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REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY PETITION NO. 1701 OF 2017

Madhuri Dattprasad Pitre …Petitioner
And
Govind Janardan Pitre …Deceased

Mr Ashish Raghuvanshi, *i/b Ram U Singh, for the Petitioner.*
Mrs Chandan Bhatt, *Company Registrar, in charge of the Testamentary Department is present.*

CORAM: G.S. PATEL, J
(Through Video Conferencing)
DATED: 6th April 2021

PC:

1. Heard through video conferencing.

2. This is the fourth or fifth such matter that has come before me in the last two weeks on an objection taken by the Registry. In each case, there is an estate in which a minor has an interest and the applicant, either for Letters of Administration or a Succession Certificate, is the mother and natural guardian of the minor. In every such case, the Registry has taken an objection demanding that the mother must justify the surety for the entirety of the minor's share

in the estate. The objection is apparently based on Rule 422 of the Bombay High Court (Original Side) Rules.

3. In every single matter, I have dispensed with the requirement of surety. I will proceed to do precisely that in this matter too.

4. But I do believe it is now time that Rule 422 be correctly interpreted so that this objection is not taken again and again. Rule 422 of the Original Sides Rules reads thus:

> "**R. 422. Surety to be justified in certain cases**.—
>
> (a) In the following cases the surety to the bond shall justify for the whole amount of the estate—
>
> (i) When the person to whom the grant is made has taken out letters of administration or succession certificate for the use and benefit of a lunatic or person of unsound mind, unless he be a committee of the estate of such lunatic appointed by the Court and has given security.
>
> (ii) When the person to whom the grant is made has taken out letters of administration or succession certificate for the use and benefit of a minor, **unless he be a guardian of the property of such minor appointed by the Court and has given security**.
>
> (iii) When the person to whom the grant of letters of administration or succession certificate is made is entitled to a life interest.
>
> (b) When the person to whom the grant of letters of administration or succession certificate is made is entitled to a portion only of the estate, the surety to the bond shall

justify for the whole estate less the share of the grantee and of such sharers as shall consent in writing thereto.

(c) In all other case the surety may be a common surety. **The Judge in Chambers may, however, in a proper case and for reasons to be recorded in writing dispense with the justification of surety**."

(*Emphasis added*)

5. Clearly, this Rule itself provides that surety may be dispensed by the Court in a proper case and for reasons recorded in writing.

6. My reasons in every single case have been more or less the same. The petitioners have been widowed at an uncommonly early age in their lives — 50 years old or younger. They have been left with the duty of caring for minor children, some of them very young; and in at least two cases, they had aged parents or in-laws to take look after as well. In every single case, these widowed petitioners have had no independent income. They have no means of providing the surety, bond or justifying the surety for any part of the estate. To ask them to do this even from the sale proceeds of a flat, which was the factual scenario in one matter, means putting the petitioner to even greater hardship. In more than one order, I have noted all our Rules are not meant to impede justice, but to aid it. No Court of Justice can be blind-sided by such a ruthless application of this or that Rule. This is precisely why sub-clause (i) gives a Court discretion.

7. But Rule 422(a)(ii) is, in my view, being completely misread, misinterpreted and misunderstood. This is clear from the last phrase

in that clause which speaks of the applicant for Letters of Administration or Succession Certificate being exempted if he be a guardian of the property of such minor appointed by the Court. "Appointed by the Court" qualifies "guardian" not "property". This is, therefore, clearly a reference to someone *other* than the surviving birth parent and natural guardian. No mother or father needs to be 'appointed' a guardian of the property of the minor by an order of the Court. That parent is the natural guardian at law of the property of the minor. There are situations where *persons other than parents* may need to be appointed as guardian of the property of the minor, That requires an order of the Court. If neither of the parents and natural guardians are alive, then, possibly, a minor's uncle, aunt, adult sibling, or grandparent may need to be appointed as the natural guardian of the property of the minor. This is also true if the person is a step-parent. Such an appointment will be done by an order of the Court on an application for that purpose.

8. Therefore, Rule 422(a)(ii) has no application at all to a birth parent who is the natural guardian of a minor. It follows that when an application for Letters of Administration or Succession Certificate is made by a parent and one of the heirs is the natural guardian of the Petitioner, no question arises of having to furnish surety or of justifying surety for the share of a birth minor in an estate. The parent-applicant is already charged in law with the guardianship of the property of the minor and is bound to safeguard it.

9. The insistence on this Rule in the case of a mother/father and natural guardian and the minor is also illogical because no consent

can be obtained from the minor except through the birth parent and natural guardian in the first place.

