HIGH COURT OF KARNATAKA

Bench : JUSTICE M. NAGAPRASANNA

Date of Decision: 26th March 2024

WRIT PETITION No.17967 OF 2023 (GM – RES)

SRI RAVI KUMAR C. & SMT. B. TANUJA … PETITIONERS

Versus

CENTRAL ADOPTION RESOURCE AUTHORITY
STATE ADOPTION RESOURCE AUTHORITY … RESPONDENTS

Legislation:

Article 226 of the Constitution of India
Sections 58, 60 and 63 of the Juvenile Justice (Care and Protection of Children) Act, 2015
Regulations 23, 42, 70 of the Adoption Regulations of CARA, 2022
Section 13 of the Code of Civil Procedure

Subject: Petition seeking a writ of mandamus directing respondents to consider petitioners' representation for legalizing the adoption of a child from Uganda, in light of Indian citizenship of petitioners.

Headnotes:

Cross-Border Adoption and Legal Recognition in India – Petitioners, Indian citizens residing in Kenya, adopted a child in Uganda and sought legal recognition of adoption in India [Paras 2, 3, 9].

CARA's Inaction on Legalization Request – Petitioners approached CARA for legal sanctity in India but received no definitive response, leading to this petition [Paras 3, 9, 10].

Legal Framework for Adoption – Indian Juvenile Justice Act, Hague Convention, and Adoption Regulations applicable. Uganda not a Hague Convention signatory, creating complexity in adoption recognition [Paras 11-13].

Judicial Interpretation for Unforeseen Situations – Court emphasized the role of judicial review in adapting the law to unique situations not envisaged by legislators [Paras 13, 14].

Application of Foreign Judgments in India – Court applied Section 13 of the Code of Civil Procedure, recognizing that foreign judgments can be conclusive in India, subject to conditions [Paras 15-17].

Direction for Action by CARA – Court mandated CARA to consider the petitioners' request and issue a No Objection Certificate, harmonizing international and national legal provisions for adoption [Para 17].

Order: The High Court directed CARA to process the petitioners' request and grant a No Objection Certificate for adoption, complying with relevant laws and observations, within six weeks from the order receipt [Para 17].

Referred Cases:

- Anokha (Smt.) v. State of Rajasthan (2004) 1 SCC 382
- Deva Prasad Reddy v. Kamini Reddy2002 SCC OnLine Kar.266
- Frank M. Costanzo v. The Regional Passport OfficerW.P.No.14880 of 2010 Decided on 17-09-2010 (Mad HC)
- Arun.A v. The Marriage Officer (Sub-Registrar), KarakulamW.P.(C) No.21638 of 2023 decided on 07.07.2023 (Kerl HC)
- Y. Narasimha Rao v. Y. Venkata Lakshmi(1991) 3 SCC 451

- Seaford Estate V. Asher 1949(2) ALL.E.R. 155

Representing Advocates:

Sri Sameer Sharma for petitioners
Sri H.Shanthi Bhushan, Deputy Solicitor General of India, for respondents

ORDER

The petitioners/husband and wife are before this Court seeking a direction by issuance of a writ in the nature of mandamus directing the respondents to consider the representation submitted by the petitioners through electronic mail and redress the grievance. The grievance is concerning cross-border adoption of a child.

2. *Sans* details, facts in brief germane are as follows:-

The petitioners are husband and wife; citizens of India. Presently they are in Nairobi, Kenya. The husband is working as Vice-President, Africa in Intellect Design Arena Limited, Nairobi. The wife is a software Engineer working in Kenya. The petitioners between 2011 and 2018 were residents of Uganda and later shifted to Kenya from 2019 and even today they hold Indian passport as they have not renounced Indian citizenship. During the time they were staying in Uganda, the petitioners became desirous of adopting a child and in such pursuit of adoption, after following all due procedures took steps with the prevailing law in Uganda to get a child which matched them. The child who was taken in adoption on 12-08-2014 is Master Kris Bright Kumar. The petitioners then filed an application before the jurisdictional Family and Children Court at Makindye, Kampala, Uganda seeking conferment of a care order under the applicable laws of Uganda. The concerned Court grants the care of the child in favour of the petitioners. Thereafter, the High Court of

Uganda in Family division grants guardianship of the child in favour of the petitioners as on 20-07-2015. It is averred that the child is in the care of the petitioners and undergoing schooling at Kampala. The petitioners then filed an application for formal adoption before the High Court of Uganda, again under the applicable laws. It is declared by the concerned Court at Uganda that the petitioners are adoptive parents of the child and were granted all consequential rights upon the petitioners over the child.

3. The petitioners then desirous of adoption to become formal in India, in order to conduct their actions in compliance with the Regulations, preferred an application before the 1st respondent – Central Adoption Resource Authority ('CARA' for short) to grant legal sanctity in India for the said adoption in the light of both the petitioners being Indian citizens as of today. This is not acceded to by accepting or rejecting in answer to mails communicated by the husband/1st petitioner. It is, therefore, the petitioners are before this Court seeking a direction by issuance of a writ in the nature of mandamus.

