

BLQ v BLR
[2011] SGHC 288

Case Number : RAS No 101 of 2013 (Divorce Suit No 409 of 2012)
Decision Date : 30 December 2013
Tribunal/Court : High Court
Coram : Tan Siong Thye JC
Counsel Name(s) : Willie Yeo (Yeo Marini & Partners) for the applicant; Ms Luna Yap (Luna Yap & Co) for the respondent;
Parties : BLQ — BLR

Civil Procedure – Appeals – Extension Of Time

Civil Procedure – Appeals – Leave

30 December 2013

Judgment reserved.

Tan Siong Thye JC:

Introduction

1 This judgment relates to two summonses filed by the applicant-husband. SUM 30400/2013 is the husband's application for leave to appeal to the Court of Appeal. SUM 30539/2013 is the husband's application for a stay of execution pending the outcome of the husband's application for leave to appeal to the Court of Appeal.

Background

2 The husband is a 61 year old crane operator while the respondent-wife is a 55 year old cleaner. They have two children aged 37 and 35. The parties' 37 years marriage broke down irretrievably in January 2011 after the wife's accidental discovery of the husband's 15 years relationship with a mistress. The husband also has a 14 year old daughter with the mistress.

3 The husband filed for divorce on the ground of unreasonable behaviour on the part of the wife. The wife counterclaimed for divorce on the ground of the husband's unreasonable behaviour. Interim judgment was ultimately granted on an uncontested basis.

4 The issues before the learned District Judge were the division of the matrimonial assets and the maintenance for the wife. The learned District Judge found that the husband had made \$581,860.48 withdrawals from bank accounts without satisfactory explanation. At the Family court it was not in dispute that the wife had made direct financial contributions amounting to 41% of the matrimonial HDB flat. In view of the wife's indirect contributions, the learned District Judge held that it would be fair and just for the wife to have 65% of the flat. Taking into account the large unaccounted withdrawals and lump sum maintenance for the wife for a clean break, she awarded the wife 90% of the matrimonial flat. On 8 July 2013, she made the following ancillary orders:

- (a) The matrimonial flat at Block 661B Jurong West St 64 #11-418 Singapore 642661 shall be sold in the open market within six months from the date of this order and the proceeds of sale

after payment of the costs and expenses of sale shall be divided in the proportion of 90% to the wife and 10% to the husband. Each is to reimburse if necessary their own CPF accounts with money utilized for the purchase of the flat with accrued interest;

(b) If the parties are required to reimburse their CPF accounts upon the sale of the matrimonial flat and should there be a shortfall in the defendant's share of the proceeds of sale, the amount of the shortfall shall be transferred from the husband's CPF accounts to the wife's CPF accounts;

(c) The above order is made subject to the Central Provident Fund Act (Cap 36) ('CPF Act') and the subsidiary legislation made thereunder in respect of the member's CPF monies. The Board shall give effect to the terms of this Order in accordance with the provisions of the CPF Act and the subsidiary legislation made thereunder;

(d) The wife shall have the first option to purchase the husband's share of the matrimonial flat. If the wife does not indicate her intention to purchase the matrimonial flat within one month from the date of this Order, the matrimonial flat shall be sold as provided in paragraph (a).

(e) The Registrar of the Subordinate Courts shall be empowered to sign all necessary documents for the sale of the matrimonial flat in place of either party if either party fails to sign within seven days' written notice to do so;

(f) In view of the division of the matrimonial flat, there shall be no maintenance for the wife and each party is to retain all other assets in their respective names;

(g) No order as to costs;

(h) Liberty to apply.

5 The husband appealed against the learned District Judge's decision. The appeal came before me on 21 October 2013. I dismissed the husband's appeal. In the course of the hearing of the appeal the parties informed the court that there were some calculation errors on the undisputed figures before the Family court. The husband pointed out that there were computation errors relating to the payment of conservancy charges and property tax of the matrimonial flat submitted to the learned District Judge. The wife agreed with these errors. The learned District Judge had originally calculated that the husband had contributed 59% to the matrimonial flat, with the wife contributing 41%. Taking into consideration the revised amount of conservancy charges and property tax paid the direct contributions for the matrimonial flat became 66%-34% in favour of the husband. I therefore, corrected the errors and ordered that the proceeds of sale of the matrimonial flat be divided in the ratio of 86:14 in favour of the wife. I affirmed the other orders of the learned District Judge.

