

Item 12. 11-04-2022

FMA 345 of 2022
CAN 1 of 2022

sg Ct. 8

Elahi Buksh
Versus
Lipika Yeasmin & Ors.

Mr. Asit Kumar Bhattacharya, Adv.
...for appellant

The appellant is the elder brother of the father of the Ward and the husband of the applicant, since deceased.

The learned Counsel for the appellant submits that, under the Muslim Personal Law, the mother of the Ward cannot be appointed as guardian of the Ward and, accordingly, the ex parte ad-interim order passed by the learned District Judge is required to be set aside.

We have gone through the impugned order. It appears that the learned Trial Judge restrained the respondents from taking custody of the child. The widow is presently living at her matrimonial house at 'B' Schedule property and it is alleged by her that the appellant and the opposite party are threatening to evict her from the property.

We do not find any reason to interfere with the ad-interim order passed on 24th November, 2021 read with order dated 7th January, 2022 at this stage, as we find that the welfare of the child should be taken into consideration by the learned Trial Judge in passing such interim orders. The question of guardianship and custody is always the vexed issue and it is needless to mention that the welfare of the child is the only consideration.

We have been informed by the learned Counsel appearing on behalf of the appellant that the appellant has filed an application

under Order VII Rule 11 of the Code of Civil Procedure.

We request the learned District Judge to decide both the applications as expeditiously as possible without granting any adjournment to either of the parties unless it is unavoidable keeping in mind that the welfare of the child should be the paramount consideration.

In view of the above, appeal and the connected application are accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)