
(2001) 09 BOM CK 0081
In the Bombay High Court
Case No : Family Court Appeal No. 64 of 2001

Javid Ghorashian

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 04-09-2001

Acts Referred:

Family Courts Act, 1984 — Section 7

Citation : AIR 2002 Bom 1 : (2002) 2 BomCR 688 : (2001) 4 BOMLR 906 : (2001) 4 MhLj 814

Hon'ble Judges : J.G. Chitre, J;G.D. Patil, J

Bench : Division Bench

Advocate : Shirin Memon and Ajit Kulkarni, for the Appellant; G.P. Mulekar, A.G.P., for the Respondent

Judgement

J.G. Chitre, J.—Taking exception to the Judgment and Order dated 20th April, 2001 passed by the Family Court, Pune in D. No. 173/2000, the appellant has reiterated his prayer for adopting a child aged about 1-1/2 year old named "Vaishnavi" who is presently put in Kusumbai Motichand Mahila Seva Gram, Pune (K. M. Manila Sevagram, quoted for short) 25/20, Karve Road, Pune 411 004.

2. Few facts need to be mentioned for the purpose of understanding the matter in better way. A minor female child was found deserted and abandoned by Bhusaval Taluka Police Station staff members on 20th December, 1999 at Bhusaval. The said child was admitted initially in Civil Hospital, Jalgaon as per the orders of Juvenile Welfare Board, Jalgaon as at that time the said child was one day old. Subsequently, the said child was admitted to the care and custody of K. M. Mahila Seva Gram, Pune as per the order dated 20.12.99. No person claimed to be the parent or relative of the said minor child nor anybody ever visited her or enquired about it. The appellant - Javid Ghorashian applied for being appointed as the guardian of the said minor and expressed his desire to adopt it as his daughter. His application was scrutinised by the said Institution and the Institution approved the petitioner as a suitable person for handing over

the custody of the said child to him for adoption.

3. Petitioner happens to be an American national aged about 45 years as he was born on 2.11.1954 in Iran as averred by him. He married with a woman who obtained name as Mrs. J. Meagan Ghorashian who was an American national and aged about 31 years old when the petition was filed. She was born as averred by the petitioner on 27.9.1969 in United States of America. Both the appellant and J. Meagan got married with each other On 2.9.90 as a result of their friendship which blossomed in Silicon Valley - California. The marriage of the appellant with J. Meagan was his second marriage as he had been divorced from his previous wife as the said matrimonial tie dissolved on account of the divorce on 13.4.1989. The appellant had a son out of the said dissolved wedlock and he happens to be named as Navid and was aged about 17 years old when the present petition was filed. He resides with his mother but meets his father, the appellant. Out of the marriage with J. Meagan, the appellant is having two sons named "Nauvin" & "Armin" who are aged respectively 8 and 5 years old. The appellant happens to be an Iranian by birth but left Iran for better education and better opportunities in career.

4. As averred by the appellant, the petitioner and his present wife J. Meagan are concerned about world population and they are having a desire to have a daughter. Therefore, they decided to adopt the present child Vaishnavi. This desire is on account of their special love for India and Indian culture. They want to bring Vaishnavi up as their daughter.

5. K. M. Mahila Seva Gram, Pune is run by Mahila Seva Mandal which is a charitable institution registered under the Societies Registration Act, 1860 and Bombay Public Trusts Act, 1950. It is an approved Home under the provisions of Juvenile Justice Act, 1986 where amongst other social activities, abandoned and destitute children are sheltered, educated and trained for obtaining a better place in society and simultaneously efforts are made to find suitable adoptive parents for such children. The said Institution is also recognised by the Ministry of Welfare, Government of India, for the purpose of doing inter-country adoptions, as averred by the appellant and as there is no challenge by the adversaries.

6. The appellant has averred that he is working as a Director, Wafer Fabrication Operations with Maxim Integrated Products, Beaverton, Oregon. He currently earns U.S. \$ 117,030.00 per year. The appellant's wife J. Meagan devotes herself to the household work. They also own a house where they live in.

