

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

Present:-

The Hon'ble Justice Subhasis Dasgupta.

CO. No. 11 of 2022

Dr. Niladri Maiti

Vs.

Dr. Swati Das

For the Petitioner	: Mr. Aniruddha Chatterjee, Mr. Srijib Chakraborty, Mr. Pankaj Agarwal.
For the Opposite Party	: Mr. Joy Saha, Sr. Adv. Mr. Soumajit Dasgupta, Mr. Biswajit Kumar, Mr. Soumya Nag, Mr. Rajarshi Ganguly.
Heard On	: 22.11.2022, 13.12.2022, 16.12.2022.
Judgment	: 15.02.2023.

Subhasis Dasgupta, J:-

Subject matter of challenge in this case is against an order, dated 22nd December, 2021, passed by Learned Additional District Judge, Re-Designated Court, Paschim Medinipore, in Judicial Misc. Case No. 159 of 2021 arising out of Matrimonial Suit No. 342 of 2020, granting stay of operation of the order, dated 5th December, 2020, by which *ex parte* decree of divorce was granted.

Admittedly, a Matrimonial Suit for divorce was filed by petitioner/husband on 15th September, 2020, taking the grounds available

under Section 13 of the Hindu Marriage Act. The *ex parte* decree of divorce, however, was passed on 5th December, 2020.

Service upon the wife/opposite party is a disputed question of fact and law in this case, since service of summons, said to have been served upon the wife/opposite party, returned with a note of refusal, which is grossly under challenge in this case.

Stay of operation of the order, granting *ex parte* decree is under challenge on three-fold grounds. Firstly, the order impugned granting stay of *ex parte* decree of divorce was passed without affording an opportunity of hearing to the petitioner/husband. The second ground was relatable to non-maintainability of an application filed by the opposite party/wife under Order 9 Rule 13 of C.P.C., so as to assail the *ex parte* order, granting divorce in favour of the petitioner in a case, when the petitioner/husband already got himself re-married doing strict observance of the provisions of law. The third ground pertained to non-consideration of an application under Section 5 of the Limitation Act, praying for condonation of delay in connection with application under Order 9 Rule 13 C.P.C., registered as Judicial Misc. Case No. 159 of 2021, while granting an order of stay of operation of the order.

Mr. Anirudhha Chatterjee, learned advocate appearing for the petitioner/husband, while assailing the impugned order, submitted that when application under Order 9 Rule 13 C.P.C. had been filed by the opposite party/wife long after the statutory period of limitation, provided under the Act, and when there had been an application filed under Section 5 of the Limitation Act, praying for condonation of delay, the court below ought not to have granted stay of operation of order, granting *ex parte* decree of

divorce, without making condonation of delay, and without extending an opportunity of hearing to petitioner/husband, who got himself re-married for the second time after the said decree of divorce dated 5th December, 2020, upon duly complying with the provisions of Section 15 of the Hindu Marriage Act, 1955.

Mr. Chatterjee contended that service had been effected upon the opposite party/wife in both ways i.e. through court as well as through postal service taking order of the court, and in both the ways, the service returned with a note to have been refused by wife/opposite party.

Upon taking note of such refusal of service, the court below had no other alternative, but to set the matter for *ex parte* hearing, as the opportunity to ensure appearance for on and behalf of the opposite party, could not be utilized.

The refusal of service, according to Mr. Chatterjee, would be treated as good service, and there left nothing to doubt the service already effected upon the opposite party/wife.

Mr. Chatterjee further submitted that the second marriage of the petitioner having held in compliance with the provisions of Hindu Marriage Act, 1955, the pending proceedings relatable to Order 9 Rule 13 C.P.C. would not be maintainable, and the Judicial Misc. Case under Order 9 Rule 13 C.P.C. being itself not maintainable under the law, the stay petition could not have been entertained by the court below, granting stay of operation of decree of divorce dated 5th December, 2020.

Reliance was placed by Mr. Chatterjee on a decision reported in ***Krishnaveni Rai Vs. Pankaj Rai & Anr.*** reported in **(2020) 11 SCC 253**,

to submit that once a party had contracted a second marriage, it would not be in the interest of justice to allow him or her to contest further litigation from their previous marriage, as the petitioner got himself re-married after the statutory period was over, and upon duly complying the provisions of Section 15 of the Hindu Marriage Act.

