

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INDIAN ADOPTION PETITION NO. 70 OF 2019

Mathew Inacio Abreo

...Petitioner/Applicant

Mr. Rakesh Kapoor i/b M/s Rakesh K. L. Kapoor & Co., Advocate for
the Petitioner.

Mr. O. Hareendran, Scrutiny Officer.

CORAM : G.S. KULKARNI, J.

DATE : 18th DECEMBER, 2019

P. C.

Mr. Mathew Inacio Abreo, aged 66 years is before the court praying that Malaica Maria Abreo, aged 22 years be given in adoption to him. Facts are quite peculiar. The petitioner alongwith his late wife Mrs. Dora Abreo had filed in this Court Indian Guardian Petition No. 23/1998. By an order dated 11th March 1998 the said petition was allowed, whereby the petitioner and his wife were appointed as guardians of minor Malaica who has born on 16th June 1997. Today she is about 22 years of age.

2. Learned counsel for the petitioner would contend that Malaica has throughout remained under the guardianship of the petitioner since the said order passed by this Court. It is contended that if adoption as prayed for by the petitioner is not granted, it will cause a

serious prejudice to Malaica in as much as she would be deprived of her legitimate entitlement to the legal status to have the petitioner as her parent and would be foisted with a status of being an orphan, although she was brought up by the petitioner as his own daughter.

3. In support to his contention, learned counsel for the petitioner has drawn my attention to the decision of Mr. Justice F.I. Rebello, (as Lordship then was) in the case of **Manuel Theodore Vs. Unknown** reported in 2000(2) Bom. CR 244, to contend that it would be necessary requirement to recognize a constitutional right of a citizen to have a family and parents in adoption.

4. Learned counsel for the petitioner has contended that the legislative vacuum in case of adoption when a citizen professes Christian faith was recognized in the said decision of the learned Single Judge. It is thus, is contended that in the facts of the present case, although there is some delay on the part of the guardians to approach this court, it would be imperative to allow the prayers as made in the petition, by applying the legal principles as laid down in **Manuel Theodore's** case.

5. The petitioner is residing at Santacruz (E), Mumbai, he is about 66 years of age with no biological children. The petitioner was

married to Dora Mathew Abreo, who expired on 20th March 2018, suffering a heart attack. Her death certificate is placed on record.

6. Petitioner has referred to his Histopathology report dated 30th August 2019 and other medical reports which indicate primary pancreatic malignancy with hepatic metastases. Petitioner is presently working as an Executive Secretary with the Indian Pharmaceutical Association-Maharashtra State Branch, Kalina, Mumbai and his monthly (July-2019) gross salary is Rs. 40,863/-. All the relevant details of the petitioner including property details etc. are placed on record.

7. There is also a medical report dated 1st October 2019 of Malaica stating that she does not suffer from any contagious disease. She is mentally and physically fit to do any job or academic course.

8. There is a adoption home study and follow-up visit report dated 1st October 2019 of the adoptive family as conducted by the social worker Ms. Clipsy Banji, BA, MSW, PGPDM, which records that petitioner is a committed father to Malaica. It records that his family comes from a very humble background, having good moral values. The report records that in the last month petitioner was diagnosed and afflicted with cancer of the pancreas and is under chemotherapy from

the Holy Spirit Hospital in Andheri. It is recorded that due to the medical treatment, he stays with his sister at Andheri in Mumbai as it is convenient for him to travel and rest. The petitioner and Malaica share a loving relationship with one another. It is also stated that the petitioner who is now ailing needs his daughter's support, love and affection at this crucial time.

9. In so far as Malaica is concerned there is a further follow-up report dated 1st October 2019 recording that Malaica is an active, smart and bright young girl. She was also given to understand her adoptive status when she was in the 6th standard and from then she has accepted her reality in a matured manner. She has completed her graduation in B.Sc from Sheela Raheja College and since from last one year she has been employed as a Key Accounts Executive (Sales)with Aspri Spirits Pvt. Ltd. She is happy to work and establish her own finances and loves the feeling of being economically independent even as she supports her ailing father.

10. There is representation from Mr. O. Hareendran, ICSW, referring to stating that it is of order dated 11th March 2018 passed by this court in Indian Guardianship Petition No. 23/1998 and to the documents and reports recording that Malaica is well integrated into the adoptive family.

11. I have heard Mr. Kapoor, learned counsel for the petitioner. I have also perused the documents placed on record. It needs to be observed that in pursuance of the order dated 11th March 2018 passed by this court in Indian Guardianship Petition No. 23/1998, Malaica has throughout remained under the guardianship of the petitioner and his late wife who has recently passed away. Malaica is now well integrated into the petitioner's family and is an inextricable part of the petitioner's family. Defacto she has a status of being petitioner's daughter. In my opinion mere guardianship being conferred on the petitioner would certainly not suffice and it has lost its efficacy as Malaica is now a major. In the facts of the case Malaica is definitely in requirement of being conferred a legal status of being the daughter of the petitioner. Malaica has to lead her life with dignity and confidence which she would be able to do when the petitioner's right to adopt her is recognized and reciprocally Malaica's right to be adopted by the petitioner also finds a legal recognition. It is thus necessary that these basic human rights as guaranteed and recognized by the Constitution are enforced and implemented. Hence it is imperative to permit adoption of Malaica by the petitioner even when Malaica has now attained majority by applying the principles as laid down by this court in the case of **Manuel Theodore**.

12. Malaica has attended today's hearing. I had a meaningful interaction with her. She is very bright. She has a positive approach towards life. She is aware about all the circumstances surrounding her. She is eagerly awaiting legal recognition of her status as the petitioner's daughter.

13. In the above circumstances, I propose to allow this petition in terms of prayer clause (a) and (b), which reads thus:-

(a) That this Hon'ble Court may be pleased to declare the petitioner as adoptive parent of the said girl Malaica Maria Abreo now under the guardianship custody with the petitioner Mr. Mathew Inacio Abreo.

(b) That the petitioner be granted leave to apply to the Municipal Authorities to issue a Birth Certificate of the said girl Malaica Maria Abreo born on 16th day of June, 1997 and showing the petitioner Mr. Mathew Inacio Abreo and Mrs. (late) Dora Mathew Abreo as her father and mother.

2. Judge's order is separately signed.
3. The Indian adoption petition is disposed of in the above terms.

[G.S. KULKARNI, J.]