

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**Civil Revision No.1616 of 2021 (O&M)
Date of Decision: August 18, 2021**

Geeta Rani and another

.....Petitioners.

VERSUS

General Public

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE G. S. SANDHAWALIA

Present: Mr. Gunjan Mehta, Advocate
for the petitioners.

(The proceedings are being conducted through video
conferencing, as per instructions)

G.S. SANDHAWALIA, J.(Oral)

The challenge in the present civil revision is for quashing of orders dated 06.07.2021 (Annexure P-7) and 02.08.2021 (Annexure P-9) passed by the Principal Judge, Family Court, Panchkula.

Counsel for the petitioners has raised objections to the manner in which the Family Court is proceeding and inquiring into the matter of alleged adoption of minor child Rudra Kumar, whose date of birth is 15.10.2007. Registered adoption deed is stated to be of 25.05.2009. Vide order dated 19.08.2009, Lok Adalat, Panchkula at a pre-litigation stage, had granted a declaration that the child was adopted son of the petitioners. The defendant in that case was Aadarsh Rani, who is stated to be natural mother of the child and had live-in relationship with one Keshav Kumar and out of which, the child was born. On the strength of the said order, petitioners had

initially approached this court by filing CWP No.8204 of 2021, praying for direction for removal of the said minor child from his home country for the purpose of visiting Australia on Tourist Visa/permanently and impleaded the Australian High Commission also as respondent No.2.

In that writ petition, it had been mentioned that petitioners had taken the citizenship of Australia but continued to live in Panchkula (Haryana). Due to compelling circumstances, both the petitioners had to move Australia for their personal reasons without taking along the adopted son, who is stated to be studying and staying in a Boarding School in India and is being looked after by family friends of the petitioners. Strangely the name of the school, as such, has not been mentioned. The Tourist Visa of the minor was then applied and as per the requirement of Australian Adoption Laws, the Court order was required for removing a minor child permanently from his home country, which had led to the filing of that writ petition.

On 11.06.2021, that writ petition was disposed of with request to the District Judge to place the matter before the Court of competent jurisdiction to pass an appropriate order in accordance with law. The petitioner were given liberty to file necessary application before the concerned Court to decide the same expeditiously. Relevant portion of the order dated 11.06.2021, reads as follows:-

“Having heard learned counsel for the parties and considering the facts of this case and the urgency of the situation, this petition is disposed of with a request to the Learned District Judge, Panchkula to place the matter before the Court of competent Jurisdiction, to pass an appropriate order in accordance

with law. The petitioners may file the necessary application before the concerned Court which is requested to decide the same expeditiously preferably within a period of three weeks.

It would be open to the petitioners to move this Court for any further directions if necessary.”

Keeping in view the above, the matter was initially placed before the Vacation Judge, Panchkula, who had directed that the matter be put up before the Principal Judge, Family Court, Panchkula on 01.07.2021. The Family Court had then sent a reference to the District Judge, Panchkula, who while exercising powers as Chairman of the District Legal Services Authority, directed the matter to be placed before the Family Court but the same should be converted itself to the Lok Adalat and to dispose of the matter in accordance with law vide order dated 02.07.2021 (Annexure P-6).

The Family Court, however, came to the conclusion vide impugned order dated 06.07.2021 (Annexure P-7) that the case required an inquiry and it was not a summary matter, which could be taken in the Lok Adalat by the said Court. The minor child was sought to be removed from the home country and it noticed that the parties were married on 31.05.2008 i.e. About one year prior to the execution of the adoption deed and are non-resident Indians. Resultantly, certain observations were made regarding the validity as such of the adoption deed and the fact that there was no recital in the alleged adoption deed of the ceremony, as such, of 'taking in' by the adoptive parents. The provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 was held applicable by noticing that the child was born of an unwed mother out of wedlock. Resultantly, it was also directed that

Welfare Committee, Panchkula be impleaded as necessary parties, apart from the fact that the particulars of the boarding school, where the child is studying and the complete identity of the special power of attorney, who was prosecuting the matter be also placed on record. It has also been noticed that the natural mother of minor is also staying with the petitioners at the same address. Keeping in view the welfare of the minor child, better particulars were asked for and short date was given for 20.07.2021.

Counsel for the petitioners submits that in such circumstances, the Family Court is not adhering to the directions of learned District Judge, therefore, the order, as such, is sought to be challenged. It is further submitted that appropriate application had been filed, which is now appended as Annexure P-8 along with the application for impleading the concerned persons. It is submitted that vide second impugned order dated 02.08.2021 (Annexure P-9), the said application has been disposed of on account of the fact that earlier order was rather objected to.