4. Heard Sri Sameer Sharma, learned counsel appearing for the petitioners and Sri H.Shanthi Bhushan, learned Deputy Solicitor General of India appearing for the respondents.

5. The learned counsel appearing for the petitioners would vehemently contend that inter-country adoption is a recognized norm pursuant to Hague Convention of 1995. Uganda is not a signatory to Hague Convention. Therefore, CARA Regulations or the Juvenile Justice Act does not impede the process of adoption to be regularized in this country when the child is at the receiving country pursuant to Hague Convention. It is his submission that India being a signatory to Hague Convention cannot deny regularization of adoption. He would submit that lacunae in the law be filled up by an order of this Court, as it is a circumstance that has never arisen before any Court of law.

6. Per-contra, the learned Deputy Solicitor General of India Sri H.Shanthi Bhushan would take this Court through the statement of objections to contend that the Government is not wanting to jeopardize the rights of the petitioners or render the child illegal without legalizing the adoption. He would seek that the objections would indicate that the parents would be issued a support letter. A support letter would be enough in the circumstances for necessary entry and exit into the shores of the nation. He would submit that if the procedure is appropriately followed, a no objection certificate for such adoption would also be issued by the competent authority. He would accept that the Courts at Uganda have legalized the adoption and those orders are implementable in terms of the laws of this nation, if the petitioners are Indian citizens. He would submit that in terms of law, if the petitioners would act in consonance thereto, appropriate relief would be granted to the petitioners.

7. The afore-narrated facts are not in dispute. The petitioners being Indian citizens are holding Indian passport is a matter of record. The passport being valid even as on date is again a matter of record. The petitioners since 2011 have been in Uganda up to 2018 on account of their avocation is not in dispute. Admittedly when the petitioners were in Uganda between 2011 and 2018, in pursuit of their desire of adopting a child who is an African national, adopted a child on 12-08-2014. Consequent steps to legalize such adoption were immediately taken by the petitioners before the competent Court at Uganda. The Family and Children Court at Uganda accepted the plea of the petitioners and ordered that the child who had by then named Kris Bright Kumar was given in care to the petitioners in terms of an order dated 06-02-2015. The order of the learned Magistrate therein reads as follows:

"THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT MAKINDYE

IN THE MATTER OF KRIS BRIGHT KUMAR
(NAME OF CHILD) AND
IN THE MATTER OF AN APPLICATION FOR CARE ORDER
SECTION 28 OF THE CHILDREN'S ACT CAP.59

ORDER

Whereas KRIS BRIGHT KUMAR (Name) a child/young person was on the 6th day of Feb. 2015 brought before this Court as being in need of care and protection and under the age eighteen years to wit 2 years

NOW THEREFORE IT IS ORDERED that the said KRIS BRIGHT KUMAR be committed to the care of RAVIKUMAR Husband of TANUJA BASAVARAJU being a person/institution identified as fit to offer care and protection for Child's welfare for a period 3 /~~months~~/years', or until the child attains the age of eighteen years whichever is shorter.

GIVEN under my hand and seal of this Court this 6th day of February, 2015.

Sd/-

MAGISTRATE."

(Emphasis added)

Later, the petitioners approach the High Court of Uganda in its Family Division in Family Cause No.89 of 2015 seeking guardianship order in terms of laws of Uganda. The High Court of Uganda granted guardianship rights to the petitioners over the child and the
order dated 20-07-2015 reads as follows:

"THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
FAMILY CAUSE NO.89 OF 2015
IN THE MATTER OF THE CHILDREN ACT (CAP 59)
AND
IN THE MATTER OF KRIS BRIGHT KUMAR
(THE CHILD)
AND

IN THE MATTER OF AN APPLICATION BY RAVI KUMAR CHANNIGARAYACHAR AND TANUJA BASAVARAJU TO BE APPOINTED LEGAL GUARDIANS OF THE SAID CHILD
GUARDIANSHIP ORDER

This Application for Legal guardianship coming up this 20th day of July, 2015 for final disposal before HON. JUSTICE MOSES MUKIIBI in the presence of MS. NAKACWA FLORENCE DOLLO, Counsel for the applicants.

Having perused the application, the affidavits of the applicants and other supporting documents and having read the submissions of Counsel for the applicants;

IT IS HEREBY ORDERED as follows:

1. ***RAVI KUMAR CHANNIGARAYACHAR and TANUJA BASAVARAJU, the applicants, BE and are HEREBY, APPOINTED legal guardians of KRIS BRIGHT KUMAR, the child.***

2. ***The appointed legal guardians are permitted to emigrate with the child to India and other places outside Uganda in order to carry out their obligations towards him and to complete the adoption process in India.***

3. ***The legal guardians shall obtain a Ugandan passport for the child and always renew the passport as the law requires.***

4. ***The legal guardians shall submit, once a year, photographs and a report on the state of health, progress and welfare of the child to the Registrar, Family Division of the High Court of Uganda at Kampala, until the child is 18 years old, or until the adoption process is completed.***

