

## THE WEST PAKISTAN FAMILY COURTS RULES, 1965

[Gazette of West Pakistan, Extraordinary, 2nd November 1965]

**No. Intg. 10-31/64** (ii).-In exercise of the powers conferred by section 26 of the West Pakistan Family Courts Act, 1964 (Act No. XXXV of 1964), the Governor of West Pakistan is pleased to make the following rules, namely: -

**1.** These rules may be called the West Pakistan Family Courts Rules, 1965.

**2.** In these rules, unless there is anything repugnant in the subject or context :-  
(a) **"Act"** means the West Pakistan Family Courts Act, 1964 (Act XXXV of 1964);

(b) <sup>1</sup>**"Court"** means the Family Court established under the West Pakistan Family Courts Act], XXXV of 1964;

(c) **"form"** means a form appended to these rules, <sup>2</sup>[and]

(d)**"section"** means a section of the Act.

(e)<sup>3</sup>**[Suit includes** an application for the custody of children or guardianship under the Guardians and Ward Act, 1890].

1.Subs, by Notification No. Integ .10.31.64/11,dated 5.4.1966.

2.Omitted by *ibid*.

3.Ins. By *ibid*.

**3.** Subject to the provisions of rule 7, the Courts of the District Judge, the Additional District Judge, the Senior Civil Judge, the Civil Judge, First Class and the Civil Judge, First Class (Additional) shall be the Family Courts established for the purposes of the Act.

**4.**-(1) A plaint under subsection (1) of section 7 shall be in writing, signed and verified by the plaintiff and shall be presented to the Court having jurisdiction under rule 5 of these Rules by the plaintiff or through a counsel, and where the plaintiff is a female, by her agent.

(2) The plaint under sub-rule (1) shall also contain the following particulars ; -

(a) name of the Court in which the suit is brought and the facts showing that it has jurisdiction;

(b) the name, description and place of residence of the plaintiff;

(c)the name, description and place of residence of the defendant so far as can be ascertained; where the plaintiff or the defendant is a minor or a person of unsound mind a statement to that effect;;

(d)the facts constituting the cause of action and the place where and date when it arose; and

(e)the nature of the claim and valuation of the claim with particulars in brief and the relief claimed.

**5.** Where a plaint is presented to a Court not having jurisdiction-

(a) the plaint shall be returned to be presented to the Court to which it should have been presented;

(b) the Court returning the plaint shall endorse thereon the date of its presentation to it and its return, the name of the party presenting it, and a brief statement of the reasons therefore.

### **Court Decisions**

**Family Court--Jurisdiction** - Suit for dissolution of marriage filed in Family Court at Kar.-- Defendant's plea that both parties being Canadian citizens. Court at Kar. lack, Jurisdiction to entertain and try such suit - Despite such plea defendant could not show that parties had lost their Pakistani citizenship - Nikahnama was admittedly registered at Kar. - Plaintiff admittedly was not residing at the given address at Kar. - Marriage between parties having been solemnized in Kar. under Islamic Law, second Nikah at Canada was exercise in futility - Second Nikah over and above existing valid Nikah is not recognized in Islam nor is Judicial separation - If all the facts asserted by plaintiff were correct, she was Justified in instituting suit in Kar.. **P.L.J. 2002 Kar. 117**  
PLD 1967 SC 97; P.L.J.1979 SC 120 ref.

**6.** The Court which shall have jurisdiction to try a suit will be that within the local limits of which-

- (a) the cause of action wholly or in part has arisen, or
- (b) where the parties reside or last resided together:

**Provided that** in suits for dissolution of marriage or dower, the Court within the local limits of which the wife ordinarily resides shall also have jurisdiction.