Perusal of the said order would go on to show that counsel for the petitioner had been asked to file better particulars in the form of amended petition and that there was no need to file application under Order 1 Rule 10 CPC. Directions having already been given for the necessary benefit and only by the Court itself and therefore, only an amended petition regarding better particulars of the petitioners and the minor child in terms of order dated 06.07.2021 (Annexure P-7) was to be filed along with the documents. Passport of petitioner No.2 issued by the Indian Government to be taken into consideration and required clarification as to whether the petitioners are Indian citizens or citizens of Australia, was to be done.

In the opinion of this Court, no serious objection, as such, can be taken to the methodology, which has been adopted by the Family Court. The Family Court, as such, has to ensure the welfare of the child, which is paramount consideration and best interest of the child keeping in mind the background as such of the case that the natural mother is staying abroad along with the present petitioners, is to be taken into consideration and the fact of adoption being made after a year of the marriage of the couple. The details as to where the child is staying though has been now mentioned in the application filed before the Family Court, however, perusal of the said application would go on to show that the objections have been taken as to the tenor of earlier order passed as to whether the Court has jurisdiction or not to proceed in the manner of holding an inquiry.

The custody of minor child, which is sought to be removed from the jurisdiction of this Court, is a dominant factor, which is bogging down the Family Court and it is only trying to satisfy itself as to the bona fides of the petitioners and the background of the adoption deed, which has been noticed above. In such circumstances, the methodology, which has been adopted by the Family Court, in the opinion of this Court, cannot be faulted. Merely because Permanent Lok Adalat way back on 19.08.2009 on the statements of the parties had declared that the minor is the adopted child of petitioners, would not give absolute right to the petitioners and would not divest the Family Court to exercise its jurisdiction to look into the validity of the adoption deed and whether the child can leave the country.

Under the Legal Services Authority Act, 1987, on account of settlement inter se the parties, the Court can take up the matter and dispose

it of under Section 20(3). The said order, as such, could be inter se the parties and could be enforced as a decree of the Civil Court under Section 21 but in the opinion of this Court, the interest of the minor child, as such, is not inter se the persons, who were party to that order. The Family Court, as such, while exercising its jurisdiction, would have to keep in mind that the welfare of the minor child would be the primary consideration before the Court, as such, before the child can be removed from the geographical limits of this country.

Under Section 7 (g) of the Family Courts Act, 1984, a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor, would also be within the purview of the Family Court. Therefore, the procedure, which is being followed by the Family Court, as such, cannot be said to be suffering from any illegality or infirmity, which would warrant interference in the supervisory jurisdiction of this Court under Article 227 of Constitution of India.

It is to be noticed that a Co-ordinate Bench in ***Richa Gupta v. Union of India and others 2021 (2) R.C.R. (Civil) 724***, examined the issue as to whether the adoptive parents being non-resident of India through being Indian citizens, would come within the ambit of Hindu Adoption and Maintenance Act, 1956 and Juvenile Justice (Care and Protection of Children) Act, 2015. The view taken by the Co-ordinate Bench in ***Jasmine Kaur v. Union of India and others CWP No.10555-2019 decided on 28.07.2020*** was dissented from and matter was referred to Division Bench. And it was noticed that CARA was a supervising authority. In these circumstances, the simplistic cover which is sought to be thrown over the

issue by the counsel for the petitioners, has rightly been ignored by the Family Court, as such, by proceeding to deal with the issue thoroughly.

It is also apparent that any observations made by the Family court were for the purpose of satisfying itself and such observations cannot be treated as conclusive while deciding the case finally. Therefore, the apprehension of the petitioners that certain observations have been made regarding the validity of the adoption deed, applicability of Juvenile Justice (Care and Protection of Children) Act, 2015 or religion of the petitioners, is only an apprehension in the mind of the Family Court at this stage. In the opinion of this Court, the petitioners are wrongly, as such, apprehending that the Family Court while making its observations in any manner is finally adjudicating on the issue. This would be clear on account of notice which is to be ordered to implead CARA and the Child Welfare Committee. The picture would then be clear before the Family Court before final disposal of the matter. Thus this Court is of the opinion that procedure adopted by the Family Court does not suffer from any infirmity.

Resultantly, this Court is of the opinion that the present petition as such, has no merits and is accordingly dismissed in limine.

(G. S. SANDHAWALIA)
JUDGE

August 18, 2021
Sachin M.

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>