5. ***The Registrar of the High Court shall furnish a copy of this ruling together with the address of the legal guardians in India to:***

a) *The Ministry of Foreign Affairs of Uganda at Kampala.*
b) *The High Commission of India in Kampala.*
c) *The Ministry of Justice and Constitutional Affairs of Uganda.*
d) *Supervisor OVC/Probation and Social Welfare Officer, KCCA.*

6. *Costs of this application shall be borne by the applicants.*

***GIVEN** under my Hand and Seal of this Honourable Court this 20th day of July, 2015."*

(Emphasis supplied)

8. Then steps were taken by the petitioners to legalize the said adoption by grant of complete rights of guardianship over the child. The High Court of Uganda again in terms of its order dated 17-12-2020 passed the following:

"THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)
IN THE MATTER OF THE CHILDREN'S ACT, CAP 59
AND
IN THE MATTER OF KRIS BRIGHT KUMAR
AND
IN THE MATTER OF AN APPLICATION BY RAVI KUMAR CHANNIGARAYACHAR AND TANUJA BASAVARAJU FOR THE ADOPTION OF KRIS BRIGHT KUMAR

ADOPTION CAUSE NO.046 OF 2019

RAVI KUMAR CHANNIGARAYACHAR AND
TANUJA BASAVARAJU ..... PETITIONERS

ORDER

This matter coming for final disposal before his ***Lordship Hon.Justice Dr. Joseph Murangira*** *this 17th day of December, 2020 in the presence of* ***Mrs. Florence Nakachwa Dollo*** *for the Petitioners.*

It is hereby ordered that:

(a) An adoption order of the infant Kris Bright Kumar is granted to the Petitioners jointly;

(b) The Petitioners are now the adoptive parents of Kris Bright Kumar;

(c) Kris Bright Kumar now becomes the adopted child of the Petitioners.

(d) All rights to appoint a guardian and to consent or give consent to marriage are now vested in the Petitioners;

(e) The Petitioners are at liberty to add their family name to Kris Bright Kumar;

(f) The Registrar of Births and Death makes an entry recording of this adoption in the Adoption of Children Register and to issue the adopted child a certificate reflecting the parental relationship established herein;

(g) This adoption order be furnished on to the Consular Department in the Ministry of Foreign Affairs at Kampala for necessary action.

(h) Costs are borne by the Petitioners."

(Emphasis supplied) Thus, the petitioners got complete rights over the child in terms of laws of Uganda.

9. The petitioners then submit a representation to the 1st respondent/Authority through the council seeking redressal of the grievance with regard to legalizing the adoption in terms of Juvenile Justice (Care and Protection of Children) Act, 2015 ('the Act' for short) and the Adoption Regulations of CARA, 2022. The procedure that was necessary to be adopted was also indicated in the electronic mail. The said communication is made by the petitioners through the Council on 08-06-2023. No reply comes about for close to two months and, therefore, the petitioners knock at the doors of this Court on 10-08-2023.

10. Notice is issued, and the respondents have filed their statement of objections. In the statement of objections, as submitted by the learned Deputy Solicitor General of India, the respondents would issue a support letter in terms of CARA Regulations. The support letter would also be issued on receipt of a certificate of suitability from the Indian Diplomatic Mission on the basis of Home Study and related documents. Therefore, there is tacit acceptance of the right of the child to be legally adopted in terms of laws of India. The issue is whether a mandamus could be issued to that effect as is sought for by the petitioners.

11. To consider the grievance of the petitioners, it becomes germane to notice certain provisions of the Act and the Adoption Regulations. Sections 58, 60 and 63 of the Act read as follows:

*"**58. Procedure for adoption by Indian prospective adoptive parents living in India**.—(1) Indian prospective adoptive parents living in India, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child, may apply for the same to a Specialised Adoption Agency, in the manner as provided in the adoption regulations framed by the Authority.*

(2) The Specialised Adoption Agency shall prepare the home study report of the prospective adoptive parents and upon finding them eligible, will refer a child declared legally free for adoption to them along with the child study report and medical report of the child, in the manner as provided in the adoption regulations framed by the Authority.

(3) On the receipt of the acceptance of the child from the prospective adoptive parents along with the child study report and medical report of the child signed by such parents, the Specialised Adoption Agency shall give the child in pre-adoption foster care and file an application before the District Magistrate for obtaining the adoption order, in the manner as provided in the adoption regulations framed by the Authority.

(4) On the receipt of a certified copy of the order passed by the District Magistrate, the Specialised Adoption Agency shall send immediately the same to the prospective adoptive parents.

(5) The progress and wellbeing of the child in the adoptive family shall be followed up and ascertained in the manner as provided in the adoption regulations framed by the Authority.

… … …

"60. Procedure for inter-country relative adoption.—(1) A relative living abroad, who intends to adopt a child from his relative in India shall obtain an order from the District Magistrate and apply for no objection certificate from Authority, in the manner as provided in the adoption regulations framed by the Authority.

(2) The Authority shall on receipt of the order under sub-section (1) and the application from either the biological parents or from the adoptive parents, issue no objection certificate under intimation to the immigration authority of India and of the receiving country of the child.

(3) *The adoptive parents shall, after receiving no objection certificate under sub-section (2), receive the child from the biological parents and shall facilitate the contact of the adopted child with his siblings and biological parents from time to time.*

… … ….