Mr. Chatterjee, while making elaboration of the issue pertaining to maintainability of Misc. Case., submitted that the law had been settled that a marriage contracted during the prescribed period would not be void, because it was contracted under incapacity.

According to Mr. Chatterjee, the ratio of such decision would be squarely applied over the facts and circumstances of this case, the reason being that the bar, if any, under Section 15 of the Hindu Marriage Act applies only, if there is an appeal filed within the period of limitation, and not afterwards upon condonation of delay in filing an appeal, unless of course, the decree of divorce is stayed, or there is interim order of court restraining the parties, or any of them from re-marrying during the pendency of appeal.

Therefore, according to Mr. Chatterjee, when the petitioner got himself re-married, after the *ex parte* decree of divorce, and after expiry of the period of limitation, the *ex parte* decree of divorce could not be rendered void on the filing of a belated application, registered as Mis. Case, to challenge the *ex parte* decree of divorce.

Reliance was further placed on such issue by Mr. Chatterjee, on a decision reported in **1980 SCC OnLine All 881**, delivered in the case of **S.P. Srivastava Vs. Smt. Prem Lata Srivastava**, to submit that the second

marriage contracted by the petitioner/husband could not be construed to be coming within the mischief period provided under the Act, and thus nothing incapacitated the petitioner/husband to go for second marriage after obtaining an *ex parte* order of divorce.

Regarding the disputed question of service of summons of Matrimonial Suit for divorce, Mr. Chatterjee attempted to derive capital from a decision reported in **(1987) SCC OnLine Raj 474**, delivered in the case of **Harjeet Singh Vs. Smt. Guddi**, to submit that the service having effected in both ways, which subsequently returned with a note of refusal of service, could not be allowed to be disputed so as to assail the *ex parte* decree of divorce.

Reliance was further placed by Mr. Chatterjee on the same issue on three other decisions reported in **(1987) SCC OnLine Raj 474**, delivered in the case of **Harjeet Singh Vs. Smt. Guddi, AIR 1997 Raj 63**, delivered in the case of **Surendra Kumar Vs. Kiran Devi, (2015) 2 CHN 50** delivered in the case of **Jharna Rani Ghosh @ Jharna Ghosh Vs. Prabir Kumar Ghosh** to enforce the stand, that the second marriage contracted after the expiry of statutory period, and that too doing adherence to Section 15 of the Hindu Marriage Act, the application under Order 9 Rule 13 C.P.C. filed by opposite party/wife would be treated to be not maintainable, and far to grant of stay of operation of order passing *ex parte* decree.

Mr. Chatterjee upon making reference to a decision, reported in **(2002) SCC OnLine Cal 7** delivered in the case of **British Airways PLC Vs. Barunendra Nath Basu** submitted that when the proposed relief sought to be obtained, could not be granted on the ground of maintainability of the

petition proposing relief, there could not be any interim relief granted, making stay of operation of the order granting *ex parte* decree of divorce.

Taking recourse to a decision reported in **(2009) 1 SCC 193** delivered in the case of ***Director General of Police, Central Reserve Police Force, New Delhi & Ors. Vs. P.M. Ramalingam***, and another decision reported in **(2009) 2 SCC 694** rendered in the case of ***State of West Bengal & Ors. Vs. Somdeb Bandyopadhyay & Ors.***, Mr. Chatterjee in his candid submission disclosed that whenever maintainability of an application had been grossly challenged, there could not be any interim order granted without deciding the maintainability, and even if interim order is granted, pending application under Order 9 Rule 13 C.P.C., the same would be treated to be impermissible under the law.

It was thus submitted by Mr. Chatterjee that learned Trial Judge, while granting stay order, had completely lost sight of the important principles of law, that while granting an ad interim order of stay the maintainability of proceedings incidentally to be taken in view, otherwise there would be abuse of the process of the court leading to flagrant violation of justice.

Mr. Joy Saha, learned Senior Advocate appearing for the opposite party/wife, taking the ground of fraud, misrepresentation, submitted that *ex parte* decree had been obtained by the petitioner making immense perpetration of fraud upon the opposite party. While emphasizing the fraud being practiced, Mr. Saha had referred some events including subsequent events, that had taken place, to support his stand.

Some of the events were thus referred, which this Court perceives to be relevant to address the points raised in this case.

