IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 54

Civil Appeal No 169 of 2018

Between

UFN

… *Appellant*

And

UFM

… Respondent

Summons No 72 of 2019

Between

UFM

… *Applicant*

And

UFN

… *Respondent*

In the matter of Originating Summons (Family) No 101 of 2016 (Registrar's Appeal No 10 of 2017)

Between

UFM

… *Plaintiff*

And

UFN

… *Defendant*

GROUNDS OF DECISION

[Family Law] — [Ancillary powers of court] — [Financial relief consequential on foreign matrimonial proceedings]

UFN
v
UFM and another matter

[2019] SGCA 54

Court of Appeal — Civil Appeal No 169 of 2018 and Summons No 72 of 2019
Sundaresh Menon CJ, Judith Prakash JA and Debbie Ong J
9 July 2019

9 October 2019

Debbie Ong J (delivering the grounds of decision of the court):

Introduction

1 This appeal is the first case concerning Ch 4A in Part X of the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter") to reach this Court. Chapter 4A (containing ss 121A–G) was introduced fairly recently in 2011, providing a new regime for the application for financial relief after a foreign divorce or nullity. Up until then, there existed a "gap" in the law in cases where a foreign divorce had been obtained and there were matrimonial assets situated in Singapore. This gap arose because the Singapore court could no longer grant a divorce and exercise its ancillary powers to divide matrimonial assets or order maintenance for the spouse where a marriage had been terminated by a foreign judgment. However, by the Women's Charter (Amendment) Act 2011 (Act 2 of 2011) the court's powers in ss 112, 113 and 127 of the Women's Charter were

extended to marriages which have been dissolved, annulled, or where the parties to a marriage have been legally separated by judicial or other proceedings under the law of a foreign country recognised as valid in Singapore. The then Minister for Community Development, Youth and Sports explained that (*Singapore Parliamentary Debates, Official Report* (10 January 2001), vol 87 at cols 2048–2049 (Dr Vivian Balakrishnan, Minister for Community Development, Youth and Sports):

> … with the increasing number of Singaporeans working and residing overseas and increasing marriages between locals and foreigners, this proposed provision will help those who are made vulnerable by foreign divorces and who have a relevant connection to Singapore to seek relief.… With this new Chapter, the courts here will be able to make orders on matrimonial assets in Singapore and the maintenance for divorces that were obtained in foreign courts. This will plug an existing gap.

2 As this case raised several issues relating to the interpretation of the recently introduced provisions, we issue these written grounds to explain our decision.

Background facts

3 The appellant ("the Husband") and the respondent ("the Wife") solemnised their marriage in Jakarta in 1995. They have three children: two daughters who are 22 and 18 years old, and a son who is ten years old. The parties and their children are all Permanent Residents of Singapore. At the time of the hearing, the Husband was residing in Singapore, while the Wife was residing in Indonesia with the children.

4 According to the Wife, the marriage broke down because the Husband began physically and mentally abusing her and their children. The Husband eventually faced criminal proceedings in Indonesia. On 23 July 2013, the West

Jakarta District Court found the Husband guilty of "[d]omestic physical violence and violence against children for committing in an obscene action" and sentenced the Husband to a term of imprisonment of three years and six months, with a fine of IDR100m (approximately $9,750). The Husband's appeal was dismissed on 9 January 2014 by the West Jakarta High Court, which enhanced his sentence to an imprisonment term of four years and six months. The Husband has not served his sentence.

5 The Wife filed for divorce in Indonesia during the ongoing criminal proceedings. On 5 June 2013, the West Jakarta District Court made the following orders:

(a) The parties were legally divorced with effect from 5th June 2013.

(b) The Wife shall have custody of the three children to the marriage.

(c) The Husband shall pay monthly maintenance for the three children at IDR50m.

(d) The marital attachment to the "community property" requested by the Wife is refused.

6 The Husband appealed to the Jakarta High Court, which dismissed the appeal on 5 May 2014 save for varying the monthly maintenance sum downwards to IDR22.5m (approximately $2,300). A further appeal to the Indonesian Supreme Court was dismissed on 27 August 2015.

7 From the foregoing, it is clear that the District Court's order on the marital property (see [5(d)] above) was not disturbed on appeal. Counsel for the

Wife explained at the hearing below that the purpose of attachment is to free the assets and is a prelude to the division of assets. This explanation was not challenged by the counsel for the Husband.

8 As the request for marital attachment is of some importance to the current appeal, we set out the translation of the detailed order in full:

> Considering, that the fifth and sixth prayer for relief is a request for levying marital attachment to the community property, but there is no adequate reason to levy the marital attachment and it is in fact, the attachment requested by the [Wife] has been executed by the Bailiff, therefore the fifth and sixth prayer for relief must be rejected.

9 The Wife's Indonesian lawyer explained that the West Jakarta District Court declined to levy the marital attachment because:

> … the divorce proceedings were not the appropriate occasion to rule on the community property between [the parties]. This was because the community property would be governed by the Prenuptial Agreement, to the extent that the Prenuptial Agreement was valid. The validity or effect of the Prenuptial Agreement was not before the West Jakarta District Court. The District Court Divorce Case only concerned the divorce between [the parties], not the validity of the prenuptial Agreement.

