
(2003) 03 BOM CK 0063
In the Bombay High Court
Case No : Guardianship Petition No. 7 of 2002

Shakuntala T. Sonawane

APPELLANT

Vs

Narendra A. Khaire

RESPONDENT

Date of Decision : 07-03-2003

Acts Referred:

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

Citation : AIR 2003 Bom 323 : (2003) 2 ALLMR 861 : (2003) 5 BomCR 182 : (2003) 3 MhLj 484

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : R.D. Dave, for the Appellant; Manjula Rao and Tiwari, for the Respondent

Judgement

A.M. Khanwilkar, J.—Heard both sides.

2. This petition for appointment as the Guardian of minor Aniruddha son of Narendra and Alka Khaire and his property without security and without remuneration, is filed by his real maternal grand mother (petitioner herein), under the provisions of Guardianship and Wards Act, 1890.

3. Briefly stated, the respondent and Alka (daughter of petitioner) got married on 19-4-1994 at Mumbai. Out of the said wedlock minor Aniruddha was born on 29-1-1995. However, even before the birth of Aniruddha, said Alka, parted his company due to unpalatable relations with her husband (respondent herein), and started staying with her parents, namely, the petitioner and her husband. During the stay with her parents, minor Aniruddha was born on 29-1-1995. On that very day, the respondent had instituted divorce proceeding in the Family Court at Bandra, Mumbai on the ground of cruelty and desertion. During the pendency of the said proceeding, the custody of the minor Aniruddha remained with the wife Alka, who was staying with the petitioner and her family. It is common ground that Alka died on 10-2-2000. According to the petitioner, she was set on fire by the respondent and a criminal case in that behalf has been instituted against the

respondent. Whereas, according to the respondent, Alka committed suicide in the presence of her parents. It is however, not necessary to elaborate on this aspect for deciding the present petition. Suffice it to point out that, while the said Alka was alive and even after her death the minor Aniruddha was and is being looked after by the petitioner and her family members. It appears that the respondent filed application before the Family Court for custody of the minor Aniruddha and the said proceedings are still pending. Whereas, the present petition has been instituted by the petitioner who is the real maternal grand mother of minor Aniruddha, sometime in October, 2001, for the following reliefs:

"(a) The notice u/s 11 of the Guardianship and Wards Act, 1890 be dispensed with.

(b) That the petitioner be appointed as the Guardian of Minor Aniruddha S/o Narendra and Alka Khaire and property of minor described in the Exhibit "C" herein without security and without remuneration.

(c) That in the interest of minor Aniruddha, this Hon''ble Court be pleased to order, to deposit in the Account Office of this Hon''ble Court, the entire amount lying in the credit of deceased Alka Narendra Khaire, as more particularly mentioned in Exh. "C".

(d) That this Hon. Court be pleased to direct the respondent to deposit all the arrears of maintenance @ Rs. 1500/- p.m. as per order in W. P. No. 547/1996 dated 20-2-1996 filed by deceased Alka on the Appellate Side of Hon''ble Bombay High Court, being the maintenance for the minor and a further direction to deposit the said maintenance amount henceforth in the Account office of this Hon''ble Court.

(e) Cost of this petition be provided for."

4. According to the petitioner, having regard to the welfare of the minor Aniruddha, it would be appropriate to grant relief as prayed for in the petition. It is averred that the petitioner has taken care of the welfare of the minor child Aniruddha right from his birth from January, 1995 and that itself is a very good reason for granting guardianship in favour of the petitioner. It is also averred that the respondent is not a fit person for being appointed as Guardian since he is an accused in a criminal case pending against him, though he is the natural guardian of minor Aniruddha. It is also averred that the respondent is not interested in taking care of the minor and has no inclination to look after the welfare of the minor Aniruddha.

5. This petition has been resisted by the respondent by filing reply affidavit. In the reply affidavit, it is contended that the respondent is a Graduate and employed with Air Port Authority of India. But it is admitted that presently he is under suspension because of the Criminal case pending against him. It is however, asserted in this reply that the allegations made against him in the petition are false and devoid of merits. Further that, a false case has been

registered against him. It is further submitted that the petitioner is more interested in the financial aspects and that she is not entitled for the custody or guardianship of minor Aniruddha in preference to the respondent who is the natural guardian.

6. Arguments canvassed before the Court were essentially focussed in the context of the relief claimed in this petition. Moreover, Mrs. Rao for the respondent contends that the respondent is willing to abide by any condition that were to be imposed by this Court with regard to the financial obligations qua the minor Aniruddha.

7. Having considered the rival submissions, and taking the totality of the circumstances of the case, I have no hesitation in taking the view that for the welfare of the minor Aniruddha, the petition, as presented by his real maternal grand mother, deserves to be allowed. I do not think it necessary to go into the question whether the respondent is facing false prosecution or that he is an unfit person. Because, even if the respondent is held to be fit person that alone cannot be the basis for considering this petition. On the other hand, the Court is obliged to keep in mind the paramount interest and welfare of the minor. It is also well settled that even if a natural guardian is alive and stakes his/her claim, but the Court can still proceed to appoint some other fit person as the guardian under the provisions of the Act. That needs to be done having regard to the welfare of the minor.

8. In the present case, the petitioner is the real maternal grand mother of the minor. Besides, the minor Aniruddha who was born on 29-1-1995, has throughout stayed with the petitioner and her family. The petitioner and her family were looking after Alka as well as minor Aniruddha. The mother (Alka) died on 9-2-2000 but, even thereafter, the petitioner has continued to nurture the minor Aniruddha. There is nothing on record to indicate that the interest of minor Aniruddha is not properly looked after by the petitioner.

9. Reliance has been rightly placed by the petitioner on the decision of the Kerala High Court reported in Baby Sarojam Vs. S. Vijayakrishnan Nair, . In similar situation, Kerala High Court has allowed the guardianship to be given to the maternal grand mother of the minor. Reliance is also rightly placed on the decision of our High Court reported in Mohammad Shafi Vs. Shamin Banoo, . Even this decision takes the view that the purport of the provision of the Act is wide enough to entitle a person other than the natural guardian to maintain the application and the Court while considering that application should keep in mind the paramount interest and welfare of the child.

10. On the other hand reliance has been placed by Mrs. Rao on the decision of the Apex Court reported in Smt. Palchuri Hanumayamma Vs. Tadikamalla Kotlingam (D) by L.Rs. and Others, . to contend that where natural father was alive, the question of granting guardianship to the grand mother was improper and cannot be countenanced. To my mind, the observations made in the said

reported case which are seriously pressed, are in the fact situation of that case. However, in the fact situation of the present case, it is seen that the minor has throughout remained in the custody of the petitioner who is the real maternal grand mother, since his birth and, is being properly looked after by the petitioner till now. The fact that the respondent is the father of the minor or for that matter has been given access to the minor and visiting rights does not mean that the petitioner is ineligible for maintaining the application under the provisions of Guardianship and Wards Act. The petitioner is competent to maintain this application and having regard to all the attending circumstances, the petition is made absolute in terms of prayer Clauses (b) and (c).

11. Insofar as the relief in terms of prayer Clause (d) is concerned, it will be open to the petitioner to take out appropriate proceeding as permissible in law, if so advised.

12. Needless to mention that the Family Court shall decide the custody petition stated to be pending before it, on its own merit in accordance with law,

13. Ordered accordingly.

C. C. expedited.