

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

C.O. 3218 of 2024

Jagannath Guha

Vs

Manju Guha (Paul) and Anr.

For the Petitioner : Mr. Satyam Mukherjee,
Ms. Debarshi Brahma,
Mr. Saibal Rakshit.

For the Respondent No. 1 : Ms. Sahili Dey.

For the State : Mr. Jayanta Samanta,
Mr. Tapas Ballav Mandal.

Judgment reserved on : 10.03.2026

Judgment delivered on : 23.03.2026

SHAMPA DUTT (PAUL), J. :

1. The civil revision has been preferred against an order being order no.5 dated 23.04.2024 passed by the Learned District Judge, Nadia in Misc.(Adoption) Case No.27 of 2022 thereby dismissing the application for adoption under the Hindu Adoption & Maintenance Act, 1956.

2. Vide the impugned order, the trial Court rejected the petitioner's application under Section 11 of the Hindu Adoption and Maintenance Act, 1956 on the findings as follows:-

“Now, in the instant case no where in the four corners of the pleading of this petition it would appear whether the petitioner was previously married with any other woman or whether he has a son by that wife or not. Secondly, the boy in the instant case, as appears from Ext. 5 was born on 02-05-2008 and the instant case have been filed on 18-04-2022. It is arithmetically clear that on the date of filing of the instant application the boy was about fourteen years and now the boy is sixteen years. So, that sands as a statutory bar in giving the desired relief to the petitioner. The question may come up that when the application was filed on 18-04-2022 he had not completed the age of fifteen years and due to procedural lapse, the requisite time period has elapsed and now the said boy has crossed the age of fifteen years and is aged about sixteen years but since the order has to be passed by the court on this day when the boy is about sixteen years, I think the said statutory requirement should not be violated. Had it been cured, the earlier observation, as made aforesaid, that there has been no averment of the petitioner with regard to his first marriage, if there be any, or having any son by the said lady or not, could have been taken care of by giving him a chance to amend the petition and his affidavit-in-chief but since there is a statutory bar with regard to allowing the instant petition being violation of Sec. 10 clause (iv), I think giving chance to the petitioner to amend the petition would be an empty formality.

Hence, it is **ordered** that the instant application be and the same is hereby dismissed.”

3. Section 10 (10) of the HAMA, 1956, requires that a person capable of being taken in adoption, among other requirements, has not completed the age of fifteen years. Admittedly in the present case, when the application for adoption was filed being Misc (Adopt) 27 of 2022, filed on 18.04.2022, the person to be adopted was about 13 years, 11 months, his date of birth being 02.05.2008.
4. Vide the impugned order, the trial Court dismissed the application on the ground that due to procedural lapse (of Court) the requisite time period has elapsed and as the person has crossed 15 years of age on the date of order, the application was dismissed.
5. So the only point for consideration in the present case is as to whether **the petitioner’s right to adoption which existed on the date of filing the application for adoption (child was 13 ½ years old), would extinguish on the date of order passed by the Court, as the child had crossed the age of 15 years.**
6. In Indian adoption petition no.31 of 2009, **the Bombay High Court** in its order dated 16.09.2009, in re-adoption of ***Payal @ Sharinee Vinay Pathak and his wife Sonika Sahay @ Pathak***, 2010(1) **BomCR434, decided on: 16.09.2009**, held:-

“18. The provisions of the Juvenile Justice Act came up for consideration before a Constitution bench of the Supreme Court in Pratap Singh v. State of Jharkhand

MANU/SC/0075/2005 : (2005) 3 SCC 551. The Supreme Court held that the Act was not only beneficial legislation but that it was also remedial in character. The Constitution bench held that the statute must be construed in a manner that would make it effective and operative on the principle of *ut res magis valet quam pereat*. A similar approach had been adopted by a Bench of three Learned Judges of the Supreme Court in *Umesh Chandra v. State of Rajasthan* MANU/SC/0125/1982 : (1982) 2 SCC 202. The Rajasthan Children Act, 1970 was regarded as a piece of social legislation which the Court held, would have to be "liberally and meaningfully construed".

19. Adoption is a facet of the right to life under Article 21 of the Constitution. The right to live that is asserted is, on the one hand, the right of parents and of individuals women and men who seek to adopt a child to give meaning and content to their lives. Equally significant, in the context of the Juvenile Justice Act, 2000, the right to life that is specially protected is the right of children who are in need of special care and protection. The legislature has recognized their need for rehabilitation and social integration to obviate the disruptive social consequences of destitution, abandonment and surrender. There is legislative recognition of adoption as a means to subserve the welfare of orphaned, abandoned and surrendered children.