Matrimonial Suit No. 683 of 2020 was instituted before the learned District Judge at Paschim Medinipore under Section 13 of the Hindu Marriage Act taking the grounds, as available therein, wherein the address of the opposite party/wife was described, as resident of Vidyasagar Sarani, Midnapore, P.O.- Midnapore, P.S.- Kotwali, District- Pashchim Midnapore, PIN- 721101.

The *ex parte* decree of divorce was granted on 5th December, 2020, which was alleged to have been passed in extraordinary haste, as per the submissions of Mr. Saha.

Such *ex parte* decree came to the knowledge of opposite party/wife on 10th December, 2021, when she for the first time came to know that an *ex parte* decree had been obtained against her by her husband. It is on 10th December, 2021, the Officer-in-Charge of concerned Police Station visited her father-in-law's house at 46A Harish Chatterjee Street, Kolkata-700026, to get the opposite party/wife ousted from her matrimonial home, taking the order of the court passed in WPA 19431 of 2021, on 9th December, 2021.

The opposite party thereafter having been surprised with the order of Writ Court directing concerned Police Station to evict her from her matrimonial home, situated at 46A Harish Chatterjee Street, Kolkata-26, for redressal of her grievance, filed an application before the Writ Court in WPA 19431 of 2021 for recalling the said order, which was ultimately dismissed on 12th April, 2022. Two appeals were then carried against decision of the

order passed in WPA 19431 of 2021, and against the decision passed in connection with CAN application therein filed.

Both the appeals were allowed upon setting aside the orders passed in WPA 19431 of 2021 with a direction upon the writ petitioners to put back the opposite party/wife in possession in respect of her matrimonial home, situated at 46A Harish Chatterjee Street, Kolkata-26.

SLP was then preferred.

It would be relevant here to mention that WPA 19431 of 2021 came to be instituted at the instance of the father of the petitioner, who happens to be the father-in-law of the opposite party.

The SLP filed by the father-in-law of the opposite party was, however, dismissed, as withdrawn. Subsequently, a separate CAN application was filed before the Division Bench at the instance of the father-in-law of the opposite party, praying for modification of the order dated 12th July, 2022, whereby restoration of possession in respect of the matrimonial home at 46A Harish Chatterjee Street, Kolkata-26, was granted. But the said CAN application, filed before the Division Bench, was dismissed on 28th September, 2022. SLP though preferred before the Apex Court against the order of the Division Bench, was ultimately dismissed without making any interference with the order of the Division Bench.

The opposite party/wife in the meantime filed a contempt petition being CPAN 728 of 2022.

Upon referring such events, mentioned hereinabove, Mr. Saha referred to Para-3 of WPA 19431 of 2021, in order to reveal that there had been suppression of facts as well as non-service of notice of summons of

Matrimonial Suit for divorce upon the opposite party/wife, which may be reproduced, as hereinbelow:

“3. The petitioners states that at the time of the marriage of the petitioner’s son, he was faculty in a dental college in Calcutta and was also a practicing dentist and was having a Clinic at 100, Harish Mukherjee Road, Kolkata 700 025 and since Smt. Swati Das i.e. respondent 4 was also qualified dentist, she also had joined the petitioner’s son in his said Clinic at 100, Harish Mukherjee Road (the said property is/was always owned by the petitioner). It is stated here that after marriage the petitioner’s son was residing with his wife in Kolkata and also in Mindapore wherein a Kolkata they used to reside in a building at 46A, Harish Chatterjee Street (first and second floor whereof are fully owned by the petitioner) which is/was having an accommodation of two self contained flats wherein in the first floor the petitioner was residing with his wife, where they still reside and in the second floor of the said building, his son was living with the respondent no. 4 and in Midnapore, his son and respondent 4 used to reside at petitioner’s ancestral property and they also practiced there as dentists. ”

Upon advertng to Para-3 of the referred writ petition, Mr. Saha submitted, stressing much upon the admission of address of opposite party/wife that the address of Kolkata mentioned in Para-3, which is situated at 46A Harish Chatterjee Street, Kolkata-26, had been purposefully and strategically suppressed in order to obtain an *ex parte* decree of divorce, behind the back of the opposite party/wife.

In the Matrimonial Suit, the address of Midnapore for opposite party/wife was described to be the permanent address, wherein the opposite party enjoyed her conjugal life with her petitioner/husband, but in the writ

petition filed by the father-in-law of the opposite party, the address of the opposite party/wife was described as 2nd Floor of premises no. 46A Harish Chatterjee Street, Kolkata-26.

