Ng Kee Shee v Fu Gaofei
[2005] SGHC 171

Case Number : OSF 55/2005

Decision Date : 14 September 2005

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Ting Hi Keng (Yu and Co) for the plaintiff; The defendant unrepresented and absent

Parties : Ng Kee Shee — Fu Gaofei

Family Law – Divorce – Bars – Whether exceptional hardship existing to lift bar to divorce before lapse of three years from date of marriage – Circumstances amounting to "exceptional hardship" under s 94(2) Women's Charter – Section 94 Women's Charter (Cap 353, 1997 Rev Ed)

14 September 2005

Tay Yong Kwang J:

1 This was an application under s 94 of the Women's Charter (Cap 353, 1997 Rev Ed) made to a district judge of the Family Division of the Subordinate Courts for leave to be granted to the plaintiff ("the husband") to present a petition for divorce before three years have passed since the date of the marriage. Section 94 provides:

> (1) No petition for divorce shall be presented to the court unless at the date of the presentation of the petition 3 years have passed since the date of the marriage.
>
> (2) The court may, upon application being made in accordance with the Rules of Court, allow a petition to be presented before 3 years have passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree nisi, do so subject to the condition that no application to make the decree absolute shall be made until after the expiration of 3 years from the date of the marriage, or may dismiss the petition without prejudice to any petition which may be brought after the expiration of the said 3 years upon the same, or substantially the same, facts as those proved in support of the petition so dismissed.
>
> (3) In determining any application under this section for leave to present a petition before the expiration of 3 years from the date of the marriage, the court shall have regard to the interest of any child of the marriage and to the question whether there is reasonable probability of a reconciliation between the parties before the expiration of the said 3 years.
>
> (4) The court may, before determining an application under this section, refer the differences between the parties to a Conciliation Officer so that a reconciliation between the parties might be effected.
>
> (5) Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters which have occurred before the expiration of 3 years from the date of the marriage.

The case for the plaintiff

2 The husband is an electrical engineer aged 42. The defendant ("the wife") is 21 years old, residing in Wenchang City in the province of Hainan Island in the People's Republic of China. They were married on 20 October 2004 through the assistance of a marriage agency.

3 The husband claimed he suffered exceptional hardship for the reasons that follow. After their marriage on 20 October 2004, the wife returned to her family home in Hainan Island on 9 January 2005 ostensibly to celebrate the Chinese New Year with her family. She left with her two female friends, Lin Yuyin ("Yuyin") and Lin Qiongrui ("Qiongrui"), both of whom were also from Hainan Island. More than two months later, the wife has not returned to Singapore. She has not made any telephone call to the husband despite the fact that he had reminded her several times before her departure to call him every four or five days. She has also not written to him nor attempted to contact him in any way. The husband's fear and suspicion that the wife has no intention of returning to Singapore were confirmed when he found that she had taken all her clothes and jewellery with her, leaving only a few inexpensive T-shirts and underwear which were being laundered at the time of her departure.

4 The husband telephoned Qiongrui's husband, Toh Heng Leong ("Toh"), and found out that Qiongrui had also not returned to Singapore. Yuyin returned to Singapore in the middle of March 2005. On 8 March 2005, the husband and Toh visited Yuyin to ask her about their wives. The husband was told by her that the wife's parents tried to persuade her to return to Singapore but she told them she would rather die than obey them. Yuyin then telephoned the wife and passed the receiver to the husband so that he could speak to her. The wife told him that their marriage was over, that she wanted a divorce and would never return to him. She also told him that she was willing to sign any document to enable him to obtain a divorce.

5 The husband also enumerated various examples of the wife's "abnormal behaviour" while she was with him. During their honeymoon in Thailand, the wife refused to let him hold her hand by practically running away from him. She would also rebuff any attempt by him to place his arm over her shoulders and would warn him not to do so. She also refused to let him hug or kiss her. The wife refused to have sexual relations with him until the third day after the solemnisation of their marriage. When they finally had sex, she was unresponsive and refused to allow him to touch her face altogether.

6 The wife permitted the husband to have sex with her only once a week and would sleep as far away as possible from him on their bed, placing a bolster between them and turning away from him.

7 The wife would hold Qiongrui's hand with their fingers intertwined and they would caress each other, even in the presence of and apparently oblivious of their husbands. The wife would also have long telephone conversations with Qiongrui, friends and relatives almost every day and night, which often went past midnight. Even when they were having their honeymoon in Thailand, she appeared more interested in making telephone calls than in him. She would stay overnight at Qiongrui's home at every opportunity and he had to beg her to return to their matrimonial home. On one occasion, the husband and the wife were at the airport together with Yuyin, Qiongrui and their husbands to send off the wife's mother and relatives. After the mother and relatives had left, the wife refused to get into the husband's car and, when he insisted, she ran towards the highway as if to commit suicide. Yuyin's husband ran after her and managed to catch hold of her before any accident could happen. The wife calmed down only after the husband relented and allowed her to stay overnight with Qiongrui at Yuyin's home.

