

Misc case 57 of 2017

(Under Section of 7 of Guardians and Wards Act)

In the matter of : An application for appointment of guardian in respect of the person and property of minor Sandeep Kumar Dey.

Shanti Rani Dey versus General Public & one other.

Present: Bivas Pattanayak,
District Judge, Uttar Dinajpur
at Raiganj

Order no. 12 dated 03.09.2018

Today is the date fixed for passing order.

Petitioner files *hazira* through her Learned Advocate.

The case was heard *exparte* on 05.06.2018.

This is an application under section 7 of Guardians and Wards Act filed by the petitioner praying for appointment of guardian in respect of person and property of minor Sandeep Kumar Dey.

On 14.08.2018 as per direction of the court the petitioner filed a verified legible copy of the application which has been accepted and kept with the original application.

The brief fact of the case is that the parents of the minor namely Ashim Kumar Dey (Father) and Munmun Dey (Mother) resident of Sri Colony P.O & P.S- Kaliyaganj, District-Uttar Dinajpur died on 19.02.2017 leaving behind the minor (born on 22.05.2010). It is contended that the petitioner is the grandmother of the minor and she is looking after the maintenance and welfare of the minor as there are no other suitable person to look after the minor inasmuch as the opposite party no. 2

(husband of the petitioner) due to his illness cannot work properly and that the petitioner has got no interest adverse to that of interest of the minor. Further, it is stated in the application that deceased Ashim Kumar Dey and Munmun Dey during their lifetime was the holder of LIC policy being No.- 998912874, 458274166, 456661120 respectively and on account of death of both of them, the minor being their legal heir is entitled to get an amount of Rs. 2,85,000/- under the said policies from the Life Insurance Corporation of India, Kaliyaganj Branch. Furthermore, it is stated by the petitioner that without obtaining guardianship certificate the said amount of Rs. 2,85,000/- cannot be collected for the welfare of the minor which has been duly intimated by the LIC Authorities. It is further stated that the said minor is in the care & custody of the petitioner at Sri Colony P.O & P.S- Kaliyaganj, District-Uttar Dinajpur and the petitioner who is fit and proper person having sound financial capability to look after the wellbeing of the minor, to be appointed as guardian of the person and property of the said minor. Further it is stated that after the death of parents of the minor a huge amount of money is required for the maintenance and welfare of the minor. In such situation the petitioner has filed this application for being appointed as guardian of person and property of the minor, with further prayer for permission to withdraw the amount of money mentioned in schedule "A" to the petition from the LIC Authorities and for liberty to defray the expenses towards maintenance and requirement of the minor.

After filing of the case notices were issued to both the Opposite party no. 1 & 2. Opposite party no. 2 though served with the notice but he did not appear to contest the case and the case proceeded *exparte* against him. After publication of the notice in the newspaper for General Public none appeared to oppose the prayer of the petitioner and the case was heard *exparte*.

Petitioner filed her examination-in chief on affidavit and in her examination-in-chief the petitioner has corroborated the entire facts as mentioned in the petition for being appointed as guardian of person and property of the minor.

The petitioner filed the following documents during her examination namely Letter being no. KBO/D-claim of LIC, Jalpaiguri Division, Original Endowment policy being no.456661120, Original LIC's New Endowment Plan under policy no. 998912874, LIC's New Bima Bachat under policy no. 458274166, Original Death certificate of Ashim Kuamr Dey, Original Death certificate of Munmun Dey, Original Birth certificate of minor Sandeep Kumar Dey, Photocopy of Voter's identity card of Shanti Rani Dey, Photocopy of Adhar card of Shanti Rani Dey marked Exhibits 1 to 9 respectively.

Learned Advocate of the petitioner submitted that the petitioner is the grandmother of the minor who has lost his parents and Opposite party no.2 being the grandfather is unable to look after the minor due to his own ailments and as such there are practically no one to take care of the well being of the minor save and except this petitioner. Moreover, a

huge amount of money is required for the maintenance and welfare of the minor and that without obtaining guardianship certificate the amount of Rs. 2,85,000/- in respect LIC policies standing in the name of the minor's deceased parents cannot be collected for the welfare of the minor which has been duly intimated by the LIC Authorities. Accordingly, it is pressed into service by the Learned Advocate that the welfare of the minor can be protected by appointing the petitioner as guardian of the person and property of the minor. He further submitted that for the benefit and wellbeing of the minor the petitioner has sought for permission to withdraw the amount of money mentioned in schedule "A" to the petition from the LIC Authorities and for liberty to defray the expenses towards maintenance and requirement of the minor. Furthermore it is submitted that the petitioner in compliance to section 10(3) of the Guardian & Wards Act has already submitted her willingness before the court to be appointed as guardian of the person and property of the minor. In conclusion he submitted for allowing the prayer of the petitioner.