### **Court Decisions**

Jurisdiction. Proviso to R. 6, West Pakistan Family Courts Rules, 1965, enables estranged wife to file suit for dissolution of marriage within local limits of which she ordinarily resides. Words "ordinarily resides" must be construed in context of estranged wife who had left her husband's abode and had sought residence at any other place of her own choice; such place of her choice would answer to concept "ordinarily resides". Petitioner ordinarily residing at a place other choice, after separation from her husband, was, thus, competent to bring suit for dissolution of marriage in the Court of that place. High Court ordinarily would not go into question of fact in Constitutional Jurisdiction but where findings of Courts below on the face of record appeared to be perverse or based on no evidence, High Court even in Constitutional Jurisdiction could take different view. Both Courts below having unlawfully refused to exercise their Jurisdiction on wrong assumption that they did not have such Jurisdiction, their Judgments were set aside. P.L.J.1997 Lah. 1631 = 1997 CLC 742. Expression ordinary resides "does not necessarily mean that residence should belong in point of time, residence for a few days is enough. Court has to see place where female has chosen to stay regardless of whether she is a permanent resident of place, whether she has property over there or length of time she has resided there. P.L.J.1996 Lah. 1071 = 1996 CLC 1820.

**7.- (1)** Suits relating to custody of children and guardianship shall be instituted, heard and tried by the Court of the District Judge, but such Court may transfer any such suit to the Court of the Additional District Judge, the Senior Civil Judge, the Civil Judge, First Class or the Civil Judge, First Class (Additional), having jurisdiction as provided in rule 6, and thereupon the Court to which such suit is so transferred shall have jurisdiction to hear and try the same.

(2) Suits relating to the custody of children and guardianship shall be instituted, heard and tried in the Court of the Senior Civil Judge, the Civil Judge, First Class or the Civil Judge, First Class (Additional), having jurisdiction as provided in rule 6, and where in any district there is no such Court, such suits shall be instituted in and heard and tried by the Court of the District Judge.

(3) Notwithstanding anything contained in sub-rules (1) and (2), the Court of District Judge may-

(a) recall any suit made over by it for trial under sub-rule (1) to an Additional District Judge, Senior Civil Judge, Civil Judge, First Class or Civil Judge, First Class (Additional) and either try such suit himself or refer it for trial to any other Court within the District;

(b) send for the record and proceedings of any suit pending for trial in the Court of the Additional District Judge, Senior Civil Judge, Civil Judge, First Class or the Civil Judge, First Class (Additional) and hear and try the suit itself or refer it for trial to any other Court within the District, and thereupon the District judge or the Court to which such suit is so transferred, as the case may be, shall have jurisdiction to hear and try the suit.

#### PUNJAB AMENDMENT

Sub-rule (2) of rule 7 shall be deleted and sub-rule (1) of rule 7 shall be re-numbered as Rule 7 . by notification No. legis 4 (24)/72,dated 7.4. 1972.

**8.** The Court of the District Judge may, for reasons to be recorded in writing, stay the proceedings of any suit pending in the Court of the Senior Civil Judge, Civil Judge, First Class or Civil Judge, First Class (Additional).

#### PUNJAB AMENDMENT

Rule 8 shall be deleted by notification No. legis 4 (24)/72,dated 7.4. 1972.

**9.** On transfer of a case from one Court to another it shall not be necessary to commence the proceedings before the succeeding Judge de novo unless the Judge for reasons to be recorded in writing directs otherwise.

#### PUNJAB AMENDMENT

Rule 9 shall be deleted by notification No. legis 4 (24)/72,dated 7.4. 1972.

**10.-** (1) The Court may, where it deems fit, direct that the whole or any part of the proceedings under the Act be held in camera.

(2)Where both the parties to the suit request the Court to hold the proceedings in camera, the Court shall do so.

<sup>1</sup>**[10-A.** (1) The evidence of each witness shall be taken down in writing, in the language of the Court by the Presiding Officer of the Court, or in his presence and hearing and under his personal direction and superintendence and shall be signed by the presiding officer of the Court.

(2)When the evidence of a witness is given in English , the presiding officer of the Court may take it down in that language with his own hand and unless the parties request the Court otherwise, and authenticated translation of such evidence in the language of the Court shall form part of the record.

(3)When the evidence of a witness is given in any other language, not being English, or the language of the Court, the presiding officer of the Court may take it down in that language with his own hand, or cause it to be taken down in that language in his presence and hearing and under his personal direction and superintendence, and an authenticated translation of such evidence in the language of the Court or in English shall form part of the record.

