

Sharayu Khot.

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

INDIAN ADOPTION PETITION NO. 37 OF 2024

WITH

JUDGE'S ORDER NO. 55 OF 2024

WITH

JUDGE'S ORDER NO. 53 OF 2024

Sayeed Cassim and
Maleeha Sayeed Cassim

...Petitioners

Mr. Rakesh Kapoor i/by M/s. Rakesh K.L. Kapoor and Company for the Petitioners.

Mr. O. Hareendran, Scrutiny Officer present.

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

Mr. Sayeed Cassim, Adoptive Father present in Chamber.

Ms. Maleeha Sayeed Cassim, Adoptive Mother present in Chamber.

Mr. Adil Cassim, Adopted male present in Chamber.

CORAM : R.I. CHAGLA J

DATE : 27 March 2024

ORDER :

1. By this Indian Adoption Petition, the Petitioners are seeking adoption of the female Misbah Cassim (“**Misbah**”), who was born on 2nd September 1997. Misbah was an inmate of the Family

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Service Centre, Mumbai. The said Family Service Centre proposed Misbah in Guardianship to the Petitioners vide Indian Guardianship Petition No. 13 of 1998. The said Guardianship Petition was granted/allowed by this Court vide its order dated 11th February 1998. The said Guardianship order is on record at page Nos. 16-19 to the Petition.

2. The Petitioners are also seeking adoption of the proposed male Adil Cassim (“**Adil**”), who was born on 28th October 1999. Adil was an inmate of the Family Service Centre, Mumbai. The said Family Service Centre proposed Adil in Guardianship to the Petitioners vide Indian Guardianship Petition No. 60 of 2000. The said Guardianship Petition was granted/allowed by this Court vide its order dated 28th June 2000. The Guardianship order is on record at page Nos. 20-23 to the Petition.

3. In view of Misbah staying in United Kingdom and presently there, she is unable to attend today in Chambers.

4. The Petitioners along with Adil are present in Chambers and I have had an opportunity to interact with the Petitioners and

Adil and find on such interaction that they have perfectly adjusted to each other and thus, there is no impediment in considering the present Indian Adoption Petition.

5. The present Indian Adoption Petition has been filed in respect of adoption of Adil and Misbah who have become majors. Mr. Rakesh Kapoor, learned Counsel for the Petitioners has placed reliance on the decisions of this Court viz. Judgment of Justice F.I. Rebello (the then Judge of this Court) in the matter of **Manuel Theodore D'Souza Vs. Unknown**¹ as well as decision passed on 18th December 2019 (G.S. Kulkarni, J) in case of **Mathew Inacio Abreo**² in support of the contention that it would be necessary to recognize the constitutional right of a citizen to have a family and parents in adoption.

6. Thus, I am satisfied that the adoption sought by the Petitioners of Misbah and Adil who are majors can be validly sought for and this is as per settled law laid down in the aforementioned decisions.

¹ 2000(2) Bom CR 244

² IAP/70 of 2019

7. The Petitioners are Indian Nationals, permanent resident of Chennai, Tamil Nadu and presently at Bandra West, Mumbai, aged about 65 and 57 years respectively. They have been married for the past 34 years (27th May 1990) and have no biological children.

8. The Medical Certificate of the family doctor dated 15th February 2024 of the Petitioners, female Misbah and male Adil is on record at page No. 30 and it states “All members are on regular follow up with me and their health condition is fit”.

9. The Petitioner No. 1 is a Businessman and running a partnership firm Cassim Unlimited at Chennai and his income for the Assessment Year 2023-24 is Rs. 14,22,300/-. His Income Tax Returns for the Assessment Years 2021-22, 2022-23 and 2023-24 are on record at page Nos. 31-48 to the Petition.

10. The Petitioner No. 2 is a homemaker, who is earning. She has earned Rs. 95,47,370/- for the Assessment Year 2023-24 from Long-term Capital gain and gain from securities. Her Income Tax Returns for the Assessment Years 2021-22, 2022-23 and 2023-24 are on record at page Nos. 49-67 to the Petition.

11. Misbah has just completed her higher studies in International Fashion Marketing from the Regents University, London. She also earned Rs. 15,06,940/- for the Assessment Year 2023-24 from Long-term Capital gain from Auto-classification, Gain from securities and Dividend. Her Income Tax Returns for the Assessment Years 2021-22, 2022-23 and 2023-24 are on record at page Nos. 68-84 to the Petition.

12. Adil is currently undergoing training at an Insurance Brokerage firm. He also earned Rs. 16,50,040/- for the Assessment Year 2023-24 from Long-term Capital gain from Auto-classification, Gain from Securities and Dividend. His Income Tax Returns for the Assessment Years 2021-22, 2022-23 and 2023-24 are on record at page Nos. 85-101 to the Petition.

13. The Petitioners Aadhar & PAN Card copies, Supportive financial documents and proof of residence/property are on record at page Nos. 26-29 and 102-123-a to the Petition.

14. The Adoption home study report dated 22nd February 2024 of the Social Worker Ms. Nishath Basheer, MSW,

Chennai about the adoptive family is on record at page Nos. 124 to 127. The social worker has recommended both Misbah and Adil's case for adoption, as it will be in the best interest of Misbah and Adil.

15. Recommendation letters in support of adoption of Misbah and Adil from close friends are on record at page Nos. 128-133 to the Petition.

16. Based on the Indian Guardianship Petition No.13 of 1998 and 60 of 2000 allowed on 29th April 1998 and 28th June 2000 respectively by this Court in the favour of the Petitioners and the latest home visit Report prepared by the Qualified Social Worker, it is observed that both Misbah and Adil are well integrated into the adoptive family.

17. Mr. O. Hareendran, Scrutiny Officer has tendered Report/Representation of Indian Council of Social Welfare dated 19th March 2024, which is taken on record and marked "X" for identification.

18. Having considered the material on record as well

as the Report of Mr. O. Hareendran, Scrutiny Officer marked X, I am of the view that it would be in the interest of both Misbah and Adil, if they are adopted by the Petitioners.

19. 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.**,³ 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

³ Writ Petition No.1085/2023 (Writ Petition (L) No.32065/2022)

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.”*

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

21. 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 declare the Petitioner as Adoptive Parents of the said female Misbah Cassim and male Adil Cassim, now under the

guardianship custody with the Petitioners.

(b) That this Hon'ble Court may be pleased to condone the delay in filing the present Petition.

*(c) That the concerned Municipal Authority/Birth Certificate issuing Authority may be directed to issue Birth Certificate in the name of the said female **Misbah Cassim**, born on **02/09/1997** and male **Adil Cassim**, born on **28/10/1999** stating that thereon that the Petitioners as the Parents of the said female **Misbah Cassim and male Adil Cassim.**"*

22. The above two Judge's Orders are accepted and signed separately.

23. The Indian Adoption Petition is accordingly, disposed of.

24. There shall be no order as to costs.

[R.I. CHAGLA J.]

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