

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION**

**INDIAN ADOPTION PETITION NO. 12 OF 2017
WITH
JUDGES ORDER NO. 179 OF 2017**

SWTI, Bal Vikas Shishu Bhavan, Malad [E]	]	
Mumbai 400 097 through Mrs. Jaissita	]	
Panigrahi, Managing Trustee	]	Petitioner
Vs.		
Rakesh Laxmichand Jaswani & anr.	]	Prospective Adopting parents

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Smt. Lalita Jaya Raj, for petitioner.
Mr. O. Hareendran, Scrutiny Officer (ICSW) present.
Ms. Panigrani, Managing Trustee from Bal Vikas Shishu Bhavan present.
Rakesh Laxmichand Jaswani, adopting father present.

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CORAM : R.G. KETKAR, J.

DATE : 23RD AUGUST, 2017.

P.C.

Heard Ms. Lalita Jaya Raj, learned Counsel for the petitioner at length. Proposed adopter Rakesh Jaswani is also present in my Chambers.

2. This Petition proposes adoption of male minor Hritik born on 2nd January, 2017. The mother had relinquished her child

before the Child Welfare Committee, Mumbai Suburban District, Mumbai [for short 'C.W.C'] on 9th January, 2017 and the safe custody was given to the Petitioner institution Bal Vikas, Mumbai as per the order of C.W.C dated 9th January, 2017 under section 33 (i) (a) of the Juvenile Justice (Care and Protection of Children) Act 2000 [for short 'Act']. The said order is at page 25.

3. C.W.C has issued a Certificate declaring the child legally free for adoption on 7th April, 2017 stating that;

“the child is hereby declared legally free for adoption on the basis of the following Report of the Social Worker dated 7th April, 2017, Deed of surrender executed by the biological parent (s) or the legal guardian of the child before this Committee on 9th January, 2017 and Declaration submitted by Specialized Adoption Agency concerned to the effect that they have made restoration efforts as required under sub section (1) of Section 40 of the Act, the rule framed thereunder and the Adoption Regulation, but, nobody has approached them for claiming the child as biological parents or legal guardian as on date of the said declaration”.

It is at pages 26 and 27.

4. The Proposed Adopters are Indian Nationals residing at Champa, Chhattisgarh both aged about 40 and 34 years respectively. They have been married for the past 8 years (30th November, 2009) with no biological children. Motivation letter from the Prospective Adoptive Parents is at page No.9. Affidavit by the Specialized Adoption Agency (Petitioner) in support of adoption of child Hritik is at Pages 14 to 17. Decision of Adoption

Committee dated 19th July, 2017 is at Pages 23 to 24. The Health Report of the proposed adopters dated 24th July, 2017 is at Pages 69 to 72 and it states that they are physically and mentally healthy. Investigations were within normal limits. Their HIV I & II and HBsAg test reports certify the case as Negative. It is at pages 73 to 74.

5. The First Proposed Adopter is self employed [Family Business of Mobiles and Electrical at Station Road, Barpali, Champa] since April, 2011 and his income for the assessment year 2016-17 is Rs. 2,72,250/-. Chartered Account Certificate and Tax Returns 2014-15 and 2016-17 is at Pages 28 to 37. Copy of PAN Cards, Bank References, Property/Assets and copy of Aadhar Cards are at pages No. 38 to 43.

6. The Home study report Part I: self assessment by the proposed adopters is at Pages 51 to 57. Home Study Report Part II: Assessment Report of the Social Worker of Sewa Bharti Matruchaya Bilaspur, Chhattisgarh (date of Home visit 22nd March, 2016) is at pages 58 to 60 and it states that the proposed adopters were highly motivated to adopt a child and bring up as their own. They are educationally, financially, psychologically as physically stable enough. They have secure source of income and have good house and surroundings. The marital relationship of the couple is very strong. They have also a strong support from family members. The Social Worker strongly recommended that the prospective adoptive parents are eligible to adopt a child of 0-2 years. Child Security undertaking dated 28th July, 2017 by the brother and

sister-in-law of the 1st Proposed Adopter residing at Champa, Chattisgarh to look after the proposed minor in case of any mishap to the Proposed Adopters at pages 47 to 48.. Post Card Size Photograph of the family & proposed minor is at page 50. Medical Examination of the proposed minor Hritik dated 12th May, 2017 is on record and it states "Normal active child". The proposed adopters have countersigned the said report. It is at Pages 78 to 87.