6 Subsequently, the husband filed SUM 30400/2013/Z and SUM 30539/2013/L, seeking an extension of time to apply for leave to appeal to the Court of Appeal, leave to appeal to the Court of Appeal and a stay of execution pending my decision to grant leave and the outcome of the appeal to the Court of Appeal. The application for leave to appeal to the Court of Appeal was filed on 7 November 2013, more than 2 weeks after I had dismissed the husband's appeal.

Issues

7 There are five issues for my consideration:

(a) What is the requisite time frame for the filing of an application for leave to appeal to the

Court of Appeal?

- (b) Does the High Court have the jurisdiction to extend the time for the filing of an application for leave to appeal to the Court of Appeal?
- (c) Should the High Court extend the time for the husband's application for leave to appeal to the Court of Appeal? Is the husband required to apply for an extension of time to file a notice of appeal?
- (d) Should the High Court extend the time for the husband's application for leave to appeal to the Court of Appeal?
- (e) Should leave be granted to the husband to appeal to the Court of Appeal if application for the extension of time to appeal is granted?
- (f) If so, should execution be stayed pending the outcome of the appeal to the Court of Appeal?

What is the requisite time frame for the filing of an application for leave to appeal to the Court of Appeal?

8 Both parties informed the court that the requisite time frame for filing an application for leave to appeal to the Court of Appeal was seven days. However, there are no provisions that expressly prescribe the requisite time frame. I shall now examine the apposite provisions. It is important to emphasise that the husband sought leave to appeal against the decision of the High Court exercising its appellate jurisdiction. The first relevant provision is the Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order 2007 (Cap 322, S 672/2007) ("the 2007 Transfer Order"). Paragraph 6(2) of the 2007 Transfer Order states:

Except with the leave of the Court of Appeal or a Judge of the High Court, no appeal shall be brought to the Court of Appeal from a decision of the High Court in respect of any appeal heard and determined by the High Court pursuant to sub-paragraph (1), regardless of the amount in dispute or the value of the subject-matter.

9 O 56 r 3(1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) indicates that the prescribed period for filing the application for leave to appeal is seven days. It reads:

A party applying for leave under section 34 of the Supreme Court of Judicature Act to appeal against an order made, or a judgment given, by a Judge must file his application to the Judge within 7 days from the date of the order or judgment. [emphasis added]

This explains why the parties submitted that the prescribed period for filing such application in this instant case is seven days. The husband in SUM 30400/2013 prayed for extension of time "to apply for leave under section 34 of the Supreme Court of Judicature Act". Is Section 34 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") applicable in this case? Section 34 states:

Matters that are non-appealable or appealable only with leave

34.—(1) No appeal shall be brought to the Court of Appeal in any of the following cases:

- (a) where a Judge makes an order specified in the Fourth Schedule, except in such circumstances as may be specified in that Schedule;

(b) [Deleted by Act 30/2010 wef 01/01/2011]

(c) [Deleted by Act 30/2010 wef 01/01/2011]

(d) where the judgment or order is made by consent of the parties; or

(e) where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final.

(2) Except with the leave of a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:

(a) where the amount in dispute, or the value of the subject-matter, at the hearing before the High Court (excluding interest and costs) does not exceed \$250,000 or such other amount as may be specified by an order made under subsection (3);

(b) where the only issue in the appeal relates to costs or fees for hearing dates;

(c) where a Judge in chambers makes a decision in a summary way on an interpleader summons where the facts are not in dispute;

(d) where a Judge makes an order specified in the Fifth Schedule, except in such circumstances as may be specified in that Schedule; or

(e) where the High Court makes an order in the exercise of its appellate jurisdiction with respect to any proceedings under the Adoption of Children Act (Cap. 4) or *under Part VII, VIII or IX of the Women's Charter (Cap. 353)*.

