

QU v QV
[2008] SGCA 9

Case Number : CA 35/2007
Decision Date : 10 March 2008
Tribunal/Court : Court of Appeal
Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s) : Koh Tien Hua (Harry Elias Partnership) for the appellant; Yap Teong Liang (T L Yap & Associates) for the respondent
Parties : QU — QV

Civil Procedure – Rules of court – Judgments or orders which need not specify time within which act was to be done – Relationship between O 42 r 6(2) and O 45 r 5(1)(a) of Rules of Court (Cap 322, R 5, 2006 Rev Ed)

Contempt of Court – Civil contempt – Order of court failing to specify time for compliance – Whether party subject to order could be committed for non-compliance – Order 45 r 5(1)(a) Rules of Court (Cap 322, R 5, 2006 Rev Ed)

Statutory Interpretation – Interpretation act – Whether s 52 of Interpretation Act (Cap 1, 2002 Rev Ed) could be applied to court judgments or orders for purposes of committal

10 March 2008

Chan Sek Keong CJ (delivering the grounds of decision of the court):

1 This was an appeal against the decision of the High Court judge (“the Judge”) in *QU v QV* [2007] 4 SLR 588 (“the GD”) affirming a committal order made by the District Court (“the Committal Order”) in *QV v QU* [2006] SGDC 290.

2 This appeal raised a very simple but important issue, namely, whether a person could be committed for contempt of court for not obeying an order of court which did not specify a time for compliance with its terms. At the conclusion of the hearing, we allowed the appeal and ordered the Committal Order to be set aside on the ground that it was predicated upon the breach of a court order which did not specify a time for compliance. We now give the full reasons for our decision.

The facts

3 Sometime in early 2004, the respondent in this appeal commenced divorce proceedings against his wife, the appellant. A decree *nisi* was granted in July 2004. On 24 January 2005, the respondent obtained an ancillary order of court (“the Ancillary Order”) which provided, *inter alia*, as follows:

The [respondent] be granted sole custody, care and control of the child of the marriage ... and the [appellant] to surrender the child’s passport and birth certificate to the [respondent]. The [appellant] shall be at liberty to apply for access.

4 The appellant came to know about the Ancillary Order in August 2005 and applied to set it aside. Prior to that, in June 2005, the respondent had applied, via Originating Summons Family No 98 of 2005 (“OSF 98/05”), for an order that the appellant return the child to his lawful custody, care and

control pursuant to the Ancillary Order. At the hearing of OSF 98/05 on 22 August 2005, District Judge Shobha Nair adjourned the application pending the outcome of the appellant's application to set aside the Ancillary Order ("the setting-aside application"), and also ordered that the status quo be preserved in the interim, subject to the appellant giving the respondent daily access to the child.

5 Sometime in March 2006, District Judge Nair clarified that her earlier order of 22 August 2005 was to continue only until the outcome of the setting-aside application and not until the next hearing of OSF 98/05. On 7 March 2006, the setting-aside application was dismissed by District Judge Carol Ling. The appellant appealed against District Judge Ling's decision to the High Court, which dismissed her appeal on 26 April 2006.

6 Even after the High Court had dismissed her appeal, the appellant did not comply with the Ancillary Order. On 28 April 2006, the respondent applied for leave to commit the appellant for breach of the Ancillary Order. Leave was granted. Prior to the hearing of the committal application, the appellant handed the child's passport to her solicitors on 5 May 2006 to hold as stakeholders. She also handed custody of the child to the respondent on 10 May 2006, but continued to retain the child's birth certificate.

The decisions below

7 The committal application was heard on 16 May 2006 by the same district judge who made the Ancillary Order ("the District Judge"). The District Judge held that the appellant had committed contempt of court in refusing to obey the said order. She fined the appellant \$1,000 and ordered her to pay the respondent costs fixed at \$1,500.

8 The appellant appealed to the High Court. The Judge dismissed her appeal for the reasons set out below (see the GD at [23]–[24]):

I do not accept the wife's [*ie*, the appellant's] submissions relating to the absence of a time frame within which she was required by the [Ancillary Order] to comply with its terms. An order of court takes effect from the date it is pronounced unless the court specifies otherwise in the said order or decides subsequently to stay the same. Although O 42 r 6(1) of the Rules of Court states that a judgment or order which requires a person to do an act must specify the time after service of the judgment or order, or some other time, within which the act is to be done, that is subject to O 42 r 6(2) which exempts orders requiring payment of money, giving of possession of immovable property or delivery of movable property. The handing over of the child's passport and birth certificate would fall within the last category of exempted orders and, by logical extension, so could [the handing over of custody of] the child himself. Even if the child was excluded from the exemptions, there was still no excuse for not handing over the documents timeously.