7. The appellant and his wife applied to the recognised agency in U.S.A. by name "Children's House International" (as mentioned CHI hereinafter for convenience) for adoption of the said minor child Vaishnavi. The Home Study of the petitioner and his family was carried out by the Social Worker of the appropriate agency in U.S.A. named "Cascade International Children's Services", Troutdale, Oregon. The said Home Study Report has been produced as annexure to the petition. The Children's House International has reviewed the said home study and has

accepted the same. The appellant and his wife J. Meagan have been recommended by the said agencies as suitable adoptive parents.

8. The appellant and his wife are medically fit to take care of the said minor Vaishnavi. Their health certificates are on record. So also the medical certificates in respect of their fertility is on record. It shows that both are fertile for giving birth to child.

9. The appellant averred that to the best of his knowledge and information as well as belief, no guardian has been so far appointed either of the person or the property of the said Vaishnavi and no application for the same is pending in any competent Court. He averred that permitting him adopting the child Vaishnavi and giving the said Vaishnavi to him in adoption would be in the welfare of the said child because he would be taking the said child to U.S.A. and thereafter would be bringing up the said child as his daughter which would create bright future for her. The appellant has averred that he himself and his wife would give the said minor Vaishnavi all love and affection as parents and the sons of the petitioner named Navid. Nauvin and Armin would be also treating her as their sister and would be giving such loving and affectionate treatment.

10. Ms. Shirin Memon appeared for the appellant and Mrs. G. P. Mulekar appeared for the State of Maharashtra. None appeared for the Respondent No. 2 - Indian Council for Social Welfare. Ms. Memon placed reliance on the Judgment of the Supreme Court in Laxmikant Pandey v. Union of India and ors., She referred to Annexure "B", the Home Study Report of the appellant and his family through CICS, U.S.A., Annexure "C" the certificate form of Government of India, Ministry of Social Justice and Empowerment Central Adoption Resource Agency, Annexure "D" letter form by Commissioner, Women's Child Development, Maharashtra State, Pune dated 29.1.2000. She also made reference to the Indian Council of Social Welfare.

11. Ms. Memon further submitted that the annexures to the petition show that the appellant and his wife are in deep love with their own children and as they are having two sons, they desire to have a daughter and therefore they are desirous of adopting Vaishnavi as their daughter. She submitted that both the appellant and his wife J. Meagan are concerned with their family welfare, as appellant happens to be a careful son, husband and father, Vaishnavi would be safe in the hands of the appellant. She submitted that his wife J. Meagan would be also treating Vaishnavi as her child and, therefore, the proposed adoption is in the welfare of the said minor child. She submitted that ignoring this important aspect of the matter, the learned Family Court Judge gave importance to other conjectures, which are not consistent with material on record and committed error in rejecting the prayer of the appellant for getting himself appointed as guardian of person and property of the minor child Vaishnavi. She submitted that appropriate order be passed setting aside the Judgment and Order of the learned Family Court Judge and the appellant be appointed as the guardian of person and property of the said minor Vaishnavi and Vaishnavi be permitted to be adopted

by the appellant.

12. Mrs. Mulekar appearing on behalf of the State submitted that after carefully seeing the record, the Respondent No. 1 is of the opinion that the said adoption would be beneficial to the said minor child Vaishnavi and she would be getting bright future if adopted by the petitioner and if the child goes to U.S.A. for her further portion of the life.

13. In cases where a person has expressed his desire to get himself appointed as the guardian of person and property, the Court should keep in mind that the minor's interest is of paramount consideration. The Court should find out the material for the purpose of enabling it to judge whether such person should be permitted to be the guardian of person and property of the minor or whether his prayer should be rejected. When it is coupled with the prayer of permitting such person to adopt such child, the Court should be careful enough to see whether the said desire expressed by the said person is bona fide or is motivated with some other intention which would not be beneficial to the future of the said child. In this context, the following factors are very much important :-

- (a) Whether such person and his spouse is having criminal antecedents.
- (b) Whether such person and his spouse are well placed in their life and are capable of shouldering responsibility of upbringing the said child.
- (c) Whether the said child would get proper atmosphere to grow physically, mentally and intellectually in association with the same person and his spouse and his family members.
- (d) Whether the said person, his family members would shower on such child the humanly love and affection so as to create a good life in future for such child.
- (e) Whether such child would get proper education and would get future opportunities of having better life and social status.