Capitalizing the admission disclosed in Para-3 of the writ petition, Mr. Saha endeavoured to establish that there had been serious fraud practiced, upon making suppression of address of the opposite party/wife in the cause-title of the Matrimonial Suit, and as a result thereof summons could not be served upon the opposite party/wife, while she continued to stay in her matrimonial home, situated at 46A Harish Chatterjee Street, Kolkata-26.

The specific case of the opposite party, as made out, is that the marriage was held in ancestral paternal house of the opposite party situated at Medinipore, and thereafter the opposite party shifted to her matrimonial home situated at 46A Harish Chatterjee Street, Kolkata-26 to enjoy her conjugal life with her husband, but it is for the designedful intention of petitioner, the address of the opposite party of 46A Harish Chatterjee had been purposefully suppressed.

Mr. Saha in his endeavour persuaded this Court to believe that when there had been immense fraud perpetrated upon the opposite party/wife, the entire proceedings leading to the grant of *ex parte* decree would vitiate everything.

On this score, reliance was placed by Mr. Saha on decisions reported in the case of **Sanjay Singh Vs. Garima Singh** reported in **(1988) 8 SCC 375** and **Balwinder Kaur Vs. Hardeep Singh** reported in **(1997) 11 SCC 701** to re-enforce his stand that the alleged perpetration of fraud, committed upon the opposite party in obtaining *ex parte* decree of divorce would go to

the very sub-stratum of the Matrimonial Suit granting divorce decree *ex parte*. The documents, thus referred, according to Mr. Saha, would in all probability of the circumstances reveal that there had been immense perpetration of fraud committed upon the opposite party in obtaining *ex parte* decree of divorce.

As regards the impugned order granting stay of operation of divorce decree, without condoning the delay in connection with an application under Order 9 Rule 13 C.P.C. filed by the opposite party/wife, registered as Judicial Misc. Case No. 159 of 2021, which was fundamentally challenged by the petitioner, Mr. Saha, replied that the discretionary authority to pass an interim order, without condoning the delay in exercise of inherent power of the court below to do complete justice between the parties, could be very well made, without any doubt, depending upon the exigency of the circumstances. In other words, it was attempted to establish by Mr. Saha that exigency of a situation/circumstances would permit the court to grant stay, without even making condonation of delay under Section 5 of the Limitation Act, though filed, which was very much available within the authority of court under Section 151 C.P.C.

Reliance was placed by Mr. Saha on a decision delivered in the case of ***Ram Ch. Sinha Vs. Sm. Protiva Dutta*** reported in **1978 (2) CLJ 462**, to submit that the prohibition contained under Order 41 Rule 3A C.P.C. could not be construed to be an absolute prohibition, because there may be cases to arise, where it will be doing injustice to deny the stay of a decree.

Reliance was further placed by Mr. Saha on another decision on the same issue reported in **1983 SCC OnLine Cal 52: AIR 1984 Cal 20**

delivered in the case of **Sri Rani Satiji Mandir & Ors. Vs. Shyam Sundar Jhunjunwala & Ors.** to submit that the principle of Order 41 Rule 3A of C.P.C. would not stand as a bar to the granting of stay against a decree of divorce, since the expression of the word “decree” in legal parlance, would differ from the word “order”.

It was thus submitted by Mr. Saha that incidents of legal consequences of a decree would fundamentally differ from those of an order granting *ex parte* decree of divorce, which was challenged upon filing an application under Order 9 Rule 13 C.P.C.

In the referred decision of Division Bench, the ratio of the decision decided in the case of **Ram Ch. Sinha (Supra)** was also noticed, and the Division Bench concurred the same view with regard to the non-applicability of the provisions, contained in Order 41 Rule 3A of C.P.C. in case of an order by virtue of Order 43 Rule 2 C.P.C.

In furtherance of alleged perpetration of fraud committed upon the opposite party, so as to obtain an order of *ex parte* decree of divorce, Mr. Saha strenuously argued that there had been serious tampering caused in the cause list, and manipulation of court’s records with regard to fixation of the date of *ex parte* hearing, which could only be established by allowing the opposite party to produce the relevant documents, upon granting stay to the decree of divorce, already granted by the Trial Court.

