

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

GUARDIANSHIP PETITION NO. 28 OF 2016

Master Aabir Sarkar, Son of late
Shubhajit Sarkar

.. Minor

Dr.Debajit Nityendra Sarkar

.. Petitioner

Ms.Sonali Humane i/b Ranjana Todankar for petitioner.
Mr.Debajit Nityendra Sarkar-petitioner present.

CORAM : K.R.SHRIRAM, J.

DATE : 4TH APRIL, 2017

P.C.

1 The guardianship petition was accepted on 17th January 2017 and notice was directed to be issued to the three persons mentioned in paragraph 7 of the petition. The petitioner filed an affidavit of service of one Subhash Bhojane affirmed on 27th February 2017 in which it was stated that the persons at Sr.Nos.2 and 3, viz., Shri Nityendra Ch. Sarkar and Mrs.Dipti Nityendra Sarkar, have been served on 6th February 2017. The affidavit of service is on record. Since service was not effected on the person at Sr.No.1, viz., Smt. Piyali Pal Sarkar, the Court directed service to be effected on the said Smt. Piyali Pal Sarkar. The counsel tenders an affidavit of Debajit Nityendra Sarkar, i.e, the petitioner himself, affirmed on 4th April 2017 in which it is stated that when he went to Jalpaiguri, West Bengal where Smt. Piyali Pal Sarkar is residing, she was not at home but her parents informed

the petitioner not to make any attempt to meet Smt. Piyali Pal Sarkar and refused to accept the notice issued by this Court. It is also stated that the notice was sent by Blue Dart Courier which has also been returned undelivered with the endorsement “*consignee has refused to accept the consignment*”. It is also stated that the affidavit of service notice has been sent by email to Smt. Piyali Pal Sarkar at her email address at piyabill-sarkar@hotmail.com and piyalis25@gmail.com.

2 In view of the same, I consider that the notice has been validly served because refusal is good service.

3 The petitioner is the paternal uncle of the minor Aabir Suhubhajt Sarkar, who was born on 4th September 2004. Aabir's father was one Mr.Shubhajt Nityendra Sarkar (deceased) and the mother is Piyali Pal Sarkar, who had abandoned her child and the deceased as mentioned in this petition. The deceased was the brother of the petitioner. Shri Nityendra Ch. Sarkar and Mrs.Dipti Nityendra Sarkar referred earlier are the paternal grand parents of the minor.

4 The minor was born on 4th September 2004 to the deceased and Piyali Pal Sarkar. The deceased and Piyali Pal Sarkar had filed a petition for

dissolving their marriage by decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 before 5th Additional Principal Family Judge at Bangalore being M.C.No.1139 of 2014. After filing of the petition, Smt. Piyali Pal Sarker moved to Jalpaiguri, West Bengal to reside with her parents leaving the minor with the deceased. The deceased, therefore, filed a petition under Guardian and Wards Act before 5th Addl. Principal Family Judge at Bangalore, being G & WC No.64 of 2014 seeking a declaration that he, as the father of the minor be appointed as the sole guardian of the minor. During the pendency of both of these petitions, the deceased expired on 4th December 2015. A copy of the Death Certificate is annexed to the petition. In view of the death of the deceased, both the petitions were dismissed as abated.

5 The deceased was working with Tata Consultancy Services Ltd. and had nominated the minor to be entitled to all benefits in the event of the demise of the deceased. In view thereof, the minor, being a legal heir and sole nominee of the deceased, is entitled to various amounts from the provident fund, pension scheme and death gratuity, insurance policies etc. Ever since the death of the deceased, the minor of the deceased is residing with the petitioner. The petitioner is seeking to be appointed as guardian of the person and property of the minor so that all necessary forms and

applications could be filed by the petitioner on behalf of the minor and the amount payable to the minor under, *inter-alia*, the various schemes of Tata Consultancy Services Ltd., benefits of provident fund, death gratuity, insurance policies etc. could be applied for and received in the name of the minor.

6 The natural guardian would have been the mother who is still alive but the mother has, as stated in the petition, abandoned the child and the deceased. The deceased had applied for being appointed as the sole guardian of the minor. When service of this petition was attempted to be effected on the mother- Smt.Piyali Pal Sarkar, the service was refused. The petition has also been served upon paternal grand-parents and though served they have not filed anything to oppose the petition. So far as the maternal grand parents are concerned, it is clearly stated that the mother Smt.Piyali Pal Sarkar had abandoned the deceased and the child and went to live with her parents and her parents, when the petitioner went to serve the notice, flatly refused to accept and also told the petitioner not to ever try to contact them.

It is also stated that the petitioner has not made any application or filed any petition for appointment and declaration as the guardian of the property or person of the minor.

7 There is no impediment also in granting the relief sought. Therefore, all concerned to whom an application will be made by the petitioner as a guardian of the minor, shall make all the payments due and payable in favour of the Prothonotary and Senior Master, High Court, Bombay, under advise to the petitioner and give reference of this petition in the forwarding letter. The Prothonotary and Senior Master shall invest all the amount in fixed deposit with a nationalised bank initially for a period of three years and to be renewed thereafter again for a period of three years.

8 The petitioner, as stated in paragraph 12 of the petition, that the educational expenses of the minor is about Rs.57,000/-. Since it is not mentioned whether it is per month or per annum or for what period, the Court asked the petitioner, who is present in Court, as to Rs.57,000/- is for what period? The petitioner stated that it is the annual expenses for the education and other expenses of the minor.

9 Therefore, the Prothonotary and Senior Master to release a sum of Rs.60,000/- per annum to the petitioner from the interest generated on the investments made in the fixed deposits.

Ms.Humane for the petitioner stated that when the child completes 10th standard education, the educational expenses may increase. So also after

12th standard. I agree with Ms.Humane.

It is open for the petitioner at that stage to apply to the Court for increasing the amount being paid out of these investments.

10 The petition accordingly stands disposed. The amounts will be released to the minor after the minor attaining the age of majority.

(K.R. SHRIRAM, J.)