

JSN

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
GUARDIANSHIP PETITION NO.35 OF 2015**

Shri Vijay Kusaji Modak

...Petitioner

Mr. Raj J. Khude, *for the Petitioner.*

**CORAM: G.S. PATEL, J
DATED: 22nd June 2016**

PC:-

1. At my instance, in this somewhat disturbing matter, the Petitioner, Vijay Kusaji Modak, and his wife, Vaishali, are present in Court. So, too, is one Dilip Shankar Gawade, who was previously the guardian of the female minor, Duhita Sanjay Modak.

2. The context in which this Petition comes to be filed requires some elucidation. The Petitioner is Duhita's paternal uncle, i.e. her father's brother. The minor's father was one Sanjay Kusaji Modak. Her mother was Sandhya Sanjay Modak. Duhita is an only child. She was born on 26th August 2002 in Nashik. Sandhya died on 26th April 2003. Sanjay died barely a fortnight later on 17th May 2003. Duhita was not even a year old at that time. Since she was eight months old she has been staying with her maternal uncle Dilip Gawade. Dilip Gawade was appointed her guardian by an order 23rd January 2008 passed in Guardianship Petition No.105 of 2007.

3. Today Duhita is in the 7th standard. She still stays with Dilip and his wife Deepika.

4. Given this background the present application before me for substitution of one uncle as Duhita's guardian by another uncle is indeed unusual. The Petition itself does not give any reason. It says that Dilip has consented, and this is true, for I find that his consent Affidavit is annexed at page 42. But there is no other reason in the Petition itself to justify this. On the previous occasion, therefore, I orally directed that a reason be given and that the Petitioner and his wife should both remain present in Court, as should the present guardian Dilip Gawade. All three are present in Court today.

5. I also have before me an Additional Affidavit dated 9th March 2016 filed by the Petitioner. In this he provides an explanation. Having read this Affidavit fairly closely I have no doubt that what is stated in this borders on the tragic. Dilip Gawde appears to have fallen on hard times. There are statements made on page 50 which I will not repeat here, most especially since this order is dictated in open Court. It is enough to note that I do not believe that this is an atmosphere in which Duhita should remain or one in which she should grow up.

6. The Petitioner himself says that he and his family are attached to Duhita. This is expressed by the Petitioner's wife Vaishali as well. The Petitioner's mother, Duhita's grandmother, also stays with Vijay and Vaishali. They have a son aged 21 and two married daughters. As to their employment, Vijay works with CEAT

Limited at Thane and has sufficient means to provide for Duhita, almost certainly better than Dilip can or could. Copies of his salary slips, income tax returns and bank statements are annexed. Dilip and Deepika have consented to the Petitioner being appointed Duhita's guardian.

7. I also note the statement made in paragraph 12 of the Petition that the Petitioner does not seek to be appointed a legal guardian of the minor in respect of her share in any property she may have inherited. That is a matter covered by Letters of Administration separately obtained by the minor's maternal grandmother, Parvati Shankar Gawade. The Petitioner only seeks to be appointed a guardian of the person of the minor. He has no interest adverse to that of the minor.

8. It is in these circumstances I accept the statements made in the Petition and in the Affidavits as undertakings to the Court. The Petition is made absolute in terms of prayer clauses (a), (b) and (c). It is clarified that should the minor's interest in any immovable property be required to be alienated, the Petitioner will need to seek leave of this Court.

9. The Guardianship Petition is disposed of in these terms.

(G. S. PATEL, J.)