AEH *v* AEI
[2015] SGHC 255

Case Number : Divorce Suit No 1070 of 2012 (Summons No 4196 of 2015)

Decision Date : 02 October 2015

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Wong Chai Kin (Wong Chai Kin) for the applicant/husband; Mary Ong (Mary Ong & Co) for the respondent/wife.

Parties : AEH — AEI

Family Law – Women's Charter

Family Law – Family Justice Rules

2 October 2015

Woo Bih Li J:

Introduction

1 Summons No 4196 of 2015 was an application by the plaintiff husband for leave of court to be granted for him to file and extract the Certificate of Making Interim Judgment Final (which should be referred as the Certificate of Final Judgment (Divorce) instead) notwithstanding that more than one year has lapsed since the Interim Judgment was made in divorce proceedings between the parties. I granted the husband leave to do so but as there was some confusion surrounding the application, I am setting out the confusion and my views thereon with the hope that, in future, such confusion will be avoided.

Issues

2 The confusion arose in respect of:

(a) Rule 96(3) of the Family Justice Rules 2014 ("Rule 96(3)"); and

(b) Section 123(1) of the Women's Charter (Cap 353, 2009 Rev Ed) ("Section 123(1)").

Background

3 According to the supporting affidavit of Ms Wong Chai Kin, the solicitor acting for the husband, the interim judgment was made on 10 August 2012. The High Court gave its decision on the ancillary matters on 13 December 2013. The parties each filed an appeal to the Court of Appeal and the appeals came up for hearing on 12 February 2015. The husband then requested further arguments on certain orders of the Court of Appeal and a further hearing was fixed for 27 April 2015. On that day, the Court of Appeal varied some of its orders.

4 On 30 July 2015, Ms Wong applied to extract the Certificate of Final Judgment (Divorce) but the application was rejected and she was asked to file an application to extract the certificate out of

time.

5 Ms Wong did this on 28 August 2015. Prayer 1 asked for leave to be granted to the husband to file and extract the Certificate of Making Interim Judgment Final notwithstanding that more than one year has lapsed since the date of the interim judgment.

6 As mentioned above, the correct description of the certificate should be Certificate of Final Judgment (Divorce).

7 In any event, Ms Wong had proceeded on the basis that she was required to obtain leave of court to obtain the relevant certificate because more than one year had lapsed since the date of the interim judgment. In oral submission, she referred to Rule 96(3). As Rule 96(3) refers to r 96(1) of the same rules, I set out below for ease of reference, rr 96(1) and (3):

> 96.—(1) An application by a party to make final an interim judgment pronounced in his favour may be made on any day after the expiration of the period fixed by the Court for making the judgment final.
>
> …
>
> (3) An application referred to in paragraph (1) must not be made —
>
> (*a*) before the hearing of all applications for ancillary relief has been concluded at first instance, without the leave of the Court; or
>
> (*b*) after the expiration of one year from the date of the interim judgment or the expiration of 3 months from the date of the last hearing of an application for ancillary relief in the writ or defence and counterclaim (including the last hearing of any appeal), whichever is the later, without the leave of the Court.

8 As can be seen, Rule 96(3)(*b*) is the relevant sub-rule and it has two limbs. It provides that an application under r 96(1) must not be made after the expiration of one year from the date of the interim judgment or the expiration of three months from the date of the last hearing of an application for ancillary relief in the writ or defence and counterclaim (including the last hearing of any appeal), whichever is the later.

9 The rejection remarks pertaining to the husband's initial application to extract the relevant certificate merely stated that he was to file the appropriate application to extract the certificate out of time. The remarks did not mention either limb of Rule 96(3) and indeed it was not necessary to do so because the husband's initial application was out of time under both limbs.

10 However, Ms Wong had assumed that Rule 96(3) had only one limb, *ie*, the first limb. She appeared to have overlooked the second limb of Rule 96(3). I say this not only because Prayer 1 (which presumably was drafted or approved by her) referred only to the first limb but also because if she had been aware of the second limb, she would have filed the husband's initial application for the relevant certificate within time and avoided the need for the present application.

11 It will be recalled that the Court of Appeal had a hearing on 27 April 2015 and varied some of its orders on ancillary matters on that day. Assuming that ancillary orders were sought by the husband and/or the wife in their pleadings, as appeared to be the case, then it was the second limb which was applicable and Ms Wong should have filed the husband's initial application for the relevant certificate

by 26 July 2015. Instead she did so on 30 July 2015, just a few days later. No reason was given by her for the delay. In my view, she had overlooked Rule 96(3) in two respects.

12 First, she had overlooked Rule 96(3) in its entirety when she filed the husband's initial application without obtaining leave of court.

