

of the appellant-writ petitioner has been taken in the month of January, 2021. As per the affidavit of the appellant-writ petitioner he is now 35 years of age.

17. Looking into the aforesaid facts and circumstances, we expressed our mind for enhancing the monetary compensation from Rs. 30,000/- to Rs. 5,00,000/- while giving an opportunity to Sri Grijesh Tiwari, learned counsel for the Law College to make his submissions in that regard.

18. Sri Grijesh Tiwari, learned counsel for the Law College could not dispute the fact that it was on account of the fault of the Law College the appellant-writ petitioner was accorded admission, however, on the question of enhancement of compensation, he only requested that the amount of Rs. 5,00,000/- to be awarded as compensation to the appellant-writ petitioner is excessive and the Law College is not in a position to make the said payment. He also apprehends that, in case, the compensation of Rs. 5,00,000/- is awarded to the appellant-writ petitioner then the remaining 54 students would approach this Court.

19. We have bestowed our consideration on the said aspect and we find that once it is admitted to the Law College that the appellant-writ petitioner had not practised fraud and he submitted all the relevant documents and was accorded admission due to the fault of the Law College then in order to compensate the appellant-writ petitioner for jeopardizing his academic career the amount of Rs. 5,00,000/- to be awarded as monetary compensation is reasonable and not excessive.

20 . Accordingly, the order of the learned Single Judge insofar as it seeks to uphold the decision of the University dated 04.01.2021 negating the claim of the

appellant-writ petitioner to be permitted to pursue second semester of the LLB three years programme for the academic session 2019-20 needs no interference. However, we modify the order of the learned Single Judge dated 28.08.2024 passed in Writ-C No. 33767 of 2022 while enhancing the monetary compensation from Rs. 30,000/- to Rs. 5,00,000/- which shall be paid by the Law College to the appellant-writ petitioner within a period of six weeks from today.

21. In the eventuality, the Law College does not make the said payment within the stipulated period then the same shall be recovered as arrears of land revenue and paid to the appellant-writ petitioner.

22. With the aforesaid observations, the present intra-court appeal is **disposed of**.

23. Though we have disposed of the appeal, however, an affidavit of compliance shall be filed by the Law College before the Registrar General of this High Court within six weeks.

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**(2024) 10 ILRA 226**

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: LUCKNOW 18.10.2024**

**BEFORE**

**THE HON'BLE MANISH KUMAR NIGAM, J.**

Writ-C No. 6354 of 2022

**Nagendra Sharma & Anr. ...Petitioners**  
**Versus**  
**Court Of Prin. Judge Family Court Gonda & Anr. ...Respondents**

**Counsel for the Petitioners:**  
Amarendra Kumar Bajpai, Tejaswini Bajpai

**Counsel for the Respondents:**

Amrendra Nath Tripathi, Meena Singh (Kathayat)

Ashok Mishra, Advocate holding brief of Shri Amrendra Nath Tripathi, learned counsel for respondents.

**Civil Law - Family Court Act, 1984 -Section**

**10**-Writ of prohibition restraining the respondent Family Court to proceed with Rule 13 C.P.C.- initiated by respondent no. 2- claiming that Family Court has no jurisdiction to entertain a petition under Order IX Rule 13 read with Section 151 of C.P.C.;- Section 10 of the Family Court Act provides that the Civil Procedure Code are applicable in proceedings before the Family Court- the Family Court has jurisdiction to entertain an application under Order IX Rule 13 C.P.C. and therefore, no writ of prohibition can be issued to respondent no. 1.

**W.P. dismissed.** (E-9)

**List of Cases cited:**

1. Rabindra Singh Vs Financial Commissioner Co-operation Punjab & ors. reported in 2008 7 SCC 663
2. East India Commercial Co. Ltd. Vs Collector of Customs reported in AIR 1962 SC 1893
3. Govind Menon Vs U.O.I. (AIR) 1967 SC 1274 (1967)
4. Roopa Vs Santosh Kumar reported in 2004 SCC OnLine All 1157
5. Munna Lal and etc. Vs St. of U.P. & anr. etc. reported in 1990 SCC OnLine All 119
6. Ranvir Kumar Vs Judge, Family Court, Moradabad & ors. reported in MANU/UP/0598/1998
7. Deep Mala Sharma Vs Mahesh Sharma reported in MANU/UP/0283/1991

(Delivered by Hon'ble Manish Kumar Nigam, J.)

