

Christine Elizabeth Tuppen v Michael Anthony Oxborrow
[2000] SGHC 276

Case Number : D 2411/1993, SIC 602911/2000
Decision Date : 15 December 2000
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Alice Tan (A C Fergusson & Partners) for the respondent; Pradeep Kumar (Drew & Napier) for the petitioner
Parties : Christine Elizabeth Tuppen — Michael Anthony Oxborrow

JUDGMENT:

Grounds of Decision

1. This is an application by the Respondent to vary an Order of Court of 26 March 1999 made pursuant to the dissolution of his marriage to the Petitioner. Chao Hick Tin J (as he then was) ordered *inter alia* that

(1) The Respondent is to pay the Petitioner monthly maintenance of S\$6,000.00 until January 2001. From February 2001, the Respondent is to pay the Petitioner monthly maintenance of S\$5,000.00;

(2) Continued payment by the Respondent of the mortgage of S\$5,500.00 until the same is fully paid up and the Respondent will at that stage transfer his share of The Lodge to the Petitioner;

2. The Respondent sought orders

1. That the Order of Court made herein on 26 March 1999 be varied in that the Respondent do pay the Petitioner maintenance from the month of July 2000 in the sum of \$3,333 per month (instead of \$6,000 per month until January 2001 and \$5,000 per month thereafter) or such sum as this Honourable Court considers reasonable until further order.

2. That the monthly payment of \$5,500 towards the mortgage loan of the London property at No. 8 The Lodge be suspended pending the sale of the property and net sales proceeds thereon be paid to the Petitioner.

3. The grounds for the applications were stated in the summons-in-chambers to be that

(T)here has been a material change in circumstances in that the Respondent is no longer employed at his former job at Senior Engineering Group PLC as Director Asia when he was getting an annual salary equivalent to \$300,000 with free accommodation and other expatriate benefits. He is currently employed as Executive Chairman of ACP Metal Finishing Pte Ltd at a remuneration of \$100,000 per annum without free accommodation or expatriate benefits other than the use of a company car. Therefore the Respondent is unable to afford to continue to pay the sum of \$6,000 per month to the Petitioner as maintenance and the sum of \$5,500 per month as mortgage payment towards the loan on the London property at No 8 The Lodge, title of which is to be transferred to the name of the Petitioner upon final payment of the mortgage loan. The Respondent prays

for further relief that the monthly maintenance payments to the Petitioner be limited to a period of 5 years from November 1999, the date he was first ordered to pay maintenance to her.

4. In his affidavit in support of the application the Respondent deposed that on 5 February 1999, he left his previous employment as Director Asia of Senior Engineering Group PLC where he received an annual salary equivalent to \$300,000 with free accommodation and other expatriate benefits. However he did not leave empty-handed. The company agreed to pay him 168,000, or \$465,360 at the agreed conversion rate of 1 to \$2.77, more than one and a half years' salary.

5. The Respondent said that he was unemployed for 10 months following as he did not find a job commensurate with his qualifications, expertise and the remuneration he was earning. In December 1999 he set up a company in Singapore, Budleigh Engineering Pte Ltd ("Budleigh") to carry on business in investments in high technology engineering companies. Budleigh in turn acquired in association with venture capitalists a 30% interest in a company, ACP Metal Finishing Pte Ltd ("ACP") which deals with surface treatment of special metals.

6. The Respondent is currently the Executive Chairman of ACP, drawing an annual salary of \$100,000, without free accommodation and other expatriate benefits save for a company car. His monthly salary is \$8,333 before tax, and he estimated it to be \$6,666 after tax. On that basis, he wants the maintenance for the Petitioner to be reduced to \$3,333, half his net monthly salary.

7. The Respondent had written on 3 March 2000 to his children who are also shareholders of Budleigh on Budleigh's investment in ACP. He did not refer to this letter in his affidavit, and it was the Petitioner who produced it in evidence in the proceedings.

8. In this letter the Respondent stated that

... Avimo sold their electro-plating company ACP to a joint venture company comprising Budleigh Engineering and a financial group. Budleigh Engineering invested S\$50,000 and the financial group S\$117,000 to own 30% and 70% respectively of the shares of ACP.

The money required to pay Avimo the S\$3.25m purchase price was provided by the financial group as a loan to ACP - and based on expected business activities will be paid back by ACP in 3 to 4 years.

Assuming the value of the company is the same as the purchase price of \$3.25m, Budleigh's 30% share is worth S\$975,000 (i.e. 30% of S\$3.25m) but for the moment until the outstanding loan of S\$3.25m is paid, the net value of the company is zero.

