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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION
JUDGE'S ORDER NO.86 OF 2016
WITH
JUDGE'S ORDER NO.87 OF 2016
IN
FOREIGN ADOPTION PETITION NO.31 OF 2016**

Children of the World (India) Trust

...Petitioner

And

Roy Edward Roos & Anr.

...Proposed
Adopters

Mr. Rakesh Kapoor, *for the Petitioner.*

Mr.O. Hareendran, *Scrutiny Officer of ICSW.*

**CORAM: G.S. PATEL, J
DATED: 27th April 2016**

PC:-

1. The Petitioners are two United State citizens. The adoptive father is 54 years of age, and the adoptive mother is 50.
2. This Petition is unusual in many respects. First, it is in respect of not one but two minors: Vaibhav, born on 3rd December

2007, and Shrutika, born on 6th January 2009. This means that Vaibhav is today nine years old and Shrutika is about seven years old. They were found abandoned on 31st December 2012 by the Central Police Station, Ulhasnagar. This means that at the time of their abandonment Vaibhav was already five years old and Shrutika was three years old. They were taken to the Child Welfare Committee, Thane and custody was given to Shejar Chhaya, Vasai by an order dated 31st December 2012. The Child Welfare Committee then declared them free for adoption. An Inter Country adoption Foreign Adoption Petition No.60 of 2013 was filed. Those proposed adoptive parents were of Indian origin from Canada. They were not the proposed adoptive parents who are before me today.

3. While that Foreign Adoption Petition was yet pending, the birth mother approached the Child Welfare Committee and asked for return of the custody of both children. The Child Welfare Committee then quite correctly requested this Court to keep the pending foreign adoption on hold until the claim was verified. In the meantime on 10th February 2014, the children were transferred to the present institution, the Children of the World India Trust. This was under an order of the Child Welfare Committee dated 10th February 2014 passed under Section 56 of the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006.

4. It appears from the record that while hearing the Petition, the birth mother appeared before this Court (Mrs. R.S. Dalvi J). DNA Testing was ordered and was carried out. There is on record an order dated 12th November 2014. This is an elaborate and detailed order in which Mrs. Dalvi J. considered all aspects of the matter

including the schooling of the children. The ICSW *inter alia* was required to make a home visit report of the birth mother. Rather than hand over custody to the birth mother directly, the Court made a cautious and conditional order of custody, requiring the birth mother to show some improvement in her maternal behaviour before the children could be released to her. Paragraph 3 of that order read as follows:-

“3. Upon the query of the Court she has not stated to Court also why she did not even visit the children she claims custody of. Nevertheless as she is a biological mother of the two children, the Court deems it fit to allow her to take custody of the children but subject to certain safeguards. The biological mother must show improvement in her maternal behaviour to the children before the children can be released to her.”

5. The pending proposal for foreign adoption was not allowed.

6. This followed by an order about five months later on 22nd April 2015. This time, Mrs. Dalvi, J., noted that the birth mother who had been permitted to take custody of the children on certain conditions, had not availed of her right to do so. The Petitioners filed a report of the Senior Co-Ordinator (Adoption). That report, 21st April 2015, was taken on record. These are the observations in paragraph 2 of the order dated 22nd April 2015.

2. It would be not only improper but wholly unjust to keep the children in the state which the children are in for an indefinite period. The children have not been allowed to be adopted after the children were declared

free for adoption because of the claim of the biological mother of the minor children. The children are being cared for by the Petitioner. The Petitioner shall now be entitled to have the children once again declared free for adoption in accordance with law. The Petitioner shall file the usual application before the Child Welfare Committee, Thane. The Child Welfare Committee shall pass its order expeditiously taking into account the fact that the minor children had earlier been declared free for adoption.