1. Heard Shri Amrendra Kumar Bajpai, assisted by Ms. Tejaswini Bajpai, learned counsel for the petitioners, Shri

2. This petition has been filed for the following relief:

*"I. To issue a writ, direction or order in the nature of Prohibition to refrain the O.P. no. 1 from acting beyond jurisdiction by initiating proceedings under Order XI Rule 13 read with Section 151 C.P.C. in Case No. 52 of 2019-Smt. Sarla Sharma Vs. Nagendra Sharma & Another for recalling the judgment dated 16.01.2019.*

*II. To issue a writ, direction or order in the nature of Certiorari to quash / set aside the ex-parte orders dated 29.05.2019 (Annexure Nos. 1 & 2) and order dated 22.08.2022 (Annexure No. 13) passed by the O.P. no. 1 in Case No. 52 of 2019- Smt. Sarla Sharma Vs. Nagendra Sharma & Another."*

3. Learned counsel for the respondent submitted that since question of jurisdiction is involved in the present writ petition, therefore, he does not intend to file counter affidavit and matter may be heard and decided to which learned counsel for the petitioner has no objection. Therefore, matter is decided with the consent of the parties without calling for a counter affidavit.

4. Before considering the merits of the case it will be useful to refer the brief facts of the case. The petitioner No. 1 was married to the respondent no. 2 on 13.03.1996 and out of their wedlock two children were born on 06.06.1999 and 28.09.2002. Thereafter, certain differences arose between the parties which led to

filing of certain cases against the petitioner, details of which is given in paragraph no. 4 to 8 of the writ petition. The petitioner no. 1 thereafter filed an application under Section 13 of the Hindu Marriage Act for divorce being Case No. 1006 of 2017 (Nagendra Sharma v. Smt. Sarla Sharma) in the court of Principal Judge, Family Court, Gonda on 06.11.2017 and after exchange of pleadings between the parties, the application filed by the petitioner no. 1 under Section 13 of Hindu Marriage Act was allowed by judgment and decree dated 16.01.2019 and 28.01.2019 passed by Principal Judge, Family Court, Gonda. On 29.05.2019 the respondent no. 2 filed an application under Order 9 Rule 13 C.P.C. read with Section 151 C.P.C. against the judgment and decree dated 16.01.2019 and 28.01.2019 passed by the Principal Judge, Family Court, Gonda in Case No. 1006 of 2017 along with an application under Section 5 of Limitation Act for condoning the delay in filing the application under Order IX Rule 13 C.P.C. and stay application for staying the judgment and decree dated 16.01.2019 and 28.01.2019. The Principal Judge, Family Court by order dated 29.05.2019 has stayed the implementation of the judgment and decree dated 16.01.2019 and 28.01.2019 and issued notices to the petitioner no. 1 fixing 17.07.2019.

5. The petitioner has prayed a writ of prohibition restraining the respondent no. 1 to proceed with proceedings under Order IX Rule 13 C.P.C. initiated by respondent no. 2 on the ground that in view of Section 19 & 20 of the Family Court Act, 1984, the Principal Judge, Family Court has no jurisdiction to entertain a petition under Order IX Rule 13 read with Section 151 of C.P.C. and the orders passed in the

aforesaid proceedings are without jurisdiction.

6. Per contra, learned counsel appearing for respondents has submitted that the respondent no. 1 was well within the jurisdiction to entertain a petition under Order IX Rule 13 C.P.C. read with Section 151 C.P.C. and has committed no illegality in entertaining the same.

