

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CIVIL REVISION APPLICATION NO. 128 OF 2022

1. Miss Kalpana Vishwanath Khandare
Age : 42 years, Occu. Railway Service
R/o, RBII-1019/B, Nurse Near BSNL Office
Bhusawal, Dist : Jalgaon
2. Mr. Ravindra Vishwanath Khandare
Age : 39 years, Occu : Labour
R/o. RBII-1019/B, Nurse Near BSNL Office
Bhusawal, Dist. Jalgaon
3. Mrs. Varsha w/o. Ravindra Khandare
Age : 33 years, Occu : Housewife
R/o. RBII-1019/B, Nurse Near BSNL Office
Bhusawal, Dist. Jalgaon

..... Applicants

Versus

- 1 The State of Maharashtra

.....Respondent

...

Mr. N.S. Shah and Mr. S.S. Patil – Advocate for Applicants.
Mr. S.B. Pulkundwar – AGP for Respondent, State

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CORAM: GAURI GODSE, J.
RESERVED ON: 2nd March 2023
PRONOUNCED ON: 11th April 2023

PER COURT:

1. Admit. Mr Pulkundwar learned AGP waives service for the Respondent. Civil Revision Application is taken up for final disposal.
2. This Civil Revision Application is filed under Section 102 of the Juvenile Justice (Care And Protection of Children) Act 2015 ('the JJ Act') for challenging the Order dated 8th March 2022, passed by the learned District Judge -1 at Bhusawal in Civil Miscellaneous Civil Application No. 20 of 2020. The said application was filed by the present revision applicants under Section 56(2) of the JJ Act read with Rules 51 and 55 of the Adoption Regulations, 2017 ("Regulations of 2017"). These Regulations of 2017 are now superseded by the Adoption Regulations 2022 ("Regulations of 2022") made applicable from the publication in the official gazette on 23rd September 2022.
3. Applicant no.1, being a prospective adoptive parent, had registered in the child adoption and resource information and guidance assistance for the adoption of a minor child, namely, Pakhi, born on 29th January 2016. By the impugned Order, said

application for the adoption of the minor child has been rejected.

4. It is the case of the Applicants that on 9th June 2020, they filed Civil Miscellaneous Application No. 20 of 2020 before the Learned District Judge -1, Bhusawal, for seeking adoption of the minor child and declaration of Applicant No. 1 as a parent. The Applicants also prayed for issuing directions to the Municipal Council for modifying the birth certificate of the minor child as per Rule 36 of the Regulations of 2017.
5. The learned Counsel for the Applicants submitted that after following the necessary procedure, a detailed report was prepared by the District Child Protection Unit. All the necessary verifications regarding the status and health of the prospective parent and the child and the financial condition of the parties was done. However, the learned Judge has rejected the application on the erroneous ground that the prospective parent is a single lady and unmarried. The learned Judge, without any basis, observed that the prospective parent being a working lady, will not be able to give personal attention to the child per contra the biological parents would be in a better condition to take care of the child.

6. The learned Counsel for the Applicants submitted that the observations of the learned Judge are contrary to the report submitted by the District Child Protection Unit and the pre-approval letter issued by the Central Adoption Resource Authority (“CARA”). The learned Counsel submitted that all the procedural statutory requirements were fully complied with, and thus there was no reason to reject the application for adoption. The learned Counsel submitted that the reason recorded by the learned Judge for rejecting the application is perverse and unjust. It was thus submitted that the impugned Order be set aside, and the Application for adoption made by the Applicants be allowed.
7. The learned AGP fairly submitted that perusal of the record showed that all the statutory compliances were done, and CARA has issued a pre-approved letter for finalizing the adoption case by completing the procedure for issuance of the Adoption Order. He, therefore, submitted that appropriate Order may be passed.
8. I have perused the record of the Civil Revision Application and the relevant provisions of law. Revision Applicant nos.2 and 3 are the biological parents of the child, and they had submitted

the necessary consent form for the purpose of adoption of the child by Revision Applicant no.1. The prospective adoptive parent is the real sister of the biological father.

