OFFICE OF DISTRICT & SESSIONS JUDGE (HQs) : DELHI

No. 8821-88238 /Misc./Gaz/2019 Dated 05 DEC 2019

Sub:-Adoption order dated 25.07.2019 of Hon'ble High Court of Chattisgarh, Bilaspur

Kindly alongwith its enclosures forwarded for information and necessary compliance to :-

1. The District & Sessions Judges, all Court complexes, Delhi/New Delhi.
2. The Principal Judge, Family Court (HQs) Delhi.
3. The District Judge (Commercial Court) (Central) Tis Hazari Courts, Delhi.
4. The Additional District Judges (Central), Tis Hazari Courts, Delhi.
5. All the Civil Judges (Central) Tis Hazari Courts, Delhi.
6. The AO (J), Filing Branch, Admin. Branch (I,II&III) (Central) Tis Hazari Courts, Delhi.
7. The Reader to Ld. District & Sessions Judge (HQs).
8. The Website Committee (Hindi/English) Tis Hazari Courts, Delhi.
9. The R&I Branch (Central) for uploading on LAYERs.

(Ankur Jain)
Additional District Judge(Central)
Officer Incharge (Judicial Branch, Central)
Tis Hazari Courts, Delhi

OFFICE OF THE DISTRICT & SESSIONS JUDGE (NORTH) DISTRICT ROHINI COURT COMPLEX DELHI

No. 37744-37758 /Judl/North/RC/19 Dated : 18/12/19

Copy & its enclosure forwarded for information & necessary compliance to:-

1. The Ld. District Judge (Commercial Courts), North District, Rohini Court Complex, Delhi.
2. All the Additional District Judges, North District, Rohini Court Complex, Delhi.
3. All the Civil Judges, North District, Rohini Court Complex, Delhi.
4. The AOJ/Branch In-Charge, Filling Section, Rohini Court Complex, Delhi.
5. The Reader to Ld. District & Sessions Judge, North District, Rohini Court Complex, Delhi.
6. The Web-Site Committee, (North) Rohini Court Complex, Delhi.
7. P.S. to Ld. D&S.J, North District, Rohini Court Complex, Delhi.
8. The R & I Branch for uploading on Layers.

(UMED SINGH)
OFFICER IN-CHARGE(JUDL)/ASJ/SPL.FTC
(NORTH) ROHINI COURT DELHI

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.97 of 2018

Order Reserved on : 16.5.2019

Order Passed on : 25.7.2019

Seva Bharti Matruchhaya, Durg through its Secretary Dilip Deshmukh, S/o Ramdayal Deshmukh, aged about 51 years, R/o In front of Bhilai Navjeevan School, Dhanora Road, Madhuban Nagar, Borsi, Bhilai, District Durg, Chhattisgarh

---- Applicant

versus

1. xxx xxx xxx xxx
2. xxx xxx xxx xxx

Note:

Regulation 12(5) of the Adoption Regulations, 2017 specifically states that since an adoption case is non-adversarial in nature, the Specialised Adoption Agency shall not make any opposite party / respondent in the adoption application and as such the adoptive parents are not impleaded in this revision as respondents, though they have been impleaded as respondents in the trial Court.

However, it is submitted that the details of the adoptive parents are filing with this revision in a sealed cover for kind perusal and ready reference of this Hon'ble Court.

--- Respondents

For Applicant	:	Shri Rajeev Shrivastava, Advocate
For State	:	Shri Devendra Pratap Singh, Deputy Advocate General

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The instant revision has been preferred under Section 397 read with Section 401 of the Code of Criminal Procedure read with Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (henceforth 'the Juvenile Act, 2015') against

the order dated 3.11.2017 passed by the 1st Additional Principal Judge, Family Court, Durg in Miscellaneous Civil Suit No.8 of 2017, whereby the Family Court has rejected the application filed under Section 59(7) of the Juvenile Act, 2015 for inter-country adoption of orphan male child Bala.

2. Leaving a question open whether an appeal or a revision would lie before this Court against the impugned order dated 3.11.2017 passed by the Family Court on the application under Section 59(7) of the Juvenile Act, 2015 in a Miscellaneous Civil Suit, I, keeping in view the provision contained in Section 102 of the Juvenile Act, 2015, proceed to decide the instant revision.

