

328.
22-05-2026
(Ct. no.06)
debajyoti
(Bench ID
266306)

CO 1748 of 2026

**Amrita Dutta
Vs.
Dibyarup Datta Pramanik**

Mr. Anuj Singh, Adv.,
Mr. Biswajib Ghosh, Adv.,
Mr. Avirup Chatterjee, Adv.,
Mr. Avirup Mondal, Adv.,
Mr. Ratul Das, Adv.,
Mr. Sourajit Dasgupta, Adv.,
Mr. Rishav Das, Adv.,
Ms. Navya Dube, Adv.

... For the Petitioner.

Mr. S. Dutt, Adv.,
Mr. Kaushal Paul, Adv.,
Mr. Saptarshi Dutt, Adv.

... For the Opposite Party.

1. This revisional application is directed against an order dated May 19, 2026 passed by the learned Additional District Judge, Fast Track Court-II, Kandi, Murshidabad in Misc. Case No.4 of 2026 arising out of Matrimonial Suit No.236 of 2024.

2. Matrimonial Suit No.236 of 2024 had been instituted by the opposite party seeking a decree for divorce under the Special Marriage Act, 1954. Such suit was decreed ex parte on February 23, 2026. The petitioner asserts that summons was not served upon the petitioner and as such, the petitioner was not in the know of the suit.

3. It is the petitioner's case that the petitioner came to know about the suit only upon the petitioner being told about the same at the matrimonial home on March 18, 2026 whereafter, the petitioner filed an application under Order IX rule 13 read with Section

151 of the Code of Civil Procedure, 1908, which has been registered as Misc. Case No.4 of 2026.

4. In the said Misc. Case, the petitioner has filed an application for stay of the *ex-parte* divorce decree under Section 151 of the Code of Civil Procedure. Such application has been postponed for hearing on June 24, 2026. Hence, the present revisional application.

5. Mr. Singh, learned advocate, appearing for the petitioner, submits that the 90 days' period for preferring appeal against the decree impugned in the Misc. Case would be expiring on May 23, 2026 (i.e., tomorrow). It is submitted that since the courts would be going on vacation, there would be no opportunity left for the petitioner to press for any interim order of injunction restraining the opposite party from contracting marriage upon the time for preferring appeal being expired. He submits that the petitioner has good grounds to demonstrate before the learned Trial Court that summons was not served upon the petitioner and the *ex parte* decree should be set aside.

6. Learned advocate, appearing for the opposite party, submits that no stay should be granted at this stage inasmuch as there is no suit wherein stay can be granted.

7. Heard learned advocates appearing for the respective parties and considered the materials on record.

8. Since the application for setting aside *ex-parte* decree has been filed within the prescribed period of limitation, and the application for stay was filed and moved by the petitioner on May 19, 2026, the learned Trial Court was not justified in posting the

application for hearing on June 24, 2026 without considering as to whether an ad interim order of stay could have been granted or not, especially when the lis involves marital rights. It cannot be lost sight of that filing an application under Order 9 Rule 13 of the Code for setting aside an *ex-parte* decree is a remedy specifically provided by the statute and if the same is allowed it would upset the decree completely. In cases like the one at hand where the petitioner has approached timely her remedy cannot be lightly frustrated.

9. Since the Court will be closed for vacation, and it has been alleged in the application filed for stay of the operation of the decree that the opposite party may contract a second marriage, therefore, this Court is of the view that a limited restraint order would be justified so that the rights of the petitioner are not absolutely frustrated. In the aforesaid fact situation, the opposite party is restrained from contracting/solemnizing marriage till June 24, 2026, when the matter has been made returnable before the learned Trial Court.

10. The learned Trial Court is requested to take up the application for stay filed by the petitioner on that day and consider the same on merits.

11. It is made clear that the stay that has been granted today by this Court should not influence the learned Trial Court in taking an independent view on the merits of the stay application. It will be open to the learned Trial Court to extend the stay or to pass any other appropriate order that the learned Trial Court may deem fit and proper having regard to the material on record and the facts and circumstances of the case.

12. The learned Trial Court is requested to dispose of the said Misc. Case No.4 of 2026 as well as the interlocutory applications in connection therewith as expeditiously as the business of the learned Trial Court would permit.

13. With the above observations, C.O. 1748 of 2026 stands disposed of.

14. Parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

15. Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Om Narayan Rai, J.)