908 or in the Code of Criminal Procedure, 1973, shall have the meaning respectively assigned to them in the Act, or, as the case may be, in the Code of Civil Procedure, 1908 or in the Code of Criminal Procedure, 1973.

3. Working hours.—(i) The office of the Family Court shall be open daily except authorised holidays for transaction of office work between 10.00 a.m. and 5.00 p.m.

(ii) The Judges of the Family Court shall ordinarily sit in the Court between 10.30 a.m. — 4.30 p.m. on working days of the Family Court with recess between 1.00 p.m. — 1.30 p.m.

(iii) The Judges may, for expedience, hold proceedings of the Court beyond the working hours as prescribed in sub-rule (ii) above, and even on holidays :

Provided no such proceedings shall be held under sub-rule (iii) except with the consent of the parties to the proceeding.

(iv) The Family Court shall hold its sitting in open or in camera as determined by it in each case, but shall hold the proceedings in camera if either party so desires.

(v) No act of the Family Court shall be invalid by reason of holding or continuing its sitting at any place of its choice or on any holiday or outside normal working hours, when such sitting is informed to the parties in advance.

4. Place of sitting.—The judge of the Family Court may hold sitting at places other than the ordinary place of sitting in consultation with the parties to the proceedings; the provision of the Legal Aid Scheme may be invoked in appropriate cases in the proceedings under the Act.

Institution of proceedings :

(a) All proceedings instituted before a Family Court shall be by way of an application as per form No. 1 appended to these rules which should be duly verified by the petitioner. Interlocutory application in the proceeding to be instituted or already instituted shall be filed in form No. 2 after being duly verified by the applicant. The petition in form No. 1 or the interlocutory application in form No. 2 can be in any language falling in Schedule VIII to the Constitution.

(b) There shall be no Court fee or any other fee in respect of any petition or any interlocutory application filed before the Family Court.

(c) In respect of application under Section 125 of Cr PC or other application under Chapter IX of the Criminal Procedure Code the provision of that Code will apply.

(d) The application may be filed before Family Court as permitted under any law which also includes provisions in the following laws viz.

(i) Chapter IX of the Criminal Procedure Code, 1973 (2 of 1974).

(ii) Hindu Marriage Act, 1955 (25 of 1955).

(iii) Maintenance under the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956).

(iv) Guardianship of the person or custody of or access to any minor under the Hindu Minority and Guardianship Act, 1956 (32 of 1956).

(v) Dowry Prohibition Act, 1961 (28 of 1961) for an order for injunction in circumstances arising out of marital relationship.

(vi) Hindu Marriage (Validation of Proceedings) Act, 1960 (19 of 1960).

(vii) Personal law applicable to Muslims in including :

(a) Muslim Personal Law (Shariat) Application Act, 1937 (26 of 1937).

(b) Dissolution of Muslim Marriages Act, 1939 (8 of 1939).

(c) Muslim Women (Protection of Rights on Divorce) Act, 1986 (25 of 1986).

(viii) Parsi Marriage and Divorce Act, 1936 (3 of 1936) which can be instituted or taken before the Parsi District Matrimonial Courts constituted under Sections 18 and 20 of the said Act.

- (ix) Indian Christian Marriage Act, 1872 (15 of 1872).
- (x) Indian Divorce Act, 1945.
- (xi) Special Marriage Act, 1954 (43 of 1954).
- (xii) Child Marriage Restraint Act, 1929 (19 of 1929).
- (xiii) Anand Marriage Act, 1909 (7 of 1909).
- (xiv) Arya Marriage Validation Act, 1937 (19 of 1937).
- (xv) Foreign Marriage Act, 1969 (33 of 1969).
- (xvi) Suits or proceedings relating to Part B States Marriages Validating Act, 1952 (1 of 1952).
- (xvii) Guardians and Wards Act, 1890 (8 of 1890).

6. Filling of petition.—A petition or any other application shall be filed with two copies signed by the parties alongwith as many copies to be sent to all the respondents by an officer designated for this purpose. One copy of such petition or application shall be forwarded by the designated officer of the Family Court to the Counsellor forthwith.

7. Notice to respondent.—Notice of the proceeding including interlocutory application shall be issued in form No. 3 appended to these rules alongwith a copy of the petition of the application as the case may be in respect of matter under Chapter IX of the Criminal Procedure Code the summons to appear and answer shall be in form No. 4.

