

Shephali

REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INDIAN ADOPTION PETITION NO. 32 OF 2018
WITH
JUDGE'S ORDER NO. 79 OF 2018**

(1) MAYUR GOPAL SALIAN

(2) DEVIYANI KIRAN VARMA

Both Hindus of Indian Nationals, both
residing at B/102, Vijay Kesar Society,
Chincholi Bunder, Malad (West),
Mumbai 400 064

... **PETITIONERS**

And

MITANSH MAYUR SALIAN

...

MINOR

APPEARANCES

FOR THE PETITIONERS

Mr Rakesh Kapoor.

CORAM : G.S.Patel, J.

DATED : 11th April 2018

ORAL JUDGMENT:

1. This matter raises a question that, though narrow, is one that must be addressed. It arises from the judgment dated 27th October

1999 of Mr FI Rebello J (as he then was) in the matter of the Appointment of a Guardian of a Female Minor, *Doreen Theresa D'souza (Manuel Theodore D'Souza —Petitioner)*.¹

2. First, as to the facts. The minor's name is Mitansh. He was born on 13th May 2011. He has been in a legal guardianship with the Petitioners since 17th January 2018 vide a Guardianship Order of that date in Indian Guardianship Petition No. 29 of 2015. Paragraph 35 of the *Manuel D'Souza* decision says that a period of two years must elapse before the Court considers a Petition for adoption, and that period is to be reckoned from the date of the order of guardianship. The present Petition is brought before the expiry of that period. The cause set out is that the minor has been with the Petitioners since birth. The Guardianship Petition was filed when the minor was six and half years old. It was allowed earlier this year on 17th January 2018. The other peculiarity that the Petitioners have been married for only the year and half since 13th October 2016. They are relatively young, aged 33 and 30 respectively. The minor came to be with the 2nd Petitioner, Deviyani Kiran Varma, since the minor's birth mother placed the child in Deviyani's care and custody at birth. The minor himself is in good physical health and his medical reports are clear. The 1st Petitioner, the proposed adoptive father is a Senior Executive with DHL Logistics Pvt Ltd, Mumbai with a gross monthly salary is Rs.34,001/-. The 2nd Petitioner is a housewife. There is already an undertaking from the Petitioners to deposit Rs.1,00,000/- in the name of the child. That proof of investment is submitted in a compilation marked "X" for identification with today's date. In addition, there is an adoption

12000 (2) Bom CR 244.

home study report dated 13th April 2017 by Clipsy Banji which recommends the adoption and says that the adoptive parents have good families, sound values and that the Petitioners' respective families have supported their decision with much keenness and enthusiasm. There is an updated and more recent home visit report of 8th February 2018 which is equally positive.

3. The question whether this Petition should simply be dismissed, or not allowed, *only* because it does not meet the two-year requirement in the *Manuel D'Souza* case. That direction is one of several in paragraph 35 of the reported decision. The judgment itself is an elaborate discussion on various aspects of human rights, the position of parents, the *parens patrie* principle, and jurisdictional issues. These are all undoubtedly binding observations. The requirement of two years is, I find, not one that has been discussed in the body of the judgment; that is to say, I am unable to find any specific reasoning why the period should be two years and neither more nor less. I can only presume, and I think it is reasonable to so presume, that the two year period between the guardianship order and an adoption petition was thought necessary so that the Court could, in a given case, correct course and make perhaps a different order if it was found, for instance, that an adoption was inappropriate. As a matter of fact, I know of no case where an adoption has actually been refused after a guardianship order.

4. I am particularly mindful of the fact that the decision of Rebello J is now 18 years old. The factual scenario today is very different from what it was merely two decades ago. The question of identity and proof of identity for every living person and citizen has

assumed a certain criticality. From the child's earliest days, parents must now have ready at hand for a multitude of purposes documentation establishing the child's birth, identity and parentage. One of the most crucial areas is the question of admission to educational institutions. Another is applying for Government subsidies for social and financial benefits. In matters of education, things have reached an absurd and even impossible pass where a child has to be registered for admission almost at birth and certainly well before the child is able to speak or walk. So competitive is the race for admission and so difficult is the process that the child's entire educational future is often imperilled merely for want of early registration. Government benefits, both financial and social, are equally crucial. Perhaps two or more decades ago these considerations of digital ids, early admissions and the pressure and competition to gain admission had not yet become as severe or pronounced as they are today.

5. I am, therefore, not prepared to accept that two-years period mandated in *Manuel D'Souza* can be read as an invariable and inflexible rule. There is no statutory backing to this requirement. It is, therefore, a provision of caution, nothing more. Courts that must do justice and equity and most of all Courts that are *in loco parentis* and whose primary and only focus is the welfare of the minor, cannot approach these matters with such rigidity, especially if that comes at the cost of the minor. Indeed, the judgment itself has an extensive discussion of the jurisprudential principles underlying parenthood and there can be no debate that providing financial, social and educational stability are the primary duties of every parent. There is a constitutional background to this as well for it is

now every citizen's fundamental duty to provide an education to children within a specified age range. There is also now the Right to Education Act. These imperatives of children's educational, financial and social welfare cannot be limited or restricted because of what appears to me to have been little more than a precautionary operational and procedural stipulation, one that finds voice only in judge-made law. Thus, while recognising the need for caution, we must allow ourselves some flexibility so as to best achieve our avowed purpose, to ensure the future well-being of the minor.

6. In the present case, I am unable to see what possible advantage is to be gained by waiting for two years having regard to the facts. There is, as I have noted, a home study report of 13th April 2017. It has been updated more recently on 8th February 2018. The child has been with the adoptive mother since his birth. If the Petitioners are to provide for the child they will need an order of adoption to be able to manage his education and to provide for him. As a matter of law, I would therefore hold that the two-year period specified in paragraph 35 of the *Manuel D'Souza* judgment is not one that is inflexible but can always be waived if a Court finds that to do so is in the interest of the minor and if sufficient cause is made out. The hands of a Court of equity can never be tied by too rigid or too doctrinaire an approach, particularly when a Court has to deal with children.

7. The Petition is made absolute. Judge's Order is signed separately.

(G.S. PATEL, J.)