63. Effect of adoption*.—A child in respect of whom an adoption order is issued by the District Magistrate, shall become the child of the adoptive parents, and the adoptive parents shall become the parents of the child as if the child had been born to the adoptive parents, for all purposes, including intestacy, with effect from the date on which the adoption order takes effect, and on and from such date all the ties of the child in the family of his or her birth shall stand severed and replaced by those created by the adoption order in the adoptive family:*

Provided that any property which has vested in the adopted child immediately before the date on which the adoption order takes effect shall continue to vest in the adopted child subject to the obligations, if any, attached to the ownership of such property including the obligations, if any, to maintain the relatives in the biological family."

(Emphasis supplied)

In exercise of powers conferred under Clause (c) of Section 68 and Clause (3) of Section 2 of the Act, the Union of India had promulgated Adoption Regulations 2017 which come to be superseded by Adoption Regulations of 2022. Certain clauses of Adoption Regulations are also germane to be noticed. Regulations 23, 41 and 70 read as follows:

"23. Procedure for adoption of a child from a foreign country by Indian citizens.—(1) Necessary formalities for adoption of a child

from a foreign country by Indian citizens shall initially be completed in that country as per their law and procedure.

(2) On receiving Home Study Report of the prospective adoptive parents (including supporting documents), Child Study Report and Medical Examination Report of the child, the Authority shall issue the approval, as required in the cases of adoption of children coming to India as a receiving country under Article 5 or Article 17 of the Hague Adoption Convention.

(3) A child adopted abroad by the Indian citizens, having a foreign passport, and requiring the Indian visa to come to India, shall apply for visa or Overseas Citizen of India Card to the Indian mission in the country concerned, who may issue entry visa to the child after checking all the relevant documents so as to ensure that the adoption has been done following the due procedure.

(4) The immigration clearance for the child adopted abroad shall be obtained from the Central Government in the Foreigner's Division, Ministry of Home Affairs, through the Indian diplomatic mission to that country.

... ...

***41. Central Adoption Resource Authority**.—The Authority shall:—*

(1) promote in-country adoptions, facilitate inter-state adoptions in co-ordination with State Adoption Resource Agency and regulate inter-country adoptions;

(2) receive applications of an non-resident Indian or Overseas Citizen of India Cardholder or a foreigner living abroad through Authorised Foreign Adoption Agency or Central Authority or the Government department or the Indian diplomatic mission concerned and process the same under sub-section (5) of section 59;

(3) receive and process applications from a foreigner or an Overseas Citizen of India Cardholder residing in India for one year or more, and who is interested in adopting a child from India in terms of sub-section (12) of section 59;

(4) *intimate the immigration authorities of India and the receiving country of the child about the inter-country adoption cases;*

(5) ***provide support and guidance to State Adoption Resource Agencies, District Magistrates, District Child Protection Units, Specialised Adoption Agencies and other stakeholders on adoption related matters through trainings, workshops, exposure visits, consultations, conferences, seminars and other capacity building programmes;***

(6) *coordinate with State Governments or the State Adoption Resource Agencies, and District Magistrates and advise them in adoption related matters;*

(7) *establish uniform standards and indicators, relating to:—*

(a) *adoption procedure related to orphan, abandoned and surrendered children and also related to relative adoptions;*

(b) *monitoring and supervision of service providers;*

(c) *standardisation of documents in cases of adoptions;*

(d) *safeguards and ethical practices including online applications for facilitating hassle-free adoptions and;*

(e) *procedures for adoption where adoption is done under the act other than the Juvenile Justice Act, 2015 (2 of 2016).*

(8) *conduct research, documentation and publication on adoption and related matters;*

(9) *maintain a comprehensive centralised database relating to children and prospective adoptive parents for the purpose of adoption on the Designated Portal;*

(10) *maintain a confidential centralised database relating to children placed in adoption and adoptive parents on the Designated Portal;*

(11) carry out advocacy, awareness and information, education and communication activities for promoting adoption and other non-institutional child care services either by itself or through its associated bodies;

(12) enter into bilateral agreements with foreign Central Authorities as provided under the Hague Adoption Convention, wherever necessary;

(13) authorise foreign adoption agencies to sponsor applications of non-resident Indian or Overseas Citizen of India Cardholder or foreign prospective adoptive parents for inter-country adoption of Indian children;

(14) issue a system-generated No Objection Certificate in the case of inter-country adoptions;

(15) issue Conformity Certificate under Article 23 of the Hague Adoption Convention in respect of inter-country adoption;

(16) consider easing the age requirements for prospective adoptive parents adopting special needs children or children who fall into the hard-to-place category;

(17) issue a system-generated support letter to regional passport office as provided in the Schedule XVII on receiving necessary undertaking from the adoptive parents in the following situations, namely:—

(a) when resident Indian adoptive parents habitually residing in India have completed adoption procedure as per the Act and they intend to move abroad subject to undertaking for completion of the balance of the post-adoption follow-ups through the Authorised Foreign Adoption Agency or the Central Authority or the Government department or the Indian Mission concerned and in this regard, the adoptive parents have to pay the professional fees as stipulated by the receiving country.