(2A) Subsection (2)(a) shall not apply to any case heard and determined by the High Court in the exercise of its original jurisdiction under —

(a) section 17A;

(b) section 59 or Part X of the Women's Charter; or

(c) any written law which requires that case to be heard and determined by the High Court in the exercise of its original jurisdiction.

(2B) An order of a Judge giving or refusing leave under subsection (2) shall be final.

(3) The President may, after consulting the Chief Justice, by order published in the Gazette vary the amount mentioned in subsection (2)(a).

[emphasis added]

Section 34(2)(e) makes reference to only Parts VII, VIII and IX of the Women's Charter (Cap 353, 2009 Rev Ed). The power of the court to order division of matrimonial assets (s 112 of the Women's Charter) and the power of the court to order maintenance (s 113 of the same) consequent on divorce fall under Part X of the Women's Charter. Thus this provision does not fall within the ambit of s 34 of the SCJA. This instant case comes within Part X of the Women's Charter. Therefore, s 34 of the SCJA does not apply.

10 With regard to divorce proceedings heard by the High Court exercising its appellate jurisdiction, the requirement for leave to appeal to the Court of Appeal is contained in para 6 of the 2007 Transfer Order (see [8] above). However O 56 r 3(1) of the Rules of Court, which imposes a time limit of seven days for the filing of the application for leave, only refers to a party applying for leave under s 34 of the SCJA and makes no mention of para 6 of the 2007 Transfer Order.

11 The 2007 Transfer Order was promulgated pursuant to powers conferred on the Chief Justice by s 28A of the SCJA. Section 28A is silent on the requisite time frame for the filing of an application for leave to appeal. The Parliamentary debates pertaining to the second reading of the Supreme Court of Judicature (Amendment) Bill (No 35 of 2004), which promulgated the current s 28A(b), also do not shed any light on the requisite timeframe, and only state that there should only be one tier of appeal as a matter of right for family cases in the interests of finality and cost-saving (see *Singapore Parliamentary Debates, Official Report* (21 September 2004) vol 78 at col 683).

12 It seems that there is a lacuna in the law. There is no express provision governing the requisite time frame for an application for leave to appeal to the Court of Appeal where matrimonial cases heard by the High Court in its appellate capacity are concerned.

The history of O 56 r 3 of the Rules of Court

13 A historical analysis of O 56 r 3 of the Rules of Court may be able to cast some light.

14 In the Rules of the Supreme Court 1970 (Subsidiary Legislation Supplement No 59, 2 October 1970) ("the 1970 Rules"), O 56 r 2 read thus:

Subject to the provisions of section 34 of the Act an appeal shall lie to the Court of Appeal from any judgment, order or decision of a Judge in Chambers either with the leave of the Judge or the Court of Appeal and not otherwise.

Section 34 of the Supreme Court of Judicature Act (Cap 15, 1970 Rev Ed) did not have any provisions relating to leave to appeal. There was thus no express provision stipulating a time frame for the application of leave to appeal.

15 There was no change to the then O 56 r 2 when the 1990 Rules of Court (Cap 322, R 5, 1990 Rev Ed) were promulgated. However, S 515/1992 deleted O 56 r 2 and substituted it with a new O 56 r 3(1):

A party applying for leave to appeal against an interlocutory order made by a Judge in Chambers must file his application to the Judge within 7 days of the order and, in the event leave is refused within 7 days from the refusal, to the Court of Appeal

16 This was in turn deleted and substituted by another version of O 56 r 3(1) by S 194/1994:

A party applying for leave under section 34 of the Act to appeal against an order made, or a judgment given, by a Judge must file his application —

(a) to the Judge within 7 days of the order or judgment; and

(b) in the event leave is refused by the Judge, to the Court of Appeal within 7 days of the refusal.

17 There were again no changes to O 56 r 3(1) when the 2004 Rules of Court (Cap 322, R 5, 2004 Rev Ed) and the 2006 Rules of Court (Cap 322, R 5, 2006 Rev Ed) were promulgated. It was S 708/2010 which finally substituted O 56 r 3(1) for the current version (see [9] above).

