
(1989) 08 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 274 of 1986

Johannes Philipus Vadde Venee DIJK

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 22-08-1989

Acts Referred:

Guardians and Wards Act, 1890 — Section 17, 7, 8

Citation : AIR 1990 Raj 124 : (1991) 1 DMC 375 : (1989) 2 RLW 179 : (1990) 1 WLN 198

Hon'ble Judges : M.C. Jain, Acting C.J.; I.S. Israni, J

Bench : Division Bench

Advocate : R.C. Saxena, for the Appellant; G.C. Chaterji, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Israni, J.—This is an appeal u/s 47 of the Guardians and Wards Act, 1890 in the matter of appointment of guardian of the person of female minor Babita an inmate of Shanti Devi Sheeshu Grah (founding home) conducted by Rajasthan Social Welfare Department of Government of Rajasthan, Jaipur. The application filed by the appellant for appointment as guardian of the above mentioned minor child was dismissed by the Family Court vide its judgment dated August 12, 1986.

2. It will suffice for the purposes of this appeal to state that the Inter-country Adoption Agency "Juthika" (hereinafter called as "Juthika") of Netherland, which is one of the recognised agency of Government of India, approached the Director of Social Welfare Department and Superintendent, Shanti Devi Sheeshu Grah, Gandhi Nagar, Jaipur through its power of attorney holder to give minor Babita, a destitute child in Guardianship of the petitioner. The Director, Social Welfare Department gave permission for adoption of the child to a foreign parent since no Indian citizen came forward for taking the child in adoption. Petitioner through its general power of attorney holders Mrs. Hem-lata Mirazkar, 208, Olympus, Altamount Road, Bombay-4000 26 and Shri Sandeep Saxena, D-2, "Moti-Kunj",

Malviya Marg, Ashoknagar, Jaipur moved an application before the Family Court for granting Guardianship to the petitioner. This application was dismissed by the impugned order. Hence this appeal.

3. We have heard both the parties and gone through the documents on record.

4. It is contended by Shri R.C. Saxena, learned counsel for the appellant that the trial Court has erred in not considering the certificate of Professor of Dutch Law in Nether- land that a Dutch man living in Netherland can take in guardianship of any child and can also adopt as many children as he likes. It is also submitted that the direction was given by the learned Judge that the State Government and Shanti Devi Shishu Grah should publish in newspapers and also publicize on television to seek persons willing to adopt the child, it is contended that this is against the direction of Hon'ble Supreme Court given in the case of Lakshmi Kant Pandey Vs. Union of India (UOI), . It is also contended that the learned trial Court has not cared to look at the Annexure 5 which satisfied all the requirements regarding appointment of guardianship of the petitioner. It is also contended that the trial Court has overlooked that it was for the paramount benefit of the child to appoint petitioner as guardian who will eventually adopt he,r in accordance with the law of Netherland. It is also pointed out that Director of Social Welfare and the Superintendent of Shanti Devi Sheeshu Grah have stated that it is in the interest of the child that she should be given in guardianship of the petitioner.

5. From the documents on the record, we find that there is a report which has been prepared after investigation by council for child welfare, Utrecht. This report gives the details of the petitioner and his wife who went to adopt the child. They were interviewed by Social Worker of the said Council for child welfare. It mentions the previous history of the couple as also the conditions in which they live. It is also mentioned that the couple did not have their own child and the wife of the petitioner Mrs. Vadee Venee had a miscarriage and she was told that she could not bear any child in future. This couple has earlier also adopted in Indian female child "Juthika" and details have been given to show that the child is looked after affectionately and has become part of their family. This couple now wants to adopt another female child from India and it is stated that there is ample room in this family for second child and that there is both the children will be brought up lovingly and will receive good education and sound upbringing. Affidavits of both the parents have been filed stating their willingness to adopt minor Babita. Statement of an Official of "Juthika" is also on record stating that minor Babita will be adopted within two years from the date of arrival of the minor to the home of petitioner in accordance with the Dutch Law. It is also undertaken to send progress report of minor after the arrival of the minor in the home of the adoptive parents at regular intervals. It is further undertaken that in case of distribution of the adoptive. family before adoption can be effected, it shall take care of the minor and find a suitable alternative placement for it with the approval of the institution whose inmate the minor is and report such