Order 45 r 5 of the Rules of Court does not mean that where a judgment or order did not specify a time frame, contempt proceedings could never be taken out. In such a situation, it behoves the applicant in contempt proceedings to prove that a reasonable time for compliance had elapsed. Similarly, s 52 of the Interpretation Act (Cap 1, 2002 Rev Ed), which relates to the construction and interpretation of written law, states:

Where no time is prescribed or allowed within which anything shall be done, that thing shall be done *with all convenient speed* and as often as the prescribed occasion arises. [emphasis added]

Alternatively, the applicant can apply under O 45 r 6(2) for the court to fix a time within which an

act is to be done, but that is really quite unnecessary here because compliance required no more than bringing the child and the documents to the husband [*ie*, the respondent] or asking him to go to [the appellant's] home to pick [the child] up together with the documents in issue. That could have been done on the day that [the High Court] dismissed the wife's appeal [against District Judge Ling's decision] if the wife had genuine regard for all orders of court and not just those in her favour. If the wife's submissions were correct, it would mean that she could ignore with impunity the [Ancillary Order] until the husband took the further step of applying for a time frame for compliance. In my view, that cannot be correct.

[emphasis in original]

The parties' contentions on appeal

9 The appellant's main argument was that O 45 r 5(1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) clearly stated that committal proceedings for disobeying a judgment or order could only be commenced, with the leave of the court, where the judgment or order had specified a time within which it had to be complied with. Absent such a stipulation, no leave could be given, and the party wishing to enforce the judgment or order must apply to court to amend the judgment or order to specify the time frame for compliance.

10 In his reply, counsel for the respondent supported the reasoning of the Judge in holding the appellant to be in contempt of court by reason of O 42 r 6 of the Rules of Court and also s 52 of the Interpretation Act (Cap 1, 2002 Rev Ed).

Our decision

11 At the conclusion of the hearing, we allowed the appeal and set aside the Committal Order as it was clear to us that the lower courts had misconstrued the scope of both O 42 r 6 of the Rules of Court and s 52 of the Interpretation Act, and had also failed to give effect to the clear words of O 45 r 5(1).

Scope of Order 42 rule 6 of the Rules of Court and section 52 of the Interpretation Act

12 In our view, O 42 r 6 of the Rules of Court has to be read with O 45 r 6 to determine its scope. Order 42 r 6 provides as follows:

6.—(1) Subject to paragraph (2), a judgment or order which requires a person to do an act must specify the time after service of the judgment or order, or some other time, within which the act is to be done.

(2) Where the act which any person is required by any judgment or order to do is to pay money to some other person, give possession of any immovable property or deliver any movable property, a time within which the act is to be done need not be specified in the judgment or order by virtue of paragraph (1), but the foregoing provision shall not affect the power of the Court to specify such a time and to adjudge or order accordingly.

13 Order 42 r 6 of the Rules of Court corresponds with O 42 r 2 of the former Rules of the Supreme Court 1965 (SI 1965 No 1776) (UK) ("the RSC"), the scope of which was described in Nigel Lowe & Brenda Sufrin, *The Law of Contempt* (Butterworths, 3rd Ed, 1996) at pp 604–605 as follows:

By this rule [*ie*, O 45 r 5 of the RSC, the English equivalent of O 45 r 5 of the Rules of Court] the

courts have identical powers to enforce both positive and negative orders but the coercive methods of enforcing a positive order can only be exercised where that order specifically expresses the time within which the act must be done. Normally such positive orders will specify a time within which an act must be done, and indeed the courts are obliged to specify a time under Ord 42, r 2(1). However, by Ord 42, r 2(2), no time limit need be specified in respect of an order or judgment requiring a person to pay money to some other person, or to give possession of any land or to deliver goods. In practice such orders will not normally specify any time limit and accordingly they cannot be enforced by sequestration or committal. However, where the original order does not specify a time limit (and this includes not only orders or judgments requiring persons to pay money to some other person, etc under Ord 42, r 2(2), but also other orders which either through inadvertence or omission have not complied with Ord 42, r 2(1)), the courts are empowered to make a further order requiring the act to be done within a stated time. This subsequent order can be enforced by sequestration or committal, and accordingly where it is thought necessary so to enforce orders for giving possession of land or for the delivery of goods, the procedure to adopt is to apply for this subsequent order.

14 A similar approach was taken in *Kumari v Jalal* [1997] 1 WLR 97, where the Court of Appeal in England said (at 101):

Where there is a dispute about property, a court can decide the question of title and can make an order for delivery up of the property. Under the Rules of the Supreme Court it is common not to make an order specifying a time for delivery up: see R.S.C., Ord. 42, r. 2(2). But, if it is intended that the order is to be enforced by an order for committal, then it is plain from R.S.C., Ord. 45, r. 5(1) which is substantially the same as C.C.R. [County Court Rules 1981 (SI 1981 No 1687) (UK)], Ord. 29, r. 1(1) that it is necessary that the order for delivery must set out a date for compliance. If no date for compliance is inserted in the order, then a committal order cannot be made.