(b) any special circumstance that requires issue of a support letter with approval of Competent Authority.

(18) issue No Objection Certificate in cases of adoptions done under Chapter VIII (Inter-country adoptions under Hindu Adoptions and Maintenance Act, 1956) of these regulations in cases of Hague Adoption Convention ratified countries on completion of required procedure and issue support letter in cases of countries outside the Hague Convention, on receiving letter of acceptance of the said adoption from the concerned Government department of the receiving country;

(19) carry out such activities in order to promote noninstitutional care for children who have been unable to find a family through adoption.

… … …

***70. Issue of No Objection Certificate and Conformity Certificate**.—*

(1) On receipt of verification certificate from the District Magistrate, on the registered adoption deed and necessary permission under Articles 5 or 17 from the receiving country as provided in the Hague Adoption Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, the Central Adoption Resource Authority shall issue No Objection Certificate for Hague ratified countries under Article 17(c) and Conformity Certificate under Article 23 of the Convention.

(2) In the case of countries outside the Hague Adoption Convention, a support letter shall be issued by the Central Adoption Resource Authority."

(Emphasis supplied)

Section 58 of the Act deals with procedure for adoption by Indian prospective adoptive parents living in India. The Indian prospective parents living in India irrespective of their religion if interested to adopt, may apply to the Specialised Adoption Agency in the manner provided in the Adoption Regulations. That would be adoption in India. Section 60 deals with inter-country relative adoption. This mandates that a relative living abroad who intends to adopt a child from his relative in India is to follow the procedure. The effect of such adoption would be legalizing the adoption and to maintain

the relatives in the biological family of the child. These are situations where adoption is permissible inter-country only for a relative. The situation that has emerged in the case at hand does not figure in any of the provisions of the Act, but figures in the Adoption Regulations *(supra)*.

12. Regulation 23 quoted above deals with the procedure for adoption of a child from a foreign country by an Indian citizen. Sub-regulation (2) of Regulation 23 mandates that on receipt of Home Study Report of the prospective adoptive parents, the Authority shall issue an approval as required in the cases of adoption of children coming into India as a receiving country under Article 5 or Article 17 of Hague Adoption Convention. **India is a signatory to the Hague Adoption Convention; Uganda is not.** Therefore, the rights of the child to be treated as a citizen of India, on legalizing adoption, **lies in limbo.** The Adoption Regulations vest legalizing of adoption with the CARA/1st respondent. The procedure and the reason for creation of the Authority are found in Regulation 41 (*supra*). The Regulation 41 mandates issuance of a no objection certificate in cases of adoption under the Hindu Adoptions and Maintenance Act. The case at hand is not an adoption under the Hindu Adoptions and Maintenance Act. Regulation 70 (*supra*) requires a no objection and conformity certificate by the Authority in the event the adoption is in consonance with Hague Convention. As observed hereinabove Uganda is not a signatory to Hague Convention; India is.

13. Regulation 23 directs that on receipt of Home Study Report, no objection would be given or approval for such adoption would be rendered by India as a receiving country only under Article 5 or Article 17 of the Hague Adoption Convention. Therefore, the situation now is, if it is not Hague Adoption Convention, the rights of the child or the parents over the child would be left in the state of uncertainty. The petitioners are not the ones who are asking for legalizing, an illegal adoption. They are the ones asking recognition of a legalized adoption under the Regulations of the Nation. They have in their arm complete legal process in the High Court of Uganda *qua* their right over the child. Therefore, it becomes necessary to iron out the creases even in the Regulations by harmonizing the provisions of the Act and the Regulations to accept such adoption and direct issuance of a no objection or approval of such adoption. Ironing out the creases by the constitutional Courts of the provisions of law as promulgated, without disturbing the content

of the statute, is permitted exercise of judicial review, as the law makers at the time of making the law would not have envisaged a situation of the kind that is generated in the case at hand. Reference being made to the judgment of the Court of Appeal, England, in the case of ***SEAFORD ESTATE V. ASHER***[1], becomes apposite, in which Lord Denning observes as follows:

"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. *The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized.* ***A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word sc as to give "force and life" to the intention of the legislature.*** *That was clearly laid down by the resolution of the judges in Heydon's case[18], and it is the safest guide to-day. Good practical advice on the subject was given about the same time by Plowden in his second volume Eyston v. Studd[19]. Put into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases.*

Approaching this case in that way, I cannot help feeling that the legislature had not specifically in mind a contingent burden such as we have here."

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[1] ***1949(2) ALL.E.R. 155***

(Emphasis supplied)

It is therefore, on such ironing out the creases, the petitioners become entitled to the redressal of their grievance.

14. The support letter that the Government of India is

projecting to grant will place the petitioners or the child neither here nor there, as the support letter has its own limitations. The support letter is as per Schedule XVII appended to Regulation 41. It reads as follows:

"SCHEDULE XVII

[See regulation 41(17)]

Support Letter for Regional Passport Officer in case of incountry adoption

This is to certify that Mr. _____ and Mrs. _____ (Registration No. on the Designated Portal----------), have undertaken a valid In-country adoption of child _____ (Male or Female or Other), _____ (Date of birth) through Central Adoption Resource Authority via adoption order no. _____ dated _____ issued by the District Magistrate _____ (name of the District) under Juvenile Justice (Care and Protection of Children) Amendment Act, 2021.