8 The wife also refused to put on her wedding ring despite the husband's requests and finally did so only a few days before her departure. She also refused to accompany him on the once-a-week trip to the wet market, the only "chore" he requested of her as they had a maid in the home to do the housework.

9 The husband, being already past 40 years of age, was anxious to settle down and start a family and that was why he approached a marriage agency to help him find a wife. He spent a lot of money and went through a lot of trouble in order to marry the wife and thus felt cheated, humiliated and depressed. He wanted badly to be free again and be able to date and look for another life partner in order to restore his confidence with females. In view of what had already taken place, he made no attempt at reconciliation because he considered the marriage hopeless. He wished to petition for divorce on the ground of unreasonable behaviour on the part of the wife.

10 Yuyin, (who is) 32 years old, filed an affidavit stating that she is the cousin of Qiongrui, a friend of the wife. She said that Qiongrui and the wife grew up together in the same village in Hainan Island and had been schoolmates and colleagues and were practically inseparable. Both of them stayed with Yuyin when they first arrived in Singapore. After both of them got married, they would still stay overnight at Yuyin's flat despite her exhortation to them to return to their husbands.

11 In Hainan Island, Yuyin asked the wife whether she would be returning to Singapore with her on 16 March 2005. The wife replied that she would rather die than return to the husband. When the husband tried to contact the wife several times, she refused to speak to him and also refused to give him her contact number. Qiongrui's sister informed Yuyin that Qiongrui cried very bitterly when her parents tried to persuade her to return to Singapore. In Yuyin's conversations with the wife and Qiongrui, she had a very strong impression that both of them felt that their marriages were mistakes and that they could not get used to life in Singapore and would never return to their husbands. She agreed that their marriages were hopeless and that both ladies were selfish and immature persons who thought only of themselves.

The district judge's decision

12 The district judge dismissed the husband's application. She noted that the wife did not file an affidavit in this application but did acknowledge receipt of the Originating Summons on 26 April 2005. The wife also wrote a letter in which she agreed with the contents of the husband's and Yuyin's affidavits and stated that she would not return to the husband. She also stated that she would not defend his application to court nor contest the divorce petition that would be filed.

13 The district judge referred to three English decisions dealing with a provision that was similar to our s 94 of the Women's Charter. One held that it was only necessary for the court to consider whether the allegations made were such that, if proved, would amount to exceptional hardship as the case may be. There was no need to try whether the case was one of exceptional hardship since this would involve deciding whether the allegations in the petition for divorce were true (*Winter v Winter* [1944] P 72). The court could take into consideration hardship arising from the past conduct of the other spouse, the present hardship as well as hardship arising from having to wait for the three-year bar to elapse (*W v W* [1967] P 291). The hardship suffered must be something out of the ordinary, judged by the prevailing standards of acceptable behaviour between spouses (*Fay v Fay* [1982] AC 835).

14 The district judge also cited *Wong Pee Wei v Ho Soo Hua Anna Laurene* [2002] SGDC 239), where the husband in that case applied for leave to petition for divorce on the ground that the marriage was doomed from the first day and the two young parties, who had never lived together, agreed that the marriage could not be salvaged and that they should not be shackled by the doomed marriage. The district judge in that case refused leave because some hardship was inevitable in all cases of marital breakdown and the aim of s 94 was to promote sanctity of marriage and to ensure that the parties did not rush into and out of marriage capriciously.

15 The district judge proceeded to analyse the facts of this case in the remaining six paragraphs of her judgment ([2005] SGDC 153):

> 12 With regard to the husband's submissions, I find that there was nothing exceptional about the behaviour of the wife nor was the hardship of abandonment and rejection suffered by the husband exceptional. The husband chose to contract a marriage with a girl more than 20 years his junior and who hardly knew him. He must have expected adjustment difficulties on the part of a village girl to life in the city and with a stranger. The incident where the wife refused to get into the car and ran into heavy traffic over a trivial incident showed how foolish and immature the wife is and was probably not a real attempt to take her own life.
>
> 13 As for the alleged abnormal relationship between the wife and [Qiongrui], their relationship has to be viewed in the context of them being childhood friends from the same village, both married to men old enough to be their fathers, with no close relatives or friends in Singapore, except for Mdm Yuyin. One should also not read too much into young girls holding hands or having long telephone conversations into the night.
>
> 14 As for the husband's submission that he was anxious to remarry and start a family, this submission has no merit. By this submission, he is asking the Court to assume that he will be able to re-marry, father a child immediately and be healthy enough to work till he is 66. Similarly, the wife's admission that the marriage is over and consent to a divorce is not sufficient for this Court to grant leave to commence divorce proceedings.
>
> 15 The aim of section 94 is to promote the sanctity of marriage and ensure that parties do not rush into and out of marriage without any thought of the consequences. Section 94(2) states that the Court shall have regard to "question whether there is a reasonable probability of reconciliation between the parties". Parties were married for just 5 months. I note that there were no attempts at reconciliation here. The husband made no effort to go to China to persuade his wife to return, merely accepting her words over the telephone that she wanted a divorce. Just 12 days later, after the conversation with the wife, he files this OS for leave to commence divorce proceedings. Allowing the parties to divorce after only 5 months of marriage, simply because they felt that there was no hope of reconciliation would defeat the purpose of this section.
>
> 16 I accept that the husband in this case had suffered some hardship due to the behaviour and abandonment by the wife. However, some hardship is inevitable in the breakdown of a marriage. The crux is whether the hardship suffered is exceptional. In the present case, there is nothing exceptional. It was clear to me that the husband went into this marriage like it was a commercial transaction, with expectations of having a wife who would pander to his every need, having paid so much to the marriage agency for the arrangements and wedding. When reality fell short of his high expectations, he felt cheated and humiliated. While the wife is not blameless in this matter either, the husband had to some extent contributed to the situation he is in.

