

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13670 OF 2018

Beena (Leena) Makhijani Muller .. Petitioner

Versus

The Commissioner,
Department of Women & Child
Development, Maharashtra & Ors. .. Respondents

-
- Mr. Pradeep Havnur for the Petitioner
 - Mr. P.G. Sawant, AGP for Respondent Nos. 1 and 2
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CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : OCTOBER 9, 2019.

P.C.:

1. Heard learned counsel for the parties for final disposal of the petition.

2. This petition is filed by one Beena (Leena) Makhijani Muller who is a citizen of Switzerland. She has been adopted by her adopting parents who are citizens of Switzerland. The adoption is stated to have taken place pursuant to a court decree dated 10.8.1978 passed under Hindu Adoption and Maintenance Act, 1956. This adoption was facilitated by one

Asha Sadan (an adoption agency situated in Mumbai). Years later, the petitioner desired to trace her roots and possibly to trace her biological parents. Her practical difficulty, however, is that she is the permanent resident of Switzerland and is, therefore, unable to spend extensive period of time in India which would be needed for the purpose of visiting various departments and thereafter to follow the leads if so available to trace her roots. In order to overcome this difficulty, she has appointed Ms. Anjali Pawar residing at Flat No. 6, Satyasainagar, Survey No. 35/11/2, Dhanakwadi, Pune 411 043, Maharashtra and Mr. Arun Dohle residing at Reimserstr 47 52074 Aachen Germany as her power of attorneys. The power of attorneys are assigned following powers:-

- “1. To visit the Departments, Authorities and Institutions who are involved in my adoption.
2. To sign and send applications to respective departments and Courts and they can receive replies for those applications.
3. Giving full rights behalf of me to ask questions to respective authorities as well persons who are involve in my adoption and get answer for that.
4. To inspect, copy all records and files pertaining to my birth and adoption and undertake all necessary actions which will enable me to meet my biological mother and family.
5. To pay all fees, to the State and Central Government authorities / agencies against whatever information asked for

and to obtain receipt for the same.

6. To initiate or defend any legal proceedings in any court of law, civil or criminal authority, tribunal, judicial or quasi-judicial, government, State or Central, or original or appellate jurisdiction, to withdraw or compromise the same on such terms as may be deemed fit by the attorney, and to generally carry the same to its final conclusion.
7. And for such purposes to correspond with any person, authority, municipal, government, state or central, or any department thereof, for the achievement of these presents.”

3. Learned counsel for the petitioner submitted that the State Adoption Resources Authority ('**SARA**' for short) is refusing to assist the attorneys or to part with information or documents in connection with the petitioner's adoption. The said authority, presumably relies on the Adoption Regulations 2107 notified by Central Adoption Resource Authority ('**CARA**' for short). Regulation 44 thereof pertains to root search and makes provisions for supply of information to the adopted child. However, sub-regulation (6) of Regulation 44 reads as under:-

“(6) A root search by a third party shall not be permitted and the agencies or authorities concerned shall not make any information public relating to biological parents, adoptive parents or adopted child.”

4. Learned counsel for the petitioner submitted that when

the petitioner has given full power of attorney to the said attorneys to act for and on behalf of the petitioner, reliance on sub-regulation 6 of Regulation 44 by the authorities is misplaced.

5. We have heard the learned AGP for SARA and other respondents.

6. Sub-regulation (6) of Regulation 44 undoubtedly seeks to achieve an important purpose of not parting with confidential and sensitive information in relation to an adopted child to third party. The purpose for framing said sub-regulation, therefore, can easily be appreciated. However, when the adopted person himself or herself appoints an attorney to act for and on his / her behalf, such power of attorney ceases to be a third party and would therefore not be hit by the limitation contained in sub-regulation (6) of Regulation 44. A person who is appointed as attorney acts for and on behalf of the person so appointing him and therefore, cannot be considered to be a third party for the purpose of Regulation 44(6). Subject to

certain safeguards, therefore, we propose to direct the concerned respondents and in particular SARA to provide necessary documents and further information as may be available with it to Ms. Anjali Pawar as a duly constituted attorney of the petitioner for such purpose. For the purpose of present issue, other power of attorney Mr. Arun Dohle shall not be taken into consideration since fulfilling requests of two different persons may also cause difficulty for the respondents.

7. Under these circumstances, the petition is disposed of with following directions:-

- (i) The petitioner shall directly send an affidavit stating that she has executed the said power of attorney dated 8.5.2015 in favour of Ms. Anjali Pawar and that she requests that all necessary information with respect to her adoption be provided to the said attorney for which she consents and upon supply of which, she shall not raise question of breach of confidentiality.

- (ii) Upon receipt of such communication, SARA shall supply necessary information as may be available in connection with the adoption of the petitioner to Ms. Anjali Pawar as her duly constituted attorney.

8. With the above directions, the petition is disposed of.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]