alternative placement to the Honourable Court, who has passed the order of the guardianship. All these documents are duly notarised. It is also evident from the documents that the petitioner is in good employment and his yearly emoluments in October, 1984 were equivalent to Rupees 2,02,337.04/-. A character and solvency certificate has also been issued by the employer of the petitioner. Some references regarding the suitability and status of the family have also been filed. A certificate from Ministry of Justice dated 18th October, 1984 has been filed which shows that earlier child "Juthika" has been legally adopted by the petitioner and his wife on September 18, 1984 and has acquired Netherlands nationality. A statement dated 13th August, 1985 has been filed on behalf of Executive Secretary, Indian Council of Social Welfare, Rajasthan State Branch stating that no Indian couple has come forward for taking an adoption of the aforesaid child. It is also stated that the parents of the child are not traceable. It is further stated that in the circumstances it is in the best interest of the minor child that she should be given in the foster care of the foreign national couple. It is also stated that all the formalities has required according to the Supreme Court verdicts have been complied with. It is therefore, clear that the adoptive parents are suitable in all respects and can be given the guardianship of this child who thereafter will be adopted in accordance with law of Netherland, We, are therefore, of the considered opinion that it will be in the interest of the paramount welfare of the child Babita that the petitioner be appointed as her guardian as desired by him.

6. Certain directions regarding appointment of guardianship in such cases have been given by the Apex Court in Lakshmi Kant Pandey Vs. Union of India (UOI), . These directions were modified to some extent in Laxmi Kant Pandey Vs. Union of India (UOI) and Another, and Laxmi Kant Pandey Vs. Union of India (UOI), . The learned counsel for the petitioner and the attorneys of the petitioner agree to comply with the guidelines contained in the above mentioned judgments of the Supreme Court. The attorneys of the petitioner give undertaking to this Hon"-ble Court to produce the said minor child in Court whenever required and further undertake to communicate the address of the said minor to Indian Council of Social Welfare, Rajasthan, Jaipur by 31st day of December, of every year. The said attorneys on behalf of the petitioner are directed to give undertaking to take proper care, look after, properly educate and to bring up the said minor as if she was a child of the petitioner and to treat the said minor on an equal footing with his natural and/or adopted children, if any, in all matters of maintenance, education and succession. Before the minor Babita is taken out of India the petitioner shall also to execute a bond either personally or through his duly constituted attorney/attorneys in India in favour of Additional Registrar (Judicial) of this Court in sum of Rs. 20,000/- (Rupees Twenty Thousand Only) to repatriate the said minor to India by Air should it become necessary for any reason to do so and further undertaking to adopt the said minor within a period of two years after the arrival of the said minor to the home of the petitioner in accordance with laws of Netherland and to submit Additional Registrar (Judicial)

of 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 her recent photographs made or verified as true and correct by the Organisation which made by the study report, regarding said minor's moral and material progress and her adjustment in house of the petitioner with other family members and also send a true copy of the adoption order. A copy of the same shall also be sent to Indian Council of Social Welfare, Rajasthan; Jaipur and Superintendent Shanti Devi Sheeshu Grah, Gandhi Nagar, Jaipur.

It is further directed that the "Juthika" Inter-country Adoption Agency which has submitted the Home Study Report of the petitioner and has also further undertaken to assure that in case of disruption of the adoptive family before adoption can be effected. It shall take care of the minor and find a suitable alternative placement for the child with the approval of the Institution whose inmate the minor is and report such alternative placement to the Honourable Court which has passed the order of the guardianship, shall do the needful if such circumstances arise on account of disruption of the adoptive family before the adoption takes place. Such information shall be sent to the Additional Registrar (Judicial) of this Court. All the directions given in this para shall be followed by the petitioner.

7. It is, therefore, further directed that the petitioner Mr. Johannes Philipus "Vaude Vanee DIJK land National of the Netherland residing at Utrechtsweg 282" EV Amers Front the Netherlands, is hereby appointed as guardian without any remuneration for minor female child "Babita" born on 2-11-1985 whose latest photograph duly certified as such by the counsel for the petitioner and counter signed by an Officer of this Court is attached hereto and marked as EX "A". This child is presently in custody and care of the authorities of Shanti Devi Sheeshu Grah, Gandhi Nagar, Jaipur. It is further ordered that after executing the bond as aforesaid by the petitioner or her duly constituted power of attorney/attorneys are hereby granted leave to remove the said minor from the jurisdiction of this Hon"ble Court and to take her away to Netherland or wherever he may desire and for that purpose make an application to the passport authorities or any other Authorities to take away the said minor female child "Babita" out of the jurisdiction of this Hon"ble Court.

8. In the result, the appeal is allowed.