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Divorce Act, 1869

Chapter 12 - Procedure

Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the[1][Code of Civil Procedure, 1908].

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1. Substituted by Act 51 of 2001, section 27, for "Code of Civil Procedure" (w.e.f. 3-10-2001).

Section 46 - Forms of petitions and statements

The forms set forth in the Schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such Schedule.

Section 47 - Petition to state absence of collusion

Every petition under this Act for a decree of dissolution of marriage, or of nullity of marriage, or of judicial separation[1][***] shall[2][***] state that there is not any collusion or connivance between the petitioner and the other party to the marriage.

Statements to be verified. - The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may at the hearing be referred to as evidence.

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1. The Words "or of reversal of judicial separation, or for restitution of conjugal rights, or for damages, shall bear a stamp of five rupees, and" rep. by Act 7 of 1870, section 2 and Schedule III.

2. The words "in the first, second and third cases mentioned in this section," rep. by Act 7 of 1870, section 2 and Schedule III.

Section 48 - Suits on behalf of lunatics

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

Section 49 - Suits by minors

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 this Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

Such undertaking[1][***] 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.

1.The words "shall bear a stamp of eight annas and" rep. by Act 7 of 1870, Section 2 and Schedule III.

Section 50 - Service of petition

Every petition under this Act shall be served on the party to be affected thereby, either within or without[1][India], in such manner as the High Court by general or special order from time to time directs.

Provided that the court may dispense with such service altogether in case it seems necessary or expedient so to do.

STATE AMENDMENT

[2]Uttar Pradesh :

For the words "High Court by general or special order from time to time directs", the words "Court may direct" shall be substituted.

1 . Substituted by the A.O. 1950, for "the Provinces" which had been substituted by the A.O. 1948, for "British India".

2. Vide U.P. Act XXX of 1957, section 2 and schedule (w.e.f. 21-10-1957).

Section 51 - 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 application of the opposite party, or by direction of the Court, be subject to be cross-examined 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.

Section 52 - Competence of husband and wife to give evidence as to cruelty or desertion

On any petition presented,[1][by a husband or a wife, praying that hi s or her marriage may be dissolved by reason of hi s wife or her husband, as the case may be, having been guilty of adultery, cruelty or desertion] the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

1. Substituted by Act 51 of 2001, section 28, for certain words (w.e.f 3-10-2001).

Section 53 - Power to close doors

The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with closed doors.

Section 54 - Power to adjourn

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

Section 55 - Enforcement of, and appeal from, orders and decree

All decrees and orders made by the Court in any suit or proceedings under this Act shall be enforced and may be appealed from, in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the laws, rules and orders for the time being in force:

[1] [***]

No appeal as to costs. - [2] [Provided] that there shall be no appeal on the subject of costs only.

1. The first proviso omitted by Act 51 of 2001, section 29 (w.e.f. 3-10-2001).

2. Substituted by Act 51 of 2001, section 29, for "Provided also" (w.e.f. 3-10-2001).

Section 56 - Appeal to the Supreme Court

Any person may appeal to [1] [the Supreme Court] from any decree (other than a decree nisi) or order under this Act of a High Court made on appeal or otherwise,

and from any decree (other than a decree nisi) or order made in the exercise of original jurisdiction by Judges of a High Court or of any Division Court from which an appeal shall not lie to the High Court,

when the High Court declares that the case is a fit one for appeal to [1] [the Supreme Court].

1. Substituted by the A.O. 1950, for "Her Majesty in Council".