7. Before considering the rival submission, it would be relevant to quote the relevant provisions of law as well as the nature and scope of writ of prohibition:

*"Prohibition is an extraordinary prerogative writ of a preventive nature, its proper function being to prevent courts, other tribunals, officers or persons exercising judicial or quasi-judicial powers from usurping jurisdiction or exercising jurisdiction not vested in them.*

*In Halsbury's Laws of England, it is stated: "The order of prohibition is an order issuing out of the High Court of Justice and directed to an ecclesiastical or an inferior temporal court or to the Crown Court, which forbids that court to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land."*

*Thus, prohibition is a judicial writ, issued by a superior court directing a subordinate court or an inferior tribunal from exercising jurisdiction not vested in it or from acting in excess of jurisdiction. Under the Constitution of India, a writ of prohibition has been specifically recognized both under Article 32 and Article 226. It is directed either by the*

*Supreme Court or by a High Court to any subordinate court or inferior tribunal prohibiting it from proceeding with the matter over which it has no jurisdiction or in excess thereof.*

8. In case of ***East India Commercial Co. Ltd. v. Collector of Customs reported in AIR 1962 SC 1893***, the Supreme Court at page no. 1903 of the judgment held that a writ of prohibition is a judicial writ. It can be issued against a judicial or quasi judicial authority, when such authority exceeds its jurisdiction or tries to exercise jurisdiction not vested in it. It is an order directed to the inferior court or tribunal forbidding it from continuing with proceedings therein on the ground that the proceeding is without or in excess of jurisdiction or contrary to laws of the land statutory or otherwise.

9. The paramount object of prohibition is to prevent encroachment of jurisdiction. Its function is to restrain courts, tribunals and officers or authorities exercising judicial or quasi-judicial powers from usurping jurisdiction not vested in them or from exceeding their authority by confining them to the exercise of powers conferred on them.

10. Writ of prohibition is not a proceeding between the private litigants at all. In fact, it is a proceeding between two courts, a superior court and a inferior court and as the means whereby the superior court exercises its power of superintendence over an inferior court by keeping the later within the limits of the jurisdiction conferred on it by law.

11. In case of absence or total lack of jurisdiction, a writ of prohibition would be available against a judicial or quasi-

judicial authority prohibiting it from exercising jurisdiction not vested in it. Again, a distinction must be drawn between lack of jurisdiction and the manner or method of exercising jurisdiction vested in a court or tribunal. Prohibition cannot lie to correct the course, practice or procedure of an inferior court or a tribunal or against a wrong decision on merits (Govind Menon v. Union of India (AIR) 1967 SC 1274 (1967)). Therefore, when a tribunal has jurisdiction to make an order, but court or tribunal in exercise of that jurisdiction commits a mistake whether of fact or of law, the said mistake can only be corrected by an appeal, revision or proceedings under Article 227 of Constitution of India and not by a writ of prohibition.

12. Learned counsel for the petitioners contended that in view of Section 19 & 20 of the Family Court Act, 1984, it is apparent that the Principal Judge, Family Court exercising jurisdiction under the Family Court, 1984 has no jurisdiction to entertain an application under Order 9 Rule 13 read with Section 151 C.P.C.

13. Section 19 & 20 of the Family Court Act, 1984 are quoted as under:

***"19. Appeal-(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code or Criminal Procedure, 1973 (2 of 1974), or in any other law, an appeal shall lie from every judgement or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.***

***(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties [or from an***

*order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):*

*Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991].*

*(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgement or order of a Family Court.*

*[(4) The High Court may, of its own motion or otherwise, call for an examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.]*

