

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION

INDIAN GUARDIANSHIP PETITION NO. 2 OF 2021
WITH
JUDGE'S ORDER (L) NO. 11371 OF 2021**

Ms. Rekkha Modi ...Petitioner

Versus

Mr. Arunkumar Modi (Respondent) ...Respondent
And Siya Modi (Minor)

.....

Mr. Rakesh Kapoor - Advocate for the Petitioner and Respondent.

Mr. O. Hareendran Nambiar, Scrutiny Officer, Indian Council of Social Welfare, present.

Mr. D. R. Talekar – Chamber Registrar, present.

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**CORAM : DAMA SESHADRI NAIDU, J.
DATE : 08th JULY 2021.**

P.C. :

Heard Shri Rakesh Kapoor, the learned counsel for the Petitioner and Respondent, and Shri O. Hareendran Nambiar, the Scrutiny Officer, Indian Council of Social Welfare (ICWS), in the Court through a VC link.

2. The Respondent had a daughter, Siya, born on 16/12/2008. Five years later, in 2013, he divorced his wife.

Soon after the divorce, the Respondent is said to have handed over his daughter to the petitioner, his younger sister. Ever since then, she has been taking care of the child.

3. Now, the Petitioner wants the minor's guardianship under Guardians and Wards Act, 1890. In statutory compliance, she has filed this petition. The Respondent, that is the biological father, has given his consent to this guardianship.

4. When I queried about the minor's biological mother—that is, the Respondent's divorced wife—the learned counsel representing both parties to this petition informs me that the Respondent has tried his best to get the consent of his divorced wife Smt. Priyanka. But all his attempts are said to have failed because after divorce, her whereabouts have remained unknown.

5. The proposed minor's birth certificate and the Respondent's consent letter have been placed on record.

6. The petitioner is an unmarried Indian national, residing at Malad, Mumbai. She is about 53 years old with no biological or adopted children. The Petitioner's Motivation Letter, too, is on record.

7. Petitioner's medical reports show her to be “in sound mental and psychological state”. In other words,

they do not suggest any significant medical problems. All her medical reports, including her negative HIV, have also been placed on record.

8. The Petitioner is self-employed (Dialogue Writer for various TV Channels), and her income for the Assessment year 2020-21 is Rs.41,01,490/-. Her Income Affidavit, Chartered Accountant's Certificate, Income Tax Returns for the Assessment years 2018-19, 2019-20, 2020-21, and proof of residence/property, copy of Aadhar Card, and Supportive financial documents have been placed on record.

9. Home study report, dated 25/05/2019, by Ms. Clipsy Banji, BA, MSW, PGPDm, has been placed on record. The report indicates that the Petitioner is well established socially and financially. She is medically fit and healthy, unaffected by any age-related illnesses. She has an injury to the eye, but it does not hamper her vision. During the home visit, all the members were counseled, and they seem to have understood their roles in Siya's life. They have committed themselves to supporting one another in this regard. After a thorough assessment, the Social Worker reckons that the Petitioner will continue to be a good and caring parent to Siya.

10. Notarized child security undertaking, dated 14.06.2019, furnished by the Petitioner's cousin, residing at Goregaon, Mumbai, has been placed on record. He offers to look after the child if any mishap occurs to the Petitioner.

11. The minor's medical report, dated 08/01/2021, is on record; it states that "she is in sound mental and psychological state and does not reveal any evidence of significant medical conditions". Siya's negative HIV report has also been placed on record.

12. The Petitioner's consent and undertaking have been placed on record. She is willing to be appointed or declared as guardian of Siya, born on 16/12/2008. She further undertakes and assures that she shall send the minor's progress reports as per this Court requires.

13. Considering the material placed on record and compliances noted above, this Court reckons that the Guardianship petition deserves to be allowed. In this regard, the Security Officer's report, dated 21.06.2021, is taken on record and marked-'X' for identification.

14. The petition is, accordingly, allowed in terms of prayer clauses (a) to (c):

“(A) That this Hon’ble Court may be pleased to appoint the Petitioner as legal Guardian of person of the said female minor SIYA MODI, Born on 16th day of December, 2008,

(B) That the notice under Section 11 of the Guardians and Wards Act, 1890 be dispensed with,

(C) That the Petitioners may be granted leave to remove the said minor the Jurisdiction of this Hon'ble Court and to take the said minor out of the Jurisdiction of this Hon'ble Court wherever required."

15. In tune with this Court's practice note for Indian adoptions, the prospective adoptive parent has offered to invest in the child's name Rs.2,00,000/- and submit a report of that investment.

16. Today, this Court has also signed a separate Judge's Order appointing the Petitioner as guardian of Siya.

17. The Guardianship petition is disposed of in the aforesaid terms.

[DAMA SESHADRI NAIDU, J.]

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