

Government of West Bengal
Law Department
Writers' Buildings, 'G' Block, 4th Floor,
Kolkata -700001

No: 1236 - L (St.)
LW/O/St./2N-79/2024

Date :18/11/2024

From: Spl. Law Officer & *Ex-officio* Deputy Secretary (Law).

✓ To: The Nodal Officer,
Systemized Administration & Regulation of Tendering
and Handling All Court Cases,
2nd Floor, High Court at Calcutta,
Kolkata – 700001.

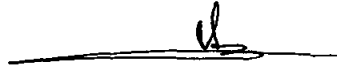
Subject : Execution of marriage/divorce deeds by Notaries-Reg.

Sir,

Kindly find enclosed herewith the Memo No.1192-LW/O/St./2N-79/2024, dated 25.10.2024 of Law Department, Government of West Bengal, for uploading the same in SARTHAC Portal.

Enclo : As stated.

Yours faithfully,



Spl. Law Officer & *Ex-officio* Deputy Secretary (Law).

GOVERNMENT OF WEST BENGAL
Law Department
Writers' Buildings, G Block, 4th Floor, Kolkata – 700 001

ORDER

No. 1192-LW/O/St./2N-79/2024

Dated:25.10.2024

Subject: Execution of marriage/divorce deeds by Notaries-Reg.

The Notaries Act, 1952 and the Notaries Rules, 1956 regulate the profession of Notaries. In pursuance of section 3 of the Notaries Act, 1952, the State Government may, for the whole or any part of the State, appoint as Notaries any legal practitioners or other persons who possess such qualifications as may be prescribed. The functions and duties of Notaries are enumerated in section 8 of the Notaries Act, 1952. The transaction of business by a Notary is regulated by rule 11 of the Notaries Rules, 1956.

2. It is clear from the plain reading of section 8 of the Notaries Act, 1952 and sub-rule (8) of rule 11 of the Notaries Rules, 1956 that execution of marriage or divorce affidavit is not the function of the Notary. The functions of Notaries as envisaged in section 8 of the Notaries Act, 1952 and sub-rule (8) of rule 11 of Notaries Rules, 1956 do not authorise any Notary to notarise any affidavit of marriage or divorce. Neither the Notary is authorized to certify the marriage nor competent to execute the divorce deed under the Notaries Act, 1952 and the Notaries Rules, 1956.

3. Hon'ble High Court of Orissa and Hon'ble High Court of M.P. have also clearly held that Notaries are not appointed as Marriage Officers and they are not authorised to execute marriage of divorce deeds. Reference may be made to the following decisions in this regard:-

- (i) Partha Sarathi Das Vs. State of Orissa and Others;
2023 SCC On Line Ori 5657 of Hon'ble High Court of Orissa
(Date of judgment-14.09.2023)
- (ii) Mukesh S/o Mr. Lakshman @ Lakshminaryan Vs. The State of M.P.
M. Cr. C. No. 44184 of 2020 of Hon'ble High Court of M.P.
(Date of judgment-31.12.2020)


- (iii) Bundel Singh Lodhi Vs. State of M.P.,
M. Cr. C No. 15168 of 2021 of Hon'ble High Court of M.P.
(Date of judgment-30.04.2021).

4. An act or omission on the part of any Notary in respect of any provision of the Notaries Act, 1952 or the Notaries Rules, 1956 will be seen as professional misconduct and the Notary concerned will render himself/herself liable to be dealt with in accordance with the provisions contained in rule 13 of the Notaries Rules, 1956 and action may also be taken against him/her by the appropriate Government under sub-rule (12) (b) of rule 13 of the Notaries Rules, 1956 and clause (d) of section 10 of the Notaries Act, 1952. The Hon'ble Supreme Court of India in the matter of Bhagwan Singh Vs. State of U.P. & Ors. in Diary No. 18885 of 2024 has observed as under in judgment/order dated 20.09.2024:-

"37. Similarly, the Notaries Act 1952 regulates the profession of Notaries. The functions and duties of Notaries are enumerated in section 8 thereof. The transaction of business by a Notary is contained in Rule 11 of the Notaries Rules, 1956. Any acts or omissions thereof, on the part of the Notary would tantamount to misconduct, and the person complained against would be unfit to be a Notary."

5. In view of the above, the Governor has been pleased to direct to all concerned that Notaries appointed under the Notaries Act, 1952 should desist themselves from executing marriage or divorce deeds as they are not appointed as Marriage Officers, under the Notaries Act, 1952. Such action on their part are against the extant law. Any omission or commission of the Notaries Act, 1952 or the Notaries Rules, 1956 in this regard on the part of any Notary will tantamount to misconduct and action will be taken against such Notary in accordance with the provisions contained in Notaries Act, 1952 and Notaries Rules, 1956.

By order of the Governor,



(DR. MD. SALIM ANSARI)
Additional Secretary to the Govt. of West Bengal.

To

All Notaries appointed by State Government.