

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7841 OF 2017(O&M)
Date of decision: 08.08.2018

Kuljeet Kaur Mahal and anr.

.. Petitioners

vs.

Santokh Singh Sandhu and others

.. Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Amarjit Singh Virk, Advocate
for the petitioners.

Mr. Nagar Singh, Advocate
for respondents No.1 and 2.

Mr. Ashwani Kumar Saini, DAG, Haryana
for respondent No.3

Harinder Singh Sidhu, J.

The petitioners are the adoptive parents of the minor child
Deepender Kaur Sandhu.

The present petition has been filed under Section 102 of the
Juvenile Justice (Care and Protection of Children) Act, 2015 (“2015 Act”)
praying for modification of the main order dated 26.07.2017, which was
amended on 10.08.2017 in order to incorporate the correction in the name of
the adoptive parents.

Vide that order, Learned Additional District Judge, Yamuna
Nagar at Jagadhri allowed the application of the petitioners filed under
Section 60 of the 2015 Act and granted permission/order to the petitioners
to adopt Baby Deepinder Kaur Sandhu, born on 17.04.2004 subject to the

condition that the petitioners shall bring the adoptive child Deepinder Kaur Sandhu at least once in a year from the date of taking the adoptive child with them in USA, in order to ensure that the child could meet her natural father or grand father till she attains the age of majority.

The grievance of the petitioners is restricted to the aforesaid condition that the petitioners shall bring the adoptive child Deepinder Kaur Sandhu at least once in a year from the date of taking the adoptive child with them in USA, in order to ensure that the child could meet her natural father or grand father till she attains the age of majority.

Primary reason for the objection is a communication dated November 1, 2017 from the Immigration VISA Unit US Embassy, New Delhi addressed to the petitioners, wherein, the Embassy has asked the petitioners to obtain a revised court order as the current court order places a condition on the adoption by stating that the petitioners shall bring the adoptive child at least once in a year in order to ensure that the child could meet the natural father till she attains the age of majority.

The other objection of the USA Embassy was to obtain a No objection/confirmation from the Central Adoption Resource Agency (for short 'CARA')

Learned counsel for the petitioners as also learned counsel for respondent No.3- the CARA states that the said confirmation/No Objection has already been granted by CARA, so to that extent the grievance of the petitioners stands redressed.

Mr. Amarjit Singh Virk, Ld. Counsel for the petitioners contended that the condition incorporated in the order by the Ld. Learned

Additional District Judge is not contemplated under the provisions of the

2015 Act. He has referred in detail to the various provisions of the 2015 Act and the Adoption Regulations, 2017 framed thereunder which have been notified on 04.01.2017.

Section 2 (2) of 2015 Act defines 'adoption' as under:-

“adoption” means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child.”

He states that the instant case was one of inter-country relative adoption as the adoptive child is the daughter of the deceased sister of petitioner No.1.

The term relative has been defined in Section 2(52) of the Act as under:

“(52) “relative”, in relation to a child for the purpose of adoption under this Act, means a paternal uncle or aunt, or a maternal uncle or aunt, or paternal grandparent or maternal grandparent;”

The main provisions of the Act applicable to the case of inter-country relative adoption are as under:

Section 56. Adoption :

“56. Adoption.— (1) *Adoption shall be resorted to for ensuring right to family for the orphan, abandoned and surrendered children, as per the provisions of this Act, the rules made thereunder and the adoption regulations framed by the Authority.*

(2) *Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act and the adoption regulations framed by the Authority.*

(3) *Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956).*

(4) *All inter-country adoptions shall be done only as per the provisions of this Act and the adoption regulations framed by the Authority.*

(5) *Any person, who takes or sends a child to a foreign country or takes part in any arrangement for transferring the care and custody of a child to another person in a foreign country without a valid order from the Court, shall be punishable as*

per the provisions of sub-section (1) of Section 80.”

Section 60. Procedure for inter-country relative adoption :

“60. Procedure for inter-country relative adoption.— (1) *A relative living abroad, who intends to adopt a child from his relative in India shall obtain an order from the court and apply for no-objection certificate from Authority, in the manner as provided in the adoption regulations framed by the Authority.*

(2) The Authority shall on receipt of the order under sub-section (1) and the application from either the biological parents or from the adoptive parents, issue no-objection certificate under intimation to the immigration authority of India and of the receiving country of the child.

