

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION

FOREIGN ADOPTION PETITION NO. 21 OF 2023
WITH
JUDGES ORDER NO. 101 OF 2023
IN
FOREIGN ADOPTION PETITION NO. 21 OF 2023

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Bal Asha Trust	...	Petitioner
V/s.		
Bartolo Giaconia & Elda Brambille ... (Proposed Adopters) & Heena @ Shabnam (Female Minor)		Proposed Adopters

Mr. Rakesh K.L. Kapoor i/b Ms. Rakesh K.L. Kapoor & Co., Advocate
for the Petitioner.

Mr. O. Hareendran, Scrutiny Officer, ICSW present.

Mr. Dilip S. Gurav, Chamber Registrar present.

CORAM : R.I. CHAGLA, J.
(IN CHAMBER).

DATE : 21ST DECEMBER, 2023.

PC:

1. This Foreign Adoption Petition is filed seeking adoption of the female minor Heena @ Shabnam (“**the said female minor**”) born on 9th June 2014. The said female minor was found abandoned by

CSMT Railway Police Station Mumbai on 15th October 2021 and admitted in B.J. Home, Mumbai on the same day. On 18th October 2021 the said minor was transferred to the Petitioner institution as per the order of Child Welfare Committee (CWC), Mumbai City-II under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015. The Transfer Order and custody order of the CWC are on record at Page No. 21-22, to the Petition.

2. After making due inquiry under Section 38 of said Act, the CWC, Mumbai City-II declared the said female minor “Legally Free for Adoption” as on 23rd June 2022. The Free for adoption Certificate is on record at Page Nos. 17 to 20, to the Petition.

3. The Central Adoption Resource Authority (CARA), New Delhi has issued its No Objection Certificate dated (29/03/2023) to this adoption as per Adoption Regulations 2017 and Article 17 (c) of the Hague Convention on the Protection of Children and Cooperation in respect of Inter-country Adoption 1993. The said No Objection Certificate is on record at Page No. 30, to the Petition.

4. The undertaking/affidavit by the Petitioner institution is on record at Page Nos. 23 to 29, to the Petition.

5. The Proposed Adopters are Italian nationals, residing at Palermo, Italy aged about 47 and 50 years respectively, having been married for the past 5 years (29/12/2018) with no biological children.

6. The Proposed Adopters Joint Family Photograph and Copies of Passport are on record at Page Nos. 31-42, to the Petition.

7. The health reports dated 18th March 2022 of the Prospective Adoptive Parents are on record and it states that both are not affected by chronic, venereal, contagious or terminal diseases and do not present any physical or mental condition that can prevent them from taking care of a minor. The said Reports also certify that the Prospective Adoptive Parents have tested Negative to pathologies for HIV and Hepatitis “B”. These reports are at Page Nos. 58-67, to the Petition.

8. The Prospective Adoptive Father is working as a Receptionist with Blood Donors Association Thalassa ONLUS, Italy since 2003 and his income for the Tax year 2021 is of Euro 24,985.00. His Employment Certificate & Income Tax certificate 2021 is on record at page No. 68-73, to the Petition.

9. The Prospective Adoptive mother is a Freelance Engineer since 2009 and her total income for the Tax year 2021 is of Euro 14,367.00. Her Income Tax certificate for the Tax years 2019, 2020 and 2021 is on record at page No. 74-79, to the Petition.

10. The Certificate of Residence is on record at page Nos. 80-89, to the Petition.

11. Mr. Kapoor, learned counsel appearing for the Petitioner

and Perspective Adoptive Parents has tendered compilation of documents which consists of the Declaration of Consent and willingness dated 1st December 2023; the said female minor's psychological tests Report dated 9th June 2022; undertaking for Guardian dated 14th November 2023; the said female minor's Custody Declaration dated 31st July 2023; Psychological reports of Perspective Adoptive Parents dated 8th March 2021 and 28th June 2021. The compilation of documents is taken on record and marked 'X' Collectively for identification.

12. The home study report dated 20th June 2021 by the authorities of "Associazione Lo Scoiattolo ONLUS", Terni, Italy has found the Proposed Adopters suitable for adopting a child. The said home study report is on record at page Nos. 116-145, to the Petition.

13. The Psychological Evaluation Report dated 28th June 2021 by Dott. Ssa Laura Domenica Cameli, Psychologist-Psychotherapist has been placed on record by way of compilation, marked 'X' for identification. The said report has recommended the proposed Adoptive Parents suitable for the adoption of a child.

14. The Permission of the Receiving Country as per Article 5/17 of the Hague Convention is on record at page Nos. 121-126, to the Petition.

15. The child Security undertaking dated 14th November 2023 given by the Prospective Adoptive Father's sister and brother-in-law,

residing at Palermo, Italy to take care of the child in case of any unforeseen mishap to the Proposed Adopters has been placed on record by way compilation marked 'X' Collectively.

