

11.12.2023
Item No.16.
Court No.6.
AB

**F.A.T. 337 of 2023
With
CAN 1 of 2023**

**Sudipto Gooptu & Anr.
Vs
Srikanta Singh & Anr.**

Mr. Amitabha Ghosh,
Mr. Sirshendu Bikash Pal,
Ms. Nabanita Chatterjeefor the Appellants.

Mr. Madan Mohan Royfor the Respondents.

In re : IA CAN 1 of 2023

This is an application for condonation of delay of 95 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

CAN 1 of 2023 is, accordingly, disposed of.

In re : FAT 337 of 2023

This First Appeal is directed against a judgment and order dated May 10, 2023, passed by the learned Chief Judge, City Civil Court, Calcutta.

The appellants had made an application under Section 7 of the Hindu Adoptions & Maintenance Act, 1956, for an order permitting them to adopt a three-month old girl child being the natural daughter of the respondents herein.

The learned Judge noted that the applicant/ appellant no.1 is 59 years of age and the applicant/

appellant no.2 is 47 years of age. The learned Judge dismissed the application observing as follows:

“In the given circumstance, this Court is of the view that the prayer for adopting a child who is three months old and the couple’s total age being 106 years which is more than 90 years, this Court cannot entertain the prayer for adoption of a child of three months by the couple whose total age up add up to 106 years.”

Being aggrieved, the applicants have come up by way of this appeal.

We have heard learned Counsel for the appellants. Learned Counsel for the respondents supports learned Counsel for the appellants. He says that the natural parents of the girl child are financially extremely weak. They are not in a position to bring up the child in a proper manner. They have three other children. Hence, they would be happy if the appellants adopt the girl child in question.

We are of the view that the learned Trial Court rejected the application of the appellants on a misappreciation of the laws. Evidently, the learned Judge relied on the Adoption Regulations, 2022, which were brought into effect by a Notification dated September 23, 2022. Such Regulations were framed under the provisions of Juvenile Justice (Care & Protection of Children) Act, 2015. Rule 5 of the 2022 Rules, inter alia, provides that the maximum composite age of prospective adoptive parents (couple) for a child upto

two years, would be 85 years. The same would be 90 years for a child above two years and up to four years.

However, Section 56(3) of the Juvenile Justice Act, 2015, specifically provides that nothing in that Act shall apply to the adoption of children made under the provisions of the Hindu Adoptions & Maintenance Act, 1956. Hence, the said Regulations of 2022 framed under the 1956 Act would also not apply to adoption of children made under the provisions of the 1956 Act.

We are told by learned Counsel for the appellants and the respondents that the conditions specified in Section 11 of the 1956 Act are satisfied in the present case.

We are also of the view, considering the financial condition of the respondents, that it will be in the best interest of the girl child concerned and for her overall welfare that the present appeal is allowed and the girl child is permitted to be adopted by the appellants.

The order under appeal is set aside. The application under Section 7 of the 1956 Act stands allowed.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)

