**IN THE APPELLATE DIVISION OF**
**THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2025] SGHC(A) 22**

Appellate Division / Originating Application No 33 of 2025

Between

XLK

… *Applicant*

And

XLJ

… *Respondent*

In the matter of District Court Appeal No 39 of 2025

Between

XLK

… *Appellant*

And

XLJ

… *Respondent*

In the matter of Originating Summons (Guardianship of Infants Act 1934) No 77 of 2025

Between

XLJ

… *Applicant*

And



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XLK

… *Respondent*

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# JUDGMENT

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[Civil Procedure — Appeals — Leave — Permission to appeal]
[Family Law — Child — Custody]
[Family Law — Guardianship — Welfare of child]



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# XLK
# v
# XLJ

**[2025] SGHC(A) 22**

Appellate Division of the High Court — Originating Application No 33 of 2025
Hri Kumar Nair JCA and Debbie Ong Siew Ling JAD
10 September 2025

5 November 2025 Judgment reserved.

**Debbie Ong Siew Ling JAD (delivering the judgment of the court):**

## Introduction

1 This judgment addresses some legal principles pertaining to cross-border custody disputes. A notable feature in the present case is that when the application for custody of the parties' child was made in the Family Court, there were already subsisting orders issued by the courts of the People's Republic of China ("China") over the custody and care of the child.

2 AD/OA 33/2025 ("OA 33") is an application by the applicant (the "Father") for permission to appeal against the decision of a Judge in the Family Division of the High Court (the "Judge") which affirmed the Family Court's order granting custody, and care and control of the parties' child to the respondent (the "Mother"). The grounds of the Judge's decision are set out in *XLK v XLJ* [2025] SGHCF 50 ("HCGD").

3 The Father argues that the Judge erred in law by treating the doctrine of comity of nations, instead of the welfare of the child, as the decisive factor in determining the issue of custody of the parties' six-year-old child. He also argues that permission to appeal should be granted so that the appellate court may address an important issue of principle, namely, whether comity may override or displace the welfare principle in the determination of cross-border custody disputes.

4 Having considered the parties' submissions, we are of the view that the Judge had considered the welfare of the child as the paramount consideration. There is thus no *prima facie* error and any further questions of law are academic. We dismiss OA 33.

**Background facts**

5 The Father and the Mother were married in China in March 2016. Both are Chinese citizens who do not have any long-term immigration status in Singapore. They have a son (the "Child"), who was born in January 2019. The Child is also a Chinese citizen and had spent almost the first five years of his young life in China. Prior to the breakdown of the marriage, the family resided in Hangzhou, China.

6 On 28 February 2023, the Mother filed for divorce in the People's Court of Shangcheng District in Hangzhou, China (the "Shangcheng District Court"). On 7 August 2023, the Shangcheng District Court granted a divorce and ordered that the Child "shall be raised and educated" by the Mother. The Father filed an appeal against this decision, but the appeal was dismissed by the Intermediate People's Court of Hangzhou, Zhejiang Province, China (the "Hangzhou Intermediate Court") on 23 November 2023.



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7 On the same day that the appeal was dismissed, the Father and the Child travelled to Phuket, Thailand, ostensibly for a holiday. Subsequently, on 11 December 2023, the Father brought the Child to Singapore and enrolled him in an international school in Singapore. The Father claims to have moved to Singapore with the Child, but as mentioned earlier, he does not have any long-term immigration status to reside in Singapore. Instead, it is the Child's paternal grandmother who obtained a long-term visit pass to reside in Singapore with the Child; this long-term visit pass is tied to the Child's student pass.

8 In February 2024, the Mother sought and obtained enforcement orders against the Father from the Shangcheng District Court and the Hangzhou Intermediate Court. These orders provided for the Father's detention due to his non-compliance with the earlier custody orders, prohibited him from leaving China, and invalidated his travel documents. Despite these further orders from the Chinese courts, the Child remained in Singapore and was not returned to the Mother.