2. As per section 63 of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, "A child in respect of whom an adoption order is issued by the District Magistrate, shall become the child of the adoptive parents, and the adoptive parents shall become the parents of the child as if the child had been born to the adoptive parents, for all purposes, including intestacy, with effect from the date on which the adoption order takes effect", which is applicable in this case.

3. ***It is further intimated that the adoptions under Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 and Adoption Regulations, 2022, provide the mandatory follow ups of the adopted child for the duration of two years from the date of pre-***

adoption foster care. So far, in the instant case _____ post adoption follow up report(s) have been completed till _____ and _____ are remaining. In case adoptive parents desire to relocate abroad permanently or for long duration (over three months) the balance of the post adoption follow ups shall be conducted by Indian Diplomatic Mission concerned through the professional social worker. The onus of getting the balance of post adoption follow up is with the adoptive parents through the professional social worker as identified by the Indian Diplomatic Mission or the Authority. (Copy of undertaking by adoptive parents attached*).*

4. The above support letter is being issued for the purpose of getting the passport issued for the child with the approval of the competent authority based on the request received from _____ (name of the adoptive parents).

Yours faithfully,

Assistant Director, CARA"

(Emphasis supplied)

The support letter is for issuance of passport in case of in-country adoption. Therefore, the support letter would also not generate such right upon the petitioners or the child, ***as this is not intercountry adoption or in-country adoption; it is cross border adoption.*** A situation neither the Act nor the Regulations envisage. Therefore, I deem it appropriate to direct the Union of India not to restrict its magnanimity to issuance of a support letter; it should stretch for issuance of an approval or a no objection under the Regulations, for the reason that, it is a signatory to the Hague Convention. Even though the adoption has not happened under the Hindu Adoptions and Maintenance Act, and in a country which is not a signatory to *Hague Convention,* but adoption has happened, the rights of a child of Indian citizens, who have adopted, cannot be left marooned.

15. As afore-quoted, the Courts at Uganda have passed certain orders declaring the rights of the petitioners; the rights over the child. The Indian citizens are granted guardianship and all rights as parents over

the child. The petitioners are, therefore, now parents of the adopted child. These are conclusive orders passed by the competent Courts in Uganda and Keenya. The petitioners seek those orders to be implemented and granted relief to them. The issue is, whether it could be accepted. Section 13 of the Code of
Civil Procedure reads as follows:

*"**13. When foreign judgment not conclusive**.—A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—*

(a) ***where it has not been pronounced by a Court of competent jurisdiction;***

(b) *where it has not been given on the merits of the case;*

(c) *where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;*

(d) *where the proceedings in which the judgment was obtained are opposed to natural justice;*

(e) *where it has been obtained by fraud;*

(f) ***where it sustains a claim founded on a breach of any law in force in India."***

(Emphasis supplied)

Section 13 mandates that decree passed by a foreign Court is conclusive between the parties subject to clauses (a) to (f) thereof. The purport of Section 13 need not detain this Court for long or delve deep into the matter. The Apex Court in the case of

ANOKHA (SMT.) v. STATE OF RAJASTHAN[2] has held as follows:

"…. …. ….

16. *In the case before us although the Guidelines do not apply, Respondents 2 and 3 had produced evidence which fulfilled all the particulars required of a Home Study Report. The appellant has repeatedly affirmed her closeness to Respondents 2 and 3 and her conviction that they would nourish and care for baby Alka as if she was their own.* ***Respondents 2 and 3 have produced sufficient evidence to justify their suitability to be adoptive parents. There was a judicially directed scrutiny by a local governmental agency in Venice. The enquiry report has resulted in a judgment passed by the Court at Venice, Italy. That judgment can be accepted by this Court under Section 13 of the Code of Civil Procedure, particularly when the respondents have filed the investigation report and other material on the basis of which the judgment was delivered."***

(Emphasis supplied) Earlier to the aforesaid judgment of the Apex Court, a Division Bench of this Court in the case of ***DEVA PRASAD REDDY v. KAMINI REDDY***[3] has held as follows:

"…. …. ….

Section 13 of the Code of Civil Procedure inter alia provides that a foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim except in situations enumerated in clauses (a) to (f). ***One of the situations, where such a judgment will not be conclusive and binding is where it has not been pronounced by the Court of competent jurisdiction. The argument advanced on behalf of the appellant therefore was that the judgment of the American Court dissolving the marriage between the respondent and Robert Selvam was not conclusive and binding as the sea had not been pronounced by a Court of competent jurisdiction. It was also argued that the judgment of the American Court was not binding and conclusive because it was founded on a breach of personal law applicable to the parties before the said Court. Inasmuch as the***

[2] *(2004) 1 SCC 382*

American Court has dissolved the marriage on a ground not otherwise recognised by the law applicable to the parties, it had committed an error which vitiated the judgment.