7. Mr. Kapoor represented the Petitioners in the previous foreign adoption petition as well. He was present at both hearings before Mrs. Dalvi J, as was Mr. Hareendran. Both of them tell me that the birth mother showed absolutely no affinity or anything resembling a normal maternal communication or attachment to these two children. She kept a distance from them. She sat on her own in one corner. She appeared to have no interest in these children. The conscience of the Court was not satisfied by her conduct. It was possible that the mother had been put up by someone else. Mr. Kapoor and Mr. Hareendran also point out that when the DNA test was ordered, the cost of this test, a quite considerable amount, of Rs.24,000/- was raised and paid by the birth mother without hesitation, but at the same time she claimed not to have even Rs.50/- to be able to spend on these children. It is in this background that the subsequent order of 22nd April 2016 came to be passed.

8. The birth mother has not seen children since December 2014. I note this in particular specifically looking to the future and by this I mean the interests of the minors as well as the present adoptive

parents. Sufficient liberty was afforded to the birth mother even at the cost of the welfare of the children, and certainly to the disappointment and trauma caused to the previous adoptive parents, who travelled frequently to India to bond with these children. She squandered that opportunity. I will not permit this to be repeated.

9. There is the report also of Mr. Hareendran, the Scrutiny Officer of the ICSW dated 19th April 2016, which I am taking on record and marked Exhibit “X” for identification. Mr. Hareendran’s report is thorough and detailed on the technical aspects of the matter, as indeed it must be. Some of what Mr. Hareendran says merits quoting:

However, the Petitioner institution filed a report to the Court on 21st April 2015 which is seen as complete lack of interest of the mother and the Court ordered that the Petitioner shall be entitled to have the child once again declared legally free for adoption in accordance with law and the CWC Thane shall pass its order expeditiously taking into account the fact that the minor child earlier have been declared free for adoption. As per guidelines governing adoption the Petitioner institution has published the children’s photographs in daily Marathi News paper Loksatta on 6th August 2015 and Sakal dated 10th August 2015, but nobody came forward to say their claim over the said children Vaibhav and Shrutika. Considering the above facts and circumstances and having read the order of the Hon’ble High Court of Court of Bombay the CWC thane hereby declares the said children (siblings) male child Vaibhav and female child Shrutika legally free for adoption under Section 41-5 (a & b) for J.J. Act, 2006. Hence the

said siblings Vaibhav and Shrutika have to be rehabilitated through adoption (Pg.14-15)

10. Again, Mr. Hareendran states this accurately and with required neutrality and attachment. But I have before me today what I can only describe as an utterly heart-rending situation. There are two minors, one male and one female, aged today nine and seven years respectively, who have, for the better part of their childhood, been footballed between their birth mother, one agency, another agency, been once previously placed for adoption only to see that possible dream evaporate and are now been suggested for adoption again. Their bond with their mother, if it existed, was broken. The previous adoptive parents came to India and built a bond with them. The birth mother returned with her claim. The bond with the adoptive parents, hard won after a struggle, was broken again. It is difficult to even begin to imagine the kind of trauma these young children must have suffered. After all they were not abandoned at birth, but at the ages of five and three, when they must have had at least some degree of awareness.

11. Mr. Hareendran points to page 140 of the Petition, a part of the medical examination report. Apart from covering his physical pathology, the report also assesses Vaibhav's emotional state. It reports, at least at the time of the report, as him showing anger, uneasiness and disappointment. I see no reason to doubt this. I can well believe that there is anger and resentment towards his birth mother, first for abandoning him, then creating false hope by claiming custody and then failing to avail of that custody.

12. Do I judge the mother and find her wanting? I do not mean to; at least not in any absolute sense. It is possible that she may have found herself once in circumstances beyond her control. We may well need a fuller understanding of her own circumstances. We may well say it cannot have been easy for any mother to feel compelled to abandon her own children at the ages of five and three. But the history of this case shows that the Court made just such an allowance for the birth mother. At the cost of the children, and at the cost of the adoptive parents, she was allowed her right to custody subject to satisfying the Court's conscience. Why did she not take it? Why did she never meet the children after December 2014. We may never know; and it now for the best, and certainly for the best for these two children, that it stay that way for all time. The birth mother's rights were, by the order of 22nd April 2015, forfeit, and that is now irreversible. To do otherwise would be to subject these children to a horror they have done nothing to deserve.

