

(2006) 12 DEL CK 0155
In the Delhi High Court
Case No : F.A.O.: 258-259 of 2006

Earl Sims and Another

APPELLANT

Vs

Indian Council for Child Welfare and Another

RESPONDENT

Date of Decision : 19-12-2006

Acts Referred:

Guardians and Wards Act, 1890 — Section 26, 7

Citation : (2007) 1 ILR Delhi 173

Hon'ble Judges : H.R. Malhotra, J

Bench : Single Bench

Advocate : Jugdeep Kishore with Ms. Rekha Gupta, for the Appellant; Saroj Tripathi, for the Respondent

Final Decision : Allowed

Judgement

H.R. Malhotra, J.—(sic) 18th September, 2006 rendered by District Judge dismissing the petition of the appellants u/s 7 and 26 of the Guardians and Wards Act, 1890. The appellants, the Americans nationals enjoying the status of husband and wife, wanted to be appointed as guardian of the minor female child Ms. Pinki born on 19th February, 1999 and found abandoned by Delhi Police who was subsequently transferred to Asharan Orphanage Hope Foundation, an Institution recognized by the Ministry of Social Welfare for appointment of the foreigners as joint guardian of the minor children under the Guardians and Wards Act, 1890, minor child having been certified as legally free for adoption by the child welfare committee, New Delhi. The appellants have already two male children born on 14th October, 1993 and 7th may, 1997. They applied before the learned District Judge for being appointed as guardian of female child Ms. Pinki and then to adopt her as their daughter as per the laws of their country. The learned District Judge after issuing notice to the respondent and also having published citation, proceeded to hear the matter and finally declined the prayer of the appellants for being appointed as guardian primarily on the ground that since Hindu cannot adopt more than one son or more than one daughter then

why foreigners be permitted for applying appointment of guardian u/s 7 and 26 of the Guardians and Wards Act for the purposes of adopting the child in terms of their laws prevailing in their country. The learned District Judge came to the conclusion that since the appellants had already two children, therefore, their request for being appointed as guardian should not be adhered to particularly when there is a prohibition for Hindu residing in India for adoption of another child.

2. It is urged by learned counsel appearing for the appellants that the learned District Judge erred in construing the provisions of Sections 7 and 26 of the Guardians and Wards Act as what was required to be looked into was the welfare of the child which aspect was ignored by learned District Judge but instead he focused on adoption part which the learned District Judge was not empowered to deal with, as adoption was to take place in accordance with the law of the land of the appellants and not in terms of Indian laws. It is urged that what was required to be seen by the learned District Judge was about the fulfillment of requirement of Section 7 and 26 of the Act and once those requirements were satisfied, the learned District Judge ought to have allowed the petition of the appellants appointing them as the guardian of the minor child. It is further urged that the rejection of the petition was detriment to the benefit and welfare of the minor child who was destitute and would have been relegated institutional care till she would have attained majority and thereafter, left to the misery of life and in case the petition of the appellants would have been allowed, the minor child in that event would have got home, warmth of his parents and the company of her brother besides good living and upbringing with lot of opportunities to grow.

3. I have taken note of the contentions of learned counsel for the appellants. I have also looked into the impugned order. Learned District Judge in his order observed in para 5 of the judgment that:-

Guardians and Ward Act has been enacted with a view to protect the person and property of the minor before granting permission to an adoption proposed by the guardian, it is the duty of the court to see that adoption will be for the welfare and best interest of the minor child. If the child is capable of expressing his wishes, his wishes/desires is required to be taken into consideration by the court and with a view to consider what is for the welfare of the child, the court has to consider the physical and moral well being/welfare of the child as well as the character and qualifications of the proposed adoptive parents. In precise the court is required to weigh the pros and cons of the two places, the place where the child is and the place where the child will be taken to.

4. The child whose guardianship is sought, was born on 19th February, 1999 who is about eight years of age and I hope she is capable of understanding what is good for her. There is no dispute about legal position. Paramount consideration is about the welfare of the child. The appellants for the present are only asking for being appointed as her guardian and not for adoption which they would do so according to their own laws, if child is permitted to be removed by them after

being appointed as the guardian.

5. Learned counsel appearing for the appellants inform that in such like cases children are invariably produced before the District Judge and in this case as well the child was produced for the purposes of ascertaining her wishes and desire as to whether she was desirous to join the appellants as her guardians. It is brought to my notice that the child had given her consent for such appointment. If that is so, learned District Judge should have proceeded with the petition in the light of Sections 7 and 26 of the Guardians and Wards Act and should not have brought into provisions of Hindu Adoption and Maintenance Act, particularly when the matter before him was under Guardians and Wards Act and not under Hindu Adoption Act as the child was to be adopted in accordance with the law of the land of the appellants and not in accordance with the law of the Hindu Adoption Act. I am, therefore, of the opinion that the District Judge erred when he made comparison of the aspect of Hindus taking in adoption and the foreigners taking children under Guardians and Wards Act, to take the child under their guardianship preparatory to their adoption under local laws of their country. I am of the view that appellants should have been appointed guardians of the minor child. In view of what has been discussed above, the impugned judgment is set aside and the appeal is allowed and the appellants are appointed as guardians of the minor child with permission to remove the minor Ms. Pinki to USA preparatory to her being adopted by them under the local laws of their own country as I am of the opinion that such adoption shall not be detrimental to the child but would be in the interest and for the benefit of the minor, This is subject to necessary surety bond in this regard being furnished to the satisfaction of the Registrar General in the sum of Rs. 1 lac with the condition that the appellants would keep on sending progress reports of the minor quarterly for a period of five years or until adoption is complete, whichever is earlier.