

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

INDIAN ADOPTION PETITION NO. 1 OF 2023
WITH
JUDGE'S ORDER NO. 1 OF 2023
IN
INDIAN ADOPTION PETITION NO. 1 OF 2023

1) Mehboob Mastaan Shaikh
2) Tanveer Mehboob Shaikh ...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 invoking the provisions of the Guardians and Wards Act, 1890 read with directions contained in the judgment of this Court in the case of *Manuel Theodore D'souza*¹ for adoption of the minor child Abdul Hannan Shaikh. The said child was born on 4/2/2005. This petition was filed in December 2022 and during the pendency of

¹2000(2) Bom. C.R. 244

this petition, the minor child has attained the age of 18 years.

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

3. It is brought to the notice of this Court by Mr. Kapoor, the learned counsel for the petitioner that when a guardian is appointed under the provisions of the Guardians and Wards Act, the minority of the ward does not cease till he attains the age of 21 years. Reliance in this regard is also placed on Section 3 of the Indian Majority Act, 1875. Even otherwise, a reference is made to orders passed by this Court in earlier cases, including in the case of *Arun Anand Adhav and Monica Arun Adhav in Indian Adoption Petition No.85/2018 as also Indian Adoption Petition No.70/2019*, wherein this Court allowed the adoption petitions although the minors in those cases had attained the age of 22 years. This Court specifically observed that a formal order of adoption is necessary for various purposes, including the well-being and growth of the minor.

4. Hence, this Court is convinced that present petition can be taken up for consideration. The documents placed on record show that by an order dated 23/12/2021, this Court appointed the petitioners as the guardians of the aforesaid child. Considering the

law laid down in the case of *Manuel Theodore D'souza (supra)*, the present petition filed by the petitioners for adoption of the minor child can be considered. The relevant portion of the judgment of this Court in the case of *Manuel Theodore D'souza supra* reads 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.”

5. It is stated in the petition that the petitioners are Muslims and they got married on 22/4/2007. The petitioners do not have any biological children and they propose to adopt the said child. The petitioner No.1 is in the business of Metal Scrap and his income is stated to be Rs.4.84 Lakhs p.a. and the petitioner No.2 is working as a teacher and her annual income is stated to be Rs.4.80 Lakhs. The documents in support of the said statements, including income affidavits and bank statements are placed on record. It is specifically stated in terms of directions issued in the order dated 23/12/2021 passed in Indian Guardian Petition No.3/2021 that the petitioners have invested amount of Rs.2 Lakhs in the name of said minor and that the said amount is deposited in this Court and documents in support thereto are placed on record at page 59 of the petition.

6. The petitioners are desirous of adopting the said child as he has lived with them since infancy. It is brought to the notice of this Court that the grandmother of the child was a party to the guardian petition. The minor child was born to her daughter, who was not married at the relevant time and she left the minor child with the grandmother. The petitioners have taken care of the child since the time he was infant.

7. It is placed on record that a qualified social worker prepared the home study report about the petitioners and their fitness to

pursue the present petition for adoption of the child. The follow up report is also prepared and both reports are placed on record with the petition. This Court has perused the reports, which indeed show that the petitioners appear to be fit and proper to pursue the present petition.

8. The report of the Scrutiny Officer of the Indian Council of Social Welfare is taken on record and marked 'X'. The said report also favourably recommends the case of the petitioners for adopting the child. The report makes reference to the income status of the petitioners as also the home study report and the follow up report placed on record by the social worker.

9. Considering the aforesaid material brought to the notice of this Court, it is found that in the present case, the prayers can be granted by exercising power available with this Court as per the above quoted directions contained in the judgment dated 27/10/1999, passed by this Court in the case of *Manuel Theodore D'souza (supra)*. This Court is convinced that it would be in the interest of justice and in the interest of minor child that he is given in adoption to the petitioners.

10. 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 adoptive parents of the said male minor ABDUL HANNAN SHAIKH now under the guardianship custody with the Petitioners Mr. Mehboob Mastaan Shaikh and Mrs. Tanveer Mehboob Shaikh

(b) That the Petitioners be granted leave to apply to the Municipal Authorities to issue a Birth Certificate of the said male minor ABDUL HANNAN SHAIKH, born on 4th February, 2005 and showing the Petitioner Mr. Mehboob Mastaan Shaikh and Mrs. Tanveer Mehboob Shaikh, as his Father and Mother.

11. Judge's order is signed separately.

(MANISH PITALE, J)