(4)In cases in which the evidence is not taken down in writing by the presiding officer of the Court, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the presiding officer of the Court with his own hand, and shall form part of the

record.

(5)As the evidence of each witness taken down is completed, it shall be read over to him, and shall, if necessary, be corrected.

(6)If the witness denies the correctness of any part of evidence when the same is read over to him, the presiding officer of the Court may, instead of correcting the evidence, make a memorandum thereon of the objections made to it by the witness, and shall add such remarks as he thinks necessary.

(7)If the evidence is taken down in a language different from that in which it has been given and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

(8)When the Court has recorded the evidence of a witness, it shall also record such remarks (if necessary) as it thinks material respecting the demeanour of such witness whilst under examination.]

1. S.10A ins. by w.p. Notification no. Integ. 10-31/64, dated 21-2-1967

**11.** Where the parties agree to a compromise or conciliation effected between them under subsection (3) of section 10 or subsection (1) of section 12, the Court shall pass a decree or give decision in the suit in terms of the compromise or conciliation agreed to between the parties, as the case may be. .

**12.-** (1) Where the plaintiff or his pleader, makes default in appearing before the Court, the suit may be dismissed in default.

(2) The Court may restore a suit dismissed in default on sufficient cause shown, on application made to it within thirty days of the dismissal in default.

**13.** Ex parte decree or proceedings may, for sufficient cause shown, be set aside by the Court on application made to it within thirty days of the passing of the decree or decision.

**14.** (1) Every judgment or order shall be written by the presiding Judge or from the dictation of such Judge in the language of the Court, or in English and shall be dated and signed by the Judge in open Court at the time of pronouncing it.

(2) Judgments and orders which are appealable shall contain the point or points for determination, the decision thereon and the reasons in brief for the decision.

#### **REGISTERS OF CASES, DECREES, ORDERS, ETC.**

**15.** When a plaint has been filed, its particulars shall be entered in a register to be kept in the form prescribed for Civil Suits under the Code of Civil Procedure, 1908.

**16.** In every suit, on passing the judgment, a decree shall be drawn up in Form I and shall be signed by the presiding Judge. The decree shall bear the seal of the Court.

#### **Court Decisions**

R. 16 of Family Courts Rules, 1965. Accumulated effect. Article 199 of Constitution of Pakistan Article 181 of Limitation Act. Compromised Judgment/decree. Non preparedness of decree sheet along with Judgment. Execution rejected by Family Court on ground of limitation. Judgment of Family Court set aside in appeal. Writ against. Family Court required

to give decree sheet on announcement of Judgment and decree can be executed and not Judgment. Limitation would commence from date when decree actually drawn and signed. Period elapsed between announcement of Judgment and signing of decree shall be treated period requisite for obtaining certified copy and neglect on part of Court. Judgment not executable in absence of decree sheet. Delay in execution was condoned. **P.L.J.1999 Lah. 236 = 1999 MLD 216.**

**17.** The Court shall maintain a register of decrees and orders in the form prescribed for decrees and orders under the Code of Civil Procedure, 1908.

**18.** Whenever any fine is paid under section 15 or section 16 or money or property is deposited with or realized by the Court under the Act or these rules, a receipt shall be given in Form II which shall be serially numbered and the counterfoil thereof shall be kept in the Court.

**19.** All fines, monies, or property deposited or realized and disbursed by the Court shall be entered in a register in Form III.

**20.** Where the Court receives any amount payable to a party it shall cause a notice thereof to be served on the party entitled to receive it and shall pay it to the party concerned within four days, so far as may be of his applying therefor.

**21** The records of the Court; including its registers, shall be preserved for such period as is provided under the rules of the High Court applicable to Civil Courts.

#### APPEALS

<sup>1</sup>**[22.-** (1) An appeal under section 14 against the decree or decision passed by the Court shall be preferred to the High Court within thirty days of the passing of the decree or decision, excluding the time requisite for obtaining copies thereof; **Provided that** the High Court may, for sufficient cause, extend the said period.]

(2)The appeal shall be in writing, shall set out the grounds on which the appellant seeks to challenge the decree or decision, shall contain the names, description and addresses of the parties, and shall bear the signature of the appellant or his counsel.