18 In the meantime, s 28A of the Supreme Court of Judicature Act (Cap 322, 1985 Rev Ed) was promulgated by Act 16 of 1993. Pursuant to this, the Supreme Court of Judicature (Transfer of Matrimonial Divorce and Guardianship of Infants Proceedings to District Court) Order 1996 (Cap 322, S 110/1996) was promulgated by the then Chief Justice Yong Pung How. Paragraph 6 states:

Procedure for appeals.

6. Rule 32 of the Women's Charter (Matrimonial Proceedings) Rules shall not apply to any proceedings under section 56 and Part IX of the Women's Charter which, pursuant to this Order, are heard and determined by a District Court, and the procedures for appeals from such proceedings to the High Court and thereafter to the Court of Appeal shall be as specified in the Rules of Court 1996.

19 Section 28A of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) was then amended by Act 36 of 2004, and has remained unchanged since. The new s 28A contained a new subsection — s 28A(2)(b), which reads:

(2) Notwithstanding any other written law, any order under subsection (1) —

...

(b) may make such provision governing appeals relating to proceedings transferred to the District Court (including provisions restricting the right of appeal) as the Chief Justice thinks fit; ...

20 Pursuant to the new s 28A(2)(b), the Supreme Court of Judicature (Transfer of Matrimonial, Divorce, and Guardianship of Infants Proceedings to District Court) (Amendment) Order 2004 (Cap 322, S 632/2004) was promulgated, which brought into force the current version of para 6.

21 In the midst of these changes the law relating to the prescribed time frame to file an application for leave to appeal to the Court of Appeal for cases that do not come within section 34 of the SCJA was inadvertently overlooked. The then s 34(2)(a) of the Supreme Court of Judicature Act only required leave where the amount or value of the subject-matter at the trial was \$250,000 or less.

22 The new regime, as currently enshrined in s 28A(2)(b) of the SCJA and para 6 of the 2007 Transfer Order, requires leave before a second appeal can be commenced in the Court of Appeal. However, the Rules of Court have yet to reflect these new developments; O 56 r 3(1) continues to explicitly refer to only applications for leave under s 34 of the SCJA, and makes no reference to s 28A of the same. This is wide enough to cover all appeals to the Court of Appeal except for appeals from the High Court sitting in its appellate jurisdiction and stemming from Part X of the Women's Charter.

23 Nevertheless, the law must be interpreted as a harmonious whole. It would be highly anomalous for there to be no time limit for the application for leave for cases pertaining to Part X of the Women's Charter. I can discern absolutely no reason to treat such cases differently from all other civil cases, which require the application for leave to be made within seven days.

24 The parliamentary debates suggest that applications for leave under para 6 of the 2007

Transfer Order were not meant to be outliers (see Singapore Parliamentary Debates, Official Report (21 September 2004) vol 78 at col 684):

The Bill will insert a new provision, in section 34(2), to require leave to appeal to the Court of Appeal where the High Court makes an order in exercise of its appellate jurisdiction with respect to any proceedings under the Adoption of Children Act or under Part VII, VIII or IX of the Women's Charter. Divorce proceedings, including division of matrimonial assets, summary applications to resolve disputes between husband and wife as to possession of property and proceedings under the Guardianship of Infants Act were originally heard by the High Court. These proceedings were transferred to the Subordinate Courts by a 1996 Order of the Chief Justice, made under section 28A. **A new complementary provision** will be inserted in section 28A of the Act to allow the Chief Justice to make such provision governing appeals relating to proceedings transferred to the District Court, including provisions to restrict the right of appeal. The Chief Justice intends to specify by Order that leave to appeal to the Court of Appeal is required in family proceedings transferred to the District Court for hearing in the first instance. [emphasis added]

25 For the above reasons it is only logical that the requisite time frame for the filing of an application for leave to appeal to the Court of Appeal for cases stemming from Part X of the Women's Charter should be seven days, just like all other appeals. Thus the husband was out of time.

Does the High Court have the jurisdiction to extend the time for the filing of an application for leave to appeal to the Court of Appeal?