Once the loan has been repaid, in 3 to 4 years time, the shareholders will be worth full value.

As the many expansion plans are implemented the value of the company will change and it is reasonable to assume a threefold increase in value over 3 to 4 years to S\$9.75m - in which case Budleigh's 30% share will be worth S\$2.925m.

9. With regard to the property in London known as The Lodge, he deposed that there is an outstanding loan of S\$150,272 as at 9 June 2000, and that he had stopped making the monthly mortgage repayments of \$5,500 since June 2000. He informed the mortgagee bank, The Royal Bank of Scotland in his letter of 9 June 1999 that

Resulting from a change in circumstances in which in essence an annual salary of

S\$300k plus free accommodation with an MNC has become S\$100k minus accommodation with my own private company. Ongoing plans to acquire new companies and expand the business will determine the speed and timing of future salary increases.

As earlier indicated I estimate a period of 9-12 months before income levels can support a return to current mortgage repayment levels.

May I request that for a period of six months, at the end of which time the situation can be reviewed, I pay the bank monthly at the rate of \$650.00 in order to cover interest charges.

10. The Petitioner disputed that there was any material change in the Respondent's circumstances. Her solicitors wrote to the Respondent's solicitors on 12 July 2000 for information *inter alia* on how the 168,000 was to be received and utilised. His solicitors did not supply the information in their reply of 14 July and the Respondent also left that unanswered in his affidavit of 27 July.

11. The Respondent has not disclosed fully the impact and implications that his change in employment has on his financial position. From the evidence available, he was entitled to a sizeable golden handshake from his former employers. His financial prospects since that time have been good. He has been able to get himself a top position in a new set-up with equity participation. Although the investment in ACP is funded with borrowed money, he is optimistic about its prospects. He informed the mortgagees that he expects to be able to resume the \$5,500 monthly repayment in 9-12 months from June 2000, and he told his children that he expects ACP to repay its \$3.25m debt in three to four years, when Budleigh's investment in ACP will be worth \$2.925m.

12. Looking at all the circumstances, I varied Order 1 of the Order of Court of 26 March 1999 so that the Respondent is to pay monthly maintenance of \$4,000 per month to the Petitioner with effect from 1 September 2000 and that he is to furnish her with a sworn statement of his total direct and indirect income from ACP for each calendar year within 2 weeks from the end of the year. The Respondent had not shown any circumstances which justify a reduction of the maintenance to \$3,333, or for limiting the maintenance payments to five years.

13. The other application was to vary the order on the division of the matrimonial property known as The Lodge. Instead of paying off the mortgage loan and transferring the property to the Petitioner, the Respondent wants to stop the mortgage repayments, sell the property and pay the net proceeds to the Petitioner.

14. Counsel for the Petitioner objected that the Respondent cannot apply to vary an order on the division of matrimonial assets by a summons-in-chambers. He cited the unreported judgment of Chao J (as he then was) in *John Chin Ah Chai v Hee Ee Chu (m.w.) and Another* in Divorce No. 2378 of 1991 where he held that

It is clear that under the Women's Charter, an order for the division of matrimonial assets is quite different from an order for the payment of periodic maintenance. Whereas an order for periodic maintenance may be varied, if there is a material change in circumstances (s.112), the same is not so for division of matrimonial assets. Such an order once made is final, subject only to appeal by the dissatisfied party. There is no power or jurisdiction in the High Court to vary it. That was the ruling of the Court of Appeal in *Sivakolunthu Kumarasamy v Shanmugam Nagaiah & anor* (1988) 1 MLJ 341 where it affirmed a High Court decision that there was no power to vary an order for the division of matrimonial assets. Chan Sek Keong JC (as he then was), delivering the judgment of the Court, (at p.348) said:-

In our view, his decision was correct. His Lordship had no power to vary the settlement order as there is no provision in the Women's Charter which empowers a court to vary such an order. When made, it takes effect like any other court order and may only be varied upon appeal.

15. Although *John Chin's case* and *Sivakolunthu's case* were decided before the 1996 amendments to the Women's Charter which brought in new provisions for the division of matrimonial assets, the position with respect to orders for the division of matrimonial assets is not affected by those amendments.

16. While the order of 26 March 1999 was not in the usual form for a property to be sold or divided immediately, but required the Respondent to repay and discharge the existing loan and then to effect the transfer, it is an order for the division of a matrimonial asset. I fully agree with the decisions cited that such an order cannot be varied except by appeal. I therefore found that this part of the Respondent's application was misconceived, and made no order on it.

17. The Respondent is not satisfied with my decisions, and is appealing against them.

Kan Ting Chiu

Judge