20. The Hindu Adoptions and Maintenance Act, 1956 and the Juvenile Justice Act, 2000 must be harmoniously construed. The Hindu Adoptions and Maintenance Act, 1956 deals with conditions requisite for adoption by Hindus. The Juvenile Justice Act of 2000 is a special enactment dealing with children in conflict with law and children in need of care and protection. While enacting the Juvenile Justice Act 2000 the legislature has taken care to ensure that its provisions are secular in character and that the benefit of adoption is not restricted to any religious or social group. The focus of the legislation is on the condition of the child taken in adoption. If the child is orphaned, abandoned or surrendered, that condition is what triggers the beneficial provisions for

adoption. The legislation seeks to ensure social integration of such children and adoption is one method to achieve that object. The religious identity of the child or of the parents who adopt is not a precondition to the applicability of the law. The law is secular and deals with conditions of social destitution which cut across religious identities. The legislature in its wisdom clarified in Sub-section (6) of Section 41 that the Court may allow a child to be given in adoption to parents to adopt a child of the same sex irrespective of the number of living biological sons or daughters. This provision is intended to facilitate the rehabilitation of orphaned, abandoned or surrendered children. The condition must apply to all persons irrespective of religious affiliation who seek to adopt children of that description. The object of rehabilitation and providing for social reintegration to orphaned, abandoned or surrendered children is a matter of high legislative policy. It is in effectuation of that policy that the legislature has stipulated that adoption of such a child must proceed irrespective of the marital status of a person taking in adoption and irrespective of the number of living biological children of the parents seeking adoption. Consequently, where the child which is sought to be adopted falls within the description of an orphaned, abandoned or surrendered child within the meaning of Sub-section (2) of Section 41 or a child in need of care and protection under Clause (d) of Section 2, the provisions of the Juvenile Justice (Care and Protection of Children) Act 2000 must prevail. In such a case the embargo that is imposed on adopting a child of the same sex by a Hindu under Clauses (i) and (ii) of Section 11 of the Hindu Adoptions and Maintenance Act, 1956 must give way to the salutary provisions made by the Juvenile Justice Act. Where, however, the child is not of a description falling under the purview of Chapter IV of the Juvenile Justice Act, 2000, a Hindu desirous of adopting a child continues to be under the embargo imposed by Clauses (i) and (ii) of Section 11 of the Act of 1956. If the two pieces of legislation, both of which are enacted by Parliament are harmoniously construed, there

is no conflict of interpretation. Resolution of Conflicting provisions the alternate hypothesis.

27. The Juvenile Justice Act, 2000, is best viewed as impliedly amending the conflicting provision of the Hindu Adoptions and Maintenance Act, rather than repealing it. The general prohibition of the earlier Act remains in force; the later Act simply creates an exception in the case of abandoned children.”

7. While adopting a child under the Juvenile Justice Act, the **CARA guidelines provides the age criteria of prospective parent on the date of registration with the adoption agency and not on the date the Court grants the decree of adoption, which takes a certain period of time for it's completion.**
8. The fundamental principles to govern adoptions of children are based on the child's best interest, whose welfare shall be of prima interest.
9. **Thus, in the present case admittedly the petitioner's application was preferred when the child was 13 years 11 months old.**
10. Following the CARA guidelines, which provides the age criteria of parents vis-à-vis the child on the date of registering with the adoption agency, this Court is of the view that **the age as on the date of application shall apply in this case and not as on the date of order, in view of the fact that the delay is a procedural delay, on the part of the Court and not the applicant, who cannot be prejudiced for no fault of his, and if so done, shall be against the principle of natural justice.**

11. A fundamental right of a person shall be affected, if an order is passed against him, even though he has been diligent in claiming that right and it is the delay in procedure of the Court, which if accepted shall extinguish an important right of a person.
12. Accordingly taking the age as on the date of application, as 13 years 11 months, the application under Section 11 of the Hindu Adoption and Maintenance Act dated 18.04.2022 is held to be maintainable.
13. **The impugned order no.5 dated 23.04.2024 passed by the Learned District Judge, Nadia, is thus set aside.**
14. Misc (Adopt)27 of 2022 is restored to it's file and number of the District Judge, Nadia.
15. The trial Court shall now proceed with the case by first calling for amendment as observed in the impugned order and proceed in accordance with law, expeditiously and make all endeavour to dispose of the case, preferably within **3(three) months** from the date of this order.
16. **The civil revision being CO 3218 of 2024 is disposed of as allowed.**
17. Applications, if any, connected thereto stand disposed of consequently.
18. Interim order, if any, stands vacated.

- 19.** Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[Shampa Dutt (Paul). J]