

Manoj Wakle

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

INDIAN GUARDIANSHIP PETITION NO. 2 OF 2024
WITH
JUDGE'S ORDER NO.86 OF 2024
IN
INDIAN GUARDIANSHIP PETITION NO. 2 OF 2024

Mr. Francis Xavier Anthony Fernandes and ...Petitioners
Mrs. Michelle Francis Fernandes

And

Michelle Francis Fernandes ...Respondent

Mr. R.K.L. Kapoor i/by Mrs. Rakesh K. L Kapoor & Co. for the
Petitioners.

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

Mr. Dilip S. Gurav, Chamber Registrar present.

Mr. Francis Xavier Anthony Fernandes, Mrs. Michelle Francis
Fernandes Adoptive Parents & Kum. Ezra Ryan Waters- Minor present
in Chamber.

CORAM : R.I. CHAGLA J

DATE : 12th JUNE, 2024

ORDER :

1. By this Indian Guardianship Petition, the Petitioners are seeking their appointment as Legal Guardians of the proposed male minor Extra Ryan Waters (“the said male minor”) born on 07th May, 2017. The said male minor was born to the Petitioner No.2 who is the mother of the said male minor from her first marriage. The Petitioner No.2 was first married to Late Ryan Rodney Waters (biological father of the said male minor) on 14th April, 2015. However, the Petitioner No.2 lost her husband on 01st April, 2020 due to heart attack.

2. The Petitioner No.2 on 28th February, 2022, married the the Petitioner No. 1. Since then the said male minor has been living with the Petitioners. At present, the said male minor has well adjusted with the Petitioners and bonds very well with all of them in the family. The said male minor along with the Petitioners are present in Chamber and upon interaction, I found that there is extremely well bonding between them.

3. The Petitioners have now decided to take the said minor under legal guardianship with the consent of the biological mother who is the Petitioner No.2.

4. The Consent Affidavit of the Petitioner No.2 and Death

Certificate of the biological father are on record at page Nos.69-72 to the Petition.

5. The Birth Certificate dated 15/05/2017 of the said male minor issued by the Municipal Corporation of Greater Mumbai K West Ward is on record at Page No. 73 to the Petition.

6. The Petitioners are Indian Nationals presently residing at Jebel Ali, Dubai and permanent resident of Bhayandar, Dist. Thane. The Petitioners are aged about 39 and 37 years respectively, having been married for the last 2½ years (28/02/2022) and have one biological son aged about 2 years (DOB: 09-07-2022). The biological son's Birth Certificate and Medical Certificate are on record at page Nos. 21-22 to the Petition.

7. The Petitioner No. 1 was married earlier on 18/04/2015, divorced on 21/01/2022, and has no biological children from this marriage.

8. The Medical Fitness Certificate of the Petitioners dated 10/04/2024 is on record and it states, "They are medically and physically fit". Their HIV and HBsAg test reports certify the case as Non Reactive. The said reports are on record at page Nos. 29-33 to the Petition.

9. The Petitioner No.1 is working as a Tech Del & Ops Excellence Associate Manager with Accenture since March-2020 and his monthly (March-2024) Net salary is AED 29,849.29. His Salary Slips are on record at page Nos.44-46 to the Petition. The Petitioner No. 2 is a Homemaker.

10. The Petitioners Proof of Permanent and Present Residence, Copies of PAN Card & 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, Vasai, Dist. Palghar has found the Petitioners suitable for taking the said male minor in guardianship. The said report is on record at page Nos.56-60 to the Petition.

12. The Recommendation letters from the close friends in support of this guardianship is on record at page Nos.61-66 to the Petition.

13. The Child Security undertaking dated 22/04/2024 given by the Sister of Petitioner No.1 residing at Bhayander, Dist. Thane to look after the said male minor in case of any mishap to the

Petitioners is on record at page No.67 to the Petition.

14. The Medical Certificate dated 26/03/2024 of the said male minor states, “He is medically and physically fit with no physical disability”. The said Medical Certificate is on record at page No.74 to the Petition.

15. The Post Card Size Photograph of the said male minor is on record at page Nos.75 to the Petition.

16. The consent and undertaking of the Petitioners is on record at page No.76 to the Petition. It inter alia states that they have consented to the legal guardianship and they agree and undertake to do all such acts, deeds and things as may be necessary in the interest of the mental and physical welfare of the said male minor.

17. Mr. O. Hareendran, Scrutiny Officer has tendered the Report/Representation from the Indian Council of Social Welfare dated 10th June, 2024 which is taken on record and marked ‘X’ for identification.

18. Having considered the material on record as well as the Report of the Scrutiny Officer which is marked ‘X’, the relief sought for in the Indian Guardianship Petition is required to be granted.

19. 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 male minor **Ezra Ryan Waters**, born on 7th day of May, 2017 now in care and custody of the Petitioners.*
- (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 out of the jurisdiction of this Hon'ble Court whenever required."*

20. In the Judge's Order there is an undertaken of the Petitioners to adopt the said male minor within two years of their guardianship as per the Judgment dated 27/10/1999 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. These undertakings are accepted as undertakings to this Court.

21. The Judge's Order is accepted and signed separately.
22. The present Indian Guardianship Petition is accordingly, disposed of.
23. There shall be no orders as to costs.

[R.I. CHAGLA, J.]

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