

# **Application of CPC to the Family Court Cases**

# **Section 10 of Family Courts Act, 1984 reads as follows:-**

(1) subject to the provisions of this act for the time 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 suits and 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, a family court shall be deemed to be a civil court and shall have all the powers of such court.

- Section 10(3)- nothing in sub-section 1 or 2 shall prevent a family court from laying down its own procedure with a view to arrive at a settlement in regard of the subject –matter of the suit or proceedings or at the truth of the facts alleged by one party and denied by the same.

# Section 7 of the Family Court Act, 1984 States that a Family Court Shall :-

- A). Have an 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 suit or proceedings of the nature referred to in the explanation, and
- B). Be deemed for the purpose of exercising such jurisdiction under such law, to be a District Court or such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends.

***Explanation:-*** The suits and proceedings referred to in this sub section are of the following nature namely :

- A). A suit or proceedings between the parties to a marriage for a decree of nullity of marriage or restitution of conjugal rights or judicial separation or dissolutions of marriage.

- B). A suit or proceeding for a declaration as to the validity of marriage or as to the matrimonial status of any person.
- C). A suit are proceeding between the parties to a marriage with respect to the property of the parties of either of them.
- D). A suit or proceeding for an order and injunction in circumstance arising out of her marital relationship.
- E). A suit or proceeding for the declaration as to the legitimacy of any person.
- F). A suit or proceeding for maintenance.
- G). A suit or proceeding in relation to the guardianship of or custody of or access to any minor.

## **Section 18 of Family Court Act sub section 1 of Family Court Act provides that:-**

A decree or order (other than an order under chapter 9 of the Code of Criminal Procedure passed by the Family Court shall have the same force and effect as a decree or order of a Civil Court and shall be executed in the same manner provided as is prescribed by the Code of Civil Procedure for the execution of decrees and orders.

## **Section 20 Act to have overriding effect:-**

- The provisions of this act shall have effect notwithstanding anything inconsistent with any other law for the time being in force or in any instrument having effect by virtue of any law other than this act.
- The Family Court Act, 1984 has an overriding effect over all other laws notwithstanding anything inconsistent contained in such laws.

- Amina Ali Akbar Vs. B. Ali Akbar, Madras High Court, the brief act of the instant case is that the petitioner who is the wife filed a suit in the Family Court to declare herself as a wife of the respondent/ defendant husband and to direct the defendant to reconstitute the conjugal rights with the plaintiff and for other reliefs. The defendant husband filed the written statement under order 7 rule 11 of the Code of Civil Procedure for the rejection of the plaint. The Wife filed her preliminary objection that the family court lack jurisdiction to entertain an application filed under order 7 rule 11 CPC as it is in violation of the Family Courts Act, 1984.
- It was held that the Family Courts are vested with the powers as that of the civil court and it is for the Family Court to decide any application filed under code of civil procedure including the application filed under order 7 Rule 11 CPC. A conjunctive reading of section 10 and section 18(1) of the Family Court Act, 1984 makes it clear that the code of civil procedure is applicable to the suits or proceedings before the family court.



# Aman Lodha v. Kiran Lohiya,

- In the present case, the three Judges Bench of the Hon'ble Supreme Court has held that indubitably the Family court obliged to enquire into the matter as per the procedure prescribed by law. The family courts have no plenary powers to do away with the mandatory procedural requirements in particular, which guarantee fairness and transparency in the process to be followed and for adjudication of claims of both sides. The nature of enquiry before the family court is, in deed, adjudicatory. It is obliged, the rival claims of parties and while doing so it must adder to the norms prescribed by the statute in that regard and also the foundational principle of fairness of procedure and natural justice.

# Binni v. Sundaran, AIR 2008 KER 84

- In this it was held that in dealing with disputes concerning the family, the court ought to adopt an approach radically different from that adopted in ordinary civil proceedings. It should make reasonable efforts at settlement before the commencement of the trial. During the trial, the proceedings will be informal and the strict rules of procedure shall not apply.
- The family court is obliged to make every endeavor in the first instance to assist and persuade the parties to arrive at a settlement in respect of the subject matter of the proceedings.
- Section 13 of the act provides that a legal practitioner shall not be entitled to represent the parties as a matter of right.

- Order 32XXXII-A was inserted by CPC amendment act 104 of 1976 which provides:- The provision of this order shall apply to suits or proceedings relating to matters concerning the family.
- In Manju Singh v. Ajay Veer Singh, the Hon'ble Supreme Court has held that if an endeavor for reconciliation is not made, the order would be illegal.
- Section 23(2) of the Family Court Act gives a direction to the Family Court that before proceedings to grant any relief under the act, it shall be duty to endeavor to bring about reconciliation between the parties. Even the filing of the written statement of the opposite party should not be insisted unless reasonable opportunity for reconciliation is granted to the parties.

# R. S. Kohli v. Tahjeeb Kohli

- The brief facts of this case are that the wife filed a case for the restitution of her conjugal rights and an amount of three lakhs by way of monthly maintenance for herself and her son.
- Later on after two years she filed an application for amendment under order 6 rule 17 wide which she sought for the dissolution of her marriage with her husband. The Family Court allowed the said amendment on the ground that 'since the matter has not reached the trial stage, in order to prevent multiplicity and to avoid to for the delay the application deserved to be allowed.'
- It was held that an application filed under order 6 rule 17 seeking amendment must be government by the factors/principles to be kept in mind by a civil court while granting or refusing the amendment. The power must be exercise judicially. Merely because it would result in multiplicity of litigation, can be no ground to grant amendment praying a diagonally opposite relief, in the main proceedings as the court must be cautious while allowing the applicant for amendment and shall discouraged worthless and/or dishonest amendment.

- The relief sought by amendment is exclusive and completely extrinsic and alien to the one which was sought in the pleadings in the original petition.
- The amendment, by no stretch of imagination can be said to be imperative for proper and effective adjudication of the existing petition seeking restitution of conjugal rights and no prejudice is cause to the petitioner if the amendment is disallowed as it is always open for the petitioner to institute a fresh petition for the dissolution of marriage .