7. The HIV report of the minor dated 24th March, 2017 certifies the case as Negative. It is at page No. 87. The Declaration of Willingness by the prospective adopting parents is at page 61. The Foster Care Affidavit dated 28th July, 2017 by the Prospective Adoptive Parents is at Pages 62 to 63. The undertaking to send follow-up report by the authorities of Sewa Bharti Matruchaya Bilaspur, Chhatisgarh is at page 64. The Indian Specialized Adoption Agency (Bal Vikas, Mumbai) recognition from the Women & Child Development, Maharashtra to place children in adoption is valid for a period up to 31.3.2020.

8. The report made by C.S.W dated 16th August, 2017 submitted by O. Hareendran, Scrutiny Officer is taken on record and marked 'X' for identification.

9. Mr. Rakesh Jaswani has invited my attention to;
Office Memorandum dated 5th April, 2017 issued by Central Adoption Resource Authority [for short 'CARA'] dealing with the subject of adoption fees prescribed under Regulation 28

(1) and 46 (1) and (2) of the Adoption Regulations 2017 notified under Section 68(c) of the Act.

Memorandum is issued in continuation to Circular of even number dated 23rd March, 2017 on the said subject. Memorandum prescribes payment of adoption fees [earlier known 'CCI'] to be made by the prospective adopted parents in following installments:

(a) In-Country Adoption Fees:

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|---|---------------------|
| (i) At the time of acceptance: | Rs. 24,000/- |
| (ii) At time of handing over the Court Order: | <u>Rs. 16,000/-</u> |
| | Rs. 40,000/- |

Note: The legal fee is included in above amount and the expenditure by Specialized Adoption Agencies (SAA) on this head shall not exceed 20% of total Adoption Fees received. The ratio of payment shall also be similar i.e Rs. 4,800/- on filing of application & Rs. 3,200 after obtaining the Court Order.

(b) Inter-country Adoption Fees;

- | | |
|------------------------------|-----------------------|
| (i) At time of Acceptance | : US \$ 3000/- |
| (ii) At time of handing over | |
| the Court order | : <u>US \$ 2000/-</u> |
| Total | : US \$ 5000/- |

Note: The legal fee is included in above amount and the expenditure by SAA on this head shall not exceed 5% of total Adoption Fees received. The ratio of payment shall also be similar i.e equivalent to US \$ 150 on filing of application & equivalent to US \$ 100 after obtaining the Court Order.

3. In case of adoption from a Child Care Institution (CCI) through a SAA, the Adoption Fees shall be 50% each for the SAA & the CCI.

Memorandum recites that it is issued with the approval of Steering Committee of the Authority vide its meeting dated 31st March, 2017.

10. **Mr. Rakesh Jaswani also referred to the e-mail dated 1st August, 2017 sent by petitioner herein to him wherein its stated;**

“I have discussed the detail with the agency and she confirmed that agency has not asked any amount. Agency will ask the lawyer in this regard and you need not pay any amount other than the adoption fee”.

11. Ms. Jaya Raj has pointed out that Chamber Summons [L] No. 97 of 2017 in Indian Adoption Lodging No. 201 of 2016 is due to come up for hearing on 28th July, 2017. In that Chamber Summons CARA is also made party and the question as regards memorandum dated 5th April, 2017 prescribing fees of CARA as also fees prescribed by this Court by the order dated 23rd November, 2016, Judges Order No. 201 of 2016 in Foreign Adoption No. 16 of 2016 is under consideration.

12. In view thereof, Mr. Rakesh Jawani suggested that he will deposit amount as prescribed by this Court in the order dated 23rd November, 2016 which shall depend upon the outcome of the

Chamber Summons [L] No. 97 of 2017. In case CARA is in position to persuade this Court to fix fees as prescribed by its Memorandum dated 5th April, 2017, amount so deposited by him may be refunded to him along with accrued interest, if any, and in case, the Court does not modify/change the fees prescribed in its order dated 23rd November, 2016, the amount may be paid over the petitioner and legal fees to the Advocate herein.

13. In view thereof, Petition is made absolute in terms of prayer clauses (a) and (b) subject to proposed adopters depositing balance amount of 35,000/- towards; child care corpus, child study report, medical examination report, child care and maintenance report and other administrative costs (including administrative overheads) and legal costs of Rs. 22,500/-.

14. Amount of Rs. 35,000/- and Rs. 22,500/- shall be deposited separately with C.S Department, Prothonotary & Senior Master's office. Mr. Jaswani assures that during the course of the day, he will deposit amount with C.S Department, Prothonotary & Senior Master office separately. Office to invest amount of Rs. 35,000/- and Rs. 22,500/- separately in a fixed deposit in any National Bank for a period of minimum days subject to further orders of the Court. Judges Order is separately signed.

[R.G. KETKAR, J.]