

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

GUARDIANSHIP PETITION NO.17 OF 2017

Bharti Ishwar Khairnar)....Petitioner

V/s.

Surekha Vilas Patil)....Respondent

Mr.A.K.Saxena for petitioner.

Ms.Shivani S.Kunder for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 6.2.2019

P.C.:-

1. This is a Guardianship Petition seeking appointment of petitioner as a guardian of a minor Vaibhav Vilas Patil (Vaibhav) born on 25.1.2002. Petitioner is the sister of the late father of the minor. Respondent is the biological mother of the minor.

2. On 28.9.2018 this court directed issuance of notice under Section 11 of the Guardian & Wards Act, 1890 (the said Act) to respondent. The court received a letter from respondent which was taken on record and marked 'X' for identification by an order dated 31.10.2018. On 19.12.2018 respondent was not present in court and therefore, a fresh notice was issued to respondent and the matter was stood over to 16.1.2019. On 16.1.2019 the following order came to be passed :-

“1. Ms.Kunder states that she has been appointed by the Maharashtra Legal Aid Services Authority on behalf of respondent. Ms.Kunder states that she will file note of appearance along with copy of the appointment order and also provide a copy thereof to the advocate for petitioner.

2. Mr.Saxena, counsel for petitioner seeks leave to file further documents to prove that petitioner's parents were looking after the minor, who is their grandson through their deceased son, from the time the minor's father died. Mr.Saxena states that the affidavit with the documents will be filed and copy served within three weeks from today. Mr.Saxena states that he will hand over photocopy of petition to Ms.Kunder during the course of today. Ms.Kunder states that she will wait till the photocopies are made.

3. Affidavit in reply to be filed and copy served within two weeks from today.

4. Petition to be listed for hearing on 6th February 2019”.

3. This court had found it rather strange that when the biological mother of Vaibhav was alive, a petition is filed by sister of Vaibhav's deceased father, under the said Act. Therefore, the court orally directed the Advocates to keep Vaibhav present in court. Vaibhav is present in court and was interviewed in the chamber by me alone and later in the presence of the Advocates. I found Vaibhav to be a genial and very intelligent boy brimming with confidence. He was clear and sure of what he wanted. He had travelled alone from Dhule,

a distance of about 350 kms., by an overnight train and was scheduled to return also alone. He said he was used to travelling alone to Mumbai to meet his grand father and petitioner.

4. Vaibhav who is now studying in 12th standard in Dhule very clearly and in no uncertain terms stated that he wants to be only with petitioner and his grand-father and has nothing to do with respondent who is his biological mother. Vaibhav was born on 25.1.2002 and in less than one year he will turn a major. Vaibhav stated that soon after his father died, when he was very small (about 5 years old), he has been living with his grand parents-father's father and father's mother. When he was in 8th standard, his grand mother was diagnosed with cancer and his grand father had to bring her to Mumbai for treatment. There was nobody to look after him in Dhule. His mother was in Chalisgaon. He was therefore, admitted to boarding and all his expenses were paid by his grand father or petitioner (aunt Bharti). Vaibhav stated that his mother (respondent) never came to see him even once and even for this trip to Bombay to be present in Court, he travelled all alone by train from Dhule. Vaibhav stated that he reached Borivali station this morning and went straight to petitioner's house where his grand father is residing and from there he came alone

to the court. Vaibhav states his 12th standard examination is starting from 21.2.2019. Vaibhav states he does not wish to go back to his mother. Vaibhav states that all his wants have been met by either his grand father or his aunt Bharti Khairnar. According to Vaibhav, his mother (respondent) and Mama/her brother only want to usurp the grand father's property.

5. Today Vaibhav is of an age when he can understand very well though Ms.Kunder submitted when father died, Vaibhav was only 5 years old. That does not take respondent's case anywhere because Vaibhav, in no uncertain terms and very clearly, has informed me that when he was very small, only his grand father looked after him. Vaibhav states that he has received love and affection only from his grand father, his late grand mother and petitioner and never got any affection from respondent. Vaibhav said he had no attachment to respondent.

6. I have also reasons to believe Vaibhav because respondent though lost her husband in September-2006, till date, has not even applied to be appointed as a guardian of Vaibhav. Vaibhav also stated that when he was in 9th standard, after his grand-mother died, his

mother's (respondent's) brother and mother (respondent) broke open the lock of his grand brother's house in Dhule and trespassed and are illegally staying in that house. Vaibhav states that when his grand father came to know about this, he and the grand father went to the house to find out how they could broke open the lock and his Uncle (mama) beat him and grand father and drove them away. He said there are cases pending. Even today his mother and her brother are living in that house as trespassers.

7. Respondent in her cross-examination in Criminal Misc.Application No.530 of 2015 before Assistant Superintendent, Civil and Criminal Court, Chalisgaon has admitted that Vaibhav has been looked after only by his grand parents and petitioner has been spending for his education. Respondent has also admitted that the grand parents admitted Vaibhav in Veral (hostel) as respondent was not taking care of Vaibhav and the grand father has been incurring all expenditure.

8. Having heard minor Vaibhav Vilas Patil who is 17 years and 12 days old today and who states that he wants to finish B.Com and study for M.B.A, I am satisfied that the petition has to be allowed.

What is required in such a case is the welfare of Vaibhav. Vaibhav is fairly old enough to understand the reality though he may not be legally major. Vaibhav wants to live with his grand father and petitioner and not with respondent even though respondent is his biological mother.

9. As noted earlier, it must also be noted that Vaibhav has travelled alone from Dhule which shows that he is good enough to take care of himself. The fact that Dhule is about 350 K.M. from Bombay and the travel time by train is 7 hours, satisfies me that Vaibhav can take a decision for himself. It will not be in Vaibhav's interest to force him to go with his biological mother. Vaibhav has no affection or attachment to respondent and he said that in no uncertain terms.

10. In the circumstances, petition is allowed in terms of prayer clauses- (b) and (c) which read as under :-

“(b) That the Petitioner being the paternal aunt (father's sister) of the Minor Child Vaibhav Vilas Patil may be appointed as a Guardian of the said minor without any remuneration and without any surety generally of the right, title and interest of the person and property of the minor

namely Vaibhav Vilas Patil ;

(c) That the Petitioner may be granted permission to apply to this Hon'ble Court as and when there may be any occasion”.

11. It is however, clarified that no property or share or rights in any property movable and immovable, in the name of Vaibhav will be sold, used or transferred or alienated or parted with, without leave of the court.

(K.R.SHRIRAM,J)