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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 23rd February, 2023

+ W.P.(C) 1307/2021

ROHAN DESAI & ORS.

..... Petitioners

Through: Ms. Shivani Luthra Lohiya, Mr. Nitin Saluja, Ms. Poonam Dangi, and Mr. Saahil Mongia, Advs. along-with the Petitioners in person. (M: 9810031323)
Mr. Vincent D. Braganza in person. (virtually)

versus

UNION OF INDIA

..... Respondent

Through: Mr. Rajesh Kumar, SPC, UOI along with Ms. Ramneet Kaur Adv. (M: 98912325156)

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. This writ petition presents some peculiar facts before the Court. By way of the present petition, the Petitioners seek a direction to the Respondent to declare Petitioner No.2 as the adoptive father of Petitioner No.1.
3. Petitioner No.1- Mr. Rohan Desai, who is the biological son of Mr. Vincent Dominic Braganza and Petitioner No.3- Mrs. Ritu Desai (@ Ritu Kanoria, @ Ritu Braganza), was born in Kolkata on 27th February, 1998. Unfortunately, the biological parents of Petitioner No.1 divorced and a decree of divorce was granted under Section 10A of the Indian Divorce Act, 1869 on 9th March, 2004 by the District Judge, Alipore.
4. Post the divorce being granted, Petitioner No.3- Mrs. Ritu Desai has married Petitioner No.2 - Mr. Dipesh Desai. They currently live in Sarvodaya

W.P.(C) 1307/2021

Page 1 of 5

Enclave, New Delhi. In the petition, the Petitioners pray that Petitioner No.2 be declared as the adoptive father of Mr. Rohan Desai.

5. As per the Petitioners, the biological father had agreed for the change of name from 'Rohan Braganza' to 'Mr. Rohan Desai' and the same was published on 26th October, 2013 in the Official Gazette which reads as under:

"I, VINCENT DOMINIC BRAGANZA son of Sh. VINCENT FRANCIS BRAGANZA, residing at A-2, Swarna Residency Off. LRDECV Raman Nagar, Bangalore-560093 present at New Delhi, have changed the name of my minor son ROHAN VINCENT BRAGANZA and he shall hereafter be known as ROHAN DESAI for all purposes. It is certified that I have complied with other legal requirements in this connection VINCENT DOMINIC BRAGANZA"

6. In the year 2003 itself, the biological father had no objection with the complete custody of the son being with the mother and since then Petitioner No.1 has been residing with Petitioner Nos.2 and 3. At the time when the name change publication was issued, Mr. Rohan Desai was a minor. However, currently he is a major. The case of the Petitioners is that the school certificates, the progress report, class X certificate issued by the CBSE of Petitioner No.1 reflect Mr. Dipesh Desai as the father of Mr. Rohan Desai.

7. It is the submission of Id. Counsel that there are no regulations which provide for adoption of the Petitioner, who is a major, under these circumstances. Accordingly, the present writ petition has been filed seeking a declaration by this Court. The relief sought is as under:

“(a) Pass an appropriate writ / direction / order directing the Respondent to declare that the Petitioner No. 2 is the adoptive father of the Petitioner No.1, and / or

(b) Pass any such other and further order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case and in the interest of justice."

8. The stand of the Respondent is that as per the prevalent Regulations at that time i.e., *Guidelines Governing the Adoption of Children, 2011*, a 'no-objection' of the biological father would be required for the purpose of recognizing the adoption. Moreover, at the time when the application has been made seeking the registration of the adoption, the Petitioner was a major, thus, the adoption cannot be permitted.

9. On 17th January, 2023, the Petitioners i.e., Mr. Rohan Desai, Mr. Dipesh Desai and also Mrs. Ritu Desai appeared before the Court through virtual mode. The interaction with the Petitioners had revealed that the Petitioners are living together as a family. During the hearing, it was disclosed to the Court that Mrs. Ritu Desai and Mr. Dipesh Desai also have a daughter. The observations of the Court on 17th January 2023, are set out below:

"8. All three Petitioners have joined the proceedings virtually. The Court has interacted with Mr. Rohan Desai, Mr. Dipesh Desai and also Mrs. Ritu Desai. After interaction with the Petitioners, it is revealed that the Petitioners are living together as a family. The couple also has a daughter who is living with them. The Petitioner no.1 refers to Petitioner no.2 as 'Dad' during his interactions. However, the Petitioner no.3 has been candid and truthful to the Court that the biological father had some reservations initially when adoption was proposed by the mother at that time. However, later, the name change was agreed to by the biological father in 2013.

9. Considering this position, it is deemed appropriate to issue notice to the biological father- Mr. Vincent Dominic Braganza at the following mobile number and address:

**Mobile Number- 9741405643,
Address: A-2 Swarna Residency, Off. LRDE,
CV Raman Nagar, Bangalore-560093.**

10. The Registry shall also give intimation of this order to enable Mr. Vincent Braganza to appear before the Court on the next date either physically or virtually.”

10. Today, the Petitioners are present before the Court. Mr. Vincent D. Braganza, the biological father of Petitioner No.1 has also joined the proceedings virtually. Upon being queried as to whether he has any objection if the adoption of Petitioner No.1 by Petitioner No.2 is recognised Mr. Braganza submits that he has no objection to the same.

11. Heard. The prayer in the writ petition is for Petitioner No.2 i.e., Mr. Dipesh Desai to be recognized as the adoptive father of Petitioner No.1- Mr. Rohan Desai. In terms of the prescribed procedure, the adoption and all the formalities thereof ought to have taken place prior to Mr. Rohan Desai attained majority. In 2013, while Mr. Rohan Desai was still a minor, his natural father gave his no objection to the name change which was published in the Official Gazette. He had already given up complete custody of the child in 2003 when he divorced Mrs. Ritu Desai. In effect, he has given his ‘No objection’ for Mr. Dipesh Desai to be treated as the adoptive father of Rohan Desai, as he was well aware of the fact that they were all living together as a family. Even in school records, Mr. Dipesh Desai is reflected as the father and nothing to the contrary has been asserted by Mr. Braganza. He has also not objected to Mr. Dipesh Desai being treated as the father of Rohan. Today, he has re-asserted that he has no objection in Mr. Dipesh Desai being treated as the adoptive father of Mr. Rohan Desai.

12. Under the scheme of the ‘Guidelines Governing the Adoption of

Children, 2011', some of the fundamental principles¹ which govern adoption are –

- The child's best interest and
- That the adoption ought not to be for financial gain.

13. The Guidelines of 2011 do not strictly apply to the facts of the present case as the same apply, as per clause 4, only to orphans, abandoned or surrendered children. Mr. Rohan Desai does not fall in any of these categories. He is living with his biological mother, who has re-married, after her divorce. Thus, the present case would not be covered by the 2011 Guidelines. Even going by the spirit of the Guidelines, the biological father's consent exists, not today, but way back in 2003, again in 2013 and reiterated today as well.

14. On the overall facts, this Court is of the view that a humane view needs to be taken in this case. The Petitioner No.1 is a young boy, whose education, life and his relationship with his own family members with whom he has been living with, could be affected if his adoption is not recognized. Accordingly, this Court deems it appropriate to grant the declaration sought by the Petitioners.

15. It is accordingly declared that Mr. Dipesh Desai shall be the adoptive father of Mr. Rohan Desai and shall be treated as such by all authorities for all purposes. This order shall not be treated as precedent.

16. The petition is allowed and disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 23, 2023/dk/sk

¹ Clause 3, Guidelines Governing the Adoption of Children, 2011.