Incidental to the points referred hereinabove, Mr. Saha submitted that the court below granted *ex parte* decree without deciding the ingredients of cruelty, which is contrary to the proposition of law, and the petitioner/husband even after obtaining the *ex parte* decree never caused the

ex parte decree to be served upon the opposite party/wife to establish his *bona fide*.

Since, application under Section 5 of the Limitation Act was filed, as an abundant precaution, the rules of procedure, meant to sub-serve the cause of justice, Mr. Saha submitted, that it could not be understood to mean to frustrate the same. The technicalities, as referred by Mr. Chatterjee, regarding non-condonation of delay in connection with an application under Section 5 of the Limitation Act, Mr Saha submitted that same would not be at all available, when *ex parte* decree of divorce had been obtained by the alleged perpetration of fraud, and thus technical grounds to challenge the propriety of the impugned order of divorce could not be allowed to be sustained.

The decree of divorce was passed on 5th December, 2020, and the application for setting aside thereof was filed within such period of time, when the order of the Apex Court granting extension of period of limitation was very much in vogue, Mr. Saha argued.

Regarding purported non-service of summons of Matrimonial Suit, Mr. Saha attempted to derive benefit from an affidavit, called for from the Postman, who allegedly delivered the writ petition, what was filed in the writ petition referred hereinabove.

According to Mr. Saha, a mere claim of refusal to receive service would not itself be sufficient and justified, without causing production of the relevant documents of alleged service of summons upon the opposite party/wife.

As to the applicability of decision reported in **(2015) 2 CHN 50** delivered in the case of **Jharna Rani Ghosh (Supra)**, stressed to be squarely applied over here by petitioner, Mr. Saha countered such submission of Mr. Chatterjee submitting that the aforesaid decision would be without any relevance in the given set of facts, as in the said decision, the validity of second marriage was the only factor for consideration.

Supporting the order of the court below, Mr. Saha finally submitted that when there had been no error of jurisdiction committed by the court below in granting stay of operation of an *ex parte* decree of divorce, the same should go un-disturbed, bearing in mind the subsequent events, that had taken place with the intervention of Division Bench of this Court, as well as by the Apex Court during the previous round of litigations between the parties.

The only point requiring address by this Court is whether the order impugned, granting stay of operation of decree of divorce, granted *ex parte*, is sustainable or not.

The *ex parte* decree of divorce was granted on 5th December, 2020, after the Matrimonial Suit was set on motion on 15th September, 2020.

The opposite party/wife filed application under Order 9 Rule 13 C.P.C. on 14th December, 2021, under Order 9 Rule 13 C.P.C. to assail the decree of divorce granted against her. An application for condonation of delay under Section 5 of the Limitation Act was also filed. The court below by the order impugned, dated 22.12.2021, stayed operation of the decree of divorce, granted *ex parte*.

In the meantime, petitioner has already suffered interim stay for more than a year.

Argument was raised by the petitioner that whenever an application under Section 5 of the Limitation Act praying for condonation of delay had been filed, the court below was obliged to hear out the same first before granting any order of stay. Such argument was countered by the other side saying that the argument raised by the petitioner pertaining to non-consideration of Section 5 application for condonation of delay, prior to granting interim stay, is not an inflexible rule, and the court below in an appropriate case, depending upon the exigency of the circumstances, would always have the authority to grant, stay without making condonation of delay.

In the case of **Ram Ch. Sinha (Supra)**, as referred by the opposite party, the execution proceeding was stayed upon condoning the delay, holding that the prohibition contained in Order 41 Rule 3A C.P.C. would not be construed to be a complete prohibition in case of an order appealed against Order 41 Rule 2 C.P.C. What is important is that stay of execution proceeding was granted in the case of **Ram Ch. Sinha (Supra)** upon condoning the delay.

The Division Bench of this Court in the case of **Sri Rani Satiji Mandir & Ors. (Supra)** concurred the same view, as decided in the case of **Ram Ch. Sinha (Supra)** that the provisions of Order 41 Rule 3A C.P.C. would not be applicable against an order appealed against.

Though Section 5 application under the Limitation Act was submitted to have been filed, as an abundant precaution, but whenever such

application for condonation of delay was filed, the court below is obliged to take in view the maintainability of any application proposing interim stay, coupled with Section 5 application under Limitation Act.