While considering all these factors, the Court should be always careful for protecting the interest of such minor child and its welfare would always be a paramount consideration.

14. In the present matter, the record shows that the social worker, CICS - Lisa Adams-Reese had given details of her observations gathered through recurrent visits to the appellant, his spouse and family members and to their house. The said report shows that the petitioner, his wife J. Meagan and his family members, namely, two sons are properly educated and are having proper culture which would assure a good humanly treatment to the said child.

15. The said report throws light on various aspects and shows that the petitioner is a gentle-hearted person having good culture and attitude towards human beings. It shows that he has been well placed in his career and the society. It further shows that the petitioner and his wife are well-respected not amongst American citizens but amongst Indian persons also who reside in Silicon Valley. It

discloses that though the appellant happens to be a divorcee and his son begotten from the first wife happens to be residing with his mother, he visits his father and both are having cordial relations. Thus, there is no social danger to the future of minor Vaishnavi if she gets adopted by the appellant and stays in his house as his daughter.

16. It is true that the medical certificates show that both the petitioner and his wife are fertile and they are capable of giving birth to a child. But that by itself does not defeat his prayer which is found to be bona fide and genuine by the material which has been placed before the Court added with the no objection from the concerned persons and from Respondent No. 1 also. Some persons though are physically fit to give birth to a child, may be desirous of adopting a female child if they happen to be having already one or two male children. The birth of human being is a matter of coincidence governed by destiny. One cannot say definitely that he would be getting a male or female child after initial days of conception. The gender identification is a later stage phenomenon. Therefore, the petitioner and his wife J. Meagan may not be desirous of taking a chance and wagering with the luck. It is pertinent to note at this juncture that the petitioner is having a male child from his previous wife and again having male child only, from his newly wedded wife J. Meagan. The modern trend is to have one or two children only and it is well justified because married couples should have that much of children only which they can bring up properly and beneficially to the children. Therefore, though the petitioner is having two male children out of his two marriages mentioned above, he may not be interested in going for a chance in getting a biological child begotten from his newly wedded wife J. Meagan. The same maybe the case with J. Meagan. She may not be interested in going for a chance for having another child when already she is having a male child begotten from her husband, the present appellant.

17. Therefore, the learned Family Court Judge was in definite error in basing his conclusions on conjectures. In dealing with such cases, the Court has to inform itself about the realities of life by thinking in a reasonable way. The capacity to give birth to biological children or availability of such children already, would not by itself show that the desire to adopt the present female child happens to be mala fide one. The Court has to inform itself that by getting adopted by the appellant the said minor child Vaishnavi would be getting opportunity of living in advanced Nation like U.S.A. and she would be getting more wide opportunity to grow and to have a better career in the future life. She would be getting a status of a "child of the family" which she would not normally get by remaining in the said social institution. Otherwise she will have to wait for herself to be adopted by somebody. In that case also, the same question would be whether such adopting should be permitted or not. For how long such child should wait?

18. The learned Judge of the Family Court allowed herself to get carried by such hypothetical moot questions which, according to us, do not remain in existence in the present case in view of the material which has been placed on record

through the annexures annexed to the petition.

19. The learned Judge has misdirected herself and has given too much importance to imaginary moot questions which have been answered by the learned Judge by taking the extra help of imagination. The paramount consideration should be the welfare of the child and that would be secured by permitting her to be adopted by the petitioner. If he is permitted to adopt the minor child Vaishnavi, she would get a better status in the society, a better life in her future life and better amenities to survive and grow up and to get more and more avenues open to her in her future life.