8. Name and address of the party or of the representative to be stated in every process.—The name and address of a party or of the representative appearing for a party shall be stated in every notice, summons, witness summons, interim application, warrant and every process of the Court issues at the instance of such party or representative.

9. Notice, summons, etc. how attested and signed.—All notices, Summons, Rules, Orders, Warrants and other mandatory processes shall be sealed with the seal of the Court and shall be signed by the designated officer of the Court.

10. Returnable date of notice, summons.—Unless otherwise ordered the notice, summons shall be made returnable three weeks after the date of the filling of the petition, if the respondent resides within the local limits of the Court and five weeks after the date of the filling of the petition, if the respondent resides outside the said limits.

11. Mode of service of notice, summons.—(a) The notice, summons shall be served in the manner prescribed in the Code of Civil Procedure save and except in proceedings under Chapter IX of the Criminal Procedure Code where the provisions of the Code will apply. Alongwith the notice, summons a copy of the petition and exhibit thereto shall be sent.

(b) In addition to the normal process of service by the Court, the applicant will be at liberty to serve upon the respondent, the notices, summons of the Court alongwith copy of the petition and exhibits either through person or through other recognisable mode of service including registered post and shall file affidavit of service upon the respondent.

12. Proof of service of summons.—It has to be shown by affidavit of applicant or other evidence that the notices, summons were served upon the respondents.

13. Substituted service.—In case of failure to serve by normal process, the Court on an oral/written application of the applicant may direct for serving upon the respondents by substituted mode i.e. through pasting publication in the newspaper, etc. and applicant shall file affidavit stating as to the mode adopted for service of summons.

14. Copy of petition to be furnished to the respondent.—Any respondent who ask for the copy on the ground that he has not received the copy of the petition or that he has not received complete copy, the applicant shall furnish the complete copy with all exhibits to the respondents.

15. The provisions under Order 1 of Civil Procedure Code for addition of a necessary party or a proper party shall be applicable to a proceeding before the Family Court.

16. Proceedings before the Court shall be taken up in the presence of the parties, and a legal practitioner shall be allowed to appear only as *amicus curiae*, if the Court finds it necessary in the interest of justice.

17. **Directions on the returnable date.**—On the returnable date of the notice, summons, the petition shall be placed for directions before a Judge of the Family Court. On that day, the designated Counsellor shall attend the Court of the Judge giving directions. The Judge shall, in consultation with the Counsellor, direct the parties to attend a specified date by which Counsellor shall file a memorandum setting out the outcome of the proceeding before him. On that day the Court will pass further order and directions as it deems fit and proper.

18. **Role of the Counsellor.**—The Counsellor appointed to counsel the parties shall fix time and date of appointment. The parties shall be bound to attend the counsellor on the date and at the time so fixed if either of the parties fails to attend the Counsellor on the date and time so fixed, the Counsellor may fix another date and shall communicate the same to the absentee party by registered post. In case of default by either of the parties on the adjourned date, the Counsellor shall submit a report to the Court and on receipt of such report, the Court may proceed with the matter without prejudice to other powers of the Court to take action against the defaulting parties.

The Counsellor entrusted with any petition on appearance of the parties before her/him shall assist and advise the parties regarding the settlement of the subject matter of dispute and shall endeavour to help the parties in arriving at conciliation.

The counsellor may in discharge of him/his duties, visit the home of either of the parties and interview the relatives, friends, and acquaintances of either of the parties.

The counsellor in discharge of him/his duties may also seek such information as she/he deems fit from the employed of either of the parties and such requisition for information shall be made through the Court.

The counsellor may take the assistance of any organisation, institution or agency in discharge of her/his duties.

the counsellor shall submit a report to the Court as and when called for to assist the Court in deciding the case in hand. The report may, inter alia contain the following points :

- (a) Living environment of the parties concerned.
- (b) Personalities.
- (c) Relationship.
- (d) Income and standard of living.
- (e) Educational status of the parties.
- (f) Status in society.
- (g) Counsellor's findings.

The Counsellor may also supervise the child/children if and when called upon by the Court.

19. **Confidentiality of information.**—Information gathered by the counsellor or any statement made before the counsellor or any notes or report prepared by the counsellor shall be treated as confidential and the counsellor shall not be called upon to disclose such information, statement, notes or report to any Court except with the consent of both the parties.

20. **Efforts for arriving at settlement.**—(1) Every Family Courts shall maintain separate lists of :
(a) Institutions and organisations engaged in social welfare together with names and addresses of representatives of each institutions or organisations.

