

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS GENERAL & INHERENT JURISDICTION

FOREIGN ADOPTION PETITION NO. 32 of 2019

WITH

JUDGE'S ORDER NO. 162 OF 2019

Bal Asha Trust, Bal Asha Dham,]
Mahalaxmi, Mumbai 400 011.] **Petitioner**
Through: Sunil Kumar Arora,]
Executive Director]

Vs

- 1) Diego De Nisi, Italian National,]
aged 44 years.]
2) Claudia Paltanin, Italian]
National,]
aged 45 years.] **..Proposed Adopters**
both residing at Via Vesture N]
33-24040, Calvenzano (BG),]
ITALY.]

Mr. Rakesh Kapoor I/by M/s Rakesh K.L.Kapoor & Co.
for the Petitioner.

Mr. O. Hareendran, Scrutiny Officer of ICSW.

CORAM : B. P. COLABAWALLA, J.

DATED :- 29TH AUGUST, 2019.

P.C. :-

1. This Foreign Adoption Petition is for the adoption of a male minor Shantanu born on 24th February, 2015 by Italian Nationals. The said minor with his biological mother were produced

before the Child Welfare Committee (for short **CWC**), Mumbai on 24th March, 2015 by Vanrai Police Station and they were admitted in Bapnughar, Worli, Mumbai (shelter home for destitute women) on the same day. They were again produced before the said CWC Mumbai on 26th March, 2015 for further orders and the minor was admitted in the petitioner-institution as per the order of the CWC dated 26th March, 2015 under Section 39 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short “the Juvenile Justice Act”) and the biological mother of the minor was admitted in Kasturba Mahilashram, Chembur, Mumbai. The Admission Order of the minor is on record at page No. 17 of the paper book. The representation of the Indian Council of Social Welfare (ICSW) is also tendered before me and taken on record and marked “**X**” for identification.

2. The Child Welfare Committee (CWC), Mumbai City II has issued a legally free for adoption order dated 28th December, 2015 stating that evidence by the concerned officer from the Vanrai Police Station was recorded. Newspaper publication was made in Maharashtra Times, Mumbai on 22nd April, 2015, “Saamana” on 16th May, 2015 and “Sakal” on 13th June, 2015 and 21st October, 2015 respectively. Vanrai Police Station has submitted a letter dated 7th

July, 2015 to CWC, Mumbai and stated that her relatives took the custody of Shantanu's biological mother on 7th July, 2015. The CWC Mumbai gave orders to Vanrai Police Station to search the biological mother and her relatives and the said Vanrai Police Station has submitted a final report to CWC, Mumbai City II which states that despite attempting to search Shantanu's biological mother and her relatives, they were not found. The District Child Protection Unit Mumbai has also submitted their final report to CWC, Mumbai City II. After the child was admitted in the petitioner institution on 26th March, 2015, no one has come forward to claim the child Shantanu. Hence, there are no legal claimants for the child. In the above facts and circumstances, the CWC declared the proposed minor Shantanu legally free for adoption as on 16th December, 2015 under Section 41 (5) (a) of the Juvenile Justice Act, 2000. The free for adoption certificate is on record and which can be found at page Nos.15 and 16 of the paper book.

3. The Central Adoption Resource Authority (CARA), New Delhi has issued a No Objection Certificate dated 20th June, 2019 to this adoption as per Adoption Regulations, 2017 and Article 17 (c) of the Hague Convention on the Protection of Children and Cooperation in respect of Inter-country Adoption, 1993. The said NOC is on

record at page No. 27 of the paper book.

4. The undertaking/affidavit by the petitioner institution is on record at page Nos.22 to 26.

5. The proposed Adopters are Italian Nationals residing at Calvenzano, Italy aged about 44 and 45 years respectively. They have been married for the past ten years (3rd October, 2009) with no biological children. The family photograph and Passport copies of the proposed Adopters are on record at page Nos. 28 to 32.

6. The health reports dated 5th June, 2019 of the proposed Adopters are on record at page Nos. 48 to 53. The said reports state that, “Underwent exams and diagnostic check up declaring the negativity from venereal infection, HIV and mental diseases. Therefore, the proposed Adopters are physically and mentally fit for the international adoption practice”.

7. The 1st proposed Adopter is working as a Clerk in the Scientific Technical and Data Processing Department with the University of Milano since 4th January, 1999 and his income for the year 2018 was 22,834.00 Euros. The 2nd proposed Adopter is a

graduate of Veterinary Medicine and practices freelance. Her income for the year 2018 was 14,337.00 Euros. The Declaration certificate of the 1st Adopter issued by the Chief of Division Human Resource Office Anna Canavese is at page No.58 of the paper book. The declaration of income of the 2nd Adopter attested by the Official Registrar in Charge, Calvenzano dated 12th June, 2018 is on record at page No.61. The income tax returns of the proposed Adopters for the year 2014 to 2018 are also on record at page Nos. 70 and 130-I respectively. Bank references / statements, personal property statement and declaration are on record at page Nos. 63 to 69 respectively.

