
(2014) 07 BOM CK 0200
In the Bombay High Court
Case No : Writ Petition No. 2943 of 2014

Ashok

APPELLANT

Vs

Mahila Vikas Mandal

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 41, 41(2), 42

Citation : (2016) 1 ALLMR 249 : (2014) 6 BomCR 658 : (2014) 2 MhLj 937

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : M.P. Khajanchi, Advocate for the Appellant; H.D. Marathe, Advocate for the Respondent

Final Decision : Allowed

Judgement

A.P. Bhangale, J.—Rule. Rule made returnable forthwith. Heard the matter by consent of learned Counsel appearing for both the parties.

2. By this petition the petitioners challenge order dated 17.4.2014, passed by learned District Judge-2, Chandrapur, below Exh. 1, in Miscellaneous Civil Application No. 110 of 2013, whereby the application filed by the petitioners/applicants u/s 41 of The Juvenile Justice (Care and Protection of Children) Act, 2000, (for short, "the said Act") for grant of permission to give abandoned female child, was rejected.

3. The facts of the case are, thus:

The petitioners/applicants claim that they are married to each other on 7.6.1994, while respondent/Mahila Vikas Mandal, Chandrapur, is Society registered under The Societies Registration Act, 1860 & Maharashtra Public Trusts Act, 1950, licensed agency under the Juvenile Justice Act. According to the petitioners/applicants, girl child by name "Puja" was given in Foster Care of the petitioners/applicants in terms of the provisions of Section 42 of the said Act.

4. On 12.11.2013, an application was made by the petitioners/applicants and respondent u/s 41 of the said Act before the District Court, Chandrapur, which learned Principal District Judge, Chandrapur appears to have assigned to learned District Judge-2, Chandrapur, to dispose of the same. It appears that the serious issue has been raised on behalf of the respondent in view of the Juvenile Justice (Care and Protection of Children) Act, 2000 as well as rules framed thereunder regarding entertaining the very sensitive matters in relation to applications for adoption and guardianship. The responsible judicial officer; preferably Principal District Judge or Principal Judge of the Family Court or Principal Judge of the City Civil Court, as the case may be, is required to consider the very sensitive issues arising out of the implementation of legislation relating to care and custody, adoption, maintenance and guardianship of minors under relevant Acts and Rules framed thereunder so as to pass the appropriate orders.

5. Section 41 of the Juvenile Justice Act, 2000, is about rehabilitation and social reintegration falling within Chapter IV of the said Act. There are guidelines contained in Section 41(2) as also under the Rules framed under the said Act regarding primary responsibility to provide care and protection to minor children. The process of adoption is required to be resorted to for rehabilitation of children; who may have been abandoned or surrendered to orphanage. The orders are required to be passed by the competent authority designated for the purpose in keeping with the guidelines for adoption issued by the appropriate Government either on behalf of the State Government or the Central Adoption Resource Agency as notified by the Central Government, children may be given in adoption by the competent Court upon its satisfaction that the appropriate inquiry and investigation has been duly made before a minor child can be given in adoption. That being so, the State Government is under legal obligation to ensure that the guidelines as prescribed and notified are punctually observed by the specialized adoption agency. Such agency is required to declare that the child is free for adoption after having declared so by the Committee making inquiry under the said Act since specific provisions are made to ensure that the child in question is legally free for being given in adoption under the proper care and safe custody in accordance with law. It is but necessary that the orders regarding giving child in adoption are preferably passed by the experienced senior judicial officer preferably learned Principal District Judge if available performing duty as such because primary aim of passing adoption order is to ensure and record satisfaction that the adoption agency and the competent Committee performed their statutory obligations before declaring the child as free for adoption and responsible judicial opinion as to such satisfaction must be recorded regarding due performance of statutory duties considering the sensitive issues raised under the relevant Acts before the competent District Judge preferably Principal District Judge or the Principal Judge of the Family Court or the Principal Judge of City Civil Court, Mumbai as the case may be, unless the Principal District Judge, Principal Judge of the Family Court or the Principal Judge of the City Civil Court, Mumbai is not available for long time to perform his/her judicial duty as

contemplated under the relevant Acts and the Rules framed thereunder.

Principal City Civil Judge, Mumbai, Principal Judge of the Family Court or Principal District Judge as experienced senior judicial officers can by coordinating with the agency concerned under the said Act can ensure that the statutory functions are duly performed as contemplated by the provisions of law.

6. For the above reasons prima facie, therefore, considering Rule 33 Sub rule (5) with reference to Section 41 of the said Act, the Court as contemplated by law which has jurisdiction in the matters of adoption and guardianship must alone pass orders in such matters when available. In my opinion, the learned Principal District Judge, Chandrapur in this case ought to have exercised jurisdiction in the matter of adoption and guardianship instead of delegating or routinely assigning such sensitive matter to another District Judge junior to him.

7. In view of above, the impugned order must be set aside.

8. In the result, the writ petition is allowed. The impugned order is set aside. Both the parties shall appear before the learned Principal District Judge, Chandrapur to get their issue resolved on 28.7.2014. The learned Principal District Judge is directed to consider the matter under relevant provisions of law including The Juvenile Justice Act, 2000, Rules framed thereunder and to hear and decide proceeding in the light of relevant legislative provisions by passing appropriate orders.

Writ petition is allowed accordingly. Rule is made absolute accordingly. No order as to costs.