3. The Applicant is a recognised Specialised Adoption Agency as per the provisions contained in the Juvenile Act, 2015. The orphan male child Bala, whose date of birth is 5.1.2014, was admitted in the agency on 5.1.2014 itself. The child was produced before the District Child Welfare Committee and was declared free for adoption. After completing the necessary formalities, the details of the child were put in the portal of the Central Adoption Resource Authority (henceforth 'the CARA'), which is a statutory body of the Ministry of Women and Child Development of the Government of India. Subsequently, the Prospective Adoptive Parents (henceforth 'PAPs') of orphan child Bala came forward for which the CARA gave a no objection certificate. After doing all the formalities an application under Section 59(7) of the Juvenile Act, 2015 was filed on 17.7.2017, which has been rejected by the Family Court vide the impugned order dated 3.11.2017 on the following grounds

(1) There is no material available on record to show that as per the provision of Section 59(1) of the Juvenile Act, 2015, within 60 days from 15.4.2015, i.e., the date on which the child was legally free for adoption, any Indian or Non-Resident Indian has not come forward as PAPs of the child because as per Section 59(1) of the Juvenile Act, 2015 the child will be free for inter-country adoption only if no Indian or Non-Resident Indian comes forward for adoption.

(2) Provision of Section 59(6) of the Juvenile Act, 2015 has not been complied with. No matching of the child with PAPs was done, therefore, provision of Section 59(6) of the Juvenile Act, 2015 has not been complied with and PAPs have not appeared before the Court and have not been examined.

(3) The documents filed with regard to the child have not been proved as per Section 67 of the Indian Evidence Act. Mere marking of the documents as exhibits does not amount to proving of the documents and the same is not explained.

4. The instant revision has been preferred on the grounds that the impugned order dated 3.11.2017 passed by the Family Court is contrary to the law applicable to the facts and circumstances of the case. The Family Court has failed to see that in a civilised society welfare of a child has got the utmost importance. If welfare of a child is ignored, the same would destroy the entire fabric and future of the civilised society. Therefore, the only provision, which is to be seen for adoption, is for welfare of a child. The Family Court has failed to see that the agencies formed under the Juvenile Act, 2015 are the specialised agencies for the purpose of adoptions and a

procedure has been adopted to make the proceedings of adoption transparent, therefore, applying the strict rule of law with regard to provision for proving the documents before the Court is contrary to the provisions of law. The Family Court has failed to see that the Specialised Adoption Agencies, setting up of a State Adoption Resource Agency and constitution of the CARA are for facilitating and regulating the process of rehabilitation of an orphan or abandoned or surrendered child through adoption. The constitution, powers, functions and responsibilities of these agencies and authorities have been well defined in the Juvenile Act, 2015, the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (henceforth 'the Model Rules, 2016') and in the Adoption Regulations, 2017 for safeguarding the interests of such a child and to provide him/her the most suitable rehabilitation. The provisions have also been made for recognition, inspection and monitoring of the functions of the agencies and the statutory bodies relating to adoption procedure. Even after completion of the adoption procedure and the child leaving the country with the adoptive parents, process of a continuous monitoring of welfare of a child has been prescribed. Thus, there is no material for the Court to hold that this adoption is not in the interests of the child. The Family Court has wrongly applied the provisions of the Code of Civil Procedure and that of the Evidence Act with regard to the pleadings and proof of the documents. The Family Court has failed to see that it is a non-adversarial litigation. The conduct of the entire proceedings by the Family Court is in violation of the relevant provisions because it is not conducted as camera proceedings.

5. I have heard Learned Counsel appearing for the Applicant and the State and perused the entire material available with due care.

