

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION****MISCELLANEOUS PETITION NO. 08 OF 2022**

Sharafat Hussain Noormohamad Khan

...Petitioner

Versus

Rehmat Ali Sharafat Hussain Khan (minor)

...Respondent

* * *

- Mr. S.P. shrivastava, for Petitioner.

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CORAM : MANISH PITALE, J**DATE : 18TH NOVEMBER, 2022.****P. C. :**

1. By this petition filed under the provisions of the Guardian and Wards Act, 1890, the petitioner is seeking to be appointed as guardian of his minor son for dealing with a flat that was purchased in the name of the minor in the year 2021.

2. It is stated in the petition that the petitioner is the father and natural guardian of his minor son, who is studying in 6th standard and who was born in the year 2010. It is stated that the wife of the petitioner and mother of the minor son unfortunately died on 10th May, 2020. It is stated that the subject flat i.e. Flat No. 104, 1st Floor, Evershine Meadows CHS Ltd., B/Wing, Jasmin Mill Road, Mahim (E), Mumbai - 400 017, was purchased by the petitioner in the name of the minor son by registered sale deed dated 23rd August, 2021, for a consideration of Rs. 65 Lakhs. It is submitted that the said flat admeasuring about 356 sq.ft. and since the petitioner desires to shift

to a larger flat, considering the needs of the family, which includes the minor son and his 5 sisters, the petitioner intends to dispose of the aforesaid flat and to purchase a new flat admeasuring 518 sq.ft. in the very same society. It is submitted that the amount that would be generated by sale of the aforesaid flat would be utilized by the petitioner to purchase the bigger flat bearing Flat No. 307 in the said society, in the name of the minor son.

3. This Court has perused the contents of the petition and the documents filed therewith. In the facts of the present case, the issuance of the notice under Section 11 of the said Act is dispensed with.

4. The documents on record do show that Flat No. 104 in the said Society adm. 356 sq.ft. was indeed purchased by the petitioner in the name of minor son on 23rd August, 2021, by way of a registered sale deed and that now he intends to purchase the bigger flat bearing Flat No. 307, in the very same society by disposing of the smaller flat. The relevant documents are placed on record and it appears that the person from whom the petitioner intends to purchase the bigger flat in the name of the minor son is the very same person who is purchasing the smaller flat bearing Flat No. 104. A proposed exchange deed is also placed on record. An affidavit of the petitioner reiterating the contents of the petition and making specific

statements that he would be utilizing the money from sale of the said flat for purchasing the larger flat is also stated. It is also specifically stated that the petitioner intends to utilize the amount for the benefit of the minor son.

5. On the basis of the aforesaid material, this Court is convinced that it would be in the interest of justice, to allow the present petition. Accordingly, the petition is allowed in terms of the prayer Clauses (a) and (b), which read as follows :

“(a) That in accordance with provisions of Section 29 of the Guardians and Wards Act, the Petitioner be allowed/permitted to sell flat No. 104, Ist Floor, Evershine Meadows CHS, Ltd., B/Wing, Jasmine Mill Road, Mahim (E), Mumbai 400 017 and to purchase flat No. 307, 3rd Floor Evershine Meadows CHS Ltd., B/Wing, Jasmine Mill Road, Mahim (E), Mumbai 400 017 in the name of minor Master Rehmat Ali Sharafat Hussain Khan by executing Exchange Deed on behalf of minor and such other consideration amount or amounts or property/properties to which the minor may become entitled to receive at any time hereafter without any condition to utilize the said proceeds.

(b) The Petitioner as such be authorized on behalf of the minor to duly execute the Exchange Deed/ Agreement for selling of flat No. 104, Ist Floor, Evershine Meadows CHS, Ltd., B/Wing, Jasmine Mill

Road, Mahim (E), Mumbai 400 017 and to purchase flat No. 307, 3rd Floor Evershine Meadows CHS Ltd., B/Wing, Jasmine Mill Road, Mahim (E), Mumbai 400 017 and to sign and passed receipts in respect of the said amount and any other amount or amounts or property or properties received on behalf of the minor as well as to do all other acts, matters, deeds and things as are necessary in that behalf.”

(MANISH PITALE, J.)