10. The aspect of the birth parent and natural guardian being charged with the care of the property of the minor is settled by the landmark three-Judge bench decision of the Supreme Court in *Githa Hariharan v Reserve Bank of India*,[1] though in a different context, where the question was whether the mother could be a 'natural guardian' only on the father's demise. I had occasion to refer to and follow that decision in *Amrita Sanjay Achharya*.[2]

11. In *Githa Hariharan*, the Supreme Court considered the statutory provisions and the law regarding natural guardianship. It said:

> 43. Turning attention on the principal contention as regards the constitutionality of the legislation, in particular Section 6 of the Act of 1956, it is to be noted that the validity of a legislation is to be presumed and efforts should always be there on the part of the law courts in the matter of retention of the legislation in the statute-book rather than scrapping it and it is only in the event of gross violation of constitutional sanctions that law courts would be within their jurisdiction to declare the legislative enactment to be an invalid piece of legislation and not otherwise and it is on this perspective that we may analyse the expressions used in Section 6 in a slightly more greater detail. The word "guardian" and the meaning attributed to it by the legislature under Section 4(b) of the Act cannot be said to be restrictive in any way and thus the same would mean and

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1 (1999) 2 SCC 228.

2 2016 SCC OnLine Bom 7508.

include both the father and the mother and this is more so by reason of the meaning attributed to the words as "a person having the care of the person of a minor or his property or of both his person and property …". **It is an axiomatic truth that both the mother and the father of a minor child are duty-bound to take due care of the person and the property of their child** and thus having due regard to the meaning attributed to the word "guardian", **both the parents ought to be treated as guardians of the minor.** As a matter of fact, the same was the situation as regards the law prior to the codification by the Act of 1956. **The law, therefore, recognised that a minor has to be in the custody of the person who can subserve his welfare in the best possible way — the interest of the child being the paramount consideration**.

44. The expression "natural guardian" has been defined in Section 4(c) as noticed above to mean any of the guardians as mentioned in Section 6 of the Act of 1956. This section refers to three classes of guardians, viz., father, mother and in the case of a married girl, the husband. **The father and mother, therefore, are natural guardians in terms of the provisions of Section 6 read with Section 4(c).** Incidentally, it is to be noted that in the matter of interpretation of a statute, the same meaning ought to be attributed to the same word used by the statute as per the definition section. In the event, the word "guardian" in the definition section means and implies both the parents, the same meaning ought to be attributed to the word appearing in Section 6(a) and in that perspective, the mother's right to act as the guardian does not stand obliterated during the lifetime of the father and to read the same on the statute otherwise would tantamount to a violent departure from the legislative intent. Section 6(a) itself recognises that both the father and the mother ought to be treated as natural guardians and the expression "after" therefore shall have to

> be read and interpreted in a manner so as not to defeat the true intent of the legislature.
>
> (*Emphasis added*)

12. Viewed from any angle, therefore, there is absolutely no warrant whatsoever for seeking a justifying surety for the share of a minor when the Petition is brought by the minor's birth parent as the natural guardian of the minor and of the property of the minor.

13. In the present case, there is misfortune heaped on tragedy. The Petitioner, Madhuri, seeks a Succession Certificate in respect of her father-in-law Govind Janardan Pitre. Govind had two sons, Dattprasad and Mahesh. Dattprasad was Madhuri's husband. They had a son Soham. Dattaprasad died in 2013. His brother, Govind's other son, Mahesh, died unmarried a year earlier, in 2012. Their father, Govind, thus suffered the fate most dreaded by every parent — attending the funeral of one's own child. Govind went through this not once, but twice. Madhuri lost her husband and her brother-in-law. Four years or so later, Govind himself died. This left Madhuri as the only surviving member of the family along with her minor son, Soham Dattprasad Pitre. He was 14 years old at the time when the Petition was brought, and is about 17 years old today.

14. Indeed this is another reason not to insist on the surety. If I was to simply adjourn this matter for six months, I have very little doubt that Soham would readily grant his consent and the matter would then proceed to a grant. The result is the same.

15. The requisition for justifying surety is without foundation in law or the Rules. It is dispensed with. The Registry will proceed accordingly.

16. In all matters where a birth parent seeks such Letters of Administration or a Succession Certificate, the Registry is not entitled to demand surety justifying the birth minor's share in the property or estate in question. Such a demand can only be made where the Petitioner is not the birth parent and natural guardian of the minor.

17. A copy of this order is to be sent to Mrs Chandan Bhatt who holds charge of the Testamentary Department for future reference as also to the Prothonotary and Senior Master.

18. All concerned will act on production of an ordinary copy of this order.

(G. S. PATEL, J)