Considered the submission of the Learned Advocate for the petitioner, the evidence adduced by the petitioner as PW-1 and the Exhibited documents.

At the very beginning it appears that in compliance to section 10 (3) of Guardian & Wards Act the petitioner have filed her signed declaration of willingness to act as guardian of the minor and it has been attested by two witnesses.

It appears from the **Birth certificate (Exhibit 7)** that that the minor Sandeep Kumar Dey was born on 22.05.2010 to Ashim Kumar Dey and Munmun Dey. From the **Death certificates (Exhibit 5 & 6)** it is revealed that both the parents of the minor has expired on 19.02.2017. It further appears from the **Death certificate of Ashim Kumar Dey (Exhibit 5)** that petitioner Shanti Rani Dey is his mother and Sri Amal Kumar Dey is his father. Thus the petitioner Shanti Rani Dey is the grandmother of the minor Sandeep Kumar Dey.

From the evidence of the petitioner (Pw1) it is found that she is grandmother of the minor and the minor is presently residing with the petitioner at Sri Colony, Kaliyaganj, District-Uttar Dinajpur and she is looking after the maintenance and welfare of the minor as there are no other suitable person to look after the minor and her husband (opposite party no. 2) due to his illness cannot work properly. There are no contrary evidence on record in this regard.

It appears from **LIC's New Endowment Plan under policy no. 998912874 (Exhibit 3)** and **LIC's New Bima Bachat under policy no.458274166 (Exhibit 4)** that the deceased Ashim Kumar Dey (father of the minor) during his lifetime was the holder of aforesaid two policies. Further from **Endowment Policy of LIC under policy no. 456661120 (Exhibit 2)** it appears that the deceased Munmun Dey (mother of the minor) during her lifetime was the holder of aforesaid policy.

Further it is found from letter of Branch Manager, Life Insurance

Corporation of India, Kaliyaganj Branch under **reference no. KBO/D-Claim (Exhibit 1)** addressed to the petitioner and her husband that a death claim for the aforesaid policies were made but as there was no fresh nomination after the death of the registered nominees, the petitioner was asked to submit Guardianship certificate for the court of law in respect of Rs.2,85,000/-. Thus it is clear that without obtaining order of appointment of Guardianship from the court of law the amount of Rs. 2,85,000/- in respect LIC policies standing in the name of the minor's deceased parents will not be disbursed for the welfare of the minor as has been duly intimated by the LIC Authorities.

It has fallen before the court that the minor Sandeep Kumar Dey has lost both his parents and his grandfather is ailing, and hence I find that there are practically no one to take care of the well being of the minor save and except this petitioner, who is the grandmother of the minor. Further it appears from the evidence of the petitioner (Pw1) that a huge amount of money is required for the maintenance and welfare of the minor.

In my considered opinion there is acute necessity for the welfare of the minor to withdraw the amount of money mentioned in schedule "A" to the petition from the LIC Authorities .

It is placed on record that no one has raised any objection including the opposite parties or by anybody else towards the claim of the petitioner. In my view for the welfare of the minor child the petitioner should be appointed as guardian of the person and property of the minor

mentioned in schedule "A" to the petition and further be permitted to withdraw the said amount from the LIC authorities.

CF paid is correct.

Hence, it is

ORDERED

that the instant Misc case be and the same is allowed *exparte* without any order as to costs.

The Petitioner **Shanti Rani Dey** wife of Amal Kumar Dey @ Asit Kumar Dey is hereby appointed as guardian of person and property minor **Sandeep Kumar Dey** mentioned in schedule "A" to the petition amounting to Rs. 2,85,000/- (Rupees two lakh eighty five thousand) and to act in accordance with law.

The petitioner is permitted to withdraw the amount of money to the tune of Rs. 2,85,000/- mentioned in schedule "A" to the petition from the LIC Authorities.

The petitioner is directed to keep the aforesaid amount so withdrawn in fixed deposit scheme in a Nationalized bank or in the Post Office in the name of the minor grandson **Sandeep Kumar Dey** till the minor attains his majority.

The petitioner is permitted to withdraw the interest accrued on the fixed deposit per year for defraying the expenses towards maintenance and requirement of the minor and she is also permitted to withdraw the interest accrued at any time according to needs for the welfare of minor

child after obtaining permission to that effect from this Court by filing petitions.

That the petitioner shall submit annual account of the interest which she will receive from the fixed deposit scheme as above.

The petitioner is also directed to produce the fixed deposit certificates in this Court.

That the petitioner shall furnish a bond of Rs.5,000/- with the undertaking that she shall abide by the conditions as above.

Let a copy of this order be supplied to the petitioner free of costs.

To 25.09.2018 for furnishing bond.

Typed by me

District Judge,Uttar Dinajpur
03.09.2018

District Judge,Uttar Dinajpur
03.09.2018