6. Before discussing the material available, it would be appropriate to refer to the relevant provisions of law.

7. Section 59 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which relates to the procedure for inter-country adoption of an orphan or abandoned or surrendered child, reads as under:

> "59. **Procedure for inter-country adoption of an orphan or abandoned or surrendered child.**—(1) If an orphan or abandoned or surrendered child could not be placed with an Indian or non-resident Indian prospective adoptive parent despite the joint effort of the Specialised Adoption Agency and State Agency within sixty days from the date the child has been declared legally free for adoption, such child shall be free for inter-country adoption:
>
> Provided that children with physical and mental disability, siblings and children above five years of age may be given preference over other children for such inter-country adoption, in accordance with the adoption regulations, as may be framed by the Authority.
>
> (2) An eligible non-resident Indian or overseas citizen of India or persons of Indian origin shall be given priority in inter-country adoption of Indian children.
>
> (3) A non-resident Indian or overseas citizen of India, or person of Indian origin or a foreigner, who are prospective adoptive parents living abroad, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child from India, may apply for the same to an authorised foreign adoption agency, or Central Authority or a concerned Government department in their country of habitual residence, as the case may be, in the

manner as provided in the adoption regulations framed by the Authority.

(4) The authorised foreign adoption agency, or Central Authority, or a concerned government department, as the case may be, shall prepare the home study report of such prospective adoptive parents and upon finding them eligible, will sponsor their application to Authority for adoption of a child from India, in the manner as provided in the adoption regulations framed by the Authority.

(5) On the receipt of the application of such prospective adoptive parents, the Authority shall examine and if it finds the applicants suitable, then, it will refer the application to one of the Specialised Adoption Agencies, where children legally free for adoption are available.

(6) The Specialised Adoption Agency will match a child with such prospective adoptive parents and send the child study report and medical report of the child to such parents, who in turn may accept the child and return the child study and medical report duly signed by them to the said agency.

(7) On receipt of the acceptance of the child from the prospective adoptive parents the Specialised Adoption Agency shall file an application in the court for obtaining the adoption order, in the manner as provided in the adoption regulations framed by the Authority.

(8) On the receipt of a certified copy of the court order, the specialised adoption agency shall send immediately the same to Authority, State Agency and to the prospective adoptive parents, and obtain a passport for the child.

(9) The Authority shall intimate about the adoption to the immigration authorities of Indian and the receiving country of the child.

(10) The prospective adoptive parents shall receive the child in person from the specialised adoption agency as soon as the passport and visa are issued to the child.

(11) The authorised foreign adoption agency, or Central Authority, or the concerned Government

department, as the case may be, shall ensure the submission of progress reports about the child in the adoptive family and will be responsible for making alternative arrangement in the case of any disruption, in consultation with Authority and concerned Indian diplomatic mission, in the manner as provided in the adoption regulations framed by the Authority.

(12) A foreigner or a person of Indian origin or an overseas citizen of India, who has habitual residence in India, if interested to adopt a child from India, may apply to Authority for the same along with a no objection certificate from the diplomatic mission of his country in India, for further necessary actions as provided in the adoption regulations framed by the Authority."

8. Section 61 of the Juvenile Act, 2015 provides for Court procedure and penalty against payment in consideration of adoption. Sub-section (2) of Section 61 of the Juvenile Act, 2015 provides that the adoption proceedings shall be held in *camera* and the case shall be disposed of by the Court within a period of two months from the date of filing.

9. Regulation 12 of the Adoption Regulations, 2017 reads as under:

"12. **Legal procedure.**—(1) The Specialised Adoption Agency shall file an application in the court concerned, having jurisdiction over the place where the Specialised Adoption Agency is located, with relevant documents in original as specified in Schedule IX within ten working days from the date of matching of the child with the prospective adoptive parents and in case of inter-country adoption, from the date of receiving No Objection Certificate from the Authority, for obtaining the adoption order from court.

(2) The Specialised Adoption Agency shall file an application in the given format as per Schedule XXVIII or XXIX, as applicable.

(3) In case the child is from a Child Care Institution, which is not a Specialised Adoption Agency and is located in another district, the Specialised Adoption Agency shall file the application in the court concerned, in the district where the child or the Specialised Adoption Agency is located and in such a case, the Child Care Institution will be a co-petitioner along with the Specialised Adoption Agency and the Child Care Institution shall render necessary assistance to the Specialised Adoption Agency concerned.