**Decision below**

9 On 18 June 2024, the Mother commenced proceedings in Singapore by way of FC/OSG 77/2024 ("OSG 77") seeking an order for sole custody, and care and control of the Child, and for the Father to take all required steps to hand over the Child and the Child's passport to the Mother. The Father opposed these proceedings, and on 7 November 2024, filed FC/SUM 3478/2024 ("SUM 3478") for orders that the parties have joint custody of the child, and for the Mother to have care and control of the child on the condition that the Father has liberal access, including overnight and overseas access under specified terms. Meanwhile, according to the Father, he also filed a fresh application on 9



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September 2024 in the People's Court of Xihu District in Hangzhou, China, for the right to raise and educate the Child.

10 On 13 March 2025, a district judge in the Family Court (the "DJ") allowed OSG 77 and dismissed SUM 3478: see *XLJ v XLK* [2025] SGFC 42 ("FCGD"). The DJ reasoned that it was in the best interests of the Child for the Mother to be given care and control, and to enable the Mother to exercise this right, she should also be given sole custody for the purpose of having the Child returned to her in China: FCGD at [92(a)]. The DJ also observed that, once the Child returned to China, he "would not be within the jurisdiction requiring any other order for custody, care and control or access": FCGD at [92(b)]. As there were existing orders on custody made by the Chinese courts, it would be "against the comity of nations" for another jurisdiction to make further orders on the same matter: FCGD at [92(c)]. Instead, issues such as access ought to be litigated in China, which was the proper forum to deal with these issues: FCGD at [92(d)]. In the section of the FCGD headed "Is it in interest of the child for him to be returned to the Applicant Mother?", the DJ emphasised, "[t]his is the crux of the matter at hand": FCGD at [72]. The DJ considered the "non-exhaustive list of factors" set out in *TSF v TSE* [2018] 2 SLR 833 ("*TSF v TSE*") to be relevant to the welfare of the child. He explained in some detail his analysis of the welfare of the child with reference to these factors.

11 The Father's appeal against the DJ's decision was dismissed by the Judge. The key reasons for the Judge's decision are set out at [6] and [7] of the HCGD, which we reproduce below:

> 6 I agree entirely with the learned DJ's decision and his grounds. In my view, the facts show clearly that this is a case of outright child abduction. Although the Hague Convention does not apply, the incontrovertible evidence is clear. The [Mother] was given custody, care and control of the [Child]. The



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> court orders were challenged all the way to the final court of their own country. Not only had the [Father] failed in all his attempts to gain custody of the [Child] in China, but his travel documents had since been cancelled. Unfortunately, he managed to have the [Child] brought to Singapore and is being looked after by the [Father's] mother although the [Father] claims that he is also here but he is on short term pass.
>
> 7 The doctrine of comity of nations has immense force on the facts of this case, and on that basis alone, the appeal ought to be dismissed, but the facts also show that the child was only brought here to be registered in an international school. The claim that this would be in the son's best interest is not persuasive. Neither parent has long term passes to be here. Mr Lun, counsel for the [Father], asserts that his client has been "flying in and out", but Mr Sng, submits that the [Father] may not be allowed out of China once he returns there. I am of the view that the crucial point is that it is in the best interests of the child to be with the mother.

12 Counsel for the Father, Mr Clarence Lun ("Mr Lun"), then made an oral request to the Judge seeking a stay of execution of the Judge's orders. This request was rejected by the Judge: see HCGD at [8].

**Events after the Judge's decision**

13 The Father also filed an application to this court by way of AD/OA 31/2025 ("OA 31") on 27 August 2025, seeking a stay of execution of the Judge's orders. He did not, however, file his application for permission to appeal (*ie*, OA 33) until about a week later, on 4 September 2025.

14 On 10 September 2025, the Mother wrote to the court, informing the court that she had returned to China with the Child on 1 September 2025, and consequently, she no longer wished to participate in these proceedings. She nevertheless filed written submissions opposing both OA 31 and OA 33. Despite these developments, the Father informed the court that he still wished to proceed with both OA 31 and OA 33. He took the position that, as of



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25 September 2025, the Mother and the Child were in fact still in Singapore and had not left jurisdiction.