20. At this juncture, it is important to note that there is nothing on record to show as to what religion the present minor female child Vaishnavi belongs. It has exposed the reality of the life. Directing a pointer towards the fact that the child get the religion bestowed on it from its parents who give it the birth. It continues following the same religion. Thereafter the child may think of continuing with it or think of abandoning It by selecting an appropriate religion which it prefers to profess after getting the age of majority or after attaining the age of taking appropriate decision. Presently, there is nothing to know as to what was the religion of the said child. This point has to be dealt with because the petitioner happens to be an Iranian person from his birth and was born in Iran. He migrated to U.S.A. and acquired its nationality. He married to J. Meagan who, the record shows, professes Christian religion. Therefore, what religion this child should be taught to follow would be a question and something will have to be spoken about it at this juncture. The present child after adoption be taught the fundamental principles of all known religions of human beings. Thereafter it be left at liberty to select the religion which it desires to profess in her future life after attaining the majority or the decision taking capacity in view of the laws where the child happens to be staying at that particular age, that appellant has to keep in mind while upbringing the child Vaishnavi which this Court permits to be adopted by him.

21. Before passing the final order, this Court directs the petitioner to follow the following directions :-

(a) Appellant through his Advocate to give an undertaking to this Court to produce the said minor whenever required.

(b) Appellant to undertake to this Court to communicate any change of address to K. M. Mahila Seva Gram, Pune.

(c) Appellant to undertake to this Court to take proper care, look after, educate and to bring up the said minor as if she was the child of the Appellant.

(d) Appellant to undertake to this Court to treat the said minor on an equal footing with their natural children in all matters of maintenance, education and succession.

(e) Appellant to undertake to this Court before taking the said minor out of India

to execute a Bond through their duly Constituted Attorney in India in favour of the Registrar of this Court in the sum of Rs. 60,000/- to repatriate the said minor to India by air should it become necessary for any reason to do so.

(f) Appellant to undertake to this Court to adopt the said minor within a period of two years after the arrival of the said minor to his home according to the laws of United States of America, especially that of State of California.

(g) Appellant to undertake to this Court to submit to this Court every three months for the first two years and every six months for the next three years progress report of the said child [along with its recent photographs) made or verified as correct by the Organization which made the Home Study Report herein regarding the said minor's moral and material progress and her adjustment in the appellant's family with information of the date of arrival of the said minor from India to the appellant's Home and the true copy of the Adoption Orders with the copies of the said report to the said Indian Council of Social Welfare, Mumbai and further the agency which had submitted the Home Study Report of the appellant, agreeing that in case of disruption of the appellant's family before adoption the said agency shall take care of the minor and find a suitable alternative placement for her with approval of the Institution whose inmate the minor is and report such alternative placement to this Court and also to the Indian Council of Social Welfare, Mumbai.

(h) Mr. Javid Ghorashian is hereby appointed as guardian without security and without remuneration of the said minor Vaishnavi whose latest photographs are duly certified as such by the Advocate for the petitioner herein and counter signed by an officer of this Court.

(i) After executing the Bond and giving undertaking as aforesaid, the petitioner is hereby granted leave to remove the said minor to United States of America or wherever he may desire and for the purpose to make an application to the passport authorities to take away the said minor out of the jurisdiction of this Court.

(j) The appellant herein do pay a sum of Rs. 2500/- to the said Indian Council of Social Welfare, Mumbai, towards their costs of this Appeal.

22. Thus, the Appeal stands allowed. The Hon. Secretary of K. M. Mahila Seva Gram. Pune. is hereby authorised to give minor child Vaishnavi who happens to be an inmate of the said Institution in adoption to the petitioner. Mr. Javid Ghorashian national citizen of United States of America aged about 45 years personally after satisfying all necessary requirements of the law in that context at a nearly date. Thereafter the appellant would be permitted to take the said child to U.S.A. for bringing up as his daughter. He will have to follow the conditions laid down by this Court as embodied in the Judgment.

23. Costs of Rs. 2,500/- be awarded to K. M. Mahila Seva Gram. Pune in this context.

24. Appeal disposed of.