Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
GUARDIANSHIP PETITION NO. 1 OF 2018

Zubin Joseph D'Souza Alias Zubin Francis D'Souza Alias Zubin D'Souza …Petitioner
Versus
Zachiel D'Souza & Dinse D'Souza …Minors

Mr P Vas*, i/b P Vas & Co., for the Petitioner.*

CORAM: G.S. PATEL, J
DATED: 30th January 2018

PC:-

1. Heard.

2. The Petition is under the Guardians & Wards Act. The Petitioner is the father and, consequent on the death of his wife, the only natural guardian of the two minor children Zachiel and Denise, aged about 11 and 6 years respectively. The Petitioner was married to one Duann on 20th December 2003. She died intestate in Goa on 2nd June 2017. Her death certificate is annexed.

3. The Petitioner, Duann and the Petitioner's brother Clint were jointly the owners of Flat No. A/03, Gill Haze CHSL at Marve Road, Orlem, Malad (West), Mumbai 400 064. This was purchased under an agreement of sale dated 29th August 2010. Each of the three had an undivided 1/3rd share, right, title and interest in that flat.

4. On Duann's death on 2nd June 2017, the Petitioner and two minors became entitled to a 1/3rd share, i.e., the two children were entitled to 1/9th share each while the Petitioner's share increased to a 4/9th share in the flat. The approximate value of the flat is about Rs.94 lakhs. Clint has agreed and given his no objection to the sale of the flat.

5. Leave is sought to alienate the 1/9th share each of the two minors. This is said to be in the interest of the minor to meet their various expenses. I will accept this submission. The undertakings in the Petition for utilizing the only interest income are accepted.

6. In my view, the Petition ought to be made absolute. The Petition succeeds. There will be an order in terms of prayer clauses (a), (b), (c), (d) and (e).

7. In partial modification of prayer clause (c), having regard to the facts and circumstances of the case, I will permit the Petitioner to invest the minors' shares of the sale proceeds in a bank deposit of his choice other than a nationalized bank so that it fetches an optimal return. He may also place it in an investment such as mutual funds which is relatively risk-free. He is not to invest in stocks, though he may deploy the funds in government-issued secure bonds. He must, however, furnish an undertaking in terms of prayer clauses

(c) and (d) and this must be done within four weeks of the completion of the sale of the flat.

(G. S. PATEL, J)