15 An expedited hearing was convened on 29 September 2025 for OA 31. There was evidence adduced by the Mother which supported her claim that the Child had returned to China with her on 1 September 2025, including the Child's flight itinerary and boarding pass. In the course of the hearing on 29 September 2025, which was conducted virtually by Zoom, the Mother showed the court through the Zoom video that she was onboard a train in China, with the Child ostensibly asleep by her side – this was for a brief moment during the virtual hearing. In response, Mr Lun informed the court that the Father still intended to continue with his application for a stay of execution. He contended that the Child's passport remained with the Father at the material time. Although the Mother explained that she had obtained a travel pass issued by the Chinese embassy in Singapore and that was how she managed to bring the Child to China, she declined to produce the Child's travel documents in court, her reason being that she did not want the Father to have a copy of the documents. The Father, on the other hand, had adduced evidence of an email issued by the Immigration & Checkpoints Authority ("ICA") on 25 September 2025, which he submitted served as evidentiary proof that the Child was only cleared to leave Singapore on 25 September 2025 and therefore could not have left Singapore on 1 September 2025. We add a note here that the ICA email did *not* state that the Child was in Singapore until 25 September 2025; the main information conveyed in the email was that the travel restriction in the Family Court order against the Mother "no longer applies".

16 After hearing the parties, we allowed OA 31, granting the Father a stay of execution of the orders below, with a view to maintaining the *status quo* pending the determination of OA 33. Given the positions taken by the parties



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regarding the Child's whereabouts, we did not think that a stay of execution would cause significant prejudice to either of the parties.

**The parties' submissions in OA 33**

17 In the present application, the Father seeks permission to appeal against the Judge's decision primarily on the ground that there is a *prima facie* error of law in the Judge's decision. According to the Father, the Judge failed to apply s 3 of the Guardianship of Infants Act 1934 (2020 Rev Ed) (the "GIA") in coming to his decision, which requires the welfare of the Child to be the paramount consideration. He submits that the Judge treated international comity and the label of "child abduction" as the decisive factors, which foreclosed a genuine balancing of other welfare considerations such as the Child's integration into Singapore, schooling and stability. He asserts that the Judge had merely stated that it was in the best interests of the Child to be with the Mother without even analysing the welfare factors as propounded in *TSF v TSE*.

18 To buttress his position, the Father also points out that the Judge failed to call for a welfare report or to conduct a child interview. He further suggests that by using the language of "child abduction", the Judge may have conflated the present case with an application for return under the Hague Convention on the Civil Aspects of International Child Abduction (25 October 1980) 1343 UNTS 89 (entered into force 1 December 1983) (the "Hague Convention").

19 The Father also submits that permission to appeal should be granted so that the appellate court may address the question of whether, and to what extent, considerations of comity may override and/or displace a full welfare inquiry under s 3 of the GIA in cross-border custody disputes. According to the Father, this is a question of general principle decided for the first time and/or a question



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of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

20 The Mother, on the other hand, submits that the Judge did not place excessive weight on comity. Instead, the Judge rightly recognised that principles of comity and the deterrence of forum shopping were relevant factors within the welfare inquiry. She asserts that the Judge did not create a new principle that "comity overrides welfare" but instead applied established principles to the unique facts of the present case.

## Our decision

### *No* prima facie *error*

21 The principles governing applications for permission to appeal based on a *prima facie* error of law are well-established. In such a case, an applicant would succeed in making out a *prima facie* case of error if two things are established: (a) the appeal is likely to succeed (this being a standard that goes beyond presenting what is merely an arguable case); and (b) there is a likelihood of substantial injustice if permission was not to be granted: see *Lun Yaodong Clarence v Dentons Rodyk & Davidson LLP* [2025] 1 SLR 849 at [24].