10 The Wife maintained that the Husband had not fully complied with the Indonesian court's directions for him to pay maintenance for the children. She had also not taken any further step in the Indonesian courts.

11 On 21 October 2016, the Wife applied under s 121D of the Women's Charter for leave to commence Ch 4A proceedings. She sought an order for the division of a property in Singapore, which she jointly owned with the Husband (hereinafter referred to as the "Seaview Property"). Her application was dismissed by the District Judge ("the District Judge") on 2 May 2017 on the

sole ground that the Wife should have applied to the Indonesian courts for financial relief before applying for the same in Singapore.

12 The Wife's appeal was allowed by the Judicial Commissioner of the High Court ("the Judge"). The Judge held that the doctrine of natural forum does not apply to a determination under Ch 4A. The Wife thus need not show that Singapore is the more appropriate forum. The Judge then held that s 121D, which requires the applicant to show "substantial ground" for her application for financial relief, relates to the entirety of the merits of the application. That in turn requires the court to consider the nine factors enumerated under s 121F, which relate to the appropriateness of granting financial relief. Contrary to the position adopted by the District Judge, she also held that Ch 4A does not set out any rule that an applicant had to exhaust all available remedies in the jurisdiction in which the foreign divorce was obtained before making a Ch 4A application in Singapore. Instead, she emphasised that s 121F(2)(*f*) simply invites the court to assess whether the applicant had a good reason for choosing Singapore over any other jurisdiction in which he or she may have a right to obtain financial relief from the other party. Applying the factors in s 121F to the facts, the Judge observed that the parties have a significant connection to Singapore. She also held that given the Husband's non-compliance with Indonesian court orders, it would be unfair and impractical to require the Wife to first seek financial relief from him in Indonesia. In addition, any order affecting the Seaview Property given by the Singapore court may be enforced in Singapore. It is therefore appropriate for the relief sought to be granted by a Singapore court. Accordingly, the Judge allowed the appeal and granted the Wife leave to make her application. Given that there was no Court of Appeal decision on the scope and application of the recently introduced provisions in Ch 4A, the Judge granted the Husband leave to appeal to this Court.

The parties' submissions

13 The Husband, who was self-represented in this appeal, raised many grounds of appeal in his appellant's case, which we summarise as follows:

(a) The Singapore courts have no jurisdiction because he has been domiciled or habitually resident for less than three years in Singapore.

(b) The proceedings should not be heard in Singapore because there is a valid pre-nuptial agreement that is governed by Indonesian law.

(c) Leave should not be granted because the Wife did not apply for financial relief in Indonesia, which shows that she is forum shopping.

(d) He had complied with the maintenance orders made in Indonesia ([6] above) and had in fact paid three times of what he was required to under those orders.

(e) His criminal convictions were a "hoax".

(f) The Wife breached an "oath" given before the Judge that she would not lay claim to assets in Indonesia if the Singapore Courts were to divide the Seaview Property.

(g) He is not a fugitive, as evidenced by the stamps on his passports showing that he has been travelling to Indonesia and a certificate from what appears to be a local authority in West Jakarta stating that he has been domiciled there since 2012.

(h) His mother and his sisters have a claim to the Seaview Property.

14 At the hearing before us, he stated that his principal submission was that the Wife had not obtained a divorce in Indonesia. He claimed that the Indonesian court orders obtained by the Wife were "fake".

15 The Wife essentially sought to defend the Judge's decision. In response to the Husband's allegations in relation to the Seaview Property, she submitted that:

(a) the Husband's mother does not own the property;

(b) if the property were meant to be a gift to the Husband, he had integrated it into the pool of assets;

(c) no express, resulting or constructive trust of the Seaview Property arises in favour of the Husband's mother; and

(d) if proceeds from a previous gifted property were used for its purchase, the registration of the Seaview Property in both parties' names is sufficient to render it a matrimonial asset.

16 As for the pre-nuptial agreement, she submitted that it was procured without due consideration on her part and is therefore void under Indonesian law. In any case the agreement does not cover the Seaview Property because it is concerned only with preventing the community of property which the parties owned separately (the Seaview Property is held by the parties as joint tenants). She also pointed out that the Husband's evidence on the length and consistency of his presence in Singapore and the extent to which he had complied with the Indonesian orders on maintenance were inconsistent.

The legal framework and principles

17 Applications for financial relief under Ch 4A comprise two stages. At the first stage, an applicant must obtain the leave of the court. Only when leave is obtained will he or she be able to make a substantive application for financial relief at the second stage.

First stage of obtaining leave

Whether there was a valid foreign divorce

18 First, the applicant must show that there is a foreign divorce, annulment or judicial separation that is entitled to be recognised as valid in Singapore under Singapore law:

> **Applications for financial relief after overseas divorce, etc.**
>
> **121B.** Where —
>
> (a) a marriage has been dissolved or annulled, or the parties to a marriage have been legally separated, by means of judicial or other proceedings in a foreign country; and
>
> (b) the divorce, annulment or judicial separation is entitled to be recognised as valid in Singapore under Singapore law,
>
> either party to the marriage may apply to the court in the manner prescribed in the Family Justice Rules made under section 139 for an order for financial relief under this Chapter.