(4) In case of siblings or twins, the Specialised Adoption Agency shall file single application in the court.

(5) Since an adoption case is non-adversarial in nature, the Specialised Adoption Agency shall not make any opposite party or respondent in the adoption application.

(6) The court shall hold the adoption proceeding in-camera and dispose of the case within a period of two months from the date of filing of the adoption application by the Specialised Adoption Agency as provided under sub-section (2) of section 61 of the Act.

(7) The adoptive parents shall not be asked in the adoption order to execute any bond or make investment in the name of the child, considering the fact that their psycho-social profile and financial status have already been ascertained from the Home Study Report and other supporting documents.

(8) The Specialised Adoption Agency shall obtain a certified copy of the adoption order from the court and shall forward it to the prospective adoptive parents within ten days and it shall also post a copy of the order and update the relevant entries in the Child Adoption Resource Information and Guidance System.

(9) Registration of an adoption deed shall not be mandatory as per the Act.

(10) The Specialised Adoption Agency shall apply to the birth certificate issuing authority for obtaining the birth certificate of the child within three working days from the date of issuance of

adoption order, with the name of adoptive parents as parents, and date of birth as recorded in the adoption order and the same shall be issued by the issuing authority within five working days from the date of receipt of the application.

(11) The Specialised Adoption Agency shall submit an affidavit in the court while filing a petition as provided in Schedule XXIII."

Regulation 17 of the Adoption Regulations, 2017 reads thus:

"17. **Legal Procedure.**—(1) The legal procedure as provided in regulation 12 shall, *mutatis mutandis* be followed in cases of inter-country adoption under this Chapter.

(2) In cases of the prospective adoptive parents habitually residing abroad and wanting the Specialised Adoption Agency to represent on their behalf as well, the application shall also be accompanied by a Power of Attorney in favour of the social worker or adoption in-charge of the Specialised Adoption Agency which is processing the case and such Power of Attorney shall authorise a social worker to handle the case on behalf of the prospective adoptive parents."

Regulation 19 of the Adoption Regulations, 2017 runs as follows:

"19. **Follow-up of progress of adopted child by Non-Resident Indian, Overseas Citizens of India and foreign prospective adoptive parents.**—(1) The Authorised Foreign Adoption Agency or the Central Authority or Indian diplomatic mission or government department concerned, as the case may be, shall report the progress of the adopted child for two years from the date of arrival of the adopted child in the receiving country, on a quarterly basis during the first year and on six monthly basis in the second year, by uploading online in the Child Adoption Resource Information and Guidance System in the format provided in Schedule XII along with photographs of the child.

(2) On the basis of the progress report or in course of post-adoption home visits, if an adjustment problem of an adoptee with the adoptive parents comes to the notice of the Authorised Foreign Adoption Agency or Central Authority or the Government department concerned in the receiving country, necessary counseling shall be arranged for the adoptive parents and for the adoptee, wherever applicable.

(3) If it is found that the adoptee is unable to adjust in the adoptive family or that the continuance of the child in the adoptive family is not in the interest of the child, the Authorised Foreign Adoption Agency or Central Authority or the Government department in the receiving country or Indian diplomatic mission concerned, as the case may be, shall withdraw the child and provide necessary counseling and shall arrange for suitable alternate adoption or foster placement of the child in that country, in consultation with the Indian diplomatic mission and the Authority.

(4) In case of disruption or dissolution of adoption, the child shall be entitled to receive care, protection and rehabilitation through the child protection services of that country and as per Hague Adoption Convention for the Hague Adoption Convention ratified countries.

(5) The Authorised Foreign Adoption Agency or Central Authority or Government department concerned shall contract Indian diplomatic mission to render necessary help and facilitate the repatriation of the child, if required.

(6) The Authorised Foreign Adoption Agency or Central Authority or Government department concerned, may organise annual get-together of Indian adoptees and their adoptive parents and forward a report of the event to the Authority and the Indian diplomatic missions shall facilitate such get-togethers.

