

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INDIAN ADOPTION PETITION NO. 2 OF 2023
WITH
JUDGE'S ORDER NO. 2 OF 2023
IN
INDIAN ADOPTION PETITION NO. 2 OF 2023**

1) Alphonso D'souza

2) Suzana D'souza

...Petitioners

Mr. Rakesh Kapoor i/by. Rakesh L. Kapoor & Co. for petitioners.

Ms. Vandana Chincholkar, Scrutiny Officer, Indian Council of Social Welfare.

Ms. Shonali Dighe, Chamber Registrar.

CORAM : MANISH PITALE, J

DATE : 9th MARCH, 2023

P.C. :

. The petitioners have approached this Court under the provisions of Guardian and Wards Act, 1890 with a prayer for adopting Desiree Stephanie D'souza. By an order dated 22/1/1997, this Court had appointed the petitioners as guardians of the said Desiree Stephanie D'souza, who at that time was a minor child aged about one year. The petitioners have taken care of the then minor

girl child. The present petition is filed in order to obtain formal order of adoption in the light of the law laid down by this Court in the case of *Manuel Theodore D'souza*¹, wherein this Court specifically held that the Courts that passed orders of guardianship would have a right to give the child in adoption.

2. Heard Mr. Kapoor, learned counsel for the petitioner in the presence of Ms. Vandana Chincholkar, Scrutiny Officer, Indian Council of Social Welfare (ICSW).

3. The learned counsel for the petitioners brought to the notice of this Court that on an earlier occasion also, in similar adoption petitions, this Court had passed orders of formal adoption in cases of persons who had attained the age of 21 or more, by taking note of the fact that such formal order of adoption was necessary for various purposes, including the well-being and growth of such person who was a minor when the petitioners approached this Court to be appointed as a guardian. Therefore, this Court is convinced that the present petition can be taken up for consideration.

4. It is brought to the notice of this Court that the petitioners, by the said order dated 22/1/1997, were appointed as guardians of the then minor girl child. The petitioners abided by the directions given in the said order. The petitioner Nos.1 and 2 are aged about 61 and

¹2000(2) Bom. C.R. 244

59 respectively. It is stated that the petitioner No.1 is now retired and he is receiving income of Rs.5,31,740/- per annum from his savings and that the petitioner No.2 is also retired, receiving income of Rs.5,15,590/- per annum from her fixed deposits. The petitioners have specifically stated that they have invested amount of Rs.15,00,000/- in Fixed Deposits in State Bank of India and also Rs. 5,00,000/- in LIC in the name of the said Desiree Stephanie D'souza, who was a minor when the petitioners were appointed as her guardians.

5. The home study report conducted by the social worker is placed on record, including progress report about said Desiree Stephanie D'souza. The said report also favourably recommends the case of the petitioners for grant of prayers in the present petition.

6. The Scrutiny Officer of ICSW has tendered the report of the Council. The same is taken on record and marked 'X'. A perusal of the same also shows that the petitioners are favourably recommended for grant of prayers made in the present petition. The petitioners have specifically stated that the said Desiree Stephanie D'souza has been with them since her infancy and she has brought them immense joy and happiness and she has made their life more complete and meaningful. It is stated that the integration and bonding between the petitioners and the said girl is complete and

since the petitioners regard the said girl as their natural born child, it would be appropriate that the present petition is allowed.

7. This Court has perused the material on record. There is sufficient material to indicate that the prayers made in the present petition deserve to be granted. This Court in the case of *Manuel Theodore D'souza supra* held as follows :

“35. I may now turn to the reliefs to be granted, conclusions and directions.

(1) The fundamental right to life of an orphaned, abandoned, destitute or similarly situated child includes the right to be adopted by willing parent/parents and to have a home, a name and a nationality. The right to be adopted, therefore is an enforceable civil right which is justiciable in a Civil Court;

(2) In the absence of any legislation setting out who can adopt, person or persons who has/have taken a child in guardianship under the Guardians & [Wards Act](#) will have the right to petition the courts to adopt the child;

(3) As jurisdiction to pass orders on guardianship is in the District Court and/or a High Court having jurisdiction under its Letters Patent, pending legislation, it will be these courts which have the right to give the child in adoption by way of a miscellaneous application in the petition for

Guardianship.”

8. This Court finds that this is a fit case for exercising jurisdiction as indicated in the above quoted judgment.

9. Accordingly, the petition is allowed in terms of prayer clauses (a) and (b), which read as follows:

(a) That this Hon’ble Court may be pleased to declare the petitioners as the adoptive parents of the said girl Desiree Stephanie D’souza born on 14th day of January, 1996 who is now under the guardianship custody of the Petitioners Mr. Alphonso D’souza and Mrs. Suzana D’souza.

(b) That the Petitioners be granted leave to apply to the Municipal Authorities to issue a Birth Certificate of the said Girl Desiree Stephanie D’souza born on 14th day of January, 1996.

10. Judge’s order is signed separately.

(MANISH PITALE, J)