22 There is in fact no real dispute between the parties that the welfare of the child is the paramount consideration in an application for custody under s 5 of the GIA. It is well-established that this welfare principle, which is statutorily enshrined in s 3 of the GIA and s 125(2) of the Women's Charter 1961 (2020 Rev Ed), is the "golden thread" that runs through *all* proceedings directly affecting the interests of children: *BNS v BNT* [2015] 3 SLR 973 ("*BNS v BNT*") at [19]. The crux of the Father's case is that the Judge failed to apply this fundamental principle by reasoning that "comity overrides welfare".



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23 In our view, the Father's submission fails to recognise that the Judge did *not* dismiss the appeal on the sole basis of comity. Rather, the Judge considered that the "crucial point" was that it would be "in the best interests of the child to be with the mother": HCGD at [7]. In coming to this decision, the Judge had considered at least the following factors: (a) this was a case involving child abduction; (b) the Chinese courts had given custody, care and control of the Child to the Mother; (c) the Child was only brought to Singapore to be registered in an international school; and (d) neither parent had long-term passes to be in Singapore: HCGD at [6]–[7]. These factors pointed to the family's apparent lack of connection to Singapore and the absence of any secure basis for the Child's parents to remain here in the longer term, which would clearly have a negative impact on the long-term stability and welfare of the Child. Once this is properly appreciated, it is clear that the Judge's decision is not at odds with the welfare principle.

24 The welfare principle requires the court to consider a multitude of factors which may inform the court's decision as to where the child's best interests ultimately lie: *BNS v BNT* at [20]. The Court of Appeal in *TSF v TSE* referred to a non-exhaustive list of factors which "afford a sound *starting* basis for any court concerned with the issue of the child's welfare" [emphasis in original] (at [51]–[52]):

> (a) the child's physical, emotional and educational needs, and his physical and emotional safety;
>
> (b) the capacity of each parent to provide for the child's needs and ensure the child's safety;
>
> (c) the child's relationship with each of his parents and with any other caregiver;
>
> (d) the need to ensure a continuing relationship between the child and his parents; and
>
> (e) the effect of any changes to the child's life.



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25 These factors, however, should not be approached mechanistically as a box-checking exercise. As the Court of Appeal explained in *TSF v TSE* at [52]:

> … the relevance of these or any other factors to a particular case, and the weight that should be given to each of the factors, is a matter of judgment and will turn on the specific facts and circumstances of that case.

26 Thus, it is imperative to bear in mind that while these factors may be a useful starting basis for a court concerned with the issue of the child's welfare, they do not form a prescriptive list of factors, nor do they exclude other relevant factors. Indeed, "there can be no pre-fixed precedence or hierarchy among the many composite factors which may inform the court's decision as to where the child's best interests ultimately lie": *BNS v BNT* at [22]. Instead "where these factors stand in relation to one another must depend, in the final analysis, on a consideration of all the facts in each case": *BNS v BNT* at [22].

27 We also point out that the DJ hearing OSG 77 had already undertaken a comprehensive analysis of the relevant factors and determined that it would be in the best interests of the Child for him to be with his mother. In appeals against decisions involving the welfare of children, the appellate court is "slow to intervene and plays only a limited role, in recognition of the fact that the decisions in such cases often involve choices between less-than-perfect solutions": *TSF v TSE* at [49].

28 The DJ, like the Judge, recognised that "the crux of the matter at hand" was whether it was in the interests of the Child for him to be returned to the Mother (see [10] above and FCGD at [72]). He referred to the welfare principle in s 3 of the GIA as the overarching principle (see FCGD at [73]) and had also expressly considered the factors mentioned in *TSF v TSE*. In particular, the DJ specifically considered the factors which the Father had raised, such as the



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Child's educational needs and the fact that the Child had been in Singapore since December 2023: FCGD at [78]–[82] and [87]. On appeal, the Judge prefaced his remarks by stating that he "agree[d] entirely with the learned DJ's decision and his grounds": HCGD at [6].

