

**O.P.No. 483 of 2022****C.V.KARTHIKEYAN, J.,**

This Petition has been filed under Section 26 of the Guardian and Wards Act, 1890 read with Order XXI Rule 1 of the Original Side Rules of the Madras High Court by the mother of the minor child Carice Miriam Wilkins, who was born on 15.05.2018, seeking a declaration that the petitioner / mother is the guardian by the minor child Carice Miriam Wilkins and to grant permission to the petitioner to remove the said minor child from the jurisdiction of this Court to Melbourne Australia or to any other country for the duration of the visa applied for even in the absence of consent of the respondent/father.

2. In the petition it had been stated that the petitioner Candice Antonette Wilkins and the respondent Joseph Prince Heiden were married on 01.06.2013 at Our Lady of Lourdes Shrine, Perambur, Chennai – 600 001 as per Christian Customs. The marriage was however dissolved by an order dated 05.02.2020 in O.P.No. 246 of 2020 by the II Additional Family Court at Chennai. The order was passed under Section 10(A) of the Indian



Divorce Act and it had been very specifically stated that the respondent herein would not have any responsibility towards the minor child and that the petitioner herein alone would be the guardian and that the respondent would not claim status as father and that the respondent's name can be removed from the records of the parties as the father of the child.

3. The petitioner had very specifically stated that since the date of separation from the respondent, from 24.01.2017, the child has been with her and there has been no interaction with the respondent. The petitioner had also stated that she had applied for passport and immigration authorities for visiting Australia. She had obtained visa, but the Australian embassy had raised a query with respect to grant of visa for the minor child in the absence of consent given by the father and as an alternate had sought an order of the Court granting permission to remove the child from the jurisdiction of the Court under Section 26 of the Guardian and Wards Act, 1890 in the absence of such consent by the respondent/father. It is under these circumstances, the present Petition has been filed.



4. Notice had been directed to the respondent. Service on the respondent had proved a futile exercise and the petitioner had to effect paper publication and accordingly, publication had been directed in Tamil daily 'Makkal Kural' and was also effected on the issue dated 03.10.2022. The respondent had apparently taken a conscious decision not to appear before this Court. He was therefore set ex-parte on 01.11.2022.

5. The petitioner was directed to tender evidence. The petitioner examined herself as PW-1 and filed proof affidavit affirming the facts stated in the Petition. She also marked the birth certificate of her daughter Carice Miriam Heiden as Ex.P-1. The Petition, Decree and Order in O.P.No. 246 of 2020 on the file of II Additional Family Court, Chennai, were marked as Exs. P-2, P-3 and P-4. The status of Visa application of the petitioner was marked as Ex.P-5 and the request for further information relating to the child was marked as Ex.P-6. The Online request check list was marked as Ex.P-7 and the Aadhaar card of the minor child was marked as Ex.P-9. The petitioner also filed Ex.P-10, the declaration of her willingness to accept the office of guardian of the minor child.



C.V.KARTHIKEYAN, J.,

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6. In view of the evidence recorded and particularly since the respondent had taken a decision not to appear before the Court, and more particularly since before the Family Court, he had disowned responsibility over the minor child and had also stated that he will not claim the status as father and that the name of the child can be changed and which had been accordingly changed as Carice Miriam Wilkins, the petitioner is declared to be the guardian of the minor child. Specific permission is granted even in the absence of consent of the respondent to the petitioner to remove the minor child from this country to Melbourne Australia or to any other country during the duration of the visa applied for.

7. With the above observation, this Original Petition stands allowed.

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17.11.2022

Note: Issue order copy on 21.11.2022

O.P.No. 483 of 2022