

JS/V

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
GUARDIANSHIP PETITION NO.22 OF 2015**

Mr. Hemal Chandrakant Talati

...Petitioner

Mr.Siddharth B. Samantaray, *for the Petitioner.*

**CORAM: G.S. PATEL, J
DATED: 20th April 2016**

PC:-

1. The Petitioner is the natural guardian and father of a minor Kathan Hemal Talati, who was born on 20th August 2006. The Petitioner, his wife Jalpa, his father Chandrakant and the minor Kathan all live together in one flat. The Petitioner's father Chandrakant purchased Flat No.203, E Wing, Sai Roshan Co-Operative Society Ltd., Kasturba X Road No.4, Borivali (E), Mumbai 400 066, from his own funds for Rs.28,00,000/- on 26th December 2012. While doing so, Chandrakant Talati, the Petitioner's father, added the names of the Petitioner and the minor on the flat purchase and title documents.

2. Consequently, all three, i.e., the Petitioner, his father and his son each have an undivided one-third share, right, title and interest

in this flat. The parties now wish to sell this flat. Leave of the Court is necessary for the sale of the minor's share in the flat. Hence this Petition.

3. The minor Kathan's mother has filed a consent affidavit which is at Exhibit "F" at Page 67. The Petitioner's father too has filed a consent affidavit which is at Exhibit "G" at page 69.

4. In law, the minor's natural guardian is his birth father, the Petitioner. The wording of prayer (b) some what awkward. What is sought is leave for the Petitioner as the natural guardian of the minor to sell the minor share in the immovable property without any security or remuneration.

5. The Guardianship Petition is made absolute with no order as to costs in the following terms.

- (a) Notice under Section 11(1) of the Guardians and Wards Act is dispensed with and waived.
- (b) The Petitioner, in his capacity as a guardian as the natural guardian of the property and person of the minor Kathan is permitted without furnishing security and without being entitled to any remuneration to sell the minor's undivided one-third share, right, title and interest in Flat No.203, E Wing, Sai Roshan Co-Operative Society Ltd., Kasturba X Road No.4, Borivali (E), Mumbai 400 066.

- (c) On execution of the sale of the minor's aforesaid share, a certified copy of the document thereof will be filed in the Petition by the Advocates for the Petitioner.
- (d) The consideration that comes to the share of the minor will be invested by the Petitioner in an appropriate fixed deposit with any nationalised bank or, if better rates are available, with any of the following banks, viz., HDFC Bank, ICICI Bank, Axis Bank or Yes Bank, in the name of the minor Kathan and for the minor's benefit, and to be retained as such till the minor attains majority.
- (e) The Petitioner shall on or before 5th May 2016 submit an undertaking to this Court that the Petitioner will deposit the original of the receipt in respect of that investment to the Prothonotary and Senior Master of this Court, who will retain it till its date of maturity or till the minor attains majority, whichever is earleir.
- (f) The minor on attaining majority will be at liberty to apply to this Court on a praecipe or a chamber application enclosing a certified copy of the birth certificate establishing that he has attained the age of 18 years and seeking that the original deposit receipt be returned to him.

6. Liberty to the Petitioner to apply for a variation or modification of this order, if necessary.
7. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)