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HIGH COURT OF ORISSA, CUTTACK

THE FAMILY COURTS (COURT) RULES, 2010

NOTIFICATION

The 13th September 2010

No. 986—R—In exercise of the powers conferred by Section 21 of the Family Courts Act, 1984, the High Court of Orissa is pleased to make the following rules for Family Courts in the State of Orissa :—

1. (a) Short Title—These rules may be called the Family Courts (Court) Rules, 2010.

(b) Commencement—These rules shall come into force on the date of publication in the *Orissa Gazette*.

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

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

(a) 'Act' means the Family Courts Act, 1984,

(b) 'Centre' means a counselling centre,

(c) 'Counsellor' means a person referred to in Section 6 of the Act,

(d) 'Court' means the Family Courts established under Section 3 of the Act,

(e) 'High Court' means the High Court of Orissa,

(f) 'Institution' means any institution or organization 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 opened daily except authorized holidays for transaction of office work between 10.30 A.M. to 5.00 P.M. with a recess of half an hour between 1.30 P.M. to 2.00 P.M. except in morning sittings when it would be from 7.00 A.M. to 1.00 P.M., with a recess of half an hour between 10.00 A.M. to 10.30 A.M.

(ii) The Court shall ordinarily commence the day sittings not later than 11 A.M. and rise at 4 P.M. and in case of morning sittings not later than 7.30 A.M. and rise at 12.30 P.M.

(iii) No case relating to Family Court shall be heard on Sundays or holidays gazetted under Section 11 (1) of the Orissa Civil Courts Act, 1984.

In respect of vacation as provided in Section 11 (2) of the Orissa Civil Courts Act, arrangement for disposal of urgent matters arising during vacation, shall be made in the following manner:—

(1) Urgent matters to be heard ordinarily in the Court of Judge, Family Court shall be taken up by the officer in the cadre of Orissa Superior Judicial Service (Senior Branch) who would be in-charge of the Judge, Family Court during that period.

(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.

### 5. 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 of the Constitution of India.

(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.P.C. or other application under Chapter IX of the Criminal Procedure Code, the provisions of that Code will apply.

(d) The application may be filed before Family Court as permitted under any law which also includes provisions contained 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 Marriages (Validation of Proceedings) Act, 1960 (19 of 1960)

(vii) Personal law applicable to Muslims 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 out 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. Filing of Petition**—A petition or any other application shall be filed with two copies signed by the parties along with 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 along with a copy of the petition or the application as the case may be, in respect of matter under Chapter IX of the Criminal Procedure Code for 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 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.

**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 that Code will apply. Along with the notice, summons a copy of the petition and exhibit annexed 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 along with copy of the petition and exhibits either through person or through other recognizable 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 either by affidavit of applicant or other evidence that the notices, summons were served upon the respondents.

**13. Substituted service of the summons**—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, poster & publication in the daily 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 become 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 direction. The Judge shall, in consultation with Counsellor, direct the parties to attend a specified counsellor for the purpose of counselling. The Judge shall fix 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 her/his duties, visit the house of either of the parties and interview the relatives, friends and acquaintances of either of the parties.

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

The Counsellor may take the assistance of any organization, 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, 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 disclose such information, statement, notes or report to any Court or other person except with the consent of both the parties.

**20. Efforts for arriving at settlement**—

(1) Every Family Court shall maintain separate lists of:—

- (a) Institutions and organizations engaged in social welfare together with names and addresses of representatives of such institutions or organisations;
- (b) person professionally engaged in promoting the welfare of the family with their names and addresses;
- (c) persons working in the field of social welfare with their names and addresses.

(2) Report from institution, organization etc. a Family Court may call for report as regards efforts made or to be made by the institution, organization 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, organization or persons to submit before it an 'interim' report.

**21.** When the parties arrive at a settlement before 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.

**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 the 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 free of cost to the parties a true copy of the judgment

**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.** Rules of Guardians and Wards Act to apply— The rules framed under the Guardians and Wards, Act 1890 by the High Court shall be applicable in matters relating to Guardians & 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, form 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 institutionalized (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 noncompliance with any of the procedural requirements prescribed herein.

**32.** Interim applications—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 an interim application. The Family Court Rules, 2010 relating to reports to be submitted by counsellors, shall *mutatis mutandis* apply to interim reports also.

**35. Officers**—The High Court may authorize 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.

The terms and conditions of a Judge of the Family Court shall be the same as of an officer of Orissa Superior Judicial Service (Senior Branch). Preference shall be given to women at the time of posting of Judges in the Family Court subject to availability of suitable women officers in Orissa Superior Judicial Service (Senior Branch) :

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 authorized 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, Judge, officer or ministerial official, as the case may be and every such Principal Judge, Additional Judge or Judge, officer or ministerial official shall comply.

**39. Power of High Court to issue directions**— For carrying out of purposes of the Act and for ensuring the uniformity of practice to be observed by Family Court 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/she is a 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. Power 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.

**43. Repeal and Savings**—The Family Courts (Court) Rules, 1988 is hereby repealed:

Provided that any order passed, appointment made, action taken or things done under the Rules so repealed shall be deemed to have been passed, made, taken or done under these rules.

**44. Interpretation**—If any question arises relating to the interpretation of these Rules, the decision of the High Court shall be final.

By order of the Court

B. K. DASH

Registrar (Vigilance) I/C.

FORM No. 1

(See Rule 5)

IN THE FAMILY COURT OF .....

PEITION 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 above named petitioner respectfully submits as under :—

1. That the Petitioner and Respondent are legally married ..... & ..... 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 ..... and 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 the 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 ..... (or 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

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

APPENDIX

FORM No. 2

(See Rule 5)

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 Section ..... for .....

The above named petitioner respectfully submits as under :—

1. That the Petitioner and Respondent are legally married ..... & ..... 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 ..... and 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

(See Rule 7)

IN THE FAMILY COURT AT .....

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

(See Rule 7)

IN THE FAMILY COURT OF .....

PEITION 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 .....

Petition for maintenance under Section 125 of Criminal Procedure Code

1. That the Petitioner and Respondent are legally married ..... & ..... 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 ..... and another child aged ..... named .....
2. The Petitioner submits that (give the grievance of the petitioner against the respondent with full particulars).
  - (a) .....
  - (b) .....

3. Petitioner has no resources/limited resources to maintain herself and her minor children. She is presently dependent upon her parents, who have their own expenses and may not be in a position to support the petitioner for long period.
4. That the Petitioner on ..... called upon the Respondent to provide money for maintenance for herself and her minor children but as yet no amount towards maintenance has been received from the Respondent.
5. That the Respondent is a person with means and has the following property, monthly income etc.
  - (a) .....
  - (b) .....
  - (c) .....
6. In the circumstances stated above there is no alternative for the petitioner and her minor children but to approach this Court for maintenance.

PRAYER

The Petitioner therefore prays that this Court may be pleased to pass an order directing the respondent to pay ..... towards maintenance of the petitioner and Rs. .... towards maintenance of the minor children.

Place :

Date :

Petitioner