(3) The adoptive parents shall, after receiving no-objection certificate under sub-section (2), receive the child from the biological parents and shall facilitate the contact of the adopted child with his siblings and biological parents from time to time.”

Section 61. Court procedure and penalty against payment in consideration of adoption :

“61. Court procedure and penalty against payment in consideration of adoption.— (1) *Before issuing an adoption order, the court shall satisfy itself that --*

(a) the adoption is for the welfare of the child;

(b) due consideration is given to the wishes of the child having regard to the age and understanding of the child; and

(c) that neither the prospective adoptive parents has given or agreed to give nor the specialised adoption agency or the parent or guardian of the child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the adoption regulations framed by the Authority towards the adoption fees or service charge or child care corpus.

(2) The adoption proceedings shall be held in camera and the case shall be disposed of by the court within a period of two months from the date of filing.”

As per Sub-section (2) of Section 56 the adoption of a child from a relative by another relative, is to be made as per the provisions of the Act and the adoption regulations framed by the Authority. Sub-Section 4 states that all inter-country adoptions shall be done as per the provisions of

the Act and the adoption regulations framed by the Authority.

Section 60 prescribes the procedure for inter-country relative adoption. As per Sub-section (1) thereof a relative living abroad intending to adopt a child from his relative in India is required to obtain an order from the Court and then apply for no-objection certificate from the Authority in the manner as provided for in the adoption regulations. As per sub-section (2) on receipt of the Court order and an application made to it in this behalf by either the biological or the adoptive parents the Authority shall issue a no-objection certificate. As per sub-section (3) after receiving the no-objection certificate from the Authority, the adoptive parents shall receive the child from the biological parents and shall facilitate the contact of the adopted child with his siblings and biological parents from time to time.

Section 61 spells out the requirements that the Court is to satisfy itself about, before issuing an adoption order, namely that the adoption is for the welfare of the child, the wishes of the child have been given due consideration and that the adoption is not for any consideration.

Regulation 55 of the Adoption Regulations further details the legal procedure that is to be followed in the case of inter-country relative adoption.

Regulation 55. Legal Procedure :

“55. Legal Procedure.— (1) The prospective adoptive parents, who intend to adopt the child of a relative as defined in sub-section (52) of section 2 of the Act, shall file an application in the competent court under sub-section 2 of section 56 or sub section (1) of section 60 of the Act in case of in-country relative adoption or inter-country relative adoption, respectively, alongwith a consent letter of the biological parents as provided in Schedule XIX and all other documents as provided in Schedule VI.

(2) The biological parent and the step-parent, who intend to adopt the child or children of the biological parent, shall file

the adoption application as provided in Schedule XXXII, in the court concerned of the district where they reside, along with consent letter of the biological parents and the step-parent adopting the child or children, as provided in the Schedule XX and all other documents as provided in Schedule VI.

(3) The prospective adoptive parents, in case of inter-country relative adoption, shall file the adoption application in the court concerned of the district, where the child resides with biological parents or guardians as provided in Schedule XXXI.

(4) The prospective adoptive parents shall file an application in Family Court or District Court or City Civil Court, as the case may be.

(5) Before issuing an adoption order, the court shall satisfy itself of the various conditions stipulated under section 61 of the Act, and regulations 51 to 56, as the case may be.

(6) The prospective adoptive parents shall obtain a certified copy of the adoption order from the court and furnish a copy of the same to the District Child Protection Unit for online submission to the Authority.”

Sub Regulation (5) specifies that before issuing an adoption order the Court shall satisfy itself of the various conditions as stipulated under Section 61 and Regulations 51 to 56.

Section 61 has already been reproduced above. It spells out the requirements that the Court is to satisfy itself about, before issuing an adoption order. Regulations 51 to 55 detail the procedural requirements before filing an application to the Court for an adoption order.

Section 63 of the Act spells out the effect of adoption. It is reproduced below:

“63. Effect of adoption.— *A child in respect of whom an adoption order is issued by the court, shall become the child of the adoptive parents, and the adoptive parents shall become the parents of the child as if the child had been born to the adoptive parents, for all purposes, including intestacy, with effect from the date on which the adoption order takes effect, and on and from such date all the ties of the child in the family of his or her birth shall stand severed and replaced by those created by the adoption order in the adoptive family:*

Provided that any property which has vested in the adopted child immediately before the date on which the adoption order

takes effect shall continue to vest in the adopted child subject to the obligations, if any, attached to the ownership of such property including the obligations, if any, to maintain the relatives in the biological family.”

