

12.03.2021
SL No.13
Court No.12
(gc)

**FMAT 125 of 2021
With
CAN 1 of 2021**

**Nikhat Mustaque
Vs.
Mr. Nurul Huda & Ors.**

(Via Video Conference)

Mr. Tarique Quasimuddin,
Mr. Ram Narain Rajak,
...for the Appellant.

This appeal is arising out of an order of refusal passed by the learned Judge, 12th Bench, City Civil Court at Calcutta in T.S.No.143 of 2021 to grant ad-interim order of injunction. The prayer of the plaintiff/widow was to restrain the defendants, who are her stepsons, from giving effect to the Certificate of Divorce, dated 10th December, 2020, whereby the husband of the plaintiff alleged to have divorced the plaintiff. The husband died on 12th January, 2021. We could not find anything on record to show that during the lifetime of the husband, the wife challenged the Certificate of Divorce.

The learned Counsel appearing on behalf of the appellant submits that under a wrong legal advice, the plaintiff approached the Family Court, but the case could not be registered due to technical glitches, which fact, however, has not borne out the averments made in the plaint, or in the petition. The ground on which the Certificate of Divorce is bad has not been adequately disclosed in the petition.

Leave is given to the appellant to file a supplementary affidavit in the injunction petition within seven days from date

by adequately furnishing reasons as to why the Certificate of Divorce is illegal or *non est* or not enforceable as also to explain the delay in filing the injunction application. In the event the said supplementary affidavit is filed within one week from date, we request the Trial Court to reconsider the prayer for ad-interim injunction upon prior notice to the respondents. The plaintiff shall in the meantime serve a copy of the injunction application along with a copy of the plaint and the supplementary affidavit upon the respondents and shall move the prayer for ad-interim injunction upon notice to the respondents. For a period of two weeks or until further order, whichever is earlier, the possession of the plaintiff in the suit property shall not be disturbed. With regard to other prayers, the Trial Court shall consider the same on consideration of the pleadings and after hearing the respondents. Any transfer or alienation of the properties of the deceased husband shall abide by the result of the injunction petition and shall not create any equity in favour of the transferee if made in the meantime.

With the aforesaid direction, the appeal being FMAT 125 of 2021 and the stay application being CAN 1 of 2021 are disposed of.

Urgent Photostat certified copy of the order, if applied for, be given to the parties on usual undertaking.

(Subhasis Dasgupta, J.)

(Soumen Sen, J.)