

CIVIL REVISION APPLICATION NO. 11 OF 2022

SUBHALAXMI ANANT PRABHU
TENDULKAR AND 2 ORS. ... APPLICANTS
Versus
BHARAT RAMNATH PRABHU
VELGUEKAR AND 3 ORS. ... RESPONDENTS

Ms. Anarkali Agni, Senior Advocate with Ms. Jay Sawaikar,
Advocate for the Applicants.

Ms. Gina Almeida, Advocate under Legal Aid Scheme for
Respondent Nos. 1 and 2.

Ms. Amruta Kamat, Chairperson, CWC and Ms. Roselle M.F. Solomon, Member, CWC, are present on behalf of Respondent No. 3.

CORAM: VALMIKI SA MENEZES, J.

DATED: 28th APRIL 2023

ORAL ORDER:

1. This Petition takes exception to orders dated 18.11.2022 under Nos. CWC-SG/ADMN/2022-23/1007 and CWC-SG/ADMN/2022-23/1006 passed by Respondent No. 3-Child Welfare Committee (CWC), by which, the child-Kaiwalya was placed in foster care of Respondent Nos. 1 and 2.

2. The case of the Petitioners is that Petitioner No. 1 is the paternal uncle of Kaiwalya i.e. Kaiwalya is the son of the brother (late Shailesh alias Ramkrishna Anant Prabhu) of Petitioner No. 1 and of his sister-in-law late Purnima Ramkrishna Prabhu Tendulkar, both of whom are no more. The Petitioners aver that Petitioner Nos. 2 and 3 have two daughters, namely, Vaibhavi and Vedika, who reside with them. That, after the demise of Kaiwalya's parents, he was placed in the care of a home for orphans at Matruchaya (Bal Kalyan Kendra Ashram at Talaulim, Ponda), under whose care he continued to be until Respondent Nos. 1 and 2 applied to Respondent No. 3 for taking Kaiwalya into their foster care in terms of the provisions of Section 44 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (the Act).

3. The impugned orders dated 18.11.2022 under Nos. CWC-SG/ADMN/2022-23/1007 and CWC-SG/ADMN/2022-23/1006 were passed, after taking all the relevant factors into consideration, placed Kaiwalya in the foster care of Respondent Nos. 1 and 2. It is these orders that the Petitioners takes exception to on the main premise that they are direct relations of the child-Kaiwalya, Petitioner No. 1 being his grandmother.

4. Further, the Petitioners' case is that in furtherance of their desire of being guardian to Kaiwalya, they filed Civil Miscellaneous Application No. 38/2022/A before the Civil Judge Senior Division at Ponda under the provisions of Articles 200, 207 and 224 of the Portuguese Civil Code, 1867, wherein they have requested the Civil Court to appoint a Family Council, pursuant to which necessary orders have been invited to appoint the Petitioner No. 1, who is the paternal grandmother of the child, as a legal guardian.

5. During the pendency of this Petition, this Court has, from time to time passed orders to facilitate the bonding of Kaiwalya with the family of the paternal grandmother (Petitioner No. 1). By order dated 21.04.2023, this Court, commenced the process of Kaiwalya residing at the home of Petitioner No. 1 and this arrangement has continued till date. The arrangement has been followed under the interim orders of this Court with the complete consent of Respondent Nos. 1 and 2 and with the consent of Respondent No. 3-CWC. The transition of the child-Kaiwalya moving from his foster care home to the home of the paternal grandmother (Petitioner No. 1) has also been done under the

observations and overall supervision of the Members of the CWC in order that no trauma is caused to the child.

6. The Petitioners express their desire to shift Kaiwalya from Tarabai Dalvi High School, Pale and admit him to S.S. Samiti High School, Dhavali, Ponda, Goa. For that purpose, Respondent Nos. 1 and 2 state that they will arrange a school leaving certificate, medical records and other documents that may be required by the Petitioners to facilitate Kaiwalya to take admission to his new School.

7. The Petitioners now state before me that they are willing to invite an order under the provisions of Section 44 of the Act from the CWC (Respondent No. 3) seeking the appointment of Petitioner Nos. 2 and 3 as the foster parents of Kaiwalya. A further statement is made that the requisite Application under the provisions of Section 44 of the Act would be made by 03.05.2023 and placed before the CWC. Ms. Amruta Kamat, the Chairperson of the CWC and Ms. Roselle M.F. Solomon, Member of the CWC, who are present before the Court state that the Application would be dealt with immediately and orders under Section 44 of the Act would be passed on the same, to consider the appointment of Petitioner Nos.

2 and 3 as foster parents of Kaiwalya on or before 04.05.2023. In the event the CWC proceeds to pass such an order in favour of Petitioner Nos. 2 and 3, the same would operate in terms of the provisions of the Act for a term of one year. The CWC would renew such orders periodically from year to year as would be permitted under the provisions of the Act.

8. Consequently, by consent of all the parties to the Petition, the orders dated 18.11.2022 under Nos. under Nos. CWC-SG/ADMN/2022-23/1007 and CWC-SG/ADMN/2022-23/1006 are quashed and set aside to enable the CWC to pass orders on the Application of the Petitioner Nos. 2 and 3 that will be filed on 03.05.2023.

9. The Civil Judge Senior Division at Ponda shall decide the CMA No. 38/2022/A pending before it in terms of the directions given by this Court vide its order dated 21.04.2023 positively by 31.05.2023.

10. The Petition is disposed of in the above terms.

VALMIKI SA MENEZES, J.