13. What we must do is to move on in the interest of the two children. This is, after all, every Court's primary and paramount concern.

14. I simply do not have it in me to refuse this adoption or to delay it. I expect that given delicate and perhaps volatile emotional state of both these children, the parents will have to work very hard to make them feel secure again. I have, therefore, paid very minute attention to the home study report that is in the Petition before me apart from considering Mr. Hareendran's report. I note that the adoptive mother herself is of Indian extraction. There are considerable detail disclosed about both parents. The father has had

a stable childhood and upbringing. He is educated, easy going and well qualified. He is said to be thoughtful, friendly, caring and patient man devoted to his spouse. The mother, Jennie, is about 49 years old. She is of Indian origin, though born and brought up in the United States. Her father was born in India and migrated to America in 1959 and settled in New York. Ms. Jennie is one of two sisters. Her other sister passed away in 1993 at a very early age due to heart failure. Jennie's own childhood appears to have been secure and active. The Christian faith and the Church played a prominent role in her upbringing and life. It seems to me clear from this that the mother is family-oriented, social, caring and that both parents together have the capacity to provide the necessary security and comfort to both these children.

15. The adoptive parents met online in 2006 on a dating site for Christian singles. At the time, theirs was a long distance relationship. This bloomed into something deeper, and led to marriage. They have been together ever since.

16. I have also seen the details of their home which appears to be by all accounts a well appointed and well equipped house in Irvington, New York. Their apartment is described as being close to and overlooking the Hudson River. The couple own the house. It is a split two-level apartment with three bedrooms close to the town centre and in close proximity to schools, libraries, recreation facilities and so on. There is plenty of space.

17. I also note that there are sufficient supporting references for this adoption. In addition, the combined financial means of both parents runs to about US\$ 1,85,894.

18. In his report, Mr. Hareendran had earlier noted that certain further compliances were yet pending including health reports and a letter from the USA Embassy. Mr. Kapoor has compiled these along with financial documents in a separate volume, which I am taking on record and marked “X1” for identification.

19. Vaibhav and Shrutika have both been brought to my Chambers today. It is gratifying to see that they seem happy and well cared for. The social worker, Ms. Betty Methai, Senior Co-Ordinator, Children of the World India Trust, is also present. She says that while the children have not met adoptive parents, this will be done soon. In the meantime both children have been regularly counselled, shown photographs and albums of their proposed new home and so on. I sense that the children do have some idea of what lies ahead. Shrutika tells me she would like to go. She is bright but shy; quite a contrast to Vaibhav, a smiling, delightfully mischievous and intelligent young man brimming with a restless energy. I must express my thanks to Ms. Betty Mathai, Senior Co-Ordinator of Children of the World India Trust for bringing the children to Court today and for her efforts and those of others at the Trust in looking after and counselling them.

20. It may be too early to say whether the children are fully aware of the implications of the adoption. I do not expect the road ahead

for them or the parents will be easy. But it is one on which the parents have set foot, and one that seems to me to lead toward a better future for the children.

21. In view of these observations, the two Judge's Orders are separately signed. There is separate Judge's Order, one for each of the two children.

22. None of these matters is ever easy, but this one has been more difficult than any. I think I speak not just for myself, but for Mr. Kapoor, Mr. Hareendran, Ms. Betty Mathai, the staff at the Children of the World (India) Trust and all of us in Court, when I say to Roy and Jennie Roos that we have now put in them our trust, and with that trust we have placed in their hands two young children who are in a sense as much ours as they are soon to be theirs. The children have lost more than anyone should. They have already suffered enough; perhaps too much. I have no doubt Mr. & Mrs. Roos's nature and their faith (I see that both are profoundly devout) will help them form a secure and loving family with Vaibhav and Shrutika, and I am just as sure that they will find in these children an unceasing source of joy and happiness, a glimmer of which I was privileged to see in my Chambers today. These children deserve all that and more.

"Train up a child in the way he should go: and when he is old, he will not depart from it." — Proverbs 22:6.

(G. S. PATEL, J.)