*[(5)] Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.*

*[(6)] An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.*

**20. Act to have overriding effect.-**  
*The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."*

14. Per contra, learned counsel appearing for the respondents contended

that in view of Section 10 of the Family Court Act, 1984, the provisions of Civil Procedure Code, 1908 shall apply to the suits and proceedings before a family court subject to other provisions of the Family Court Act or the rules made thereunder, therefore, an application under Order 9 Rule 13 read with Section 151 C.P.C. is maintainable before the Family Court. It has been further contended by learned counsel for the respondents that from the perusal of the application filed by respondent no. 2 under Order 9 Rule 13 C.P.C., it is apparent that the petitioner by committing fraud on the court has got filed a written statement with forged signature of the respondent no. 2 on 08.01.2018. The respondent no. 2 never came to Gonda on 08.01.2018 nor engaged any counsel nor has signed any vakalatnama and on 08.01.2018 and respondent no. 2 was at Lucknow in her school. The respondent no. 2 has no information of the mediation proceedings before the court below and never appeared in Gonda and entire proceedings were conducted by the petitioner by committing fraud. It is also submitted that since the judgment and decree passed by the family court is because of fraud committed upon the court by the petitioner no. 1, therefore, the same can be looked into by the court in exercise of its inherent powers.

15. Section 10 of the Family Court Act is quoted as under:

**"10. Procedure generally.-**  
*(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings other than the proceedings under Chapter IX of the Code of Criminal*

*Procedure, 1973 (2 of 1974) before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court*

*(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.*

*(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other."*

16. A close scrutiny of Section 10 of Family Court Act clearly provides that subject to the other provisions of this Act and the Rules the provisions of Code of Civil Procedure, 1908 and of any other law for time time being in force shall apply to the suits and proceedings other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 before a Family Court and for the purposes of the said provisions of the Code, Family Court shall be deemed to be a civil court and shall have all the powers of such court.

17. It is evident from perusal of Section 10 of Family Courts Act that provisions of Civil Procedure Code are applicable to the proceedings before the Family Courts. It would be pertinent to observe here that provisions encoded in Civil Procedure Code are based on principle of natural justice and fair play, hence all the provisions of Civil Procedure

Code are made applicable to the proceedings before Family Courts within the meaning of Section 10 of the Family Courts Act.

18. In case of **Roopa v. Santosh Kumar** reported in **2004 SCC OnLine All 1157**, the Division Bench of this Court was considering a question as to whether the Family Court has the power to adjourn the case on an application moved by a party. The Family Court rejected the adjournment application on the ground that in the Family Court Act, there is no provision for moving an application for adjournment or exemption of appearance and thereafter passed final order rejecting the application under Section 13-B of Hindu Marriage Act. In paragraph nos. 8, 9, 12 & 13, the Division Bench of this Court has held as under:

*"8. Learned counsel for the appellant pointed out that Court had completely misdirected itself in rejecting adjournment application (6 Ga) on the ground that there was no provision under law for moving such an application under Family Courts Act.*

*9. Learned counsel referred to Section 10 of Family Courts Act which is relevant for our purpose reads :*

*" (1) Subject to the other provisions of this Act and the Rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings (other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973) (2 of 1974), before a Family Court and for the purpose of the said provisions of the Code, Family Court shall be deemed to be a civil court*

*and shall have all the powers of such Court.*

(2).....

(3) *Nothing to the other provisions of this Act and the Rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings or at the truth of the facts alleged by the one party and denied by the other."*

12. *Considering the averments contained in the divorce petition under Section 13B, Hindu Marriage Act/Annexure-1 to the affidavit, Family Court was under an obligation to afford opportunity to the concerned parties to prosecute consent divorce petition."*

13. *Family Court has necessary powers, including those under Order IX Rule 13, CPC by virtue of Section 10, Family Court Act.*

19. Thus, the Court was of the view that Family Court has all necessary powers including those under Order IX, Rule 13 C.P.C. by virtue of Section 10 of the Family Court Act.