(b) Person professionally engaged in promoting the welfare of the Family with their addresses.

(c) Persons working in the field of social welfare with their addresses.

Report from institution, organisation etc. (1) A Family Court may call for report as regards efforts made or to be made by the institution organisation or persons referred to in Section 5 of the Act :

Provided that where efforts for amicable settlement are continuing or are deferred, the Family Court may require the institution, organisation or person to submit before it an interim report.

21. When the parties arrive at a settlement before the Counsellor relating to the dispute or any part thereof such settlement shall be reduced into writing and shall be signed by the parties and countersigned by the counsellor.

HEARING OF PETITIONS IN COURT

22. **Adjournment by the Court.**—The petition so fixed shall not be adjourned by the Court unless there are circumstances justifying such adjournment and to meet the ends of justice. The Court shall record its reasons for adjourning a matter.

23. **Memorandum of evidence.**—The Court shall record only the substance of what the witness deposes and prepare a memorandum accordingly which shall be read and explained to the witness and the memorandum of the said substance recorded by the Court shall be signed by the witness and the presiding officer of the Court and shall form part of the record. The evidence taken on affidavit, if any, shall also form part of the record of the Court. The judgment shall contain a concise statement of the case, the point for determination the decision thereon and the reasons for such decision.

24. The Court shall furnish to the parties to the proceedings before it a copy of the judgment certified to be a true copy free of cost.

25. Appeal under Section 19(1) of the Act shall be in the manner of appeals against the original decree or order in a civil proceedings but there shall be no Court fee payable for the appeal.

26. The rules framed under the Guardians and Wards Act, 1890 by the Patna High Court and published in Bihar Gazette-III dated the 27th May, 1931 and 8th September, 1933 shall be applicable in matter relating to Guardians and Wards Act, 1890 to the extent they are not inconsistent with the provisions of the Act or the Rules framed thereunder.

27. **Application for Guardianship.**—All petitions for guardianship other than applications over which the High Court has jurisdiction, shall be filed before the Family Court.

28. **Contents of the Application.**—Every petition for guardianship when it is by a person other than the natural parent or natural guardian of the child shall be accompanied by a Home Study Report of the person asking for such guardianship and his/her spouse, if any, prepared by an approved association of social welfare agencies etc. or a suitably trained social worker, from the list of agencies and/or persons for the purpose of their association with the Court approved by the Government in the rule made under Section 5 of the Act, in consultation with the High Court.

29. 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.

30. A child study report of the child proposed to be taken in guardianship together with a photograph of the child should also be filed in all petitions for guardianship, as required under Rule 23 of the Rules framed under the Guardian and Wards Act, 1890. Such report shall be in a particular Form prescribed by the Court when the child is institutionalised (or Court committed). The report shall be countersigned by the petitioner.

31. A proceeding before the Family Court shall not become invalid by reason only of non-compliance with any of the procedural requirement prescribed herein.

INTERIM APPLICATIONS

32. **Interim application.**—All interim applications to the Court shall be separately numbered as “Interim Application No.....” In Petition No.....

33. **Interim application while matter is pending before Counsellor.**—An interim application may be made even while the matter is pending before a Counsellor.

34. **Report from the Counsellor.**—The Court may ask the Counsellor to submit an interim report for the purposes of such an application before deciding on interim application. The Family Court Rules, 2002 relating to report to be submitted by Counsellor, shall mutatis mutandis apply to interim reports also.

35. **Officers.**—The High Court may authorise and empower judge of the Family Court, or if, there be

more judges than one in a Family Court the principal judge of such Court to appoint so many and such clerks and other ministerial officers as may be necessary for the administration of justice and due execution of all powers and authorities exercisable by a Family Court.

Provided that the appointments of officers and ministerial staff shall be subject to any rules or restriction as may be prescribed or imposed under the Act.

36. The proceedings before the Court shall be heard and disposed of as expeditiously as possible, preferably within 3 months, and in achieving this objective the rules or procedure may not rigidly be adhered to.

37. **Control of High Court.**—Every Principal Judge, and Judge of Family Court shall be under administrative and disciplinary control of the High Court.