9. It is necessary to refer to the relevant provisions of the JJ Act and the Regulations of 2017. The present case is the in-country adoption of a minor child by a relative from another relative. Sub-section (2) of Section 56 permits the adoption of a child from a relative by another relative irrespective of their religion by following the provision of the JJ Act and the Rules framed by the Authority. Eligibility of prospective parent is prescribed in Section 57, which reads as under:

“Section 57. Eligibility of prospective adoptive parent –

(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.”

(Emphasis Applied)

10. The legal procedure for an in-country adoption of a child from a relative by another relative is prescribed in Rule 55 of the Regulations of 2017, as was applicable to the present case. As per the said Rule 55, the prospective adoptive parents who intended to adopt the child of a relative were required to file an application in the competent Court under sub-section (2) of Section 56 of the JJ Act in case of in-country relative adoption along with a consent letter of the biological parents as provided in Schedule XIX and all other documents as provided in Schedule VI. A perusal of Schedules XIX and VI shows that there is a requirement for online registration of an exhaustive form with various details and supporting documents, including consent of biological parents in the prescribed form. Schedule XXX prescribes a model Application required to be filed in the Court.
11. Sub-Rule (5) of Rule 55 provided that before issuing an Adoption Order, the Court shall satisfy itself of the various conditions stipulated under Section 61 of the Act and regulations 51 to 56, as the case may be. In the present case, the relevant regulation was Rule 51, which read as under:

“51. In-country relative adoptions.—(1) The prospective adoptive parents shall register in Child Adoption

Resource Information and Guidance System and follow due legal procedure as provided in Regulation 55.

(2) Consent of biological parents or permission of the Child Welfare Committee, as the case may be, shall be required as provided in Schedule XIX or Schedule XXII respectively.

(3) The consent of the child shall be obtained, if he is five years of age or above.

(4) Affidavit of adoptive parent(s) is required in cases of in-country relative adoptions in support of their financial and social status as per Schedule XXIV.

(5) The prospective adoptive parents shall file an application in the competent court as provided in Schedule XXX.”

12. Section 61 lays down parameters for the procedure for disposal of adoption proceedings. Section 61 reads as under:

“Section 61. Procedure for disposal of adoption proceedings - (1) Before issuing an adoption order, the [District Magistrate] shall satisfy itself that—

(a) the adoption is for the welfare of the child;

(b) due consideration is given to the wishes of the child having regard to the age and understanding of the child; and

(c) that neither the prospective adoptive parents has given or agreed to give nor the specialised adoption agency or the parent or guardian of the child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the adoption regulations framed by the Authority towards the adoption fees or service charge or child care corpus.

(2) The adoption proceedings shall be held in camera and the case shall be disposed of by the [District Magistrate] within a period of two months from the date of filing.”

13. Perusal of Section 61 shows that the parameters prescribed for disposal of adoption proceedings are applicable to the adoption in all cases. The parameters prescribed in Section 61 show that before issuing an Adoption Order, the Court has to be satisfied that the adoption is for the welfare of the child and that all the prescribed formalities under the JJ Act and the Adoption Rules are complied with. The prescribed forms to be submitted under the said Rules shows that due care is taken to verify all the details of the prospective adoptive parents, biological parents and the child. Therefore, the provision of Section 61 requiring the competent Court to be satisfied with the prescribed parameters, including the welfare of the child, has to be read with all the other prescribed procedures to be followed. Thus, a duty is cast upon the Competent Court to satisfy itself about the welfare of a child as per the parameters laid down in Section 61 before passing an Adoption Order.
14. Learned Counsel for the Applicants invited my attention to the necessary procedure that was followed in the present case with respect to submitting the consent form of the biological

parents in the prescribed format, the affidavit of the prospective adoptive parent and the family background report of the Child prepared by the District Child Protection Officer as per the home visit done. A perusal of the report submitted by the District Child Protection Officer recommends the adoption of the child. Learned Counsel for the Applicants also invited my attention to the pre-approved letter dated 23rd May 2022 issued by the Assistant Director- CARA, confirming that the affidavit of the prospective adoptive parent is furnished in the prescribed format and all the statutory requirements for undertaking the in-country relative adoption under the JJ Act are complied with.