20. In case of ***Munna Lal and etc. v. State of U.P. and another etc.*** reported in ***1990 SCC OnLine All 119***, the Division Bench of this Court was considering a question whether Section 24 of the Civil Procedure Code, 1908 will apply to Family Court constituted under the Family Courts Act, 1984. In paragraph nos. 3, 5, 6 & 7, this Court has held as under:

*"3. Common question, which has been argued in these three cases, is as to*

*whether High Court has jurisdiction to transfer the case from one Family Court to another Family Court in exercise of the powers of transfer under C.P.C. and Cr.P.C. Section 7 of the Act, which deals with the jurisdiction of the Family Court is quoted below :*

*"7. Jurisdiction : (1) Subject to the other provisions of this Act, a Family Court shall-*

*(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation : and*

*(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends. In connection with the suits and proceedings referred to in the explanation to sub-sec. (1) of Section 7 of the Act a Family Court exercises jurisdiction exercisable by any district or any subordinate civil court and for the purpose of exercising such jurisdiction be deemed to be a district court or subordinate civil court, as the case may be and in respect of the matter relating to Chapter IX of the Cr.P.C. Family Court exercises the jurisdiction exercisable by a Magistrate 1st Class under Chapter IX of the Code.*

*5. By virtue of Section 10 of the Act, provisions of C.P.C. and of any other law for the time being in force shall apply to suits and proceedings before a Family Court and for the purpose of these provisions of the Code. Family Court shall*

*be deemed to be a civil court and so far as proceedings under Chapter IX of the Cr.P.C. are concerned, the provisions of the Cr.P.C. have been made applicable.*

*6. Family Court, as such, is a substitute of a civil court in respect of the matters referred to in the explanation to sub-section (1) of Section 7 of the Act and has been declared to be a district court or the subordinate civil court as the case may be. When exercising powers under Chapter IX of the Cr.P.C. Family Court is a substitute of a Magistrate Ist Class and exercises all the powers, which are exercisable by those Magistrates. By S. 10 of the Act, C.P.C. has been made applicable to matters dealt with in the explanation to sub-section (1) of Section 7 of the Act and Family Court when dealing with these matters, has been declared to be a civil court. Likewise, Code of Criminal Procedure has been made applicable to proceedings under Chapter IX of the Cr.P.C.*

*7. Family Court, when exercising powers and jurisdiction relating to the matters referred to in explanation to sub-section (1) of Section 7 of the Act is a civil court, and as such, High Court has the jurisdiction to transfer the cases from one Family Court to another under Sections 22, 23 and 24 of the C.P.C. Similarly, when Family Court is exercising the powers and jurisdiction under Chapter IX of the Cr.P.C., it is criminal court equivalent, to the Magistrate Ist Class and High Court will have the powers to transfer the case from one Family Court to another under Section 407 of the Cr.P.C.”.*

**21. In case of Ranvir Kumar v. Judge, Family Court, Moradabad and others** reported in **MANU/UP/0598/1998**,

this Court was considering a question whether against an order passed by the Family Court allowing an application under Order IX Rule 13 C.P.C. an appeal would lie under Section 19 of the Family Court Act or a writ petition could be filed to challenge the order. This Court held that an order passed by Family Court allowing an application under Order IX Rule 13 C.P.C. will amount to a final order and not an interlocutory order, therefore, an appeal will lie under Section 19 of the Family Court Act. Paragraph no. 7 of the *Ranvir Kumar v. Judge, Family Court, Moradabad (Supra)* is quoted as under:

*“7. In the cloister of the above authorities, I feel persuaded to the view that the order setting aside the ex parte decree of divorce is no doubt fraught with the effect of restoring the status quo ante qua the main issues involved in the divorce petition and reviving the issues which were settled by the ex parte decree but, the expression "interlocutory order" seems to have been used in Section 19(1) of the Act in the sense of orders passed on miscellaneous applications during the pendency of the main case, divorce petition in the instant case, which do not have the effect of the case itself being finally disposed of, if once the main case is decided, an order setting aside the decision and restoring the case for decision afresh would not be treated as one interlocutory order for restoration proceeding is an independent proceeding. The decision on the issues raised in the restoration application will have the complexion of a final decision qua the restoration application. The order allowing or rejecting restoration application, is therefore, not an interlocutory order within the ambit of Section 19(1) of the Family Courts Act. 1984, and is clearly appealable*