26 O 57 r 17 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) provides:

Without prejudice to the power of the Court of Appeal under Order 3, Rule 4, to extend the time prescribed by any provision of this Order, the period for *filing and serving the notice of appeal* under Rule 4 or for making application ex parte under Rule 16(3) may be extended by the Court below on application made before the expiration of that period. [emphasis added]

O 57 r 17 is only germane to the filing and service of the notice of appeal, and is not relevant to the extension of time for an application for leave to appeal to the Court of Appeal.

27 O 3 r 4 of the Rules of Court is the relevant provision that gives the High Court the jurisdiction to extend the time for an application for leave to appeal to the Court of Appeal. It states

Extension, etc., of time (O. 3, r. 4)

4.—(1) *The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules or by any judgment, order or direction, to do any act in any proceedings.*

(2) *The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.*

...

(4) In this Rule, references to the Court shall be construed as including references to the Court of Appeal.

[emphasis added]

28 Thus the High Court has the power to extend the time for leave to appeal to the Court of Appeal.

Is the husband required to apply for an extension of time to file a notice of appeal?

29 The husband has not prayed for an extension of time to file his notice of appeal in his summonses. The husband was probably assuming that O 56 r 3(2) of the Rules of Court, which stipulates that a party who has obtained leave to appeal must file and serve the notice of appeal within one month from the date on which leave was given, would be applicable. However, O 56 r 3(2) does not apply to applications for leave pursuant to para 6 of the 2007 Transfer Order. Hence there is another procedural lacuna. I would adopt a similar approach regarding the earlier lacuna pertaining to the lack of a prescribed period to file an application for leave to appeal to the Court of Appeal. In other words, if this court grants him leave to appeal he should file the notice of appeal within one month from the date on which leave was given.

Can an applicant apply directly to the Court of Appeal for leave to appeal instead of doing so in the High Court?

30 Although it is not necessary for this court to consider this issue I would like to give some clarity to para 6 of the 2007 Transfer Order which states that leave may be sought from "the Court of Appeal or a Judge of the High Court" (see [8] above). This does not mean that an applicant has the right to bypass the High Court and apply directly to the Court of Appeal for leave to appeal. This is the result of O 56 r 16(4) of the Rules of Court, which states:

Whenever under these Rules an application may be made either to the Court below or to the Court of Appeal, it shall not be made in the first instance to the Court of Appeal, except where there are *special circumstances which make it impossible or impracticable to apply to the Court below*. [emphasis added]

31 In this instant case the husband had correctly make his application to the High Court for leave to appeal as there were no special circumstances which made it impossible or impracticable to apply to the High Court.

Should the High Court extend the time for the husband's application for leave to appeal to the Court of Appeal?

32 There is a distinction between the test for whether time should be extended for an application for leave to appeal, and the test for whether leave to appeal should be granted. I shall now deal with the former.

33 The Court of Appeal, in *Sun Jin Engineering Pte Ltd v Hwang Jae Woo* [2011] 2 SLR 196, made the following comments for an extension of time to file a notice of appeal (at [29]):

The factors which our courts have regard to in determining whether an extension of time to file a notice of appeal should be granted are fourfold, namely: (a) the length of the delay; (b) the reasons for the delay; (c) **the chances of the defaulting party (ie , the would-be appellant) succeeding on appeal if the time for appealing were extended**; and (d) the degree of prejudice to the would-be respondent if the extension of time were granted (see, *inter alia*, *Hau Khee Wee v Chua Kian Tong* [1985-1986] SLR(R) 1075 at [14], *Pearson Judith Rosemary v Chen*

Chien Wen Edwin [1991] 2 SLR(R) 260 at [15], *AD v AE* [2004] 2 SLR(R) 505 at [10], [*Lee Hsien Loong v Singapore Democratic Party* [2008] 1 SLR(R) 757] at [18] and *Anwar Siraj v Ting Kang Chung John* [2010] 1 SLR 1026 at [29]). It should, however, be noted that these factors have also been applied in some cases which did not concern an application for leave to file an appeal out of time (see, eg, *The Oriental Insurance Co Ltd v Reliance National Asia Re Pte Ltd* [2008] 3 SLR(R) 121, which pertained to the late filing of a proof of debt under a scheme of arrangement for a company). [emphasis added]

The court should have regard to the same four factors in determining whether to allow the leave application to be filed out of time (see also *Singapore Civil Procedure 2013* (GP Selvam) (Sweet & Maxwell Asia, 2013) at para 3/4/4).

