

VFU v VFV
[2020] SGHCF 3

Case Number : Registrar's Appeal No 45 of 2019
Decision Date : 03 February 2020
Tribunal/Court : High Court (Family Division)
Coram : Debbie Ong J
Counsel Name(s) : Patrick Fernandez (Fernandez LLC) for the appellant; Anuradha d/o Krishan Chand Sharma (Winchester Law LLC) for the respondent.
Parties : VFU — VFV

Family Law – Muslim – Issues within jurisdiction of civil court

3 February 2020

Debbie Ong J (delivering the judgment of the court *ex tempore*):

Issue

1 The key issue in this appeal is whether a Syariah Court continuation certificate under s 17A of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (“SCJA”) is required in order for the present committal proceedings to be heard in the Family Court. Sections 17A (2) and (3) of the SCJA provide:

Civil Jurisdiction- concurrent jurisdiction with Syariah Court in certain matters

17A. — (2) Notwithstanding that such matters come within the jurisdiction of the Syariah Court under section 35(2)(d) or (e), 51 or 52(3)(c) or (d) of the Administration of Muslim Law Act, the High Court shall have jurisdiction as is vested in it by any written law to hear and try any civil proceedings involving matters relating to —

- (a) maintenance for any wife or child;
- (b) custody of any child; and
- (c) disposition or division of property on divorce.

(3) Where civil proceedings involving any matter referred to in subsection (2)(b) or (c) and involving parties who are Muslims or were married under the provisions of the Muslim law are commenced in the High Court, the High Court shall stay the civil proceedings —

- (a) involving any matter referred to in subsection (2)(b) or (c), if the civil proceedings are commenced on or after the commencement of proceedings for divorce in the Syariah Court or after the making of a decree or order for divorce by the Syariah Court or on or after the registration of any divorce under section 102 of the Administration of Muslim Law Act (Cap. 3) between the same parties, unless a Syariah Court commencement certificate in respect of the civil proceedings has been filed with the High Court;

(b) involving any matter referred to in subsection (2)(b), if proceedings for divorce are commenced in the Syariah Court or a decree or order for divorce is made by the Syariah Court or a divorce is registered under section 102 of the Administration of Muslim Law Act between the same parties after the commencement of the civil proceedings, unless a Syariah Court continuation certificate in respect of the civil proceedings has been filed with the High Court.

Background Facts

2 The Appellant-Father and Respondent-Mother are Muslim parties who were married under Muslim law. They have three children aged ten, nine and five years old. The Mother filed Originating Summons (Guardianship) No 9 of 2017 ("OSG 9/2017") in the Family Court after the parties had serious marital difficulties. OSG 9/2017 was resolved by way of a Consent Order recording the parties' agreed terms on 9 March 2017 (the "OSG Order"). In this order, the Father was to have access to the children of the marriage.

3 On 11 September 2018, the Father commenced divorce proceedings in the Syariah Court. Interim orders in relation to the access of the children were made on 13 August 2019 and 27 August 2019 by the Syariah Court.

4 The Father filed committal proceedings Summons 2221 of 2019 ("FC/SUM 2221/2019") on 4 July 2019. I note that this was prior to the interim orders made by the Syariah Court in August 2019. He alleged that the Mother had breached the OSG Order in the period from 19 June 2019 to 22 June 2019.

5 The hearing for the committal proceedings was fixed on 27 September 2019. The District Judge ("DJ") sought submissions from both counsel on whether the Family Court had jurisdiction to hear the committal proceedings without a continuation certificate. After hearing the submissions, she decided that the Family Court had no jurisdiction to hear the committal proceedings without a continuation certificate.

Father's submissions

6 The Father now appeals against the DJ's decision on 27 September 2019 to "adjourn FC/SUM 2221/2019 and direct parties to confirm with the Syariah Court if a continuation certificate is needed before FC/SUM 2221/2019 is heard by the Family Justice Courts". Through counsel, he submits that "the summons for an order for committal is not division of property or custody of child", hence no leave of the Syariah Court is required. He further submits that "the Syariah Court does not have concurrent jurisdiction to hear enforcement proceedings, such as, committal."

Mother's Submissions

7 The Mother submits that the "OSG Order of Court dated 9th March 2017 is automatically stayed as the Father filed divorce proceedings in Syariah Court on 11th September 2018, hence, all matters pertaining to issues of custody, care and control and access of the children are now within the ambit and jurisdiction of the Syariah Court".

Decision

8 The main question in this appeal relates to the interpretation of ss 17A(2) and (3) of the SCJA. It is clear to me that had OSG 9/2017 *not* been concluded when divorce proceedings were

commenced in the Syariah Court, the court “shall stay the civil proceedings” in OSG 9/2017. In that situation, the SCJA provides that it is the Syariah Court that shall be the court with the jurisdiction to make the orders relating to the matter of custody (see s 17A(3)(b)). Thus a continuation certification would have been required before the civil proceedings may proceed.

9 On the present facts, the OSG 9/2017 proceedings had concluded with the issuance of the OSG Order. There are no longer any “civil proceedings” to be stayed in accordance with s 17A(3).

10 I also considered whether the OSG *Order* would be stayed upon the commencement of divorce proceedings in the Syariah Court, on a broader reading of the reference to “civil proceedings”. I am of the view that the OSG Order is not automatically stayed. The rationale for the stay of civil proceedings is to prevent a situation of two courts determining the same matter and possibly reaching different orders. Legislation provides that the Syariah Court shall have jurisdiction in such a situation.

11 In the present case, the civil proceedings in OSG 9/2017 had concluded by the time the divorce proceedings were commenced in the Syariah Court; indeed the OSG Order had regulated the parties since 9 March 2017. The Mother’s submission appears to be that the OSG Order was stayed from 11 September 2018 when divorce proceedings were commenced in the Syariah Court. The consequence of such a position is that there would be no order regulating the parties from 11 September 2018 until 13 August 2019 when the Syariah Court’s interim orders were made. I do not think that this was intended by the legislature. I accept instead that the OSG Order subsists and regulates the parties until superseded by the Syariah Court orders over the same subject matter. No issue of conflicting orders arises from this position. The parties are instead continuously regulated by the relevant orders, *ie.*, the OSG Order from March 2017 and thereafter the Syariah Court Orders from 13 August 2019.

12 In light of my holdings, the Father’s committal application in FC/SUM 2221/2019 was for alleged breaches of a subsisting Order in OSG 9/2017. Enforcement proceedings of the OSG Order by way of committal proceedings are not civil proceedings that are stayed under s 17A(3) of the SCJA. It is the Family Court and not the Syariah Court that has the jurisdiction and powers to enforce custody orders (see s 53 of the Administration of Muslim Law Act, Cap 3, 2009 Rev Ed). Thus, there is no requirement of a Syariah Court continuation certificate in order for SUM 2221/2019 to proceed.

13 Having said this, I add my observation that the Syariah Court orders on access were made less than 2 months after the time of the alleged breaches. In contempt proceedings, the alleged contemnor’s acts of purging the contempt are relevant to the Court. If the Mother had complied with the August orders on access, such conduct would be relevant. I urge the parties to consider a conciliatory path. Parental conflict has negative effects on the children. The parties should minimise their conflict and work hard to be cooperative in co-parenting their children. This may seem a tall order to them amidst court proceedings, but the law does impose this obligation on them as parents and there are resources they can access to support them through this time of transitions. As they continue with the resolution of the issues within the Syariah Court proceedings, they can also reach out to therapeutic resources available there.