8. The Childcare Arrangements statement from the proposed Adopters is on record at page Nos. 131 to 134.

9. The home study report of the proposed Adopters dated 18th June, 2018 conducted by the Authorities of “Associazione Italiana Pro Adozioni” Italy dated 18th June, 2018 is on record and it states that the proposed Adopters indicate to have very good capabilities to become parents. They are patient, believe in mutual help and very respectful of the other persons and of the diversities and show suitable cognitive, emotional and pedagogical skills to

comply with minor children's needs under both, material as well as psychological points of view. After all assessment, the Social Worker is of the view that the couple is to be considered admissible to the adoption of two minor children upto five years old. The said home study report is at page Nos. 137 to 143.

10. The pre-adoption psychological evaluation report dated 20th April, 2018 of the proposed Adopters is on record at page Nos. 145 to 150 and it states “the couple seems to have affective and educational resources to receive a minor. The elements of knowledge collected during the request investigation, underline the possibility to offer to a child an environment of growth serene, in a context of family stability”.

11. The Adoption Guarantee letter dated 16th January, 2019 issued by the Commission for Inter-country Adoption on behalf of the Government of Italy and Approval dated 24th October, 2017 from Juvenile Court of Brescia is on record at page Nos. 159 to 167.

12. The Child Security undertaking dated 31st May, 2018 by the sister of prospective adoptive father to look after the proposed minor in case of any mishap to the proposed Adopters is on record at

page No. 183.

13. The Medical Examination Report (MER) of the minor Shantanu dated 14th February, 2019 is on record and it states that there is a significant Development delay. On over all observation of the child, it is stated that he is pleasant child. He is mildly dysmorphic (Low set ears) and his karyotype shows a mosaic pattern of 47XXY (8) 46XY (32). The Proposed Adopters have countersigned this Report. The said report is at page Nos. 191 to 197.

14. The Report of Psychological Testing dated 7th January, 2019 of the minor Shantanu states that he has average intellectual functioning and Below Average social functioning. His IQ is 91 and SQ is 87. His language, speech and hearing report of December, 2018 is also on record and it states Shantanu has significant delay in speech and language development. He requires conductive environment with speech therapy and loving family to develop to his full potentials. The proposed Adopters have countersigned these reports which can be found at page Nos. 198 to 201 of the paper book.

15. The HIV report of the proposed minor dated 25th May, 2015 certifies the case as non-reactive. The said report is at page No. 202. The post card size photograph of the minor is also on record at page No.203.

16. The declaration of consent and undertaking of proposed adopters is on record and it states that they are willing to be appointed or declared guardians of the male child Shantanu born on 24th February, 2015 in India. They further undertake that they will provide this Court and other concerned agencies progress report of the said child, together with recent photographs of the minor as required by this Court. The said declaration of consent is at page No.204 of the paper book.

17. The undertaking dated 19th December, 2018 of the Authorized Foreign Adoption Agency Associazione Italiana Pro Adozioni” Italy to provide post adoption progress report of the child for a period of two years and make suitable alternative arrangements in the event of any disruption in the adoptive family, is on record at page Nos. 210 and 211 respectively. The general power of attorney duly signed by the proposed adopters in favour of the petitioner institution is also on record at page Nos. 213 and 214.

18. The petitioner institution's recognition from the State Government to place children in adoption is valid for a period upto 31st July, 2019. However, it is stated before me that the petitioner institution has applied for renewal, and in the interregnum, this adoption petition is filed under the provisions of the Adoption Regulations, 2017.

19. Having gone through all the documents that have been placed before me and after perusing the record, I think it would be in the interest of the child if he is adopted by the proposed Adopters. I therefore do not find any impediment in granting the reliefs sought for in the petition.

20. In view of this, the petition is allowed in terms of prayer clause (a) to (d) which read thus : -

(a) For the adoption of the proposed male minor SHANTANU, born on 24th day of February, 2015 by the proposed Adopters under Section 59 (7) of the Juvenile Justice Act, 2015;

(b) For declaring the proposed Adopters as Adoptive parents of the said minor and shall have all parents rights, privileges and responsibilities over the said minor child SHANTANU now in the care and custody of Bal Asha Trust, Bal Asha Dham, Anand Niketan, Dr. E Moses Road, Mahalaxmi, Mumbai 400 011;

(c) Leave/permission be granted to apply the concerned

Municipal Authorities to issue Birth Certificate of the said minor SHANTANU; and

(d) That the proposed Adopters may be granted leave to remove the said minor SHANTANU from the jurisdiction of this Hon'ble Court and to take the said minor to ITALY or wherever they may reside in future.

21. The Judge's Order is also separately signed.

22. It is directed that the petitioner institution shall obtain a further undertaking from the adoptive parents that they shall not give the minor child for further adoption, without the prior leave of this Court. Once this undertaking is obtained, the same shall be filed on the record of this Court.

23. The Adoption Petition is disposed of in the aforesaid terms.

(B.P. COLABAWALLA, J.)