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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 12981/2021**

KARAN ARORA

.....Petitioner

Through: **Mr. Sarthak Ahuja, Advocate.**

versus

UNION OF INDIA AND ANR.

.....Respondents

Through: **Mr. Vikrant N. Goyal and Mr. Vivek Nilesh Goyal, Advocates.**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

04.09.2024

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1. The factual background to the present petition is briefly summarised as under:

1.1. The Petitioner, Mr. Karan Arora, was born on 11th February, 1998 from the union of Mr. Vijay Arora and Ms. Renu Arora, his biological father and mother respectively¹.

1.2. Subsequently, his Biological Parents gave the Petitioner in adoption to the Petitioner's paternal aunt, Mrs. Meenu Marbaha and her erstwhile husband, Mr. Trilochan Singh Marbaha². To this effect, an adoption deed was executed on 10th March, 2010³, which was also duly registered with the office of the Sub-Registrar.

1.3. Although the Adoption Deed was executed, however, the Petitioner

¹ Collectively, "Biological Parents"

² Collectively, "Adoptive Parents"

³ "Adoption Deed"



never moved into the family of the Adoptive Parents, who were residents of the United Kingdom. After executing the Adoption Deed, the Adoptive Parents travelled back to the United Kingdom, whereas the Petitioner continued to stay with his Biological Parents. Thus, the adoption remained only on paper and there was no effective adoption in terms of Section 11 of the Hindu Adoptions and Maintenance Act, 1956⁴.

1.4. Mrs. Meenu Marbaha submitted an application for issuance of Passport of the Petitioner under file No. DLHM00757610, when he was still a minor. Along with the application, the Adoption Deed, signed by the Adoptive Parents and Biological Parents, was also submitted. Accordingly, passport bearing No. J0938093 dated 15th July, 2010 was issued to the Petitioner. However, the said passport was issued with incorrect particulars. While the Petitioner's name was mentioned as "Karan Marbaha", the father's name was entered as Vijay Arora and mother's name was entered as Meenu Marbaha, who are actually brother and sister by relation.

1.5. In the year 2019, the Petitioner re-applied for passport under file No. DL2073317214419 in lieu of the previous passport. This time, he sought to change his surname with the name of his Biological Parents. However, since the previous passport was issued with the name of his adoptive mother on the basis of the Adoption Deed, the Petitioner was advised to get the Adoption Deed annulled for considering the Petitioner's request for the change of surname. In absence of any supporting documents, Public Relation Officer (PRO) advised the Petitioner to get a declaration from a court of law.

1.6. In these circumstances, the Petitioner's application for passport was

⁴ "HAMA"



closed. Further, as per the rules and guidelines, the existing passport was cancelled as the Petitioner had submitted a new application for reissuance of the passport.

1.7. On the basis of advice received, the Petitioner filed a civil suit bearing No. 1168/2019 before the Tis Hazari Court, praying that the Adoption Deed be declared null and void/ cancelled. However, the Petitioner faced a hurdle of the civil suit being barred by limitation. Although, there is no express finding to that effect, it appears that the Petitioner withdrew the suit on account of this obstacle of limitation. In such circumstances, the Petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking a direction to the Respondent to issue a passport with the correct particulars.

2. Taking note of peculiar facts of the instant case, this Court, on 9th February, 2023, passed the following order:

- “1. This hearing has been done through hybrid mode.*
- 2. The present petition has been filed on behalf of the Petitioner - Karan Arora seeking issuance of directions to the Respondents to issue passport in the name of the Petitioner with correct particulars.*
- 3. This petition presents peculiar circumstances wherein the Petitioner, who was adopted on 10th March, 2010 through a registered adoption deed, did not proceed to live with his adoptive parents, who were citizens of the UK. The adoptive parents are the paternal aunt and uncle (Bua and the Phuphad) of the Petitioner.*
- 4. The Petitioner continued to live with his biological parents in India. Sometime in 2010 an application for his passport was made with an error in the description of parents. He was thus issued a passport with incorrect particulars. The Petitioner has now applied for a fresh passport which is not being granted to him on the ground that the adoption deed has not been cancelled.*
- 5. A suit was filed by the Petitioner challenging the validity of the adoption deed, however, the same was withdrawn as it was stated that the same was barred by limitation.*
- 6. The Respondent No.2 - Regional Passport Officer, has taken the position that until and unless the adoption deed is cancelled, the Petitioner cannot be*



issued the passport with the name of his biological parents.

7. It is submitted by the Petitioner, who is present in Court, that the adoptive parents were his bua and uncle, who have now been divorced. Considering the above position, the biological parents and whichever of the adoptive parents is available shall join the proceedings virtually on the next date of hearing. Officials from the passport office shall also join the proceedings virtually.