19 The recognition of foreign matrimonial proceedings is governed by the common law. The court will recognise foreign judgments made in other jurisdictions in accordance with rules of private international law. An established rule on the recognition of foreign divorces in Singapore is that a foreign judgment of divorce will be recognised as valid if it is granted by a court of either party's domicile: Debbie Ong, *International Issues in Family Law in Singapore* (Academy Publishing, 2015) ("*International Issues in Family Law*")

at paras 5.47 and 5.53, cited with approval by this Court in *Yap Chai Ling and another v Hou Wai Yi* [2016] 4 SLR 581 at [49]. Recognition may however be withheld if such recognition would be contrary to public policy: *Ho Ah Chye v Hsinchieh Hsu Irene* [1994] 1 SLR(R) 485 at [53] and [68(g)].

Whether the Singapore courts have jurisdiction to grant relief

20 Second, the applicant must show that the Singapore court has jurisdiction over the matter as required by s 121C:

> **Jurisdiction of court**
>
> **121C.** The court shall have jurisdiction to hear an application for an order for financial relief only if —
>
> (a) one of the parties to the marriage was domiciled in Singapore on the date of the application for leave under section 121D or was so domiciled on the date on which the divorce, annulment or judicial separation obtained in a foreign country took effect in that country; or
>
> (b) one of the parties to the marriage was habitually resident in Singapore for a continuous period of one year immediately preceding the date of the application for leave under section 121D or was so resident for a continuous period of one year immediately preceding the date on which the divorce, annulment or judicial separation obtained in a foreign country took effect in that country.

Whether there is substantial ground for the making of the application

21 Once these two jurisdictional hurdles are crossed, the applicant may seek leave by showing that there is "substantial ground" for the making of an application for an order for financial relief:

> **121D.**—(1) No application for an order for financial relief shall be made unless the leave of the court has been obtained in accordance with the Family Justice Rules made under section 139.
>
> (2) The court **shall not grant leave unless it considers that there is substantial ground** for the making of an application for such an order.

> (3) The court may grant leave under this section notwithstanding that an order has been made by a court of competent jurisdiction in a foreign country requiring the other party to the marriage to make any payment or transfer any matrimonial asset to the applicant or a child of the marriage.
>
> (4) Leave under this section may be granted subject to such conditions as the court thinks fit.
>
> [emphasis added in bold]

22 However, the provision does not define "substantial ground".

23 The term "substantial ground" also appears in Part III of the English Matrimonial and Family Proceedings Act (c 42) (UK), on which Ch 4A was modelled after. It has been interpreted by the UK Supreme Court to mean a threshold that is "not high", but higher than "serious issue to be tried" or "good arguable case": *Agbaje v Agbaje* [2010] 1 AC 628 ("*Agbaje*") at [33].

24 The court should interpret a statutory provision in a way that gives effect to the intent and will of Parliament: s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed). In seeking to draw out the legislative purpose behind a provision, primacy should be accorded to the text of the provision and its statutory context over any extraneous material: *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [43]. Thus, in interpreting the term "substantial ground", regard must be had to the entire statutory regime in Ch 4A and in particular to the fact that the proceedings take place in two stages: the application for leave and the substantive application.

25 Under the current regime, an application for leave must be made by originating summons which, unless the court otherwise directs, must be served on the defendant at least five clear days before the date of the case conference or hearing. The defendant may be heard even without filing a memorandum of appearance: Rule 40 of the Family Justice Rules 2014 (S 813/2014) ("FJR").

Thus both the application for leave and the subsequent application for substantive financial relief are heard *inter partes*.

26 We pause briefly to observe that the current regime is less than satisfactory. It requires the court to hear two rounds of arguments which add to costs and time required to dispose of the matter. In our view, the initial application for leave ought to be made on an *ex parte* basis, where the applicant must make proper and candid disclosure, establish that the jurisdictional hurdles are crossed and show that there is substantial ground for the making of the application. We emphasise that the defendant will, in any event, be entitled to make detailed submissions after the applicant applies for financial relief pursuant to the leave granted by the court. In our view, this would strike an appropriate balance between according fairness to both parties on the one hand and ensuring that applications are dealt with expeditiously on the other, bearing in mind that an expeditious resolution benefits not just the applicant but also the defendant.

27 Our view above is consistent with the Law Reform Committee's proposal for leave be heard *ex parte*: Law Reform Committee, Singapore Academy of Law, *Report of the Law Reform Committee on Ancillary Orders after Foreign Divorce or Annulment* (July 2009) ("LRC Report") at para 65. We note too that leave applications in the equivalent English regime are heard *ex parte*: *Agbaje* at [3]. The Law Reform Committee also recommended that challenges to leave granted *ex parte* be restricted to *only* those on jurisdictional grounds (*ie*, under s 121C of the Women's Charter). The Law Reform Committee provided an elaboration of this recommendation at para 67:

> … This type of challenge should be allowed because the jurisdiction of the court goes to the root of the claim. Further, this challenge is based on well-established principles of law and not subject to discretionary considerations. To go further to

> allow challenges based on prospects of success or natural forum considerations before getting to the substantive hearing itself will, we fear, increase the cost and complexity of the process and prolong the proceedings.

