IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 197

Divorce Petition No 1922 of 1992
(Summons No 600100 of 2015)

Between

GEORGE SAPOORAN SINGH

… *Petitioner*

And

GORDIP D/O MD GARSINGH

… *Respondent*

GROUNDS OF DECISION

[Family Law] — [Maintenance]

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George Sapooran Singh
v
Gordip d/o MD Garsingh

[2016] SGHC 197

High Court — Divorce Petition No 1922 of 1992 (Summons No 600100 of 2015)
Kannan Ramesh JC
29 December 2015; 15 March, 8 June and 4 July 2016

19 September 2016

Kannan Ramesh JC:

Introduction

1 The husband was subject to a court order to pay maintenance to his wife from his first marriage. The husband applied subsequently to rescind the maintenance order, citing the needs of the family from his second marriage as constituting a "material change in circumstances" under s 118 of the Women's Charter (Cap 353, 2009 Rev Ed). What approach should the court take in such a situation? This was the pith of the case in Summons No 600100 of 2015 ("the Application"), which was the Petitioner's application under s 118 to rescind an Order of Court dated 16 September 2010 ("the Order") ordering that he pay maintenance to the Respondent in the sum of $150 per month with effect from 1 September 2010. The Petitioner was the husband and the Respondent the wife. I shall hereinafter refer to the parties as "Mr Singh" and

"Mdm Gordip" respectively. Both parties were represented by counsel appointed by the Legal Aid Bureau.

2 On 4 July 2016, I heard and dismissed the Application, and delivered brief oral grounds. Mr Singh has appealed my decision and I now set out my detailed grounds of decision.

Background

3 The parties were both around 70 years of age. They had one child from their marriage, a son ("the Son"), at present 28 years of age. He worked as a relief security guard and lived with Mdm Gordip in an HDB apartment registered in Mdm Gordip's sole name.

4 Mr Singh remarried on 15 April 1994. His marriage was to Mdm Mary d/o Koshy ("Mdm Koshy"). That was also Mdm Koshy's second marriage. Mdm Koshy had four children from her previous marriage. Mr Singh, Mdm Koshy and her unmarried daughter ("the Daughter") lived under one roof in an HDB apartment which appeared to be registered in their joint names. Apart from the Daughter, Mdm Koshy's other children, a son and two daughters, were said to be married and did not live with her.

5 The parties divorced on 13 May 1993. On the application of Mdm Gordip, the court directed maintenance of $250 per month to be paid to Mdm Gordip and the Son (apportioned $70 and $180 respectively). Subsequently, by a consent order dated 19 March 2001 ("the Consent Order"), Mr Singh consented to increasing the maintenance to $300. An attempt was made by Mdm Gordip in Summons No 600036 of 2010 ("the first application") to vary the Consent Order by increasing the maintenance to $500; this application

resulted in the Order. Several grounds were relied upon by Mdm Gordip in the first application, including that:

(a) She had been unable to work since 2002 due to poor health; she suffered from hypertension, ischemic heart disease and hypercholesterolemia;

(b) The Son, though having reached 22 years of age, was unable to find employment; and

(c) Since 2008, Mr Singh had stopped paying maintenance for the Son, on the ground that he had reached the age of majority;

6 In his affidavit in reply in the first application filed on 7 July 2010, Mr Singh cited several reasons in resistance, being that:

(a) He had remarried on 15 April 1994 and his present wife, Mdm Koshy, suffered from several medical ailments;

(b) Mr Singh and Mdm Koshy lived alone and survived solely on his monthly salary of $2,500 as a security guard (though it was acknowledged that Mdm Koshy had children, the point made was that they were married with their own families and did not seem compelled to support her);

(c) Mr Singh suffered from several medical ailments that required regular medical treatment which, coupled with his age, then 65 years, made it doubtful that he could continue working;

(d) The combined monthly household expenses of Mr Singh and Mdm Koshy were $1,234.60; his monthly savings of around $1,000

were required to ensure that the couple's needs were taken care of should he stop working; and

(e) Mdm Gordip ought to be supported by the Son, who lived with her, given that he had reached the age of majority.