(7) The prospective adoptive parents shall furnish an undertaking to the effect that they would allow personal visits of the representative of Authorised Foreign Adoption Agency, the foreign Central Authority or Government department concerned, as the case may be, to ascertain the progress of the child with the adoptive parents in

family at least for a period of two years from the date of arrival of the child in the receiving country."

10. Rule 45 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 runs thus:

> "45. **Procedure before the Court.**—(1) The procedure for obtaining an Adoption Order from the court concerned would be as provided in Adoption Regulations.
>
> (2) The Court, for the purpose of an application for adoption order, shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) and Evidence Act, 1872. The procedure, as laid down in the Juvenile Justice (Care and Protection of Children) Act, 2015 and Adoption Regulations shall be followed."

Rule 46 of the Model Rules, 2016 reads as follows:

> "46. **Period for disposal of applications.**—(1) The Court shall dispose of an application for making an adoption order within a period of two months from the date of filing of the application, as provided under sub-section (2) of section 61 of the Act and where the judge of the court concerned ordinarily exercising jurisdiction in such matters is not available for a period of more than one month, the applications shall be disposed of within stipulated time by other senior most judge.
>
> (2) No information or Court order regarding adoption disclosing the identity of the child shall be uploaded on any portal except as may be stipulated in Adoption Regulations."

11. Now, I shall examine the case in hand in the light of above provisions of law. Vide the impugned order dated 3.11.2017, the application under Section 59(7) of the Juvenile Act, 2015 has been rejected by the Family Court on the afore-stated three grounds.

12. As regards first ground of rejection of the application, on examination of the documents available and the relevant provisions of law, I find that paragraph 18 of the impugned order of the Family Court itself reflects that an advertisement was issued in a daily Hindi newspaper Haribhoomi, Raipur on 3.12.2014 that the child has been kept in the custody of the State Adoption Agency, vide Ex.P8 the child was declared legally free for adoption on 15.4.2015 and vide Ex.P48 the CARA also issued NOC on 25.5.2017, therefore, the finding of the Family Court that compliance of the provision of Section 59(1) of the Juvenile Act, 2015 has not been done is not acceptable. Apart from this, declaring the child free for adoption is the role of Specialised Adoption Agency and the CARA. If these agencies are issuing no objection certificate then the Family Court has to see that the child is free for inter-country adoption. Thus, finding of the Family Court in this regard is not proper.

13. So far as second ground taken by the Family Court for rejection of the application is concerned, it is clear from the material available that prior to submission of the adoption application before the Family Court, no matching of the child with the PAPs was done. As provided in Section 59(6) of the Juvenile Act, 2015, a matching of the child with the PAPs should have been done, but such matching is not mandatory in nature. A bare perusal of Regulation 12(1) of the Adoption Regulations, 2017 would reveal that in a case of within-country adoption, an application for adoption is to be filed before the competent Court within 10 days of matching of the child with the PAPs and in a case of inter-country adoption, the Specialised Adoption Agency shall file an application for adoption

before the competent Court within 10 days of receipt of no objection certificate from the CARA, meaning thereby in a case of inter-country adoption, matching of the child with the PAPs is not mandatory in nature.

14. So far as third ground of rejection of the application is concerned, a perusal of sub-rule (2) of Rule 45 of the Model Rules, 2016 shows that the Court for the purpose of an application for adoption shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 and the procedure laid down in the Juvenile Act, 2015 and in the Adoption Regulations, 2017 shall be followed. Therefore, on this point, the finding of the Family Court is perverse.

15. In view of the aforesaid discussion, I find the present to be a fit case allowing adoption of male child Bala by the PAPs whose names and details are mentioned in the closed and sealed envelope through the Applicant.

16. Accordingly, I direct that male child Bala be given on adoption to the PAPs. The CARA shall complete the formality regarding passport and visa and shall do the needful as required under Regulation 18 of the Adoption Regulations, 2017. The Specialised Adoption Agency shall forward certified copy of this order to the PAPs within 10 days as required under Regulation 12(8) of the Adoption Regulations, 2017 and shall also post a copy of this order and update the relevant entries in the Child Adoption Resource Information and Guidance System. As provided in Regulation 12(10) of the Adoption Regulations, 2017, the Agency shall also apply for obtaining birth certificate of the child within 3 working

days of issuance of the adoption order, with the names of the adoptive parents as the parents and date of birth as recorded in the adoption order and the same shall be issued by the issuing authority within 5 working days from the date of receipt of the application. The Specialised Adoption Agency, which has prepared the Home Study Report, shall adhere to the follow up of progress of the adopted child as required under Regulation 13 of the Adoption Regulations, 2017 and as further directed by this Court today.