As per this Section a child in respect of whom an adoption order is issued by the Court, becomes the child of the adoptive parents, and the adoptive parents become the parents of the child as if the child had been born to them and all the ties of the child in the family of his or her birth stand severed and replaced by those created by the adoption order in the adoptive family.

Mr. Virk states that on passing of the adoption order by the Court all the essential documents of the child namely the Birth certificate, Aadhar Card, Passport etc. stand modified by substituting therein the names of the adoptive parents in place of the biological parents. He argues that in the very nature of things such an order cannot be conditional or contingent.

Mr. Virk appears to be right in his contention that there is no provision in 2015 Act, which would empower the Court to impose a condition requiring the adoptive parents to bring the child to India meet the biological father and grandfather till she attains the age of majority. Sub-Section (3) of Section 60 which requires that the adoptive parents after receiving the child from the biological parents shall facilitate the contact of the adopted child with his siblings and biological parents from time to time cannot be construed as such a provision as not only does it not refer to the Court but is a stage subsequent to the Court order. Learned counsel for respondent No.3 also states that in terms of 2015 Act, such a condition could not have been imposed in the order granted permission for adoption.

It is not as if in the Act and the Regulations there is no

procedure to monitor the progress of a child after adoption. Regulation 19 of the Adoption Regulation, 2017 is very elaborate in this regard:

“19. Follow-up of progress of adopted child by Non-Resident Indian, Overseas Citizens of India and foreign prospective adoptive parents.- (1) *The Authorised Foreign Adoption Agency or the Central Authority or Indian diplomatic mission or Government department concerned, as the case may be, shall report the progress of the adopted child for two years from the date of arrival of the adopted child in the receiving country, on a quarterly basis during the first year and on six monthly basis in the second year, by uploading online in the Child Adoption Resource Information and Guidance System in the format provided in Schedule XII along with photographs of the child.*

(2) *On the basis of the progress report or in course of post-adoption home visits, if an adjustment problem of an adoptee with the adoptive parents comes to the notice of the Authorised Foreign Adoption Agency or Central Authority or the Government department concerned in the receiving country, necessary counseling shall be arranged for the adoptive parents and for the adoptee, wherever applicable.*

(3) *If it is found that the adoptee is unable to adjust in the adoptive family or that the continuance of the child in the adoptive family is not in the interest of the child, the Authorised Foreign Adoption Agency or Central Authority or the Government department in the receiving country or Indian diplomatic mission concerned, as the case may be, shall withdraw the child and provide necessary counseling and shall arrange for suitable alternate adoption or foster placement of the child in that country, in consultation with the Indian diplomatic mission and the Authority.*

(4) *In case of disruption or dissolution of adoption, the child shall be entitled to receive care, protection and rehabilitation through the child protection services of that country and as per Hague Adoption Convention for the Hague Adoption Convention ratified countries.*

(5) *The Authorised Foreign Adoption Agency or Central Authority or Government department concerned shall contact Indian diplomatic mission to render necessary help and facilitate the repatriation of the child, if required.*

(6) *The Authorised Foreign Adoption Agency or Central Authority or Government department concerned, may organise annual get-together of Indian adoptees and their adoptive parents and forward a report of the event to the Authority and the Indian diplomatic missions shall facilitate such get-togethers.*

(7) *The prospective adoptive parents shall furnish an undertaking to the effect that they would allow personal visits of the representative of Authorised Foreign Adoption Agency,*

the foreign Central Authority or Government department concerned, as the case may be, to ascertain the progress of the child with the adoptive parents or family at least for a period of two years from the date of arrival of the child in the receiving country.”

Accordingly, this revision petition is allowed.

The order dated 26.07.2017 of the Additional District Judge, (Yamunanagar at Jagadhari) as modified by the order dated 10.08.2017 to the extent is specifies that the necessary permission is hereby granted subject to the condition that the petitioners shall bring the adoptive child Deepinder Kaur Sandhu at least once in a year from the date of taking the adoptive child with them in USA, in order to ensure that child could meet her natural father or grandfather till she attains the age of majority, is quashed.

August 08, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No