13 Secondly, after the rejection remarks were made, she overlooked the second limb of Rule 96(3) and assumed that leave was required only because of the one year qualification under the first limb. The second reason is why I said that there was confusion over Rule 96(3). The confusion was not over the interpretation of Rule 96(3) but rather it arose because the second limb of Rule 96(3) was overlooked.

14 I would add one point which may however cause genuine confusion. Apparently, the orders made by the Court of Appeal included counselling for various persons and for the counsellors to submit a report on each of these persons. Parties were to write in to the court to fix a review in six months' time. Arguably, the review would be the last hearing of the appeal for the purpose of Rule 96(3) and hence no leave would have been required to obtain the relevant certificate discussed above. However, this point was not taken and, in any event, for the avoidance of doubt, I granted leave. In future similar situations, solicitors should ask the court to clarify which is the last hearing for the purpose of Rule 96(3).

15 I would mention yet another point. Rule 96(1) refers to the expiration of the period fixed "by the Court" for making the judgment final. As far as I am aware, the court does not usually fix a period after which the application for the relevant certificate may be made. Instead, the period is fixed by s 99(1) of the Women's Charter. Nothing turns on this for present purposes but r 96(1) should be amended to avoid further confusion.

16 I come now to Section 123(1). It states:

> 123.—(1) Subject to this section, the court shall not make final any judgment of divorce or nullity of marriage or grant a judgment of judicial separation unless the court is satisfied as respects every child —
>
> (*a*) that arrangements have been made for the welfare of the child and that those arrangements are satisfactory or are the best that can be devised in the circumstances; or
>
> (*b*) that it is impracticable for the party or parties appearing before the court to make any such arrangements.

17 Ms Mary Ong, counsel for the wife, initially took the position that as the wife was not satisfied with certain aspects of the orders made by the Court of Appeal in respect of the children, Section 123(1) would apply.

18 In *AQB v AQC* [2011] 3 SLR 1042, Tay Yong Kwang J referred with apparent approval to an observation made by a District Court in *ZK v ZL* [2008] SGDC 376 on Section 123(1) that, "The purpose of the provision is to make sure that the welfare of the children is not overlooked before the judgment is made final" (at [13]). Tay J added at [14] that, "all the court needs to ensure is that parties involved have addressed their minds to the welfare of their children" at the stage of making the interim judgment final. Notwithstanding these observations, Ms Ong was still initially of the position that Section 123(1) would apply in the existing situation because the wife was not satisfied with certain aspects of the Court of Appeal's order pertaining to the children. In my view, Ms Ong was

confused about the scope of s 123.

19 I agreed that the purpose of the provision is simply to make sure that the welfare of every child is not overlooked when the judgment is to be made final. I elaborate that Section 123(1) is meant to apply where there has been no court ruling in respect of every child of the marriage. For example, where the parties have not sought such a ruling in respect of matters pertaining to every child, the court is to consider whether satisfactory arrangements have been made for the welfare of every child. It is for the court to check that such arrangements have been made and that they are satisfactory to the court.

20 In Section 123(1), the reference to "arrangements" having been made for the welfare of every child is to arrangements made by the parties and not to orders of court.

21 This also appears to be the view in Leong Wai Kam, *Elements of Family Law in Singapore*, (LexisNexis, 2nd Ed, 2013) at p 217, where the author suggests that Section 123(1) may largely have been superseded by the parenting plan required under the then Women's Charter (Matrimonial Proceedings) Rules. Under the current Family Justice Rules 2014, a parenting plan is still required under r 45(1). Indeed, r 45(2) of the current rules goes on to stipulate that, "The parties to a marriage must try to agree on the arrangements for the welfare of every dependent child of the marriage and file an agreed parenting plan". Rules 45(3) and (4) also refer to agreements on arrangements for the welfare of any dependent child of the marriage. These provisions are similar to Section 123(1) with the addition of the word "dependent" in the current rules for clarity. Therefore, if the court has made an order for the welfare of every child, Section 123(1) does not apply.

22 Furthermore, Section 123(1) is not intended to allow one court to review whether an earlier order in respect of the welfare of the child is satisfactory. To reiterate, an order of court does not constitute an "arrangement" for the purpose of Section 123(1) and while another court may review or vary an earlier order, this is not done under Section 123(1).

23 Accordingly, Section 123(1) does not come into play just because one or both parties are dissatisfied with an order of court or with the implementation of the order as Ms Ong was suggesting. Otherwise it will have the effect of preventing one party from extracting the relevant certificate indefinitely so long as the other party is dissatisfied with the court's order or the implementation thereof.

24 I would also mention that Ms Ong had referred to a copy of s 123 from the 1997 Revised Edition of the Women's Charter. The applicable edition is the 2009 Revised Edition. Fortunately, the differences were immaterial for present purposes.