

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22059 of 2014

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1. Shilpee Kumari @ Shilpee @ Shilpee Madewalkar, D/o Purshottam Upadhyay, W/o Samit Madewalker.
 2. Arya @ Arya Madewalkar, D/o and under guardianship of Shilpee. Both R/o H.No. 2-21105/69/1, Tilak Nagar, New Nallakuhtha, Hyderabad-500044.

.... Petitioner/s

Versus

1. The L.I.C. of India through its Divisional Manager, Jeevan Prakash Building, Frazer Road, Patna-1.
2. The Chief Manager, LIC of India, Patna Branch Office, Jeevan Deep Building, 3rd Floor, Exhibition Road, Patna-1.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Narayan Singh, Advocate.

For the Respondent/s : Mr. Rajeev Ranjan Prasad, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 09-01-2015

Heard learned counsel for the parties as with regard to

the following relief prayed in this writ application :

"1. That this application is being filed for issuance of appropriate writ/writs, direction/directions to the respondents for making change in the name of petitioner no. 2 from Shagun to Arya @ Arya Madewalkar as per their request and available documents on record and accordingly thereafter made payment of their respective amount of fixed deposit with up to date interest on the date of attaining her majority i.e. age of 18 years. The petitioners are aggrieved with Annexure-7."

2. Learned counsel for the petitioners has submitted that such prayer had to be made only in view of the letter of the Chief Manager of Life Insurance Corporation of India (hereinafter referred to as 'the LIC') dated 12.07.2013 addressed to the petitioners, wherein the said authority of the LIC has advised the petitioner no. 1 to get the name of her daughter corrected from this



Court. He has, in this regard, placed reliance on the deed of adoption and other affidavits to show that the nick name of the daughter of the petitioner no. 1 was 'Shagun' and the official name as entered in the record of the school was 'Arya' and, therefore, there should have been no difficulty for the authorities of the LIC in changing the name of the daughter of the petitioner no. 1.

3. Mr. Rajiv Ranjan Prasad, learned counsel appearing on behalf of the LIC, on the other hand, has submitted that the matter is not so simple as has been projected by the learned counsel for the petitioners. In this regard, he has firstly shown that the deed of adoption of a natural daughter of the petitioner no. 1 is itself fraudulent and void in terms of Section 11 of the Hindu Adoption & Maintenance Act, which prohibits adoption of a daughter, if the adoptive father or mother of whom the adoption is made has a daughter. He has also submitted that the authority of the LIC could not have made change in the name of the daughter of the petitioner no. 1 from 'Shagun' to 'Arya' because in the order of this Court dated 20.04.2007 in C.W.J.C. No. 2818 of 2006, this Court had described the name of such daughter of petitioner no. 1 as 'Shagun' and not 'Arya'. Mr. Prasad, therefore, explains that the authorities of the LIC did not also want to get into trouble by tinkling into the order of this Court passed on 20.04.2007 in

C.W.J.C. No. 2818 of 2006.

4. In the considered opinion of this Court, there are three categories of persons in this world. Some are born great, some become very great and on some greatness is thrust upon. The petitioner no. 1, in fact, seems to be in the third category. No one can doubt that the petitioner no. 1 was earlier married to a person known as Abhishek Kumar. That Abhishek Kumar having a policy of L.I.C. died and a problem arose before L.I.C. with regard to payment of insured amount to the legal heirs of Late Abhishek Kumar. This Court at the initiative of petitioner no. 1, the wife of Abhishek Kumar, having regard to the family position, had passed an order on 20.04.2007 in C.W.J.C. No. 2818 of 2006, relevant portion whereof reads as follows:

"8. On consideration of all aspects of the matter, I hold that the Life Insurance Corporation of India will make payment of 1/3rd of the insurance amount, payable under the insurance policy to respondent no. 6, the mother of deceased, Abhishek Kumar being Class I heir. Rest of the amount will be put in a fixed deposit with some Nationalised Bank. It will remain deposited till petitioner no. 2, Shaqun, minor daughter of deceased, Abhishek Kumar, attains her majority. Once, she will attain majority, the money will be paid to her. Interest amount will also remain deposited till it is finally paid to Shaqun, on her attainment of majority.

9. Counsel appearing for respondent no. 5 has contended that the Life Insurance Corporation of India has kept money for such a long time without payment, as such, interest is payable on this amount. It has neither been submitted by the petitioners or by the respondents that Life Insurance Corporation of India had delayed payment on account of any laches on its part. I find that payment was not made only because a serious dispute was raised in between the parties. In this situation, the insurance company can not be asked to make payment of any interest."

(underlining for emphasis)

5. From a bare reading of the aforesaid *inter parte* order dated 20.04.2007 covering the petitioners and the LIC, it would emerge that there had been some genuine and serious family dispute on account of which the payment of insured amount of Late Abhishek Kumar was not made to his heir and legal representative namely his wife, the petitioner no. 1 and his daughter known as Shagun. That dispute was resolved by this Court and it was said that one third amount shall be paid to the wife and two third amount shall be kept for its being paid to the daughter namely Shagun when she becomes adult.

6. This Court fails to understand as to what was the necessity for the petitioner no. 1 to have created a deed of adoption of her own daughter. It is true that the petitioner no. 1 got married to one Sameet Mandewalkar on 16.02.2008 as per the marriage certificate (Annexure-5) much after the order of this Court had been passed on 20.04.2007 and infact at a point of time when the petitioner no. 1 had not been remarried. Therefore, the ghost created by the petitioner no. 1 by way of deed of adoption and that too unregistered one cannot be relied in view of Section 16 of Hindu Adoption and Maintenance Act which reads as follows:-

"16. Presumption as to registered documents relating to adoption- Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved."

7. Thus the moment, the petitioner no. 1 got married to Sameet Mandewalker, the latter became the step father and there was no any question of any adoption by a step father in view of the petitioner no. 1 being herself the natural mother. Therefore if such a collusive or fraudulent document of adoption was filed and enquired by the authorities of the LIC in respect of claim of petitioner no. 1 for changing the name of petitioner no. 2, namely, 'Shagun', no fault can be said to have been committed by them.

8. In that view of the matter, this Court also does not find any error in opinion given by the Chief Manager of the LIC as with regard to changing the name of the daughter of the petitioner no. 1 from Shagun to Arya.

9. Before parting with, this may, however, make it clear that the apprehension in the mind of the petitioner no. 1 that her daughter, the petitioner no. 2, will face problem in getting the amount kept with the LIC under the order of this Court dated 20.04.2007 after she attains the majority, is wholly misconceived

and misplaced. Law in this regard is well settled that when any amount is payable to a minor after he or she becomes major, such amount shall be paid on leading of evidence of his or her being the real concerned person. At that stage the natural mother i.e. the petitioner no. 1 can definitely show and claim that the name of the petitioner no. 2 was 'Shagun' by way of nick name but her official name otherwise is 'Arya'.

10. With the aforesaid observation, this writ application is, accordingly, disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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