28 We are of the view that serious consideration ought to be given to amending Rule 40 of the FJR to provide for applications for leave under s 121D to be heard *ex parte*. In such an *ex parte* application, the applicant's burden is to establish that there is a valid foreign divorce, annulment or judicial separation, the Singapore court has jurisdiction and that there is substantial ground for the application to be made in Singapore.

29 We now return to our discussion on the interpretation of "substantial ground" in the context of the current two-stage process. In our view, Parliament could not have intended for a court to hear detailed substantive arguments at both the hearing for the application for leave and again at the hearing on the full merits of the case. This would lead to duplication in evidence and arguments at both stages, increasing costs and causing delays in resolving the dispute. This will be particularly acute if appeals are filed at both stages of the proceedings. Further, the purpose of the leave mechanism is only to sift out plainly unmeritorious cases or those which amount to an abuse of process: see LRC Report at para 66 and *Agbaje* at [33]. In light of the foregoing, we are of the view that "substantial ground" should not be interpreted as imposing a high threshold; it is a ground that is "solid" in that it should not be plainly unmeritorious. Instead, at the leave stage, the applicant need only show that it is *prima facie* appropriate for a Singapore court to grant relief. This threshold is analogous to the one used in *ex parte* applications for leave to apply for an order for committal under O 52 r 2 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (*ie*, a *prima facie* case of contempt: see *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 at [57]).

30 A pertinent issue is whether the factors in s 121F are relevant to the analysis of whether "substantial ground" is made out at the leave stage. Section 121F requires the court to consider whether in all the circumstances of the case it would be appropriate for the court in Singapore to make the order for financial relief sought in s 121G. Section 121F(2) provides that the court shall in particular have regard to the following nine factors:

> **Duty of court to consider whether Singapore is appropriate forum for application**
>
> **121F.**—(1) Before making an order for financial relief, the court shall consider whether in all the circumstances of the case, it would be appropriate for such an order to be made by a court in Singapore, and if the court is not satisfied that it would be appropriate, the court shall dismiss the application.
>
> (2) The court shall, in particular, have regard to the following matters:
>
> (a) the connection which the parties to the marriage have with Singapore;
>
> (b) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which judicial separation was obtained;
>
> (c) the connection which those parties have with any other foreign country;
>
> (d) any financial benefit which the applicant or a child of the marriage has received, or is likely to receive, in consequence of the divorce, annulment or judicial separation, by virtue of any agreement or the operation of the law of a foreign country;
>
> (e) in a case where an order has been made by a court of competent jurisdiction in a foreign country requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the marriage, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;
>
> (f) any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any foreign country, and if the applicant has omitted to exercise that right, the reason for that omission;

> (g) the availability in Singapore of any matrimonial asset in respect of which an order made under section 121G in favour of the applicant could be made;
>
> (h) the extent to which any order made under section 121G is likely to be enforceable; and
>
> (i) the length of time which has elapsed since the date of the divorce, annulment or judicial separation

31 The Judge was of the view that the factors in s 121F must be considered when the court determines whether to grant leave under s 121D. We broadly agree, save that we do not think that every factor in s 121F needs to be considered in the way that a court hearing the substantive application might do so. Section 121D refers to a "substantial ground for the making of an application" for an order for financial relief. The granting of leave to make an application in the Singapore court is one step removed from the granting of the order for financial relief. We think that "substantial ground" is more closely tied to the *making of the application in the Singapore court* and less so to the *order for financial relief* itself. The requirement in s 121D appears to be concerned with the appropriateness of the Singapore court in making an order for financial relief under s 121G; precisely the issue to which the s 121F factors relate.

32 Our views are consistent with the views of the High Court in *Harjit Kaur d/o Kulwant Singh v Saroop Singh a/l Amar Singh* [2015] 4 SLR 1216 ("*Harjit Kaur*"), where the court held at [20] that leave should not be granted if it is clear that Singapore is not the appropriate forum, having regard to the factors in s 121F. We emphasise however that it is not incumbent on the court in *ex parte* applications for leave to consider each and every one of the factors and weigh them separately. Rather, the court must apply its mind to these statutory signposts towards the ultimate determination of whether, *prima facie*, Singapore is an appropriate forum for the application.

Second stage of applying for substantive relief

33 Once leave is obtained, the applicant may proceed to apply for substantive financial relief. In this regard, the court may pursuant to s 121G make orders for the division of assets and maintenance under ss 112, 113 or 127(1) of the Women's Charter. Section 121F provides that "[b]efore making an order for financial relief, the court shall consider whether … it would be appropriate for such an order to be made by a court in Singapore". We emphasise that at this stage, the court must conclude, taking into account all the circumstances, that it would be appropriate for a Singapore court to grant the relief. This is different from the determination at the leave stage, where the applicant only needs to show that it would be *prima facie* appropriate to do so.