1 5 *Singapore Civil Procedure 2007* (G P Selvam ed) (Sweet & Maxwell Asia, 2007) contains a passage to the same effect. At para 45/5/1, it is noted:

The effect of the qualification [to require a time to be specified] is that a judgment or order to pay money to some other person or to give possession of immovable property or to deliver property which need not, and will not as a general rule, specify the time within which such act is required to be done (see O.42 r.6(2)) will not come under this rule, and so will not be enforceable by order of committal, unless and until time is specified for the doing of that [a]ct ...

16 Section 52 of the Interpretation Act provides that “[w]here no time is prescribed or allowed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises”. In our view, s 52 is not intended to apply to a judgment or order, the breach of which will expose the party in default to committal proceedings; otherwise, O 45 rr 5(1) (a), 5(2) and 6(2) of the Rules of Court would be rendered redundant.

17 Order 45 rr 5(1) and 5(2) provide as follows:

5.—(1) Where —

(a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under Order 3, Rule 4; or

(b) a person disobeys a judgment or order requiring him to abstain from doing an act,

then, subject to these Rules, the judgment or order may be enforced by one or more of the following means:

(i) with the leave of the Court, an order of committal;

(ii) where that person is a body corporate, with the leave of the Court, an order of committal against any director or other officer of the body;

(iii) subject to the provisions of the Debtors Act (Chapter 73), an order of committal against that person or, where that person is a body corporate, against any such officer.

(2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under Rule 6 requiring the act to be done within some other time, references in paragraph (1) to a judgment or order shall be construed as references to the order made under Rule 6.

18 Order 45 r 6 provides as follows:

6.—(1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court shall, without prejudice to Order 3, Rule 4, have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time as may be specified therein.

(2) Where, notwithstanding Order 42, Rule 6(1), or by reason of Order 42, Rule 6(2), a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.

(3) An application for an order under this Rule must be made by summons and the summons must, notwithstanding anything in Order 62, Rule 10, be served on the person required to do the act in question.

19 There appears to be no local judicial decision on the question whether a party can be punished for contempt of court for disobeying a court order directing him to do a positive act (such as the acts to be done by the appellant under the Ancillary Order in the present appeal) where that court order does not specify a time for doing the act in question. However, in our view, the answer seems obvious as a matter of law and justice in the context of the power to punish a person for contempt of court by imprisonment or imposition of a penalty. It is contrary to all notions of justice that a person could or should be punished for omitting to do an act stipulated in a court order when he does not know or is not certain when such omission constitutes a breach of the court order. In the present case, it is true that the appellant had plenty of time to deliver the child's birth certificate to the respondent, but, in our view, the meaning of O 45 r 5(1)(a) should not be determined on the facts of a specific case. That rule is explicit in its prescription that a court order requiring a person to do an act *must* specify a time frame for doing that act before the party subject to the court order can be committed for breaching it.

20 We are aware that in *Allport Alfred James v Wong Soon Lan* [1992] 2 SLR 385, the Court of Appeal held that O 45 r 7(4) of the Rules of the Supreme Court 1970 (the equivalent of the present O 45 r 7(4) of the Rules of Court) need not be complied with before a person subject to a court order

to abstain from doing an act could be committed for breach of such an order. That case concerned the failure to include a penal notice in an interim injunction restraining the wife in a divorce petition from disposing of the net proceeds of sale of the matrimonial property. The Court of Appeal held that a party breaching such an order could still be committed for contempt so long as he or she had notice of the order.

21 But, in our view, there is a great difference between being required *to abstain from doing* an act altogether and being required *to do* an act within a specified time. In the former scenario, time is not critical because the failure to abstain from doing the act at any time is a breach of the order. In the latter scenario, however, the party has not been told by when he must do the act. Imputing a reasonable time to the doing of the act does not help because whether or not there is a breach depends on what the court considers to be reasonable. In short, to commit a person to gaol or to a fine for breaching an order of court that lacks certainty is contrary to our established notions of justice. In *Allport Alfred James v Wong Soon Lan* [1988] SLR 987, Chao Hick Tin JC said at 989, [8] that the court's power to punish a person for civil contempt was quasi-criminal in nature, and where any procedural step for the exercise of that jurisdiction was prescribed, that rule should be scrupulously observed and strictly complied with. We agree with him.

Conclusion

22 For the reasons given above, we allowed the appeal with the usual consequential orders, except that we ordered the parties to pay their own costs in this appeal and in the High Court.

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