17. During the course of arguments, it was jointly submitted by Shri Rajeev Shrivastava, Learned Counsel appearing for the Applicant and Dr. M. Geeta, Secretary, Women and Child Development Department, Government of Chhattisgarh that in the cases of adoption the Courts of the Chhattisgarh State are not properly following the provisions of the Juvenile Act, 2015, the Model Rules 2016 and the Adoption Regulations, 2017. They submitted that according to Section 61(2) of the Juvenile Act, 2015 and Regulation 12(6) of the Adoption Regulations, 2017, the whole proceeding must be done in camera and must be decided within 60 days from the date of submission of the adoption application in the Court. It was further submitted that according to Regulation 12(5) of the Adoption Regulations, 2017, a case of adoption is of non-adversarial nature and, therefore, the Specialised Adoption Agency cannot make any opposite party or Respondent in the adoption application, but this provision is also not complied with. According to Regulation 12(7) of the Adoption Regulations, 2017, the adoptive parents cannot be asked to execute any bond or make any investment in the name of the child. Despite that, some Courts

are not complying with this provision and have been asking for executing such bond or for making such investment. It was further submitted that according to Regulation 12(9) of the Adoption Regulations, 2017, registration of an adoption-deed is not mandatory in nature, but some Courts have been asking for such registration.

18. Taking into consideration the submissions put-forth by Shri Rajeev Srivastava, Learned Counsel appearing for the Applicant and Dr. M. Geeta, Secretary, Women and Child Development Department, Government of Chhattisgarh, I deem it appropriate to issue certain directions. I direct that the competent Courts and the Specialised Adoption Agencies, while dealing with an adoption case under the Juvenile Act, 2015, shall henceforth positively comply with the following directions—

(1) While deciding an adoption application, the Court shall strictly adhere to the time limit of two months as provided by Section 61(2) of the Juvenile Act, 2015, Rule 46 of the Model Rules, 2016 and Regulation 12(6) of the Adoption Regulations, 2017.

(2) If an adoption case is not disposed of within the aforesaid period of two months, the Court shall record a specific reason therefor.

(3) The Court shall conduct proceedings of an adoption case in camera.

(4) The Court shall not treat an adoption case as an adversarial litigation.

(5) While deciding an adoption case, the Court shall strictly adhere to Rule 45(2) of the Model Rules, 2016 with regard to applicability of the procedure laid down in the Juvenile Act, 2015 and the Adoption Regulations, 2017.

(6) Looking to Regulation 12(7) of the Adoption Regulations, 2017, the adoptive parents shall not be asked to execute any bond or make any investment in the name of the child.

(7) Since an adoption case is a non-adversarial litigation in nature, the Specialised Adoption Agency shall not make any opposite party or Respondent in the adoption application. Along with an application for adoption, names and details of PAPs shall be kept in a covered and sealed envelope.

(8) Though as provided in Regulation 19(1) of the Adoption Regulations, 2017, in a case of inter-country adoption, it is mandatory that the Authorised Foreign Adoption Agency or the Central Authority or Indian Diplomatic Mission or Government Department concerned, as the case may be, shall report progress of the adopted child for two years from the date of arrival of the adopted child in the receiving country, on a quarterly basis during the first year and on a six monthly basis in the second year, I deem it appropriate to direct that in addition to the above a welfare report and a detailed educational report of the adopted child shall also be obtained on a six monthly basis till the adopted child attains majority and such reports shall be monitored properly

19. As a consequence, the instant revision stands disposed of in the aforesaid terms.

20. A copy of this order be sent to all the Subordinate Courts of the State as also to the Secretary, Women and Child Development Department, Government of Chhattisgarh for their information, guidance and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE