

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 147 OF 2017
IN
TESTAMENTARY PETITION NO. 746 OF 2016**

Neeraja Vinay Modak

...Petitioner

Mr Girish M Joshi, *for the Petitioner.*

CORAM: G.S. PATEL, J

DATED: 2nd May 2018

PC:-

1. The Miscellaneous Petition is completely unnecessary. The Petitioner is the mother of the minor. She does not need an order “appointing” her as the guardian *ad litem*. She is the natural guardian and that, for the general edification of everyone concerned, including any particularly enthusiastic member of our Registry, is a situation that cannot be altered for a lifetime.

2. Under the personal law governing the parties and even otherwise under the Guardians & Wards Act, the birth mother is evidently the mother and natural guardian. The law in this regard has been firmly settled 19 years ago by the Supreme Court in *Githa*

*Hariharan & Anr v Reserve Bank of India & Anr.*¹ I trust this period is long enough for even our Registry to take note of the Supreme Court decision, study it and understand what it says.

3. There is no question of any authority or the Registry requiring the Petitioner to obtain an order of the Court certifying her as the guardian. So long as the mother is alive, she and she alone (the father having passed away) is the natural guardian.

4. The Petition is disposed of in these terms. No costs.

5. The Prothonotary & Senior Master and Mr SP Mathkar will immediately issue a circular in this regard specifying that no officer of our registry is under any circumstances to insist on a petition being filed by a birth mother to have her declared or appointed as a guardian *ad litem* of her child. If I have one more instance of a registry officer making such a demand, I will immediately proceed in contempt against that officer.

(G. S. PATEL, J)

1 (1999) 2 SCC 228 : AIR 1999 SC 1149.