34 In this case there was a delay of about 16 days after I dismissed the husband's appeal. Although the duration of the delay is not significant, counsel for the husband has not adequately accounted for this delay, merely averring that it was his mistake that he did not file the application for leave in time.

35 The determinative factor in this regard is the husband's chances of successfully obtaining leave to appeal. Thus, both issues are inextricably linked: there is no point in extending the time for filing the application for leave if the husband cannot successfully obtain leave to appeal. I shall now turn to the application for leave to appeal to the Court of Appeal.

Should leave be granted to the husband to appeal to the Court of Appeal if application for the extension of time to appeal is granted?

36 The Court of Appeal in *IW v IX* [2006] 1 SLR (R) 135 at [21] rejected the "realistic prospect of success" approach in *Smith v Cosworth Casting Processes Ltd* [1997 1 WLR 1538:

"If we were to adopt the test of "realistic prospect of success" propounded in *Smith v Cosworth*, it would be a rather low threshold to meet. As we have indicated before, that test is really an "arguable case" test which would not be a difficult one to satisfy. This would effectively mean that many cases would have to be permitted to go further to the Court of Appeal, thus clogging up the Court of Appeal."

37 The Court of Appeal in *IW v IX* at [22]-[24] went on to examine the intention of Parliament and came to the conclusion that there should only be one tier of appeal:-

22 An examination of s 34 of the SCJA would show that, as a general rule, it is intended that there should only be one tier of appeal as a matter of right. A litigant in a case commenced in the Subordinate Courts would have a right of appeal to the High Court. Any further appeal to the Court of Appeal would require the leave of court.

23 When matrimonial matters were first transferred to be heard in the district court in 1996, an anomaly appeared. This was because it was not possible to quantify, in monetary terms, a divorce or custody matter. Thus, before the enactment of s 28A of the SCJA, a decision of the district court in a divorce proceeding could be taken up all the way to the Court of Appeal, as it would not be caught by the restriction imposed in s 34(2)(a) which prescribes that no appeal may be brought to the Court of Appeal except with leave where the subject matter at the trial is of a value of \$250,000 or less. The object of enacting s 28A was to correct this anomaly. The Deputy Prime Minister ("DPM") and Minister for Law, Prof S Jayakumar, in moving the second reading of the Supreme Court of Judicature (Amendment) Bill (No 35 of 2004) on 21 September 2004, which

sought to amend the SCJA, including the addition of the new s 28A, said (Singapore Parliamentary Debates, Official Report (21 September 2004) vol 78 at cols 682 to 683):

These amendments were proposed by the Supreme Court to address an anomaly. With respect to civil proceedings (other than family law matters), which are heard in the Subordinate Courts, a party has, subject to certain statutory conditions, the right to appeal to the High Court. Leave is needed for a further appeal to the Court of Appeal. However, in family law cases, parties currently have the right to appeal from the Subordinate Courts to the High Court and then make a further appeal to the Court of Appeal, without having to seek leave. This is an anomaly which needs correction.

In the interests of finality, there should be only one tier of appeal as a matter of right for family cases, with a second appeal only with the leave of court. The general position in Singapore for civil cases, other than family cases, is only one tier of appeal as a matter of right. This is because having an automatic second tier of appeal delays a final decision on the matter and increases costs for litigants.

24 Having regard to what was clearly legislative intent, we did not think this court should adopt the more liberal regime for granting leave to appeal expounded in *Smith v Cosworth*....

