

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 15 of 2015**

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AMUL PRAVINBHAI PATEL & 2....Applicant(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

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Appearance:

MR.BHASH H MANKAD, ADVOCATE with MRS. GARIMA B. MANKAD,
ADVOCATE for the Applicant(s) No. 1 - 3

MR DEVANG VYAS, ADVOCATE for the Respondent(s) No. 2

MR KP RAVAL, APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE N.V.ANJARIA****Date : 05/05/2015****ORAL ORDER**

The present Revision Application arose from judgment and order dated 19.12.2014 passed by learned 3rd Additional District Judge, Kheda at Nadiad, in Civil Misc. Application No. 174 of 2014. The applicants there and applicants herein are the adoptive parents desirous to adopt a girl child aged 4 years named Sonia who has been otherwise under the care of respondent No.2-Matruchhaya Orphange House.

2. It is the case of the applicants-adoptive parents that the necessary procedure, inquiries and verification formalities required to be undergone under "Guidelines Governing Adoption of Children, 2011" and Juvenile Justice Act, 2000, were complied with. It is the case that the reports including report by Recognized Indian Placement Agency (RIPA), as well as report by Central Adoption Resource Authority

(CARA) were obtained. The applicants have stated that all these reports favour the prayer for inter-state adoption of the child opted by the applicants.

3. Thus, praying for adoption by the applicants, under Section 41(6) of the Juvenile Justice Act, 2000, aforesaid Civil Misc. Application No. 174 of 2014 was filed before the District Court, Kheda at Nadiad.

3.1 For the reasons and grounds stated in the impugned judgment and order by learned Additional District Judge, Kheda at Nadiad, the prayer of the applicants for inter-state adoption of child was rejected.

3.2 The ground which weighed with the Court below for not accepting the request and rejecting the application as stated in paragraph-17 of the order, read as under,

"[17] So, considering the fundamental principles for governing adoption child's interest should be of prime importance while deciding any placement. In this case, it is clear from the facts as well as evidence that none of the applicant no.1 either wife or husband even taken care to physically see child "SONIA" till today. Now, it is pertaining to note that applicants no.1 have stated in their application that they have also started inquiry about suitable child through their relatives. On inquiry the petitioner no.1 and his wife came to know that minor child "SONIA" available with

petitioner No.2 institute. But there is no any affidavit of any relatives who can clearly say that he has inquired about suitable child even there is no any evidence produced before the court which shows that they have inquiry about suitable child because as I stated above the adoptive parents means applicants no.1 husband and wife has not been take care to physically see the face of the child in Orphange Home till today. Then the question arise how petitioner no.1 (couple) will offer maternal and parental care and love towards "SONIA." In my humble opinion in such case of adoption the paramount consideration is the welfare of the child and her future in foreign county. It is pertaining to note that the person who is desire to adopt the child has not even care to see the child till today and has not subjected himself to the scrutiny of the court had that applicant remain present before the court. The court would have every opportunity to make scrutiny about that person and would have satisfy about the genuine claim of applicants and court could have arrive at its subjective satisfaction. But, when this has not been done or when this was not happened I am not satisfy that the welfare of the child will be taken care properly."

3.3 The Court therefore observed that the applicants-adoptive parents had not cared to come personally to see the child which they want to adopt. The prayer therefore was not granted.

3.4 The aforesaid was the main ground on which this Court thought it proper to consider the matter in the Revision.

3.5 Since there was no contesting party side as such, learned advocate Mr. Mehul S. Shah was requested to act as an *amicus curiae*.

4. Even before the matter could be finally considered on its merits, learned advocate Mr. Bhash Mankad with learned advocate Mrs. Garima Mankad on instructions from the applicants stated that the applicants-adoptive parents are ready and willing to visit India. He further stated that they are ready and willing also to appear before the Court of learned 3rd Additional District Judge, Kheda at Nadiad, in the proceedings of Civil Misc. Application No. 174 of 2014 and willing to see and meet the child personally.

4.1 Learned advocate for the applicants made further statement on instructions that the applicants-adoptive parents are ready and willing to appear before the Court and answer the queries which the Court may put to them in the consultative process whereby the Court may arrive at its own satisfaction on the question of allowing the applicants to adopt the child. Learned advocate for the applicants however submitted that since the applicants would have to come from a foreign country and they would have to return back after certain number of days, a time bound schedule may be fixed in respect of proceedings, appearance and consultation before the Court and for completion of

all the necessary formalities in that regard.

5. In view of above statement evincing readiness and willingness of the applicants as recorded above, the proceedings of Civil Misc. Application No. 174 of 2014 are required to be remitted back to the Court of learned 3rd Additional District Judge, Kheda at Nadiad. The aforesaid process can be undertaken and the Court can pass fresh order thereafter.

6. Accordingly, the impugned judgment and order dated 19.12.2014 passed by learned 3rd Additional District Judge, Kheda at Nadiad, in Civil Misc. Application No. 174 of 2014 is hereby set aside for the purpose that the aforesaid exercise is undertaken as agreed by learned advocate for the applicants and appropriate fresh order can be passed thereafter by the Court. In light of what is recorded above, this Revision Application is **disposed of** while setting aside the impugned judgment and order as above, by issuing following directions,

(i) The statements made by the applicants who are prospective adoptive parents being (a) Mr. Amul P. Patel and (b) Mrs. Hema Amul Patel, both residing at 12 Hill Society Hallow Road, Lake Hopatcong, New Jersey 07849 USA, shall visit Indian between the period from 15.06.2015 to 30.06.2015, shall be abide by.

(ii) According to the said statement made, in compliance thereof, during that time, they will

appear before the Court of learned 3rd Additional District Judge, Kheda at Nadiad, in the proceedings of Civil Misc. Application No. 174 of 2014.

6.1 Following further directions are issued,

(a) The Court of learned 3rd Additional District Judge, Kheda at Nadiad, shall fix a date in the week beginning from 22.06.2015 and on the said date fixed, the applicants shall appear before the Court.

(b) The Court shall undertake necessary exercise of querying, consulting and interaction with the applicants personally in relation to the subject matter and prayer, which may be in the presence of the child.

(c) The child being girl Sonia shall be brought to the Court on the said date fixed under the custody of a responsible officer from respondent No.2-Institution so that the applicants may have a face-to-face affiliation and interaction etc.

(d) The aforesaid directions are issued so as to enable the Court to arrive at its own satisfaction and pass appropriate fresh order in accordance with law.

(e) The Court shall complete the entire exercise and shall pass appropriate order on or before

30.06.2015 and in that, the Court would keep as paramount consideration welfare of the child and her future keeping in view the guidelines, the contents of the reports and the subjective satisfaction which may reach upon interacting with the applicants in the subject.

(f) The Court shall pass appropriate order without being influenced by the present order of remand, as well as without being influenced by its earlier order.

7. The aforesaid order of remand and direction above are passed without going into the merits of the case in any view.

8. It goes without saying that the aforesaid order is passed on a consensus statement made by learned advocate for the applicants and shall not be construed as precedent.

9. While parting, a word of appreciation for learned advocate Mr. Mehul Shah for rendering a valuable assistance in the proceedings of the court as friend of the Court.

10. The Revision Application is **disposed of** in the aforesaid terms.

Direct service is permitted.

(N.V.ANJARIA, J.)

chandrashekhar