

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-3546-2021 (O&M)

Date of decision: 14.07.2022

Sanjeet Kumar and another

..... Appellants

Versus

Manjeet Kumar

..... Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

PRESENT: Mr. Mohit Rathee, Advocate for the appellant.

Mr. Mayur Karkra, Advocate for the respondent.

RITU BAHRI, J. (ORAL)

Appellants-Sanjeet Kumar and Renu, have come up in this appeal against the order dated 16.11.2021, whereby their application under Section 56(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short-'the Act'), was dismissed by the Family Court, Bhiwani.

Heard learned counsel for the parties at length.

Brief facts of the case are that initially, respondent-Manjeet Kumar was married to appellant No. 2 Renu and a female child-Vanya was born on 09.07.2012 from this wedlock. Later on, Manjeet Kumar and Renu, got the divorce vide judgment and decree dated 25.04.2016, passed by the learned District Judge (Family Court), Sonapat. Thereafter, appellant No. 2-Renu, solemnized her second marriage with appellant

No. 1-Sanjeet Kumar on 30.09.2017. Both Sanjeet Kumar and Renu, filed an application (Annexure A-2) under Section 56 of the Act read with Regulations 52(4) and 55(2) of the Adoption Regulations, for adoption of female child, namely, Vanya Samota aged about 7 years daughter of respondent-Manjeet Kumar. Along with their application, the appellants have placed on record certain documents i.e. marriage certificate, Aadhar cards as well as the permission/consent (Annexure A-4) by the biological parents for surrendering the custody minor child to step-parent as per Schedule XX which was duly allowed and stamped by the seal of Child Welfare Committee, Bhiwani on 11.02.2020. Annexure A-5 is the consent of minor child-Vanya Samota dated 24.01.2020, that she wants to stay with Sanjeet Kumar and Renu and the same has also been signed by the member of Child Welfare Committee, Bhiwani. After completing the entire formalities, the application (Annexure A-2) was filed before the Court. While passing the impugned order, in paragraph 10 it has been observed that even if, the application has been filed by both the step mother and step father, then also the same is not maintainable, because a biological mother cannot become a mother in dual status i.e. a biological mother as well as adoptive mother and on this ground the application was dismissed.

For ready reference, Section 57 of the Act reads as under:-

“57. Eligibility of prospective adoptive parents – (1) The prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him.

(2) In case of a couple, the consent of both the spouses for the adoption shall be required.

(3) A single or divorced person can also adopt, subject to fulfilment of the criteria and in accordance with the provisions of adoption regulations framed by the Authority.

(4) A single male is not eligible to adopt a girl child.

(5) Any other criteria that may be specified in the adoption regulations framed by the Authority.”

As per sub-clause (4) of Section 57 of the Act, a single male is not eligible to adopt a girl child. Hence, for all intents and purposes, appellant No. 1-Sanjeet Kumar, could not adopt minor child-Vanya, as per the above said provision of law.

Now, coming to notification dated 01.01.2017 (Annexure A-3) issued by the Ministry of Women and Child Development, certain guidelines have been framed for adoption of a child. Sub-clause (2) of Regulation 55 of the aforesaid notification reads as under:-

“55 Legal Procedure (1) xxx xxx xxx

(2) The biological parent and the step-parent, who intend to adopt the child or children of the biological parent, shall file the adoption application as provided in Schedule XXXII, in the court concerned of the district where they reside, along with consent letter of the biological parents and the step-parent adopting the child or children, as provided in the Schedule XX and all other documents as provided in Schedule VI.”

As per the above provision, the biological parent and the step-parent, who intend to adopt a child or children of the biological parents, shall file the adoption application as provided in Schedule XXXII in the Court concerned along with consent letter of the biological parents and the step-parents adopting the child or children, as provided in the Schedule XX and all other documents as provided in Schedule VI. In the

present case, step-parents include biological mother itself. At this stage, reference can be made to Regulation 52 of notification Annexure A-3, which reads as under:-

- “52. Adoption by step-parent.-** (1) *The couple (step-parent and one of the biological parents) shall register in Child Adoption Resource Information and Guidance System with the required documents as mentioned in Schedule VI.*
- (2) *Consent of the biological parent(s) and the step-parent adopting the child or children shall be as provided in the Schedule XX (refer instructions in Schedule XX).*
- (3) *In case the custody of the child is under litigation, the adoption process shall be initiated only after the finalization of the case by the court concerned.*
- (4) *The biological parent and the step-parent shall file an application in the Family Court or District Court or City Civil Court as the case may be, as per format given at Schedule XXXII.*
- (5) *The applicants shall obtain a certified copy of the adoption order from the court concerned and furnish a copy of the same online to the Authority through Child Adoption Resource Information and Guidance System.”*

As per sub-clause (1) of Regulation 52, the couple which includes step-parents and one of the biological parent shall register in Child Adoption Resource Information and Guidance System with the required documents as mentioned in Schedule VI. Hence, for all intents and purposes one biological parent can give an adoption to the step-parents out of which one of them can be a biological father or biological mother. In the present case, all the required documents as per Schedule XX have been attached with the application Annexure A-2 and their application cannot be dismissed merely, on the ground that a biological mother cannot become a mother in dual status i.e. a biological mother as well as adoptive mother. Since, as per Regulation 55, the definition of adoptive parent has clearly been given in sub-clause (2) and Regulation

52 (1) includes biological parent to be an adoptive parent, the impugned order is liable to be set aside.

In view of the discussion made above, the instant appeal is allowed, impugned order dated 16.11.2021, passed by the Family Court, Bhiwani, is set aside and the application Annexure A-2 filed by the appellants is allowed.

**(RITU BAHRI)
JUDGE**

July 14, 2022
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**(ASHOK KUMAR VERMA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No