

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4358 OF 2015

Mr Abdul Aziz Ismail Memon and another v/s Mr Mohammed Iqbal @ Iqbal Tibbi Ismail Memon and another	 Petitioners ... Respondents
--	---

Shri Wasim Ansari for Petitioners.

Shri J.V. Parmar with Shri D.S. Kamwal for Respondent No.2.

CORAM : R. M. SAVANT, J.
DATE : 1st February 2017

P.C.

1 The above Writ Petition takes exception to the order dated 14th January 2015 passed by the learned Principal Judge of the Family Court, Mumbai. By the said order, the Execution Application filed by the Petitioners being Regular Darkhast No.465 of 2014 came to be rejected. By the said Execution Application, the Petitioners have sought execution of the decree passed in Petition No.D-54 of 2009 which was for the custody of the minor child Sadiya. The Respondent Nos.1 and 2 herein are the adoptive parents of the said Sadiya whereas the Petitioners are the biological parents. It seems that the parties are closely related to the Respondent Nos.1 and 2 being the brother and sister-in-law of the Petitioner No.1. It seems that Sadiya was given

in the custody of the Respondents immediately after her birth. She has been in the custody of the Respondents since last twelve years. The Respondents are looking after her. Sadiya is presently 12 years old and she is in 7th Standard in Fort Convent, 42, Sir Vithaldas Thackersay Marg, Mumbai.

2. In so far as the said Petition No.D-54 of 2009 is concerned, the said Petition proceeded ex-parte in view of the fact that the Respondents did not appear after filing their written statement in the said Petition. It seems that the notices were issued to the Respondents, however, they did not appear after framing of two issues. The said Petition No.D-54 of 2009 came to be decreed in favour of the Petitioners.

3. On the Execution Application being filed and served upon the Respondents, the Respondents appeared in Court alongwith the minor Sadiya on 13th December 2014. Having regard to the nature of the decree passed in the said Petition No.D-54 of 2009, the learned Principal Judge of the Family Court directed the Marriage Counsellor to interview the child Sadiya. It is upon such interaction with the child Sadiya that the Marriage Counsellor has submitted a detailed report dated 13rd December 2014. The said report can be said to be self-indicative. The sum and substance of the said report is that Sadiya has expressed a desire to be with her adoptive parents rather than being with her biological parents. The said report was marked Exh.7 in the said

execution proceedings. The learned Principal Judge of the Family Court, applying the yardstick of the welfare of the child being of paramount interest and considering the fact that the child is being looked after the Respondents by giving her proper education, as also she participates in extra-curricular activities of the School, opined that the welfare and good upbringing of Sadiya would be at the hands of the Respondents and accordingly rejected the Execution Application accordingly.

4. This Court, to satisfy itself, also interviewed the child Sadiya in chambers yesterday i.e. on 31st January 2017 in the presence of the learned Advocates appearing in the matter. During the course of interaction with the child Sadiya, she reiterated what was said by her before the Marriage Counsellor. The sum and substance of the same was that the child Sadiya wishes to continue with her adoptive parents and declined to go to her biological parents i.e. the Petitioners herein. This Court does not deem it appropriate to quote Sadiya verbatim so as to avoid unpleasantness between the parties.

5. In my view, considering the fact that the welfare of the child is to be of paramount importance, the wishes of the child assume importance and would therefore override the desire of the biological parents. The minor technicalities in respect of execution of the decree which are sought to be

urged by the learned counsel for the Petitioners Shri Ansari, would not therefore come in the way of the child Sadiya, being permitted to reside with her adoptive parents as per her desire.

6. In my view, therefore, interference of this Court in the impugned order dated 14th January 2015 is not called for. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]