*under the said provisions. Order XLIII, Rule 1 of the Code of Civil Procedure envisage an appeal against an order rejecting an application under Order IX. Rule 13, C.P.-C. while Section 19 of the Act provides for an appeal against any Judgment and order not being an interlocutory order. This carves out the distinction between the two provisions and, therefore, submissions made by the learned counsel for the petitioner that no appeal lay under Section 19 of the Act against the order allowing restoration application, does not commend itself for acceptance."*

22. In case of **Deep Mala Sharma v. Mahesh Sharma** reported in **MANU/UP/0283/1991**, while interpreting the provisions of Section 10 of the Family Court Act, a Division Bench of this Court held that provision of Limitation Act 1963, will be applicable to the proceedings under the Family Court Act. In case of Deep Mala Sharma (Supra), in paragraph no. 9, Division Bench of this Court has held as under:

*"9. As regards the second point as to whether the provisions of Limitation Act were applicable, under Section 10 of the Family Court's Act it has been provided that subject to other provisions of the Act and Rules the provisions of the Code of Civil procedure, 1908 and "of any other law for the time being in force" shall apply to suits and proceedings before a Family Court (other than proceedings under chapter IX of the Code of Criminal Procedure, 1973) and for the purposes of such provisions of the code, the Family Court shall be deemed to be a civil Court and shall have all the powers of such Court. The Limitation Act, particularly Section 5 thereof provides that when sufficient cause has been shown the delay*

*in preferring appeal or application can be condoned. The provisions of the Code of Civil Procedure and "of any other law for the time being in force" have been made applicable to the suits and proceedings before a Judge Family Court which has been declared to be deemed to be a civil Court having all the powers of such Court. The expression "of any other law for the time being in force" under Section 10 of the Family Courts Act is comprehensive enough to include the provisions of Limitation Act, 1963 to be made applicable to proceedings under the Family Courts Act.*

*There would be no justification in restricting the meaning of the expression of any other law for the time being in force", which is couched in a language having a very wide sweep. The provisions of a statute dealing with social and beneficent provisions should not be interpreted in a rigid manner, rather a broader view must be taken consistent with the object of legislation. The object and reasons of the establishment of Family Courts were to emphasise conciliation and achieving the socially desirable results and adherence to rigid rules of procedure and evidence were to be eliminated. In case the provisions of Section 5 of the Limitation Act were not made applicable, there might be so many cases where, particularly in a country like ours, where a sizable Section of society suffers from illiteracy, it would not be proper to adjudicate matters pertaining to marriage, restitution of conjugal rights and maintenance and divorce etc. without providing some opportunity to file an application or appeal beyond the period of limitation of 30 days, by taking a rigid view of limitation, rather there may be bonafide lack of knowledge or compelling circumstances like illness, death of a family*

*member and similar other matters on account of which any person may be prevented from preferring appeal or any application within the prescribed period.”*

23. In view of the judgments noted above, the position of law as emerges is that in view of Section 10 of the Family Courts Act, 1984, provisions of Civil Procedure Code, 1908 are applicable in proceedings before the Family Court.

24. In case of **Rabindra Singh vs. Financial Commissioner Co-operation Punjab and others reported in 2008 7 SCC 663**, Hon’ble the Supreme Courty has held that all the Courts in a situation of the present nature have incidental power to set aside ex parte order on the ground of violation of the principles of natural justice. Thus, even in the absence of any express provision, having regard to principles of natural justice in such a proceeding, the Courts will have ample jurisdiction to set aside an ex parte decree, subject of course of statutory interdict.

25. Fact of the case in case of Rabindra Singh (Supra) were that a partition suit was filed before the Revenue Court which was decreed ex parte against the defendants. An application under Order IX Rule 13 read with Section 151 CPC was filed by the respondents which was dismissed by the Courts below holding therein that the Revenue Court has no jurisdiction to entertain application under Order IX Rule 13 and the remedy of the defendant in the aforesaid proceedings was to file an application for review. The Supreme Court set aside the orders and allowed the appeal. For reference, paragraph Nos.18, 19, 20 21 & 22 of the aforesaid judgment are quoted as under :-