34 To sum up, an applicant must first obtain leave to apply for financial relief under Ch 4A. The applicant must show that there is a foreign divorce, annulment or judicial separation recognised as valid in Singapore. He or she must also establish that the Singapore court has jurisdiction over the matter as required by s 121C. Next, the applicant must show "substantial ground for the making of an application". "Substantial ground" is made out if it would *prima facie* be appropriate for the Singapore court to grant relief, having regard to the s 121F factors and keeping in mind that the purpose of the leave application is to filter out hopeless, frivolous or unmeritorious cases. If leave is granted, the court will hear the application for financial relief under s 121G at the next stage; in doing so, the court must conclude that it would be appropriate for the Singapore court to grant the relief, having regard to the s 121F factors. We add that if our view that the initial application should be made *ex parte* were accepted, then at the *inter partes* hearing, when the court embarks on the actual determination of the matter, the respondent would have due opportunity to address the court on all aspects of the matter.

Our decision

Whether there was a valid foreign divorce

35 We now turn to the facts of this case, beginning with the enquiry of whether the Wife had obtained a valid divorce in the Indonesian courts. This was not an issue in the proceedings below. However, at the hearing before us, the Husband confirmed that his main submission was that there was no divorce in Indonesia. The Husband also stated in his appellant's case that the Indonesian divorce proceedings were "fake" in that "the divorce paper[s] had been issued, NOT to me nor my legal representatives but to someone unknown who is not my legal representative", and that he and his lawyers "had question[ed] the validity [of the documents] from the very beginning when at all material times the Indonesian Court had clearly recorded the new counsel".

36 We rejected this submission. In the proceedings below, the Husband accepted that there was a valid Indonesian divorce order. He deposed in an affidavit:

> On 5th June 2013, the West Jakarta District Courts made the following orders …
>
> a. That the [Wife] and I are legally divorced with effect from 5th June 2013;
>
> …
>
> Therefore, on or about 12th July 2013, I filed an appeal … to appeal against the West Jakarta District Court's decision to grant the divorce between me and the [Wife] …

37 The Husband also stated the following in his written submissions filed at the Family Court: "Therefore, the parties were officially divorced in Jakarta, Indonesia, pursuant to the latest Indonesian Supreme Court Orders …". Indeed, the Husband had specifically stated that there was "nothing invalid or irregular about the Indonesian Order(s)", defined as including the order for divorce

pronounced by the West Jakarta District Court. We emphasise that the Husband was represented in the proceedings before the District Judge and the Judge.

38 As the Husband had taken a considered position in the proceedings below, we observed that this was a change in his position at the appeal before us. At the hearing, the Husband was unable to offer any explanation for his change of position. We also noted that the Husband had tendered an affidavit filed by a person who claimed to be an Indonesian lawyer. That person echoed the Husband's assertion that the Indonesian "divorce paper" was "fake". We were, however, not able to derive any assistance from this affidavit because it was written incoherently and the rather inflammatory opinions expressed therein were not supported by any objective evidence.

39 In light of the above, we rejected the Husband's belated claim that there was no Indonesian divorce order. We accepted the fact that the West Jakarta District Court had granted a divorce on 5 June 2013, and that its order dissolving the marriage was affirmed on appeal. Since the West Jakarta District Court is a court of competent jurisdiction under our conflict of laws rules, we recognised the divorce pronounced by the court to be valid for the purpose of s 121B.

Whether the Singapore courts have jurisdiction to grant relief

40 The Husband claimed that the Singapore courts have no jurisdiction to grant financial relief because he has been living in Jakarta since 2012 and "started being active in Singapore only on the 23rd of June 2014", which was less than three years before the Wife filed her application in October 2016. He relied on s 93(1)(*b*) of the Women's Charter, which provides:

> **Jurisdiction of court in matrimonial proceedings**
>
> **93.**—(1) Subject to subsection (2), the court shall have jurisdiction to hear proceedings for divorce, presumption of

> death and divorce, judicial separation or nullity of marriage only if either of the parties to the marriage is —
>
> > (a) domiciled in Singapore at the time of the commencement of the proceedings; or
> >
> > (b) habitually resident in Singapore **for a period of 3 years** immediately preceding the commencement of the proceedings.
>
> [emphasis added in bold]

41 Section 93(1)(*b*) does not apply here because the Wife is not seeking a divorce. Instead, the Wife is seeking financial relief and the applicable provision is s 121C, where the specific requirement is habitual residence of one year, not three years:

> **Jurisdiction of court**
>
> **121C**. The court shall have jurisdiction to hear an application for an order for financial relief only if —
>
> …
>
> (b) one of the parties to the marriage was habitually resident in Singapore **for a continuous period of one year immediately preceding** the date of the application for leave under section 121D or was so resident for a continuous period of one year immediately preceding the date on which the divorce, annulment or judicial separation obtained in a foreign country took effect in that country.
>
> [emphasis added in bold]

42 We found the Husband's assertion that he had been living in Jakarta since 2012 quite incredible. It contradicts his evidence that he has been unable to return to Jakarta since 2013. Further, the Husband's latest position is that he has been "active" in Singapore since June 2014. We found that the one-year habitual residence requirement is made out and the Singapore court has jurisdiction to grant the financial relief sought.

Whether there is substantial ground for the making of the application

43 The Judge helpfully classified the factors enumerated in s 121F of the Women's Charter into several broad groups:

(a) The degree of connection which the parties to the marriage have to Singapore or to any other jurisdiction: ss 121F(2)(*a*) to (*c*).

