

Kavita S. J.

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

INDIAN ADOPTION PETITION NO. 48 of 2023
WITH
JUDGE'S ORDER NO. 82 OF 2023

Vatsalya Trust

...Petitioner

And

1. Amar Lalit Lodaya
2. Lucy amar Lodaya

...Prospective
Adoptive Parents

Mrs. Aarti Kulkarni, Advocate for the Petitioner.

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

Mr. D.S. Gurav, Chamber Registrar present.

CORAM : R.I. CHAGLA, J.

DATE : 2ND NOVEMBER, 2023.

ORDER :

1. By this Indian Adoption Petition jointly filed by the Petitioner and Prospective Adoptive Parents, the adoption of female minor Kshiti (**“the said female minor”**) has been sought. The said female minor was born on 6th July, 2022.

KAVITA
SUSHIL
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2. The biological mother surrendered her child before Child Welfare Committee (CWC), Mumbai Suburban District on 11/07/2022 and she was admitted to the Petitioner institution Vatsalya Trust, Mumbai on the same day. On 13/07/2022, through its order, the said CWC recognized that admission under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (“the said Act”). The admission order of the CWC is on record at Page No.21 to the Petition.

3. After making due inquiry under Section 38 of the said Act, the CWC, Mumbai Suburban District declared the said female minor “Legally Free for Adoption” on 14/09/2022. The Free for adoption Certificate is on record at Page Nos. 23-24 to the Petition.

4. The Proposed Adopters are Indian nationals, residing at Marine Drive, Mumbai, both aged about 40 years. They have been married for the past 9 years (20/06/2014) with no biological children.

5. The Motivation Letter from the Prospective Adoptive Parents is on record at Page No. 47A to the Petition.

6. The Affidavit by the Specialized Adoption Agency

(Petitioner) is on record at page Nos. 117-122 to the Petition.

7. The Minutes of Adoption Committee Meeting held on 15/02/2023 is on record at Page No. 20 to the Petition and the committee has decided that the Prospective Adoptive Parents are suitable to adopt the said female child.

8. The Medical Report dated 25/08/2022 of the Prospective Adoptive Parents states, "They do not suffer from any contagious, fatal or chronic disease and are fit to adopt a child". Their HIV and HbsAg Test reports certify the case as Non Reactive. These reports are on record at Page Nos. 31-33 to the Petition.

9. The Prospective Adoptive father is self employed (Proprietor of Klik Gifting Solutions, Mumbai) since June 2009 and his income for the Assessment Year 2022-23 is Rs.11,09,770/-. The Indian Income Tax return Acknowledgment for the Assessment Years 2020-21, 2021-22 and 2022-23 are on record at Page Nos. 42-44 to the Petition.

10. The Prospective Adoptive mother is self employed- Designing & Consulting with her husband's firm "Klik Gifting Solutions since June 2018 and her income for the Assessment Year

2022-23 is Rs.4,76,570/-. The Indian Income Tax return Acknowledgment for the Assessment Years 2020-21, 2021-22 and 2022-23 are on record at Page Nos. 45-47 to the Petition.

11. The copies of PAN Card, Proof of Residence and supportive financial documents are on record at page Nos. 28-29, 34 & 48-62 to the Petition.

12. Child Care Arrangement Plan undertaken by the mother of the Prospective Adoptive Father is on record at Page Nos. 40-41 to the Petition.

13. The Home Study Report Part I: Self Assessment Reports by the Prospective Adoptive Parents is on record at page Nos. 63-69 & 77-85 to the Petition.

14. The Home Study Part II: Assessment Reports dated 30/09/2019 & 18/10/2022 of the Social Worker of "Bal Asha Trust", Mumbai found the Prospective Adoptive Parents to be suitable for adopting a child. The said Reports are at Page Nos.70-76 & 86-92 to the Petition.

15. The child security undertaking dated 07/02/2023 of the

Prospective Adoptive mother's sister residing at Cuffe Parade, Mumbai to look after the said female minor in case of any mishap to the Prospective Adoptive Parents is on record at page No.103-104 to the Petition.

16. The pre-adoption foster care undertaking dated 07/02/2023 is on record at Page Nos. 38-39 to the Petition.

17. The Medical Examination Report of the said female minor dated 13/01/2023 states "Health status of the child: Normal child. Overall observation of the child: Her overall development is normal". The proposed adopters have countersigned the said report, which is on record at Page Nos. 108-114 to the Petition.

18. The HIV report of the said female minor dated 19/12/2022 certifies the case as Negative. This report is on record at Page No. 115 to the Petition. The Photograph of the said female minor is on record at Page 116 to the Petition.

19. As regards the change of name, the Prospective Adoptive parents desire that the said female minor 'Kshiti' be renamed as "Kshiti Amar Lodaya".

20. The Declaration of consent and undertaking by the Prospective Adoptive Parents is on record and it states that they are willing to be appointed and declared as the Adoptive Parents of the said female minor. The said Declaration is at page No. 36-37 to the Petition.

21. The Undertaking dated 21/08/2023 given by the authorities of “Bal Asha Trust”, Mumbai, for furnishing post adoption follow-up reports is also on record at Page No. 124 to the Petition.

22. The Petitioner institution’s recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid for a period up to 05/07/2025.

23. Mr. O. Hareendran, Scrutiny Officer has tendered Report / Representation from the Indian Council of Social Welfare (ICSW) dated 6th October, 2023 which is taken on record and marked ‘X’ for identification.

24. Having considered the material on record as well as the Report of the Scrutiny Officer dated 6th October, 2023 marked ‘X’, in my view, it would be in the interest of the said female minor Kshiti, if she is adopted by the Prospective Adoptive Parents.

25. 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 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.”*

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

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

“(a) That the Prospective Adoptive Parents be given the said child in Adoption and be declared as parents and has all parental legal rights, Privileges and responsibilities over the said minor.

(b) That the Prospective Adoptive Parents may be granted leave to remove the said minor from the jurisdiction of this Hon’ble Court and to take the said minor out of the jurisdiction of this Hon’ble Court whenever required.

*(c) That the concerned Municipal Authority/Birth Certificate Issuing Authority may be directed to issue Birth Certificate in the name of the said minor **Kshiti Amar***

Lodaya, born on 06/07/2022 and stating that thereon that the Prospective Adoptive Parents are the Parents of the said minor.

(d) That the Prospective Adoptive Parent be allowed to change the name of the minor from 'Kshiti' to "Kshiti Amar Lodaya" born on 06/07/2022."

28. The Judge's Order is also separately signed.

29. In the Judge's Order there is an undertaking of the Adoptive Parents to invest an amount of Rs.1,00,000/- (Rupees One Lakh only) in the name of the Adopted Child in any Nationalized Bank. They also undertake not to withdraw this investment till the Adopted Child attains majority. They agree to handover the investment receipt to the Adopted Child on her becoming a major. This undertaking is accepted as an undertaking to this Court.

30. The present Indian Adoption Petition is accordingly, disposed of.

31. There shall be no orders as to costs.

[R.I. CHAGLA, J.]