… … …

In R. Viswanathan v. Rukn-Ul-Mulk Syed Abdul Wajid, Supreme Court declared that the Courts in India will not examine whether conclusions recorded in the judgment of a foreign Court are supported by evidence, or are otherwise correct as the binding nature of the judgment can be displaced only by establishing that the case falls within one or more of the six clauses enumerated under Section 13 and not otherwise.

[3] *2002 SCC OnLine Kar.266*

In Smt. Satya v. Teja Singh, the Supreme Court held that the Private International Law is not the same in all countries and that there is no system of private intentional law which could claim universal recognition. The question whether a decree of divorce passed by a foreign Court is entitled to recognition in India must depend principally on the Rules of Private International Law as recognised by Indian Courts. Such recognition is accorded not as an act of courtesy but on considerations of justice. It is implicit, declared the Court, in that process that the foreign law must not offend against the public policy in India.

In Budhia Swain v. Gopinath Deb, the Court was dealing with the question of lack of jurisdiction or mere error of jurisdiction. It pointed out that a distinction had to be drawn between the lack of jurisdiction which strikes at the every root of the exercise and vitiates the proceedings themselves and a mere error in the exercise of jurisdiction, which does not vitiate the legality and validity of the proceedings and the order passed therein unless the order is set aside by a challenge in the prescribed manner.

The interplay of the Municipal Laws of this Country and the Private International Law was however exhaustively examined by the Supreme Court in Y. Narasimha Rao v. Y. Venkata Lakshmi[4]. That was also a case,

where the parties were married in India according to Hindu law. A Petition for dissolution of marriage was filed in a Court at Tirupathi. Another Petition for dissolution was filed in the Circuit Court of St. Louis County, Missouri, USA. It was inter alia alleged in the said petition that the petitioner had been a resident of State of Missouri for a period of 90 days or more immediately preceding the filing of the Petition. From the averments made in the pleadings however it was evident that the parties had last resided together at New Orleans, Louisiana and never within the jurisdiction of the Circuit Court of St. Louis County in the State of Missouri. The Circuit Court all the same assumed jurisdiction over the matter on the ground that the husband had been a resident of State of Missouri for 90 days before the filing of the Petition and passed a decree for dissolution of the marriage in the absence of the respondent on the only ground that the marriage was irretrievably broken down. The Petition filed in the Tirupathi Court was thereupon dismissed as not pressed.

Criminal proceedings were next initiated against the husband for bigamy, in which the decree for dissolution of marriage passed by the Missouri Court was set up as a defence. The Magistrate discharged the husband holding that the complainant i.e., the wife had failed to make out a prima facie case against the husband. The High Court set aside that order holding that the photostat copy of the judgment from the American Court was inadmissible in evidence to prove the dissolution of the marriage. The matter was then taken to the Supreme Court. The Court held that time had come to ensure certainty in so far as recognition of foreign judgments in matrimonial matters were concerned. The minimum rules of guidance for securing the certainty, observed the Court, need not await legislative initiative and described its effort as a beginning in that direction leaving the lacunas and the errors to be filled in and corrected by future judgments. The Court after discussing the provisions of Section 13 an earlier decision in Smt. Satya v. Teja Singh (supra) deduced certain Rules in so far as recognition of foreign matrimonial judgments were concerned. It observed:—

"From the aforesaid discussion the following rule can be deduced for recognising a foreign matrimonial judgment in this country. The jurisdiction assumed by the foreign Court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as

follows : (i) where the matrimonial action is filed in the forum where respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents-to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties."

The Trial Court has relying upon the above decision held that the decree passed by the American Court falls in exception-3 carved out by the Supreme Court in the passage extracted above. The parties to the proceedings before the Court in America having consented to the grant of relief prayed for in the same, the decree passed by the said Court will remain binding and conclusive between them, the alleged error of jurisdiction notwithstanding. We shall presently advert to that aspect, but before we do so, We need to deal with two other submissions that were made before us on behalf of the respondent-wife. It was contended that the decree passed by the American Court was final and conclusive under Section 13 between the parties to the same. The binding and conclusive nature of such a decree could be assailed only on one of the grounds available under Section 13 of the CPC that a party to the decree or any person claiming under them. A second husband had no preexisting right which could be affected by the previous divorce so as to give him the locus to challenge its validity in collateral proceedings either on the ground that the Court that passed the decree had no jurisdiction or that the decree was contrary to the law that applied to the parties before it. Reliance in support of that proposition was placed upon Widera v. Widera, where a challenge to the decree for divorce by the second wife was held invalid. *The Court observed:—*

"In deMarigny v. deMarigny, Fla., 43 So 2d 442, a second wife ought to have the divorce decree of the first marriage declared invalid. The Supreme Court of Florida held that the putative wife, being a stranger, without then existing interest to the divorce decree, could not impeach it. It quoted with approval 1 Freeman on Judgments (5th ed.) 636, 319 : It is only those strangers who, if the judgment were given full credit and effect, would be prejudiced in regard to some preexisting right, that are permitted to impeach the judgment. Being neither parties to the action, nor entitled to manage the cause nor appeal from the judgment, they are by law allowed to impeach it whenever it is attempted to be enforced against them so as to affect rights or interests acquired prior to its rendition. 43 So. 2d at page 447."