15. The learned Counsel for the Applicants has relied upon a decision of this Court in the case of *Sumed S/o. Devidas Thamke and others*¹, in support of his submissions. In the said case adoption application was rejected by the Competent Court on the ground that since the child was neither a child in conflict with the law, nor a child in need of care and protection, nor an orphan, nor a surrendered/abandoned child, the provisions of JJ Act were not applicable. This Court, after referring to various provisions of the JJ Act, held that the JJ Act is also applicable for the adoption of a child by a relative from another relative.

1 2021 (6) Mh.L.J. 695

16. In the present case, the Competent Court has rejected the application only on the ground that the prospective parent is a single lady and unmarried, and she being a working lady, will not be able to give personal attention to the child per contra the biological parents would be in a better condition to take care of the child. Section 57 of the JJ Act provides the eligibility criteria of a prospective parent. Sub-section (3) of Section 57 holds a single or divorced person eligible for taking a child in adoption. Sub-section (1) of Section 57 states that the prospective adoptive parent shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child to provide a good upbringing to the child. Thus, the reason given by the Competent Court is not only contrary to the provisions of the JJ Act but is also contrary to the recommendation made by the District Child Welfare Officer and the Assistant Director of CARA. Even otherwise, the reason given by the Competent Court is unfounded and baseless.
17. The Competent Court was required to verify whether the statutory requirements were complied with and, after scrutinising the record of the proceedings, form an opinion as to whether the application for adoption was in the interest of the child. The Competent Court has erroneously rejected the

application by doing guesswork. The comparison done by the Competent Court between the biological mother being a housewife and the prospective adoptive mother (single parent) being a working lady reflects a mindset of the medieval conservative concepts of a family. When the statute recognises a single parent to be eligible for being an adoptive parent, the approach of the Competent Court defeats the very object of the statute. Generally, a single parent is bound to be a working person, maybe with some rare exceptions. Thus, by no stretch of the imagination, a single parent can be held to be ineligible to be an adoptive parent on the ground that he/she is a working person.

18. There is nothing adverse shown to me for rejecting the application for adoption. A perusal of the record shows that all the statutory compliances are done. The report of the District Child Welfare Officer and the pre-approved letter issued by the Assistant Director of CARA has found the prospective adoptive parent to be a fit parent for adopting the child. The impugned Order does not record anything adverse regarding the statutory compliances. The application is rejected only on one ground of the adoptive parent being a working lady. The

reason recorded by the Competent Court is unfounded, illegal, perverse, unjust and unacceptable.

19. I do not see any reason to refuse to grant the Adoption Order. For the reasons recorded hereinabove, the impugned Order is liable to be quashed and set aside. Hence, the Civil Revision Application is allowed by passing the following Order:

- i) Order dated 8th March 2022, passed by the learned District Judge -1 at Bhusawal in Civil Miscellaneous Civil Application No. 20 of 2020 is quashed and set aside.
- ii) Civil Miscellaneous Civil Application No. 20 of 2020 is allowed.
- iii) Applicant Nos. 2 and 3 are permitted to give the minor child Pakhi in adoption to Applicant No. 1.
- iv) Applicant No. 1 – Ms Kalpana Vishwanath Khandare is declared as a parent of the minor child Pakhi for all purposes.
- v) The Birth Certificate Issuing Authority of Bhusawal Municipal Council is directed to issue a modified birth certificate incorporating the name of Ms Kalpana Vishwanath Khandare as the adoptive parent of Pakhi.

- vi) Necessary formalities shall be completed by all concerned authorities for giving effect to the Adoption Order as expeditiously as possible and latest, within four weeks from the production of a copy of this Order before the concerned competent Authorities.
 - vii) All concerned to act on an authenticated copy of this Order.
20. Civil Revision Application is allowed in above terms.

[GAURI GODSE]
JUDGE