7 Notably, there was no application by Mr Singh to rescind or vary the Consent Order.

8 The Order increased the maintenance payable to Mdm Gordip from $70 to $150 a month. Though it was not entirely clear, the $150 that was allowed for maintenance under the Order was intended solely for Mdm Gordip as the Son had reached the age of majority. The court appeared to proceed based on the assumption that Mdm Gordip was eligible for maintenance of only $70 a month under the Consent Order.

The Application

9 As stated earlier, Mr Singh brought the Application under s 118 on the basis that there was a "material change in the circumstances". This is one of three grounds set out in s 118 for variation or rescission of a subsisting order for maintenance. For ease of reference, I reproduce s 118 below:

> **Power of court to vary orders for maintenance**
>
> **118.** The court may at any time vary or rescind any subsisting order for maintenance, whether secured or unsecured, on the application of the person in whose favour or of the person against whom the order was made, or, in respect of secured maintenance, of the legal personal representatives of the latter, where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.

10 It was common ground that s 118 was applicable to the Application. The sole issue before me therefore was whether there was in fact a "material change in the circumstances".

11 A total of six affidavits were filed – four by Mr Singh and two by Mdm Gordip. I now set out the grounds that were advanced by the parties in support of their respective positions.

Mr Singh's submissions

12 In his submissions, Mr Singh offered two principal grounds which for different reasons allegedly resulted *in his inability to continue working*, thereby depriving him of an income that would have otherwise placed him in a position to perform the Order. The two grounds were, that:

(a) Mdm Koshy was in need of a full-time caregiver because of her medical condition, which was a role that Mr Singh had assumed and fulfilled; and

(b) Mr Singh was diagnosed with colorectal cancer in December 2014 ("the Cancer").

13 As a result of these grounds, Mr Singh alleged that he had to give up his job as a security guard and the accompanying salary of $1,900 a month, which in turn left him dependent on the monthly sum of $460 which he received from his CPF Retirement Account to meet the increased expenses of both Mdm Koshy and himself. Their expenses were asserted to be a monthly sum of $1,137.13 ("the Expenses"), the details of which were:

	Item	**Expense ($)**
a.	Town council charges	42.00
b.	Power supply	120.00
c.	Starhub HomeHub	56.86
d.	Starhub Handphone bill	66.27
e.	Sundry goods	300.00
f.	Marketing	200.00
g.	Clothes, personal effects, toiletries	120.00
h.	Medical expenses ($200.00/4 months)	50.00
i.	Transport (bus/MRT fare/taxi)	150.00
j.	Wife's handphone bill	32.00
		Total: **$1,137.13**

14 It should be noted that in an earlier breakdown of the monthly expenses provided by Mr Singh a marginally higher sum of $1,138.54 was asserted. The difference was immaterial.

15 Without an income, Mr Singh asserted that he was unable to make ends meet, let alone perform his obligations under the Order. He therefore submitted that these grounds constituted a material change of his circumstances justifying a rescission of the Order.

16 Mr Singh also submitted that the Son should provide for the needs of Mdm Gordip as he was working. Though this was not a point that was made in submission, in his third affidavit, Mr Singh asserted that the Son should enhance his income by working as a full-time security officer instead of remaining a relief security officer. However, no evidence was offered as to whether this was feasible in the Son's circumstances or what difference it would have made to his income.

Mdm Gordip's submissions

17 Mdm Gordip challenged the premise of Mr Singh's submission that the Cancer and the condition of Mdm Koshy necessarily meant that he could not work. Her argument was that both of these situations did not prevent Mr Singh from returning to work.

18 Mdm Gordip's arguments were predicated on two assumptions, being that:

(a) Mr Singh could be re-employed as a security guard and would as a result be able to draw at least his last drawn pay of $1,900 a month; and

(b) The income thereby generated, coupled with other payments that he and Mdm Koshy received, would enable Mr Singh not only to engage a caregiver but also meet the Expenses and his obligations under the Order.

It should be noted that Mr Singh did not challenge these assumptions; instead he chose to focus on why it was reasonable for him to cease employment.

