

AYL v AYM
[2012] SGHC 64

Case Number : Divorce No 1660 of 2010/V (RAS No 168 of 2011/C)
Decision Date : 23 March 2012
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Joyce Fernando (Engelin Teh Practice LLC) for the appellant/defendant; Nigel Pereira and Stephanie Tan (Rajah & Tann LLP) for the respondent/plaintiff.
Parties : AYL — AYM

Family Law – consent orders

23 March 2012

Choo Han Teck J:

1 The appellant (who was the defendant/husband) is 59 years old. His marriage to the respondent (who was the plaintiff/wife) lasted 23 years. They have three children aged 19, 11 and 8 this year. The marriage failed and they divorced. The draft consent order regarding the division of matrimonial assets was approved by the Family Court on 13 July 2010 and the final judgment was certified on 13 October 2010. Under the consent order the parties were to have joint custody of the children but the respondent “shall have sole discretion on where the children reside in Singapore or Australia”. She was to have sole discretion as to the matters concerning the children’s medical and dental needs.

2 The respondent and the children were to live in the matrimonial home at Jalan Lateh (“the house”) for six years and thereafter, the respondent shall have the discretion to sell the house should she move to Australia with the children. They agreed that if the house was sold for more than \$2.5m the respondent would keep 70% of the proceeds and the appellant 30%. Otherwise, she would keep 80% and the appellant 20%. The house was subsequently ordered to be sold by March 2012 upon an application by the appellant to vary the consent order and that the proceeds were to be divided according to the agreed 70% – 30% (since the value of the house was above \$2.5m). The variation orders were made on 16 September 2011. The consent orders were varied as follows –

- 1 The maintenance of the oldest child be varied from \$2,670 a month to \$1,000 a month pending her enrolment to a university and thereafter to revert to \$2,670;
- 2 The school fees payable towards the oldest child’s school fees is suspended pending enrolment;
- 3 The appellant need not pay the monthly maintenance for the other two children if they do not continue their schooling at the United College; and
- 4 The matrimonial home be sold within six months and the proceeds distributed according to the terms of the consent order.

The appellant appealed to this court against the orders as varied (even though he was the one who

applied to vary the orders). He now wants the varied orders to be varied "such that a sum of \$750,000 from the sale of the matrimonial home be retained by the respondent as her share of the lump sum maintenance"; and that "the house be sold in three months and the sale proceeds be divided equally".

3 Mr Nigel Pereira submitted on behalf of the respondent that the respondent will accept \$750,000 as lump sum maintenance for herself if that sum came from the appellant's share of the proceeds. She was prepared to accept a lump sum to avoid the inconvenience of enforcing monthly maintenance payments especially if she and the children re-locate to Australia.

4 The appellant's main argument before me was that he had retired and his business venture had failed. Miss Fernando who appeared on his behalf made lengthy submission as to why it would be inequitable if the variations the appellant now seeks are not granted. However it should be noted that the original orders were agreed between the parties, and at the hearing before the Family Court for the hearing of the appellant's application to vary, the parties again agreed that the monthly maintenance for the respondent be converted to a lump sum payment. They further agreed that the amount should be \$750,000. Their disagreement was whether the \$750,000 should be paid from the appellant's share of the proceeds of sale of the matrimonial house or from the respondent's share. Their respective shares had been agreed in a way that the parties will receive a fair distribution and so they agreed to an adjustment should the sale price be less than \$2.5m. In the event, this was not necessary. Thus, on this point alone, the appellant's claim that the \$750,000 be paid out of the respondent's share of the sale proceeds should be dismissed. To order otherwise would be tantamount to asking the respondent to pay her own maintenance. If the orders had not been varied the appellant would be paying monthly maintenance from his share of the sale proceeds.

5 The appeal for the further order that the division of the proceeds of sale of the matrimonial house be divided equally instead of 70% to the respondent, will, if the above appeal were to be allowed, lead to the respondent paying extra to the appellant after the parties had already agreed to the proportion of distribution. What were the appellant's reasons for varying the original order? It appears that his business had failed. According to him, the business failed shortly after the consent order was recorded. It was a private business in which he claimed that his investors had withdrawn. I have not seen the details of the business records as to whether this was a legitimate business failure but I will assume that it was for the purposes of my decision here. In my view, business failure may sometimes be a legitimate ground for varying a maintenance order, but it does not follow that the courts will allow a variation as a matter of course. In this case, the parties had substantial assets, which include not just the matrimonial house but also a condominium apartment which had been sold and the proceeds distributed. Maintaining the orders below and refusing the appellant's plea that the \$750,000 be paid from the respondent's share would reduce the appellant's share but it would not be to such an extent that merits any adjustment to the orders made below.

6 In considering the submissions of Miss Fernando it appears that the real reason for the application for a variation of the consent order was that the value of the matrimonial house had risen from \$2.5m to \$4.85m. Miss Fernando submitted that this would give the respondent a "handsome profit". If this was the reason, I have no hesitation in rejecting it. A consent order is a contract endorsed with the approval of the court. It is not an order to be lightly varied or set aside. In matrimonial proceedings, consent orders regarding the distribution of matrimonial assets and maintenance may be varied in order to avert grave hardship on a party because the value of the property or assets had plunged beyond the contemplation of the parties. However, when the reverse occurs and the assets increase in value, the court will not interfere to re-distribute the proceeds or assets. When a contract has been made or a consent order has been recorded the parties must part with a mind at peace that the matter is at an end. They should not go on living with the anxiety of a

return to court when the asset value changes.

7 I am of the view that this appeal is without merits and is accordingly dismissed with costs to be taxed if not agreed.

Copyright © Government of Singapore.