8. Considering the fact that the Petitioner is 25 years of age and is without a passport, ld. Counsel for the Respondent shall ensure that he is available to make submissions on the next date of hearing.

9. List on 28th March, 2023 at 4:00 pm.”

3. Subsequently, on 28th March, 2023, the Court recorded the proceedings conducted in the following terms:

“1. This hearing has been done through hybrid mode.

2. Pursuant to the previous order dated 9th February 2023, Ms. Meenu Marbaha, the adoptive mother of the Petitioner - Mr. Karan Arora who is also the bua of the Petitioner has appeared virtually before the Court.

3. She submits that she is currently living in Southhall, England, and that the Petitioner is her brother's biological son. She did not have any children in her marriage, so she and her husband decided to adopt the Petitioner in 2010. Thereafter, she divorced her husband Shri Trilochan Singh Marbaha in 2010/2011 and has now re-married. She submits that she visited her brother's family in India in 2019. She submits that her present husband is not agreeable to her having an adopted child. Thus, she does not wish to continue with the adoption of the Petitioner, and has no objection if the adoption deed itself is cancelled.

4. Ms. Meenu Marbaha has recognized Mr. Vijay Arora, the Petitioner's biological father and his entire family who is present in Court.

5. Mr. Vijay Arora and Ms. Renu Arora are present in Court. Mr. Vijay Arora submits that he works in a restaurant in Moti Nagar as a Manager. The family lives together. It is further submitted that the couple have two more children. One daughter who is older to Karan Arora and another daughter who is younger to Karan Arora.

6. Ms. Renu Arora submits that she suffers from various medical ailments due to which she and her husband decided to give the child for adoption to Ms. Meenu Marbaha. On a specific query, she states that the Petitioner was born on 11th February, 1998.

7. The Petitioner who is present in Court submits that he is doing BBA from Subharti University. He has no objection in living with his biological parents.

8. The presence of all parties is dispensed with.

9. List for hearing on 20th April, 2023 on top of the board. Ld. Counsel for



the parties to address submissions on the legal aspects of the case.”

4. At the outset, it must be noted that there is merit in the contention of the counsel for Respondent that the Petitioner, through the present proceedings under Article 226 of the Constitution of India, cannot be permitted to seek a declaration of cancellation of the Adoption Deed. Indeed, the Court should ordinarily not entertain such a request. However, the Court takes note of the fact that the Petitioner’s previous passport has been cancelled and presently, he does not have any document to undertake travel abroad, which is a fundamental right under Article 21 of the Constitution of India, as held by the Supreme Court in ***Maneka Gandhi v. Union of India***⁵. Thus, in light of the peculiar facts of the present case, given that the Petitioner’s attempts to secure an order for cancellation could not succeed on account of procedural hurdles, the Court has proceeded to hear the counsel for the parties.

5. Section 11(vi) of the HAMA expressly stipulates that the child to be adopted must be *actually given and taken in adoption* with the intent of transferring the child from the family of its birth to the family of its adoption. The Supreme Court in ***Jai Singh v. Shakuntala***,⁶ has noted that the give and take in adoption is a requirement which stands as a *sine qua non* for a valid adoption. Further, while Section 16 of the HAMA provides a presumption of valid adoption *qua* registered documents, which appears to have prevailed upon the PRO at the time of declining the Petitioner’s request, however, this presumption is rebuttable, as noted by the Supreme Court in ***Jai Singh***.

⁵ (1978) 1 SCC 248



6. In the present case, this actual give and take is absent, since the Petitioner continued living with his Biological Parents even after execution of the Adoption Deed, and did not travel to the United Kingdom with his Adoptive Parents. Furthermore, in the proceedings conducted before this Court, the Petitioner's adoptive mother has joined the proceedings and stated that she has divorced from his adoptive father and she does not wish to proceed with the adoption. The Biological Parents have also confirmed that they gave their child in adoption and executed the Adoption Deed only because they were having medical problems. In light of the above circumstances, in the opinion of the Court, the Adoption Deed was nothing but a document of convenience prepared between family members which was never given effect to.

7. In view of the above, the Court is inclined to grant relief in favour of the Petitioner, and exercises its jurisdiction under Article 226 of the Constitution of India to issue the following directions:

7.1. The Adoption Deed dated 10th March, 2010 shall be deemed to be cancelled under this Court's order.

7.2. On the basis of this order, the concerned Sub Registrar shall make the necessary noting in its records on the Petitioner furnishing the original Adoption Deed.

7.3. Pursuant thereto, Petitioner shall be permitted to re-apply for a passport, giving the details of his biological parents.

7.4. The Passport Office shall consider the said request in accordance with law, and if all documentation is found to be in order, proceed to issue the passport.

⁶ (2002) 2 SCC 634



8. With the above directions, the present petition is disposed of.

SANJEEV NARULA, J

SEPTEMBER 4, 2024

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