SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			AO/330/2026 Preeti Mishra --Petitioner **Versus** Gaurav Mishra --Respondent **Hon'ble Manoj Kumar Tiwari, J.** **Hon'ble Pankaj Purohit, J.** 1. Mr. Aditya Pratap Singh, learned counsel for the appellant is connected virtually. 2. Mr. Karan Anand, learned counsel for the respondent-caveator. 3. This is an appeal under Section 19 read with Section 10 of the Family Courts Act, 1984 along with Section 47(i) of the Guardians and Wards Act, 1890 challenging the order dated 13.08.2026 passed by learned Principal Judge, Family Court, Dehradun in Case No. 18 of 2024 (Preeti vs. Gaurav). By the said order, application 98C2 made by husband (*respondent herein*) for production of minor child of 10 year as a witness, was allowed by the Family Court concerned. 4. The application 98C2 was opposed by the appellant by filing an objection 100C2. In the objection, it is submitted that son of the appellant is only 10 years old; he is residing presently with respondent husband; he might be under the influence of her husband-responent. So keeping in view his tender age, he should not be examine as witness. 5. The learned Family Court allowed

			the said application. 6. Appellant has challenged the said order mainly on the ground that a child, whose custody is subject matter of litigation, cannot be asked to appear as a witness in a petition for custody, as it will have adverse impact on his psychological growth; even otherwise, his testimony would not be relevant for deciding, which party should get his custody. He could be called by the learned Family Court to express his willingness as per Section 17(3) of the Guardians and Wards Act, 1890. 7. We find substance in the said contention. In a custody dispute, welfare of child is paramount, therefore, for forming an opinion, regarding the preference of the child, if he is old enough to express such preference, the Presiding Judge can informally interact with the child, as held by Hon'ble Supreme Court in the case of *Nil Ratan Kundu & another vs Abhijit Kundu,* reported as 2008 (9) SCC 413. "**69.** We are unable to agree with the learned counsel. We have closely gone through Thrity [(1982) 2 SCC 544]. Reading the decision as a whole makes it amply clear that on the facts of the case, this Court felt that calling minor children frequently in chamber by Judges was not proper and such interviews really disturbed them rather than giving them respite and relief. This Court reproduced some of the observations of the learned Judges of the High Court who had interviewed the minors. The Court also considered sub-section (3) of Section 17 of the 1890 Act and the power of the court to interview a minor child with a view to consider his/her preferences and observed: (Thrity case [(1982) 2 SCC 544] , SCC p. 568, para 25)

			"25. We may, however, point out that there cannot be any manner of doubt as to the court's power of interviewing any minor for ascertaining the wishes of the minor, if the court considers it so necessary for its own satisfaction in dealing with the question relating to the custody of the minor.""

8. Mr. Karan Anand, learned counsel appearing for the respondent is not in a position to support the order passed by learned Family Court.

9. In such view of the matter, the appeal is allowed. Impugned order dated 13.08.2026 is set-aside; however, Presiding Judge shall be at liberty to interact with the child for arriving at a just conclusion regarding the custody of the child.

(Pankaj Purohit, J.) **(Manoj Kumar Tiwari, J.)**

10.09.2026

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