17 For the above reasons, I dismissed the husband's application.

16 The husband appealed to the High Court against her decision.

The decision on appeal

17 I agree with the district judge that nothing much should be made of the fact that the wife and Qiongrui liked to hold hands and converse late into the night. I also do not regard the wife's reluctance to put on her wedding ring or to go to the wet market as matters of significance. I do find it somewhat disturbing that the district judge emphasised twice, almost derisively, that there was a rather big difference in the ages of the parties as seen in her statements, "The husband chose to contract a marriage with a girl more than 20 years his junior" and "both married to men old enough to be their fathers". The marriage here may perhaps be described as a late-summer-and-spring union but it was an arranged marriage, not a forced one. There was no evidence to indicate any coercion by the husband on the wife or her family to cause her to enter into the union, strangers though the parties might have been. The husband, therefore, had every reason to expect that both of them would want to get to know each other better gradually as the days passed.

18 However, it seemed that the wife was not only unwilling to make any effort towards this end after the wedding but was also constantly shutting all the doors in his face. There is a vast difference between feeling shy at being touched and telling one's spouse not to touch, hug or kiss and, as in this case, to literally stay out of one's face altogether. It was also not so much a question of the infrequency of sexual intimacy that was hurting to the husband. It was the attitude of the wife, dictating to him from the start that once a week was all she was willing to tolerate. This was not a case of a new couple learning to adjust to each other. It was simply one of the wife unilaterally setting out all the rules of intimacy from the start, something that is the antithesis of intimacy.

19 Within three months of the marriage, the wife made up her mind to leave the husband without even writing a short note to say the marriage was a mistake and that they should go their separate ways. She refused to speak to him when he called and wrote no letter to him from her family home. Her stony silence obviously hit him in his face like a piece of cold, hard rock. She has also confirmed all that the husband stated in his affidavit which included her threat to commit suicide if she had to return to his side.

20 The situation was compounded by the fact that time is not on the husband's side. On this point, I found the district judge's statement at [14] of her judgment quite incomprehensible. Even if the husband eventually fails to find another spouse or is unable to father a child immediately after his second marriage or becomes unable to work till he is 66, how would all these have an impact on the issue whether he is suffering exceptional hardship now? All that he was trying to tell the court was that the longer he had to wait, the longer he would have to remain in gainful employment if he wanted to be responsible and provide financially for his child until the child turned 21. Further, if the husband manages to go on a date with a lady in the meantime and is asked about his marital status, he would have to say in all honesty that he is a married man, thereby diminishing his chances of finding a life partner.

21 I agree with the pronouncement that the laudatory intention of s 94 is to promote sanctity of marriage and to ensure that parties do not rush into and out of marriage capriciously. Here, it was clearly the wife who had absolutely no regard for the union and who was the one who entered into the arranged marriage capriciously. To hold that the husband should nevertheless wait three years

before seeking a divorce appears to be visiting the wrongs of the wife on him. After all, he was serious about the marriage and he would like to have his wife back. It was she who abandoned him and the matrimonial home and chose to leave a gulf of more than 1,000km between them, avowing over and over again that she was never coming back. There is nothing left to reconcile in such a situation. One cannot rekindle a flame that was never lit.

22 I do not think it is fair to say that the husband entered the marriage "with expectations of having a wife who would pander to his every need". The evidence did not justify such a statement. Indeed, Yuyin stated that, to the contrary, it was the wife who was selfish and immature, thinking only of herself.

23 Exceptional hardship is something quite out of the ordinary and more than what an ordinary person should reasonably be asked to bear. All these things happened to the husband within five months of his marriage. Fortunately, he did not suffer a mental breakdown. The matters which I have highlighted, all admitted by the wife in her letter, clearly showed exceptional hardship suffered by him and would amount to unreasonable behaviour on the part of the wife. I therefore allowed the appeal and granted the husband leave to present a petition for divorce before three years have passed since the date of the marriage.

Appeal allowed.