

Sharada

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

INDIAN GUARDIANSHIP PETITION NO. 1 OF 2024

WITH

JUDGE'S ORDER NO. 44 OF 2024

IN

INDIAN GUARDIANSHIP PETITION NO. 1 OF 2024

**Gagan Sekharia and Gautami Seksaria ...Petitioner
Through Rajkumar Seksaria**

And

**Nikhil Ganesh Dewade and Rohan Nikhil ...Prospective
Devade (Male Minor) Adoptive Parents**

Mr. Rakesh Kappor i.by Kappor and co, Advocate for the Petitioner.

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

Mr. Dilip S. Gurav - Chamber Registrar present.

Mr. Nikhil Ganesh Dewade – Respondent present (biological father).

Mr. Rajkumar Seksaria & Ms. Prema Seksariaa/w Kum Rohan Nikhil
Dewade present.

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

CORAM : R.I. CHAGLA, J.

DATE : 6TH MARCH 2024

ORDER :

1. By this Indian Guardianship Petition, the Petitioners have sought for their appointment as legal guardian of the proposed male minor Rohan Nikhil Devade ('the said male minor') born on 07/10/2021. Further relief is sought for removing the said male minor outside the jurisdiction of this Court and to take the said male minor wherever required. Dispensation of notice under Section 11 of the Guardians and Wards Act, 1890 has also been sought.

2 The said male minor was born to a married couple Mr. Nikhil Ganesh Dewade and Mrs. Pooja Nikhil Dewade on 07/10/2021 at Central Hospital, Ulhasnagar, Dist. Thane. On 18/06/2023, the said male minor's biological mother Pooja Nikhil Dewade expired and since then the biological father's grandmother and maternal aunt raised the said male minor for a period of about 3 months.

3. The Petitioners have stated that the biological father has no other means of support and no stable job. He is unable to take care of his 1 ½ -year-old son who has been placed in the physical custody of the Petitioners family on 13/09/2023. For looking after the welfare

and well-being of the said male minor. The biological father (Respondent) knew the Petitioners through his aunt who is working as a House Help in the Petitioners residence at Sweri for the last 4 years. The Petitioners have now now decided to take the said male minor under legal guardianship with the consent of the Respondent herein.

4. The Consent Affidavit of the Respondent (biological father) and Death Certificate of the biological mother are on record at page Nos.60-63 to the Petition.

5. The Birth Certificate of the said male minor dated 06/12/2021 issued by the Municipal Corporation Ulhasnagar is on record at page No.64 to the Petition.

6. The Petitioners are Indian Nationals being permanent residents of Seweri, Mumbai and presently residing at Cape Town, South Africa, (aged about 44 and 46 years) respectively. They have been married for the past 19 years (27/08/2004) and have one biological daughter aged about 17 years. The biological daughter's Birth Certificate Medical Report and consent letter letter are on record at page Nos.22-24 to the Petition.

7. The Medical Fitness certificates of the petitioners dated 19/12/2023 are on record and states, “They are medically fit and have no co-morbid illnesses”. Their HIV and HbsAg test reports certify the case as Negative. These reports are at page Nos.25-32.

8. The motivation letter of the Petitioners is on record at page No.33 to the Petition.

9. The Petitioner No.1 is working as a Director of Global Investments with Red Sea Gateway Terminal, South Africa since 16 January, 2018 and his monthly (October-2023) net salary is SAR 84,974.84(=Rs.3,71,340/-). His Salary Slips are on record at page Nos.39-41 to the Petition. The Petitioner No.2 is a Homemaker.

10. The Petitioners Proof of Permanent and Present Residence, Copies of PAN Card and Aadhar Card and Supportive Financial Documents are on record at page Nos.34-38 & 42-43 to the Petition.

11. The Home Study report dated 16/12/2023 by the Social Worker Ms. Clipsy Banji, BA, MSW, PGPDm is on record and the Report has found the Petitioners suitable for taking the said male minor in guardianship. This Report is at page Nos.44-49 to the Petition.

12. The Recommendation letters from the close friends in support of this guardianship is on record at page Nos.50-57 to the Petition.

13. The Child Security undertaking dated 19/12/2023 given by the Second Petitioner's brother and sister-in-law residing at Nepeansea Road, Mumbai to look after the said male minor in case of any mishap to the Petitioners is on record at page Nos.58-59 to the Petition.

14. The Medical Certificate dated 18/12/2023 of the said male minor states, "He is fully vaccinated as per Government schedule and the he is physically fit at present".

15. The H.I.V. report of the said male minor dated 28/02/2024 certifies the case as Non-Reactive. This report is on record at page No.66a to the Petition.

16. The Post Card Size Photograph of the said male minor is on record at page No.66 to the Petition.

17. The consent and undertaking of the Petitioners is on record at page No.67 to the Petition. It inter alia states that they have

consented to the legal guardianship and they agree and undertake to to do all such act, deeds and things as may be necessary in the interest of the mental and physical welfare of the said male minor child.

18. The Foster Care Agreement dated 9th November, 2023 is on record at page Nos.68 to the Petition.

19. The Power of Attorney dated 09/11/2023 duly executed by the Petitioners in favour of Mr. Rajkumar Seksaria, father of Petitioner No.1 is on record at page Nos.79-83 to the Petition.

20. Mr. O. Hareendran, Scrutiny Officer has tendered Report / Representation from the Indian Council of Social Welfare (ICSW) dated 29/02/2024 which is taken on record and marked 'X' for identification.

21. Having considered the material on record as well as the Report of the Scrutiny Officer dated 29/02/2024 marked 'X', the relief sought in the Petition is required to be granted.

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

“(a) That this Hon’ble Court may be pleased to appoint the Petitioners as legal guardians of person of the said minor Rohan Nikhil Devade, born on 7th Day of October, 2021..

(b) That the Notice under Section 11 of the Guardians and Wards Act, 1890 is dispensed with.

(c) That the Petitioners may be granted leave to remove the said minor outside the jurisdiction of this Hon’ble Court and to take the said minor whenever required.”

23. In the Judge’s Order there is an undertaking of the Petitioners to adopt the said minor within two years of their guardianship as per the judgment dated 27th October, 1999 of the then Justice Shri F. I. Rebello (2000 ALL MR 39). Further, the Petitioners have undertaken to invest an amount of Rs.1,00,000/- (Rupees One Lakh only) in the name of the said male minor in LIC or any Nationalized Bank and further undertaking to take proper care, look after, educate and to bring up the said male minor as if he was the child of the Petitioners. The Petitioners have also agreed to submit to this Court every six months for three years progress report of the said male minor as well as copies of the said report to the said ICSW, Mumbai. This undertaking is accepted as an undertaking to this

Court.

24. The Judge's Order is also accepted and separately signed.

25. The present Indian Guardianship Petition is accordingly,
disposed of.

26. There shall be no orders as to costs.

[R.I. CHAGLA, J.]