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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
GUARDIANSHIP PETITION NO.2 OF 2024

Steffi Genovena Fernandes ...Petitioner

Versus

Chidambaram P. Sankaram ...Respondent

WITH

GUARDIANSHIP PETITION NO.1 OF 2024

Vincy Cajetan Noronha ...Petitioner

Versus

Steffi Genovena Fernandes ...Respondent

WITH

INTERIM APPLICATION (L) NO.31480 OF 2023

IN

GUARDIANSHIP PETITION NO.2 OF 2024

Vincy Cajetan Noronha ...Petitioner

Versus

Steffi Genovena Fernandes ...Respondent

Rajendra Sorankar, i/b. Ketan Dabke for the Petitioner in GP 2 of 2024 and Respondent in GP 1 of 2024.

Susan Abraham, Poojasri Ganesan for the Respondent Nos.2 and 4 in GP 2 of 2024 and Petitioner in GP 1 of 2024.

CORAM : R.I. CHAGLA J.

DATE : 13TH MARCH, 2024.

ORDER :

1. After hearing learned Counsel for the parties, this Court

is of the view that Affidavits of Evidence in support of the respective Petitions are required to be filed by the respective Petitioners who are seeking appointment as guardians of the minor Yohan Johny Sankaram born on 3rd December, 2016.

2. The Affidavits of Evidence are necessary to be filed in order for this Court to consider which of the Petitioners seeking appointment as guardian is to be appointed. Under Section 13 of the Guardian and Wards Act, it is provided that on the day fixed for the hearing of the application or soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

3. Mr. Sorankar, the learned Counsel for the Petitioner in Guardianship Petition No.2 of 2024 has referred to certain provisions under the Code of Civil Procedure, 1908 which are with regard to a Suit. He has also referred to the definition of the Suit under Section 63 of the Limitation Act, wherein the Suit is defined as not including an Appeal or Application. He has submitted that under the CPC, and in particular Order II, thereof frame of Suit is provided and it is only in connection of Suit that, provisions such as framing of issues under

Order XIV and the hearing of the Suit and examination of witnesses under Order XVIII apply. He has submitted that the Petition / Application filed under the Guardians and Wards Act can in no event be considered to be a Suit and hence, the provisions of trial in connection with a Suit does not apply to the Petition / Application under the Guardians and Wards Act.

4. Ms. Abraham, the learned Counsel for the Petitioners in Guardianship Petition No.1 of 2024 has submitted that under the Guardians and Wards Act, Section 13 contemplates evidence to be adduced in respect of the application filed by the Applicant for declaration as guardian. It contemplates hearing of the evidence before making order. She has referred to the decision of the Karnataka High Court in *C. Chenna Basappa Vs. Smt. Lingamma and Ors.*¹, wherein the Court had considered Section 17(3) of the Guardians and Wards Act which specifies that if the minor is old enough to form an intelligent preference, the Court may consider the preference. It was held that the Court is empowered to interview the child to find out the intention of the minor at the time of interview and immediately prior to it. Even then the wishes of the minor shall

¹ AIR 2007 Karnataka 130

not control the discretion of the Court. It is necessary for the Court to examine the fact situation in the case on hand. In that case the Trial Court had passed the impugned Order appointing the second Respondent as the guardian of the minor children only on the basis of wishes and preference of minors. The reasoning of the Trial Court was held to be contrary to the material on record. She has submitted that in view of this decision, the role of the Court is to examine the material on record including the evidence on hand and take reasoned decision.

5. Ms. Abraham has further submitted that in the present case, there is a dispute on facts and which would necessary require evidence to be determined by this Court.

6. This Court is exercising its jurisdiction under the Guardians and Wards Act, 1890 and in particular Section 7 thereof in determining which of the respective Petitioners in the two Guardianship Petitions is to be appointed as guardian of the minor Yohan Johny Sankaram. Undoubtedly, there have been disputes with regard to the events that transpired after the demise of the biological father and in particular concerning the welfare of the minor. I am

mindful of the fact that these proceedings are summary proceedings and cannot be considered to be a Suit for which a full trial will be required as contemplated under the aforementioned provisions of the Code of Civil Procedure, 1908. However, in the given circumstances of the present case, it would be necessary for the Petitioners in both the Petitions who seek their appointment as guardian of the minor Yohan Johnny Sankaram to place Evidence Affidavits of their case for appointment as guardian of the minor and which would be in support of the respective Petitions. The Affidavits which are to be filed by the respective Petitioners in the above Guardianship Petitions, will be considered by this Court in deciding the issue as to who is to be appointed as guardian of the minor.

7. The respective Petitioners shall file their Affidavit of Evidence within a period of two weeks from today.

8. The respective Petitioners shall also file their compilation of documents in support of their Affidavits which shall be taken into consideration on the next date.

9. The learned Counsel appearing for the Petitioner in

Guardianship Petition No.2 of 2024 had tendered an Affidavit of the Petitioner dated 27th February, 2024 on the previous date i.e. 28th February, 2024 which has been taken on record. The learned Counsel for the Respondent Nos. 2 to 4 in the above Guardianship Petition who had sought time to file Affidavit in Reply on the previous date has today tendered Affidavit in Reply of Respondent No.3 dated 12th March, 2024, which is taken on record.

10. The learned Counsel for the Petitioner in Guardianship Petition No. 2 of 2024 states that an application has been taken out in Guardianship Petition No.1 of 2024, wherein recall of the order dated 8th January, 2024 given effect on 23rd January, 2024 by the District Court, Thane and by which Order the Respondent Nos.2 to 4 who are the Petitioners in Guardianship Petition No.1 of 2024 were allowed to convert their Guardianship Petition from that filed under Section 25 of the Guardians and Wards Act, to one under Section 7 of the Guardians and Wards Act.

11. The Interim Application filed by the Petitioner is stated to have has been served on the Respondents. The Respondents shall file their Affidavit in Reply to the Application within a period of one

week from today.

12. The Interim Application is not numbered in view of the objection taken. The department is directed to give lodging number to the Interim Application and which shall be finally numbered subject to removal of office objections.

13. The Interim Application shall be placed on 20th March, 2024 at 10.30 a.m. along with the above matters.

[R.I. CHAGLA J.]