29 Thus, in so far as the Father's complaint in OA 33 is that the Judge failed in his analysis of the Child's welfare to properly consider the various factors which were raised in submissions, such as the Child's integration in Singapore, schooling and stability, we see no merit in this argument. Considering the Judge's decision in context, we are of the view that the Judge had considered these factors and concluded that they were insufficient to overcome the significant countervailing factors which weighed against the Father in the present case (see [23] above). We agree that it is in the best interests of the Child for him to return to China with his mother. The Child does not have any permanent roots in Singapore, and it is of grave concern to us that neither of his parents hold long-term immigration permits to remain in Singapore. Although the Child was brought to Singapore in December 2023, he had lived in China for the entirety of his young life up until that point, and his ability to re-adapt to life in China has not been called into question. As for the Child's schooling, there is no reason for us to doubt that the Child will not receive satisfactory education in China.

30 The fact that the Judge did not obtain a welfare report or conduct a child interview also does not disclose any error of law. While judicial interviews and child welfare reports are useful avenues for the views of children to be taken into consideration, the assessment of whether a judicial interview should be conducted, or a child welfare report obtained, is a matter for the court to decide *in the exercise of its discretion*, which will depend very much on the facts of



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each case: see *WKM v WKN* [2024] 1 SLR 158 at [28] and [45]. It cannot be said that the DJ or the Judge exercised their discretion wrongly.

***The relevance of the doctrine of comity of nations***

31 While we have concluded that the Judge correctly applied the legal principles in arriving at his decision, we think it would be useful to clarify the relevance of the doctrine of comity in the present case. In this regard, we do not think the Judge was correct in saying that the "doctrine of comity of nations has immense force on the facts of this case, and on that basis alone, the appeal ought to be dismissed": HCGD at [7]. However, we also add that despite saying this, the Judge went on to explain why the decision was in the Child's welfare.

32 As this case involved the Father's removal of the Child from China without the Mother's consent, it might be useful to contrast the present application with applications for the return of a child under the Hague Convention, which is given effect in Singapore by the International Child Abduction Act 2010 (2020 Rev Ed) (the "ICAA"). In *BDU v BDT* [2014] 2 SLR 725 ("*BDU v BDT*") at [25], the Court of Appeal accepted Professor Leong Wai Kum's summary of what countries have committed to as parties to the Hague Convention (see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at p 270):

> … The [Hague] Convention may be understood, particularly by a conflicts lawyer, as ***an agreement among nations on 'jurisdiction selection' in matters relating to custody and care of a child.*** *The participating nations agree to select the courts of the country of habitual residence of the child to be the courts to decide all issues of custody and care. Every other court will thus seek only to, as quickly as possible, return the child to the court of her habitual residence. In particular, every other court will not seek to investigate for itself what might be the best possible order regarding the custody and care of the child.* This, as agreed, should be left to the court of her habitual residence.



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> It is, therefore, not a valid criticism that, in ordering the return of the child to her habitual residence, the court has overlooked some argument relating to her welfare. *Every court other than the court of her habitual residence has agreed to desist from investigating into the substantive issues relating to her welfare to defer to the court of her habitual residence.* Put another way, the understanding of the child's welfare under the [Hague] Convention is not the substantive understanding (as under the domestic law of guardianship and custody) but rather the more limited understanding, that *where she has been unlawfully removed from her habitual residence, her welfare is best served by swiftly returning her to her habitual residence.* There the courts will look into the substantive issues.
>
> [Emphasis added in italics and bold italics]

33 The Hague Convention establishes a summary procedure for the return of children who have been wrongfully removed to or retained in a contracting state (the "Convention State"). Upon proof of the wrongful removal of a child, the court of the Convention State in which the application is filed is only concerned with the return of the child to his or her country of habitual residence, subject to limited exceptions set out in, among other things, Art 13, and not with the merits of any dispute over the custody and/or care and control of the child: see *BDU v BDT* at [26]; see also *TUC v TUD* [2017] 4 SLR 877 at [36].