38. Power of High Court to transfer Judges, officers etc. without prejudice to the administrative and disciplinary control of the High Court under Rule 12, such Court or a Judge thereof authorised under general or special order in this behalf by such Court, may where it is considered necessary or expedient so to do, transfer any Principal Judge, Additional Judge, Judges or any officer or Ministerial official of one Family Court to another Family Court in this state or retransfer such Principal Judge, Additional Judge, officer or ministerial official, as the case may be and every such principal Judge, Additional Judge or Judge, official or ministerial official shall comply.

39. **Power of High Court to issue directions.**—For carrying out the purposes of the Act and for ensuring the uniformity of practice to be observed by Family Courts and for expeditious disposal, the High Court may from time to time, supervise and inspect the Family Courts and issue directions/circulars etc. to the Family Courts.

40. **Judge not to try a case in which he is interested.**—No Judge shall hear or decide any case to which he is party or in which he/she is personally interested.

41. The Family Courts may use such forms and containing such particulars as may be approved by the High Court.

42. **Powers to call for information etc.**—The High Court may require Family Courts to maintain such registers and records and containing such particulars as may be approved by the High Court.

FORM NO. 1

IN THE FAMILY COURT OF.....

Petition No.....

Between

Mrs./Mr.....

W/o or S/o.....

Age.....

Occupation.....

Present Address.....

Permanent Address/Residence.....

Petitioner's

And

Mrs./Mr.....

W/o or S/o.....

Age.....

Occupation.....

Present Address.....

Permanent Address/Residence.....

Respondent

Petition under Section.....for.....

The abovenamed petitioner respectfully submits as under :

1. That the petitioner and respondent are legally married..... and Their marriage was solemnized on..... at..... according to..... customs. After the marriage both the petitioner and respondent had been living/ lived together as husband and wife at..... Out of the wedlock the couple was blessed with the child aged..... named..... another child aged..... named.....

2. The petitioner submits that (give the grievance of the petitioner against the respondent with full particulars)

(a)

(b)

3. This petition is not presented in collusion with the respondent and there is no unnecessary or improper delay in institution of these proceedings.

4. Cause of action for the petition arose on (date) when the marriage of the petitioner with respondent was performed. It also arose on several occasions when the respondent behaved and committed.....

5. The petitioner and the respondent both last lived together at..... (ow where the marriage took place or where the respondent at the time of presentation of the petition resided) which is within the territorial jurisdiction of this Hon'ble Court.

PRAYER

6. The petitioner therefore prays that this Court may be pleased to pass an order directing.....

Place :

Date :

Petitioner

Verification

I.....daughter/son of..... aged.....resident of..... do hereby declare that the above facts stated in the petition are true and correct to the best of my knowledge, information and belief. Hence, verified on this the.....day of month.....

Petitioner

FORM NO. 2

IN THE FAMILY COURT OF.....

Interlocutory Application No.....

In

Petition No.....

Between

Mrs./Mr.....

W/o or S/o.....

Age.....

Occupation.....

Present Address.....

Permanent Address/Residence.....

Petitioner's

And

Mrs./Mr.....

W/o or S/o.....

Age.....

Occupation.....

Present Address.....

Permanent Address/Residence.....

Respondent

Interlocutory Application under Sectionfor

The abovenamed petitioner respectfully submits as under :

1. That the petitioner and respondent are legally married..... and Their marriage was solemnized on..... at..... according to..... customs. After the marriage both the petitioner and respondent had been living/ lived together as husband and wife at..... Out of the wedlock the couple was blessed with the child aged..... named..... another child aged.....named.....

2. The petitioner submits that (give the grievance of the petitioner against the respondent with full particulars)

(a)

(b)

PRAYER

The petitioner therefore prays that this Court may be pleased to pass an order directing.....

Place :

Date :

Petitioner

Verification

I.....daughter/son of..... aged.....resident of..... do hereby declare that the above facts stated in the petition are true and correct to the best of my knowledge, information and belief. Hence, verified on this the.....day of month.....

Petitioner

FORM NO. 3

IN THE FAMILY COURT OF.....

Petition No.....of.....

.....Petitioner

Versus

.....Respondent

To

Whereas the above named petitioner has instituted a petition against you, as set out in the petition (annexed with the petition & annexure)

And whereas the petition will be placed for directions on..... day of.....

You are hereby summoned to appear before the Family Court to answer. The petitioner's claim on the said.....day of..... at O'clock and

Take notice that on the day before mentioned 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 appear before the Judge on the day 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.....Judge at.....aforesaid this.....day of.....

Registrar

FORM NO. 4

IN THE FAMILY COURT OF.....

Petition No.....

Between

Mrs/Mr.....