(3)A certified copy of the decree and decision of the Court where a decree is passed, and a copy of the decision where only an order is passed shall be attached with the appeal.

<sup>2</sup>[ (4) Any order passed by the High Court on appeal shall, as soon as may be, be communicated to the Court concerned and the Court shall modify or amend the decree or decision accordingly and shall also make necessary entries to that effect in the appropriate column of the register of decrees.]

1.Sub.rule 22(1) subs. By W.P. notification No. Integ. 10-31/64, dated 21-2-67.

2.sub.rule 22(4) subs. By W.P. notification No. Integ. 10-31/64, dated 21-2-67.

#### **Court decisions**

Family Court Rules 1965, R. 22(3) Civil Procedure Code, 1908 (V of 1908), O.XLI, R. 1. Constitution of Pakistan, 1973, Art. 199. Petitioner did not challenge decree passed against him in respondent's suit for dissolution of marriage; only decree which he challenged was in suit for dower filed by respondent. Effect. Where two or more suits had been consolidated and decided by means of one Judgment, affected party would have option to challenge all decrees passed on basis of consolidated Judgment by means of one appeal provided if certified copies of all decrees, which were challenged in appeal were filed with appeal. Petitioner admittedly did not file certified copy of decree for dissolution of marriage before

lower Appellate Court^ Even grounds of appeal showed that only challenge made by petitioner was in respect of decree passed against him in suit for recovery of dower and he did not challenge decree of dissolution of marriage on basis thereof. Provision of R. 22(3) Family Courts Rules 1965, made it obligatory on party preferring appeal against decree dissolution of marriage to file certified copy of such decree before Appellate Court. Filing of certified copies of all decrees in consolidated litigation at the time of preferring single appeal being essential requirement of law, could not be dispensed with by Appellate Court. In addition thereto, High Court would not interfere with impugned Judgment which has been passed in accordance with law. Judgment of Appellate had been dismissed on account of failure to file certified copies of Consolidated cases. **P.L.J.2000 Lah. 417.**

**RECORDS AND THEIR INSPECTION**

**23.-** (1) The Court shall, on the application of any party to a dispute, allow inspection of the records of the Court relating to the dispute on payment of a fee of fifty paisa.

(2) On the application of any party to a suit, certified copies of the decree or decision or other proceedings or entry in any register maintained under these rules or of any portion thereof shall be supplied on payment of a fee calculated at the rate of 25 paisa for two hundred words or part thereof.

**PUNJAB AMENDMENT**

In Rule 23—

(a) in sub-rule (1), the brackets and figures '(1)'; and

(b) sub-rule (2)

(c) shall be deleted.

By notification No. O. P. 8(1)/71, dated 7-8-71.

**24.-** (1) There shall be kept in the office of every Court a seal of the Court which shall be circular in shape and shall have thereon the inscription 'Family Court' and the name of the District.

(2) The seal of the Court shall be used on all summonses, orders, decrees, copies and other documents issued under the Act or these rules.

**FORM I**  
(See Rule 16)  
**Form of Decree**

In the Family Court -----

1. Case No. -----

2. ----- Petitioner/Plaintiff

**Versus**

----- Defendant/Respondent

3. Claim for-----This suit coming this day for final disposal before this Family Court, it is hereby ordered that-----

Date-----

Seal of Court.

Signature of the Judge  
Family Court at-----

**FORM II**  
(See Rule 18)

1. Name of the Family Court-----
2. Name of the payer-----
3. Amount of fine, money or property paid -----
4. Particulars of the case and purpose of payment-----
5. Date of payment-----

(Steal)-----  
Signature of the Judge  
Family Court-----

**FORM III**  
(See Rule 16)  
Register of Receipts and Disbursement

FAMILY COURT OF-----

1. Serial No.
2. Name and address of the payer.
3. Amount or property paid, realized or deposited.
4. Particulars of the case.
5. Date of receipt.
6. No. of receipt in Form II.
7. Signature of the Judge, Family Court.
8. Date of disbursement with the name of the person to whom the money or property is paid or delivered.

9. REMARKS.