(b) The fairness and practicality of any foreign relief obtained by or available to the applicant consequent on his foreign divorce including in particular the court that granted the divorce or other order: ss 121F(2)(*d*) to (*f*).

(c) The reason for the applicant's decision not to exercise an available right to apply for financial relief in any foreign jurisdiction including in particular in the court that granted the divorce or other order: s 121F(2)(*f*)

(d) The enforceability of an order that might be made by the Singapore court for financial relief: ss 121F(2)(*g*) and (*h*).

(e) Any lapse of time since the foreign divorce: s 121F(2)(*i*).

44 We broadly agree with the Judge's analysis of these factors, but do not think it necessary to go into the level of detail she did for the analysis at this stage of the proceedings (*ie*, leave of court). As we explained above (at [29]), the court should not hear detailed substantive arguments at the leave stage and only needs to find that it would be *prima facie* appropriate for a Singapore court to grant relief. On this basis, given the indisputable fact that the property in question is situated in Singapore as well as the parties' connections to Singapore as Singapore Permanent Residents, it would be *prima facie* appropriate for a

Singapore court to grant relief. However, because of the way this case proceeded in the courts below, we will in this instance examine the parties' arguments in detail.

The parties' connection to Singapore

45 We begin by analysing the parties' connections to Singapore. In our judgment, the parties have a clear connection to Singapore. The Seaview Property is located in Singapore. The parties and their children are permanent residents of Singapore. The family was living in the Seaview Property from about 2009 to October 2012. The Husband had also deposed that he had been living in the Seaview property since 2013. These, in our judgment, were sufficient to show that the Wife has substantial ground for making her application.

46 In addition, the Wife tendered a letter dated 18 February 2012 written by a reverend of a Singapore church recommending that the parties' eldest daughter be enrolled into a secondary school in Singapore. The reverend also wrote that the parties' family had been parishioners of the church since 1991. He related how the family had recently returned from Jakarta and noted that the Husband and his eldest daughter were preparing to be involved in various church ministries. The Husband had also filed an affidavit expressing his wish for his children to live in Singapore:

> I have not been given access to my three children for more than 4 years. I wish to attend to their medical and school needs in Singapore. As permanent [residents] of Singapore, they are supposed to live and study in Singapore, not getting money through law-suits from Singapore and live in another country.
>
> My son … needs to attend school and join the army in the future. Though [my daughter] may look alright after [a heart surgery], the truth is that [her new heart valve] may fail anytime, and she needs to be assessed by the doctors in

> Singapore. The three children need to be in Singapore so that an attachment can be built to Singapore, like when I had when I came here as a student in Primary School, ultimately I wish them to be Singaporeans.

47 All these show that the parties have a real connection to Singapore. In this regard, we agreed with the Judge that it was not necessary for the Wife to show that Singapore is the more appropriate forum to grant financial relief (as compared to Indonesia). While it would in general be appropriate for a court to hear both the divorce and the ancillary matters, Ch 4A clearly envisages that there will be circumstances under which it would be appropriate for two jurisdictions to be involved. Such circumstances could relate to the fairness and practicality of any foreign relief obtained by or available to the applicant, a consideration to which we now turn.

Fairness and practicality of a foreign order and reasons for not obtaining foreign relief

48 An applicant's choice not to obtain foreign relief is commonly linked to her perception (justified or not) that a foreign order would not be fair or practicable. However, where a foreign court has made an order for financial relief, a Singapore court ought not to hastily adjudge the foreign order to be unfair. Due respect for comity of nations is important in this context, and the court should also be aware of the possibility that the applicant may be trying to get a second bite of the cherry: *Harjit Kaur* at [10]. The objective of the legislation is to mitigate disadvantage, not to give extra advantage: *Hewitson v Hewitson* [1995] Fam 100 at 105. In *Harjit Kaur*, leave was refused because a Malaysian order for financial relief, which was made by consent of the parties, was not shown to be inadequate or unfair. The Singapore property had been contemplated by the parties in reaching the Malaysian consent order. The High Court found that "it was not an appropriate case for leave to be granted as that

would be tantamount to reopening the case for the Appellant to have a second bite of the cherry" (*Harjit Kaur* at [30]).

49 An application may also be made to the Singapore courts where the foreign court which granted the divorce has not made an order for financial relief. In this regard, we agreed with the Judge that an applicant is not required to exhaust foreign remedies before applying to the Singapore courts under Ch 4A. Indeed, it is clear from s 121F(2)(*f*) that the focus is not on the applicant's failure to apply for relief in a foreign court but rather, her reasons for doing so. Thus, the fact that the Wife clearly had access to the Indonesian courts does not preclude the Singapore courts from granting relief. We also emphasise that the degree of scrutiny on the applicant's reasons for not applying for relief in a foreign jurisdiction varies according to the parties' connection to the jurisdiction in which she seeks relief: *Agbaje* at [70]. Hence, if the parties' connection to Singapore were tenuous, the court might inquire more closely into why the application is being brought here. On the other hand, if there are real connections, the court should be less hesitant to entertain the application.