*“18. The Tehsildar, in his judgment, has resorted to a peculiar logic. According to him, the provisions of review were attracted and not under Order IX Rule 13 for setting aside the ex-parte proceeding. Even if that be so, the ex-parte decree, in our opinion, could have been set aside. He could have exercised his power of review. The commentary on which reliance was placed, was made on the basis of a decision of the Financial Commissioner in Hukam Chand & ors. v. Malak Ram & ors. (1932 ) 11 Lah LT 42]. The said decision, with respect, does not lay down the correct law. All courts in a situation of this nature have the incidental power to set aside an ex parte order on the ground of violation of the principles of natural justice. We will deal with this aspect of the matter a little later.*

*19. A defendant in a suit has more than one remedy as regards setting aside of an ex parte decree. He can file an application for setting aside the ex parte decree; file a suit stating that service of notice was fraudulently suppressed; prefer an appeal and file an application for review.*

*20. In Bhanu Kumar Jain v. Archana Kumar [(2005) 1 SCC 787] this Court held : (SCC p. 797, para 26)*

*"26. When an ex parte decree is passed, the defendant (apart from filing a review petition and a suit for setting aside the ex parte decree on the ground of fraud) has two clear options, one, to file an appeal and another to file an application for setting aside the order in terms of Order 9 Rule 13 of the Code. He can take recourse to both the proceedings simultaneously but in the event the appeal is dismissed as a result whereof the ex parte decree passed*

*by the trial court merges with the order passed by the appellate court, having regard to Explanation I appended to Order 9 Rule 13 of the Code a petition under Order 9 Rule 13 would not be maintainable. However, Explanation I appended to the said provision does not suggest that the converse is also true."*

21. *What matters for exercise of jurisdiction is the source of power and not the failure to mention the correct provisions of law. Even in the absence of any express provision having regard to the principles of natural justice in such a proceeding, the courts will have ample jurisdiction to set aside an ex parte decree, subject of course to the statutory interdict.*

22. *In Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal [1980 Supp SCC 420] this Court has held that an Industrial Tribunal has the requisite jurisdiction to recall an ex parte award. [See also Sangham Tape Co. v. Hans Raj (2005) 9 SCC 331 and Kapra Mazdoor Ekta Union v. Birla Cotton Spg and Wvg. Mills Ltd. (2005) 13 SCC 777]"*

26. Contention of the learned counsel for the petitioner that in view of Section 19 & 20 of the Family Courts Act, 1984, the petitioner has only remedy of filing an appeal against the ex-parte judgment, is misconceived. Learned counsel for the petitioner could not point out any provision of Family Court Act or Rules made thereunder which prohibits the application of C.P.C.

27. Thus, in my considered opinion contention of the learned counsel for the petitioner that writ of prohibition can be issued restraining the Family Court from proceeding with the application filed

by the respondent under Order IX Rule 13 C.P.C. is wholly misconceived as I have already held that in view of Section 10 of the Family Court Act, the provisions of Civil Procedure Code are applicable in proceedings before the Family Court. The Family Court has jurisdiction to entertain an application under Order IX Rule 13 C.P.C. and therefore, no writ of prohibition can be issued to respondent no. 1.

28. Learned counsel for the petitioner also tried to assail the order passed by respondent no. 1 on merits. In a writ of prohibition such a challenge cannot be entertained. Once, it is held that the court has competence/jurisdiction to entertain an application, the manner of exercise of the said jurisdiction cannot be seen while considering a writ of prohibition. The petitioner can challenge the same before the appropriate forum, if so advised but not in the present petition.

29. In view of the above discussion, the instant writ petition is not maintainable, and is accordingly **dismissed.**

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**(2024) 10 ILRA 236**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 04.10.2024**

**BEFORE**

**THE HON'BLE ALOK MATHUR, J.**

Writ-C No. 7164 of 2024

**C/M Ram Bharose Maiku Lal Inter College**  
**Thru Manager Sri Shree Kant Sahu & Anr.**  
**...Petitioners**

**Versus**  
**State of U.P. & Ors. ...Respondents**

**Counsel for the Petitioners:**