We are in respectful agreement with the view expressed in the above decision. The provisions of Section 13 of the CPC declare the decree passed by any Foreign Court to be conclusive between the parties except where the same falls under any one of the clauses from (a) to (f) enumerated thereunder. The validity of any such decree is therefore beyond the pale of any challenge unless the same is by one of the parties affected by the decree and on a ground which falls in one of the clause enumerated in Section 13. Any person, who was a stranger to the proceedings culminating in the passing of a decree cannot assail the validity of such a decree unless he had a preexisting interest which the decree affects adversely….."

(Emphasis supplied)

The High Court Madras in ***FRANK M.COSTANZO v. THE REGIONAL PASSPORT OFFICER***[3] has held as follows:

"…. …. ….

[3] *W.P.No.14880 of 2010 Decided on 17-09-2010*

10. The Guidelines issued by the Government consequent to the direction of the Apex Court would not apply to the voluntary adoption from the biological parents. This view was reiterated by the Apex Court in Anokha (Smt.) v. State of Rajasthan and others in MANU/SC/1005/2003: (2004) 1 SCC 382, WHEREIN IT HAS BEEN CLEARLY HELD THAT IN THE CASE OF ADOPTION FROM BIOLOGICAL PARENTS, THE Guidelines do not apply. In paragraph 16, it has been held as follows:

"In the case before us although the Guidelines do not apply, Respondents 2 and 3 had produced evidence which fulfilled all the particulars required of a Home Study Report. The appellant has repeatedly affirmed her closeness to Respondents 2 and 3 and her conviction that they would nourish and care for baby Alka as if she was their own. Respondents 2 and 3 have produced sufficient evidence to justify their suitability to be adoptive parents. There was a judicially directed scrutiny by a local governmental agency in Venice. The enquiry report has resulted in a judgment passed by the Court at Venice, Italy. That judgment can be accepted by this Court under Section 13 of the Code of Civil Procedure, particularly when the respondents have filed the investigation report and other material on the basis of which the judgment was delivered."

(Emphasis supplied)

The High Court of Kerala in the case of ***ARUN.A V. THE MARRIAGE OFFICER (SUB-REGISTRAR), KARAKULAM***[4] while considering an identical circumstance, in a matrimonial case, has held as follows:

"….. …. ….

6. This Court considered the contentions of the petitioner and the respondent. This Court also perused Ext.P14 judgment, it will be better to extract the relevant portion of Ext.P14 and the same is extracted hereunder;

[4] *W.P.(C) No.21638 of 2023 decided on 07.07.2023*

6. Having regard to the need of the hour to have definite rules for recognition of foreign judgments in personal and family matters, particularly in matrimonial disputes, *in* ***Y. Narasimha Rao v. Y. Venkata Lakshmi, (1991) 3 SCC 451,*** *the Apex Court has interpreted Section 13 of the Code of Civil Procedure as follows:*

"20. From the aforesaid discussion the following rule can be deduced for recognising a foreign matrimonial judgment in this country. The jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties."

It is thus evident that though the general rule is that a foreign matrimonial judgment can be recognized in India only if the jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted are in accordance with the matrimonial law under which the parties are married, such judgments can be accepted as conclusive in India where the respondent voluntarily and effectively submits to the jurisdiction of the forum and consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties. As stated above, the materials on record indicate beyond doubt that the petitioner and his divorced wife have voluntarily and effectively submitted to the

jurisdiction of the UAE Personal Status Court and consented to grant divorce to each other, although the jurisdiction of the said forum is not in accordance with the provisions of the matrimonial law applicable to them. In the circumstances, I am of the view that the courts in India have to recognise Ext.P4 divorce certification.

7. *In the result, the writ petition is allowed. Ext.P5 communication is quashed and the respondent is directed to solemnize the marriage, for which notice has been issued by the petitioner under the Special Marriage Act, in accordance with the provisions contained in the said Act."*

(Emphasis supplied)

16. On a coalesce of the judgments rendered by the Apex Court, Division Bench of this Court and the High Courts of Madras and Kerala, as afore-quoted, what would unmistakably emerge is that, if rights of the parties have been conclusively determined, those orders would become implementable through the Courts of the nation. The rights of the parties are determined by the Courts at Uganda. The rights, I mean, of the petitioners in the subject petition. If the petitioners' rights are determined and they are as on today citizens of this Country, the orders would undoubtedly enure to the benefit of the petitioners. The petition thus succeeds. Therefore, the petitioners are entitled to the relief that they have sought for in the petition.

17. For the aforesaid reasons, I pass the following:

O R D E R

(i) Writ Petition is allowed.

(ii) A *mandamus* issues to the 1st respondent/Central Adoption Resource Authority directing it to consider the representation of the petitioners

submitted on 08-06-2023, by electronic mail and pass appropriate orders, redressing their grievance, by grant of a No Objection Certificate in accordance with law, bearing in mind the observations made in the course of the order.

(iii) The order shall be passed within six weeks from the date of receipt of a copy of this order.

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