50 For reasons which we will elaborate on below, we agreed with the Judge that the Wife would have difficulty enforcing Indonesian court orders against the Husband in Singapore. We also agreed that this was an important factor which would *prima facie* make it appropriate for the Singapore courts to grant relief. Indeed, the difficulty in enforcing a foreign order for division of assets was an impetus for enacting Ch 4A of the Women's Charter. As the Law Reform Committee explained at para 26 of the LRC Report, it would be difficult to enforce a foreign order division of assets regardless of whether the order was an order *in rem* (one where the court adjudicates on the title or disposition of property as against the whole world) or an order *in personam* (one which compels a party to do a certain act in respect of property). In respect of *in*

personam orders, only money judgments (which are final and conclusive) are enforceable under common law rules, although Singapore has entered into agreements with some countries for the mutual recognition and enforcement of maintenance orders: see *eg*, Maintenance Orders (Reciprocal Enforcement) Act (Cap 169, 1985 Rev Ed). As for *in rem* orders, it is essential to the recognition of a foreign judgment *in rem* that the *res* was situated in that foreign country at the time of the judgment: *The Republic of the Philippines v Maler Foundation and others and other appeals* [2014] 1 SLR 1389 at [66]. This means that a Singapore court would not recognise an order by a foreign court declaring the title to a property in Singapore. Thus, if the Wife had obtained an order dividing the Seaview Property in Indonesia, she would face difficulty enforcing it in Singapore, regardless of whether the order is an order *in rem* or an order *in personam*. The fact that there is property in Singapore (*ie*, the Seaview Property) available for division is a strong factor in favour of the Singapore court being the appropriate court to grant the relief.

51 One possible way to overcome this difficulty would be for the Indonesian courts to grant the Wife a larger share of the Indonesian assets after accounting for the Wife's share of the Seaview Property. The Singapore courts have adopted this approach: *International Issues in Family Law* at para 6.34. But even this may not be a satisfactory solution here because the Husband had blatantly disregarded Indonesian court orders in both the criminal and divorce proceedings.

52 This brings us to the Husband's criminal conviction, which he maintained was a "hoax". His conviction was affirmed on appeal by the Jakarta High Court. We were unable to accept his submission on this point.

53 The Husband also relied on stamps on his passport showing that he had been travelling in and out of Indonesia to prove that he was not a fugitive. However, the stamps only indicate that the Husband had been travelling to and from Batam after his convictions. While Batam is part of Indonesia, it is some distance from Jakarta, where the Husband was convicted. We did not find this argument of any significance.

54 Finally, the Husband, in an effort to show that he was not "on the run" tendered a certificate which on its face appears to have been issued by a local authority in West Jakarta. The Husband submitted that he had:

> officially registered [him]self to Two Official Jakarta Provincial Government Bodies: The Head of Jakarta Province RW and Local Jakarta RT that stated on the 25th of April 2018 that [he has been] a good citizen and living in Jakarta since 2012.

The certificate states:

> That it is true that the name mentioned above [*ie*, the Husband] is domiciled at [West Jakarta address] and the person has a good conduct from 2012 until now. [original emphasis omitted]

55 We found this certificate unreliable for two reasons. First, it is only found in the Husband's appellant's case but not in any of his affidavits. Second, the content is contradicted by the Husband's criminal conviction and his earlier evidence that as a result of his conviction, he has been unable to return to Jakarta to visit his family: see [42] above.

56 We now move on to the Wife's claim that the Husband had not complied with his obligation to pay maintenance under the Indonesian court orders: see [10] above. The Husband submitted that he had paid more than three times the sum that he was ordered to pay. However, the evidence he relied on left much to be desired. First, he relied on copies of cheques, remittance slips and

telegraphic transfer forms but most of them do not state the identity of the beneficiary or the sum transferred. The exceptions are remittance slips which clearly state that the Husband had transferred (in SGD) $10,000, $2,650, $1,510, $510 and $510 to the Wife. Second, he relied on an affidavit from his mother stating that she had given the Wife $100,000. But there is no objective evidence to substantiate this assertion. Third, he relied on an audio transcription of a video in which he spoke to his mother. However, neither the Husband nor his mother referred to the Wife in their conversation. It is difficult to see how this transcription is relevant. We therefore agreed with the Judge that the Husband had not been complying with the Indonesian court orders. It follows that the Wife was not unreasonable in seeking relief in Singapore instead of Indonesia.

57 On the other hand, we noted that there was no evidence that it would be impossible for the Wife to enforce the Indonesian court orders in Indonesia without the Husband's consent or seek a share of the Singapore property in other ways. For instance, in Singapore, an order for the sale of a property may be executed without the consent of a co-owner: see s 31 of the Family Justice Act 2014 (No 27 of 2014). Nevertheless, we found, at least on a *prima facie* basis, that it would be appropriate for the Wife to apply for relief in the Singapore courts instead of the Indonesian courts. Since the parties have a clear connection to Singapore (see [45]–[47] above), it was not necessary to subject the Wife's reasons for not applying to the Indonesian courts to particularly close scrutiny or to treat her application with undue suspicion at the leave stage.