38 The parties agreed that the test whether leave should be granted for an appeal to the Court of Appeal consists of the following three disjunctive limbs (see *Lee Kuan Yew v Tang Liang Hong* [1997] 2 SLR(R) 862 at [16]; *IW v IX* at [11]):

- (a) *Prima facie* case of error;
- (b) Question of general principle decided for the first time; or
- (c) Question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

39 The husband submitted that there was a *prima facie* case of error (in accordance with the test at [38] above). In *IW v IX*, the court accepted JC Tay Yong Kwang's (as he then was) clarification in *Abdul Rahman bin Shariff v Abdul Salim bin Syed* [1999] 3 SLR(R) 138 that it must be a *prima facie* error of law (at [20]):

In *Abdul Rahman bin Shariff v Abdul Salim bin Syed*, Tay Yong Kwang JC (as he then was) clarified at [30] that the test of *prima facie* case of error would not be satisfied by the assertion that the judge had reached the wrong conclusion on the evidence. Leave should not be granted when there were mere questions of fact to be considered. He said that it must be a *prima facie* case of error of law that had a bearing on the decision of the trial court.

40 The husband submitted that the wrong factors were taken into consideration in giving effect to the adverse inference that the husband had made unaccounted withdrawals. The husband cited *NK v NL* [2007] 3 SLR(R) 743 (at [57] – [65]) and *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 ("*Yeo Chong Lin*") (at [64] – [67]) for the proposition that there were only two ways in which a court could take into account undisclosed matrimonial assets: firstly, by making a finding of the value of the undisclosed assets on the available evidence, with onus being on the other party to show that such a finding is unreasonable; and secondly, ordering a higher proportion of the known assets to be given to the wife rather than quantifying the specific assets which have not been disclosed. The husband contended that this was not followed in the instant case.

41 The husband's contention in this regard is wholly without merit. In *NK v NL*, the Court of Appeal made the following comments with regard to the two methods (at [61]):

Although the observations by Kan J in [*Tay Sin Tor v Tan Chay Eng* [1999] 2 SLR(R) 385] (quoted at [59] above) are sound and ought to be followed whenever possible, everything depends, in the final analysis, upon the precise facts concerned. In particular, it would not be appropriate for the court to engage in unnecessary speculation with respect to the specific values of undeclared assets. Further, as we have also noted, Kan J's approach **is but one of at least two alternatives**. [emphasis added]

The two methods listed at [40] above are thus not exhaustive. There is no *prima facie* error of law in this instant case. The husband's application for leave can be dismissed on this basis alone.

42 I am of the view that the learned District Judge had correctly dealt with the amount of \$581,860.48 in which adverse inference was drawn. She made a finding that the husband had failed to account for \$581,860.48 in withdrawals, and that the husband's response that the money was used for his personal and family expenses, including entertainment and gambling, was not credible. She was also of the view that 25% of this money (\$145,465.12) was to be attributed to the wife. However, instead of ordering a direct transfer of this sum of money to the wife, she calculated that this \$145,465.12 amounted to 30% of the value of the matrimonial flat, and increased the wife's share of the matrimonial flat by this amount.

43 The husband was in reality contending that the first approach necessarily involves one exclusive means of giving effect to an adverse inference — *viz.*, by ordering a direct transfer of money. However, this is not borne out by case law. *Lau Loon Seng v Sia Peck Eng* [1999] 2 SLR(R) 688 and *Tay Sin Tor v Tan Chay Eng* [1999] 2 SLR(R) 385 were both cited by *Yeo Chong Lin* (at [64]) as being emblematic of the first approach. These two cases did not mention anything about the means by which the quantified sum of undisclosed assets should be split. Under s 112 of the Women's Charter, the court has the power to order the division of "any such [matrimonial] asset in such proportions as the court thinks just and equitable". The learned District Judge, in utilising the first approach, was fully entitled to order an increase in the proportion of the matrimonial home to be allocated to the wife instead of ordering a transfer of money.

44 There is thus no necessity for this court to discuss the other remaining two limbs in *Lee Kuan Yew v Tang Liang Hong*. In any event, the husband did not raise the remaining two limbs in his application for leave to appeal to the Court of Appeal.

45 Accordingly, the issue of whether execution should be stayed does not arise.

Conclusion

46 For the above reasons SUM 30400/2013 and SUM 30539/2013 are dismissed.

47 Parties are to address the court on costs.

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