16. The Medical Examination report of the said female minor dated 31st January 2023 states, "Health Status: Normal. Overall observation of the child: Heena is a pleasant girl who is in good physical and mental health". The Proposed Adopters have countersigned this Report along with additional investigation reports, which are on record at page Nos. 155-162, to the Petition.

17. The Report of Psychological Testing of the said female minor dated 09/06/2022 states that "Heena has average intellectual functioning and social functioning". The Proposed Adopters have countersigned this report, which is on record at page Nos. 163-165, to the Petition.

18. The Declaration of consent & willingness of the proposed adopters has been placed on record by way of compilation Marked 'X-collectively' and it states that they are willing to adopt the said female minor Heena @ Shabnam.

19. The undertaking of the Proposed Adopters states that they will allow personal visits by the Representative of the Authorized Foreign Adoption Agency (AFFA) during post-adoption follow-up. The said undertaking is on record at page Nos. 168-170, to the Petition.

20. The undertaking dated 15th February 2023 of the Authorized Foreign Adoption Agency (AFFA) “Associazione Lo Scoiattolo ONLUS”, Terni, Italy to provide follow-up reports of the child and make alternative arrangements in case of disruption of the adoptive family is on record at page Nos. 173-174, to the Petition.

21. The undertaking dated 15th February 2023 of the Authorized Foreign Adoption Agency (AFFA) “Associazione Lo Scoiattolo ONLUS”, Terni, Italy to provide follow-up reports of the said female minor child and make alternative arrangements in case of disruption of the adoptive family is on record at page Nos. 173-174, to the Petition.

22. The Power of Attorney dated 2nd December 2022 duly signed by the Proposed Adopters in favour of the Petitioner institution is on record at page Nos. 175-182, to the Petition.

23. The Petitioner institution’s recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid for a period up to 05/05/2025.

24. Mr. O. Hareendran, Scrutiny Officer has tendered Report/representation from the Indian Council of Social Welfare (ICSW) dated 7th December 2023 which is taken on record and marked ‘Y’ for identification.

25. Having considered the material on record as well as the

Report of the Scrutiny Officer dated 7th December 2023 marked 'Y', in my view, it would be in the interest of the said female minor if she is adopted by the Proposed Adoptive Parents.

26. It is relevant to note here that in the case of **Nisha Pradeep Pandya alias Nisha Amit Gor and Anr. Vs. Union of India and Ors.**,¹ concerning challenge raised to the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, the Division Bench of this Court on 10th January, 2023 passed an interim order. The relevant portion of said order of Division Bench reads as follows :

“8. In the meantime, there will be an ad-interim order only until the next date in terms of prayer clauses (d), (e) and (f) of the petition which reads as follows:

(d) Pending the final hearing and disposal of the present Petition, the Hon'ble Court may be pleased to stay the effect, implementation and purport of the letter dated 30th September, 2022 issued by Respondent No.2;

(e) Pending the final hearing and disposal of the present Petition, the Hon'ble Court may be pleased to direct the Respondents not to transfer pending adoption matters before the District Magistrates for adjudication.

(f) Pending the final hearing and disposal of the present Petition, the Hon'ble Court may be pleased to direct the Hon'ble Courts to continue

¹ Writ Petition No.1085/2023 (Writ Petition (L) No.32065/2022)

with the adjudication of the adoption matters that are pending on their record and file.

9. Additionally, the safer and more prudent course of action would be to allow all matters to be placed before the learned Single Judge of this Court who is assigned those matters. Those orders may be continued to be passed until the challenge is finally decided.”

27. Hence, it is clear that this Court can consider and dispose of the present Petition.

28. In these circumstances, the Petition is allowed in terms of prayer clauses (a) to (d) of the Petition, which read thus:-

“(a) For adoption of the Proposed female minor Heena @ Shabnam born on 9th June 2014 by the Proposed Adopter under Section 59 (7) of the Juvenile Justice Act, 2015.

(b) For declaring the Proposed Adopters as Adoptive Parents of the said minor Heena @ Shabnam and having all parental rights, privileges and responsibilities over the said minor now in the care and custody Bal Asha Trust, Bal Asha Dham, Anand Niketan, Dr. E. Moses Road, Mahalaxmi, Mumbai – 400 011.

(c) Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor Heena @ Shabnam born on 09/06/2014 and showing the proposed adopters as Parents.

(d) That the Proposed Adopters may be granted

leave to remove the said minor Heena @ Shabnam from the jurisdiction of this Hon'ble Court and to take the said minor to ITALY or wherever they may reside in future.

29. The Judge's Order is accepted and signed separately.

30. It is directed that the Petitioner shall obtain a further undertaking from the Adoptive Parents that they shall not give the said female minor child for further adoption without the prior leave of this Court. Once this undertaking is obtained, the same shall be filed on the record of this Court.

31. The present Foreign Adoption Petition is accordingly, disposed of. There shall be no orders as to costs.

(R.I. CHAGLA, J)