58 We briefly deal with the remaining issues arising out of this appeal.

59 The Husband repeatedly emphasised in his appellant's case that the Wife's motive in applying for financial relief in Singapore was to sidestep a pre-nuptial agreement which the parties signed in Indonesia on 6 June 1995. This

agreement is relevant because s 121F(*d*) compels to the court to consider any financial benefit which an applicant or a child of the marriage is likely to receive under a pre-nuptial agreement. However, it appears from a plain reading of the translated text that the agreement covers only property held solely by the Husband or the Wife:

> - Between husband and wife there shall be no incorporation of property; incorporation of property in any form, not only the incorporation of property according to law, shall be expressly excluded.
> - Property brought into the marriage by the husband and the wife respectively and property acquired by either of them during the marriage in any manner, whether by way of investment (belegging) or exchanging (ruiling), shall remain in their respective possession.
> - Any debts brought into the marriage or incurred during the marriage, both intentionally and unintentionally, shall fully be the responsibility of the party bringing or making the debt.

60 Thus, on its face, the pre-nuptial agreement does not cover the Seaview Property, which is held by the parties as joint tenants. We were therefore of the view that at this stage, the pre-nuptial agreement did not preclude the Wife from applying for financial relief. The proper interpretation of the pre-nuptial agreement and the circumstances under which the agreement was signed can be addressed more fully at the second stage of the proceedings after leave is granted.

61 The Husband also submitted that the Seaview Property was purchased with his mother's money, and that therefore it belonged to her. This raises the question of whether the Husband held the Seaview Property on trust for his mother, the result of which would be that the Seaview Property was not a matrimonial asset available for division: see generally *UDA v UDB and another* [2018] 1 SLR 1015 ("*UDA*"). Like the Judge, we were of the view that this is

an issue that should be explored after leave is granted. We also observed that no order had been sought in favour of or against the Husband's mother. She thus appeared to us to be a "shadowy" figure in the wings: *UDA* at [58]. In these circumstances, it would be possible for a court to make an order exercising its powers under s 112 to divide the Seaview Property: see *UDA* at [58]. The Husband further submitted that the Seaview Property is an "inheritance asset" or a "gift". Even if his assertion were true, the Seaview Property would be considered a matrimonial asset if it had been "substantially improved" by either the Wife alone or the parties jointly: s 112(10) of the Women's Charter. This is an issue which can be explored after leave is granted.

62 The Husband also accused the Wife of breaching her "oath" to the Judge that she would not lay claim to the Indonesian assets if the Singapore courts decide to divide the Seaview Property. He relied on an affidavit in which the Wife listed properties which she and the Husband own in Indonesia. However, the Wife was only specifying the Indonesian properties which the parties own, the value of which are relevant to any future division of the Seaview Property. It is not apparent from the face of the affidavit that the Wife is seeking a division of the Indonesian properties. The Husband also exhibited photographs showing "a group of trespassers who claimed to have been instructed by my wife's lawyer … taking surveys and measurements" at one of the Indonesian properties referred to in her affidavit (the "Liberty Movie Theater"). The photographs show men taking measurements outside a building. They do not take the Husband very far. There is nothing objective linking the men in the photographs to the Wife and nothing which shows that the building being measured is indeed the Liberty Movie Theatre. Even if the Husband's assertion were correct, the men taking measurements could have been carrying out work necessary for valuing the property, which would be required in the event that the Seaview

Property were divided in satisfaction of the Wife's claim to all matrimonial assets in Singapore and Indonesia.

63 Finally, we point out that the Wife, as joint tenant of the Seaview Property, may be entitled to apply for a sale and partition of the property and seek half of the sale proceeds. The Wife does not appear to have considered this option. We leave it to her to decide whether this would be a less costly way for her to obtain a share of the Seaview Property.

The Wife's application to adduce further evidence

64 About two weeks before the hearing, the Wife applied to adduce further evidence in this appeal. Curiously, one part of the evidence which she sought to admit was a title search of the Seaview Property, even though the title search was already in evidence in the proceedings below. The other piece of evidence pertained to matters which unfolded after the Judge heard the Wife's appeal. The test for the admission of such evidence is "whether the further evidence would have a 'perceptible impact on the decision of the appeal court such that it is in the interest of justice that it should be admitted'": *TSF v TSE* [2018] 2 SLR 833 at [43]. The evidence relates to the Husband's conduct, including his behaviour at a court-ordered mediation session and his supposed non-compliance with a notice to produce served on him by the Wife. These matters are not relevant to the issue of whether it would be appropriate for the Singapore courts to grant financial relief. Accordingly, we dismissed the Wife's application.

Conclusion

65 For the foregoing reasons, we dismissed both the Husband's appeal and the Wife's application to adduce further evidence. We fixed costs to be paid by the Husband to the Wife at $20,000 inclusive of disbursements.

Sundaresh Menon	Judith Prakash	Debbie Ong
Chief Justice	Judge of Appeal	Judge

The appellant in Civil Appeal No 168 of 2018 and respondent in Summons No 72 of 2019 in person;
Nakoorsha AK, Suang Wijaya and Johannes Hadi (Eugene Thuraisingam LLP) for the respondent in Civil Appeal No 169 of 2018 and applicant in Summons No 72 of 2019.