Such a view was stressed upon by the Apex Court in the case ***Director General of Police, Central Reserve Police Force, New Delhi (Supra)***, wherein it was held that without deciding the maintainability of review petition, there could not be any interim order granted, while in the case of ***State of West Bengal & Ors. (Supra)***, grant of interim stay in the writ appeal, prior to an appeal being entertained, was held to be impermissible. Though, Mr. Chatterjee tried to apply the ratio of such decisions in the given set of facts borrowing the principles therefrom, neither in the case of ***Director General of Police, Central Reserve Police Force, New Delhi (Supra)***, nor in the case of ***West Bengal & Ors. (Supra)***, the decision of the Division Bench rendered in the case of ***Sri Rani Satiji Mandir (Supra)***, wherein the decision of Single Bench of this Court rendered in the case of ***Ram Ch. Sinha (Supra)*** was noticed, remained unconsidered.

The legality of second marriage of the petitioner already entered into, in application of the provisions of Section 15 of the Hindu Marriage Act, was sought to be decided in this case, wherein the stay of operation of the impugned order, granting *ex parte* decree of divorce was fundamentally and principally challenged upon referring several decisions cited by the petitioner, as already mentioned hereinabove.

The short question raised in the case of ***Krishnaveni Rai (Supra)*** as referred by petitioner, was whether a second marriage performed during the

pendency of an appeal from a decree of divorce, a nullity, even though there was no stay of operation of the decree.

In the event of legality or validity of alleged second marriage of the petitioner being decided in this case, the pending application under Order 9 Rule 13 C.P.C., wherein serious allegation of having committed fraud, said to have been practiced upon the opposite party in obtaining *ex parte* decree of divorce coupled with an alleged exercise undertaken for causing tampering and/or manipulation of cause-list and court records of the court below, would be rendered infructuous.

The subsequent events held, following grant of *ex parte* decree, as disclosed in the writ petition, and in writ appeal, are thus incidentally to be looked into to unearth the truth pertaining to the alleged perpetration of fraud committed upon the opposite party behind obtaining *ex parte* decree, circumstanced by the alleged suppression of address of opposite party/wife at 46A, Harish Chatterjee Street.

This Court would, thus, refrain from giving any decision pertaining to the legality and validity of the second marriage, what is left open for decision simultaneous with the decision, to be returned by the court below under Order 9 Rule 13 C.P.C.

Though, giving precedence to the technicalities is always discouraged, but it does not mean that the ordinary practice following immediately after filing Section 5 application should not be respected to, which is, however, dependent upon the exigency of the circumstances, and the same cannot be straight-jacketed by an exhaustive formula.

Mere denial of service of summons of Matrimonial Suit would not be itself sufficient, unless proved by sufficient material evidence, both oral and documentary, which the opposite party is under obligation to prove in accordance with the law in the pending application under Order 9 Rule 13 C.P.C.

Alternatively, the refusal of service, vis-à-vis denial of service may be best resolved upon collecting evidence, to be adduced by the parties to this case, if the parties to the case, so desire at the appropriate point of time.

This Court, however, perceives that returning a decision at this juncture, as to the legality and validity of second marriage in aid of Section 15 of Hindu Marriage act, would cause the allegation of committing fraud, in context with the subsequent events, as narrated by the opposite party, to be nipped in the bud.

When the petitioner has already suffered interim order for more than a year, this Court is of the view that the pending Judicial Misc. Case No. 159 of 2021 be expedited without disturbing the interim order, already granted by the court below. Maintainability of Misc. Case under Order 9 Rule 13 is thus left to be decided by court below at the time of final hearing of Misc. Case. Petitioner is given liberty to agitate the same before the court below in accordance with the law.

The revisional application, stands disposed of, for the reasons mentioned hereinabove, directing the court below to hear out the referred Judicial Misc. Case No. 159 of 2021, pending before the learned Additional District Judge, R. D. Court at Paschim Medinipore, and decide the same expeditiously as possible, subject to suitability and convenience of the court

below, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable, preferably before the commencement of Puja Vacation of court below. Parties to make communication of this order to the learned court below.

This order is passed without prejudice to the rights and contention of the parties, and without deciding the merits pertaining to the legality and validity of the second marriage, said to be entered into by the petitioner in the meantime.

Parties are directed to make communication of this order to the learned court below.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Subhasis Dasgupta, J.)