34 China is at present not a signatory to the Hague Convention. Where a non-Convention State (in the present case, China) is involved in a cross-border dispute involving the removal of a child from his or her habitual residence, it is *not* open to the court in a Convention State to apply quasi-Hague Convention rules; instead, the court must apply the welfare principle as the paramount consideration: see *TDX v TDY* [2015] 4 SLR 982 at [66], citing *In re J (A Child) (Custody Rights: Jurisdiction)* [2006] 1 AC 80 ("*In re J*"). This is because s 3 of the GIA is generally applicable and continues to apply in all child-related custody disputes that are not brought under the Hague Convention.



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35 That said, in appropriate circumstances, depending on the precise facts and circumstances of the case, the court may, *pursuant to the welfare principle*, order the immediate return of a child to a foreign jurisdiction without conducting a full investigation of the merits: *In re J* at [26]; see also *TSH v TSE* [2017] SGHCF 21 at [45]. For instance, suppose a child habitually resident in a foreign jurisdiction is unilaterally brought to this country where he is unaccustomed its language, culture and contacts, a court may find that it is in the child's best interests to ensure his swift and immediate return to minimise the disruption in his circumstances so that the "disturbing factors should be eliminated from his life as speedily as possible": *In re J* at [26]. In doing so, the court gives due consideration to the foreign court orders and the fact that the child was removed from his habitual residence because these have material bearing on the welfare of the child and not because of the interests of comity.

36 We would respectfully depart from the Judge's observations on the significance of the doctrine of comity to the present case. We observe in the present case that (a) the Chinese courts' subsisting orders on custody, together with (b) the fact that the Father removed the Child from China without the Mother's consent, are relevant circumstances to consider in applying the welfare principle. They go towards indicating the parties' and the Child's lack of connection to Singapore – these circumstances have material bearing on the Child's welfare as neither of his parents is resident in Singapore. These circumstances, particularly (a), may in some way be connected to the notion of comity of nations in that a foreign court has already made orders, but they are in themselves non-comity-related factors relevant in the assessment of the Child's welfare – this could be a reason that led to the Judge's statement at HCGD at [7], which we have said was incorrect.



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37 As we have explained, we agree with the Judge's conclusion that it would be in the welfare of the Child for him to return to China with his mother. Any error made by the Judge on the relevance of comity therefore has no impact on the ultimate outcome of the case and thus permission to appeal should not be granted: see *Three Arrows Capital Ltd and others v Cheong Jun Yoong* [2024] 1 SLR 419 at [32].

***No question of law of importance***

38 The Father also submits that the present case raises important questions of law regarding (a) the extent to which considerations of comity may override the welfare principle; and (b) the weight to be accorded to custody decisions of foreign courts.

39 The first question has been dealt with in our discussion above on the relevance of the doctrine of comity of nations. In short, considerations of comity do not override the welfare principle in guardianship and custody applications outside the ICAA. Having said this, we make clear that this does not assist the Father's case for permission to appeal as the Judge had reached the correct conclusion in dismissing the Father's appeal against the DJ's decision.

40 The second question, regarding the weight to be accorded to foreign court orders in the analysis of what would be in the best interests of a child, is not a question of law: see *IW v IX* [2006] 1 SLR(R) 135 at [25]–[28]; see also *TUC v TUD* [2017] 4 SLR 1360 at [20]–[21]. At its highest, this argument contends that the court should not have given significant weight to the foreign court orders in applying the welfare principle to the facts of the present case. However, it is well-established that the welfare principle requires the court to consider a multitude of factors, and the weight to be given to any one factor



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involves a fact-sensitive value judgment: see *BNS v BNT* at [20] and *TSF v TSE* at [52]. There is thus no question of general importance which would justify granting permission to appeal in the present application.

**Conclusion and costs**

41 We dismiss OA 33.

42 We had previously reserved the costs of OA 31 to be addressed after the determination of OA 33. We order the Father to pay the costs of OA 31 and OA 33 to the Mother, fixed in the sum of $12,000 (all-in). The usual consequential orders apply.

Hri Kumar Nair
Justice of the Court of Appeal

Debbie Ong Siew Ling
Judge of the Appellate Division

Clarence Lun Yaodong (Fervent Chambers LLC) for the applicant;
The respondent in person.



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