19 As regards the Cancer, Mdm Gordip submitted that the medical evidence that Mr Singh offered showed clearly that he was in remission and well. Reliance in particular was placed on the medical report dated 15 March 2016, which stated that Mr Singh was last seen by the doctors on 23 December 2015 and found to be well. She pointed out that the report of the medical examination dated 21 December 2015 stated that there was "... *no evidence of local tumor recurrent or distant metastasis* [emphasis added]". Mdm Gordip submitted that this unequivocally showed that the Cancer no longer continued to debilitate Mr Singh; there was no reason therefore to conclude that Mr Singh was unfit to return to work on account of the Cancer.

20 As regards Mdm Koshy's condition, Mdm Gordip's argument was that there was no reason why Mr Singh, *as opposed to someone else*, should be her primary caregiver. Mdm Gordip presented arguments on other aspects as well, such as that Mrs Koshy only required "moderate assistance with her activities of daily living", according to a memo from the National University Hospital dated 19 June 2014 which described her condition at the time.

21 On the Expenses, Mdm Gordip challenged Mr Singh's assertion that his only cash inflow was the monthly sum of $460 from his CPF Retirement

Account. She pointed out that the following additional monthly cash payments were being received:

(a) $400 on behalf of Mdm Koshy under an ElderShield Policy with Great Eastern Life Assurance Co Ltd;

(b) $100 on behalf of Mdm Koshy under the Pioneer Generation Disability Assistance Scheme; and

(c) $297 from Mdm Koshy's CPF Retirement Account which, it was emphasised, was likely to continue for some time given the account had $45,365.29 as of 3 June 2016.

This constituted a total additional cash inflow of $797 per month which Mr Singh had failed to take into account when he sketched a dire picture of his financial circumstances. Given that the Expenses were incurred by both Mdm Koshy and Mr Singh, it was argued that it was only reasonable and proper for this additional cash inflow to have been taken into account by Mr Singh.

22 As regards the Daughter, Mdm Gordip highlighted Mr Singh's concession that the Daughter contributed $300 monthly, out of a salary of some $1,400, towards the household expenses as she lived under the same roof. She submitted that this also ought to have been included by Mr Singh in estimating his cash inflow. However, she also pointed out that Mr Singh did not produce any evidence of the alleged contribution and salary, inferentially suggesting, it would seem, that perhaps more was in fact being done, or more could be done.

23 Mdm Gordip raised many issues concerning the legitimacy of the various items in the Expenses. The challenges could be broadly compacted into three categories:

(a) Common expenses which ought to be partly borne by the Daughter as she was also living under one roof in an apartment which she co-owned with Mr Singh and Mdm Koshy. Examples of such expenses were the town council charges, utilities charges, cable television charges, and marketing and sundry expenses;

(b) Lack of clarity on who incurred the monthly hand phone bill itemised in the Expenses; and

(c) Excessive costs – examples of these were medical costs, transport charges and expenses for toiletries, clothing and other associated items, which it was submitted, ought at least to be borne in part by Mdm Koshy's children.

24 Mdm Gordip juxtaposed Mr Singh's situation with her plight. She received from her Son a monthly sum of $500 which was insufficient to meet her monthly expenses of $692. On top of his monthly contribution of $500, the Son also paid for the home telecommunication charges of $80 a month. It was pointed out that the Son earned between $1,200 and $1,400 per month, based on a daily gross and net salary of $80 and $64 respectively. Her cash inflow was insufficient for her needs as a result of which she had racked up arrears of $1,765.54 in utilities charges.

25 Finally, Mdm Gordip emphasised that she too suffered from poor health. In substance, she recited the same health reasons that were put forward when she made the first application, *ie*, to vary the Consent Order.

26 Accordingly, she submitted that there was no basis for Mr Singh to rescind the Order. I should point out that Mr Singh did not challenge Mdm Gordip's description of her circumstances.

The decision

27 In *Tan Sue-Ann Melissa v Lim Siang Bok Dennis* [2004] 3 SLR(R) 376 at [26], the Court of Appeal stated that "[g]enerally, the phrase "material change" is understood in the light of the factors that determine the initial award of maintenance". In *AYM v AYL* [2014] 4 SLR 559, the Court of Appeal held (at [14]) that the court may vary agreements for maintenance (under s 119 of the Women's Charter) where it is satisfied that there has been a material change in circumstances. The circumstances in question must be those prevailing at the time the agreement for maintenance was entered into. Therefore, the material changes – which any party seeking to vary an agreement for maintenance must show – must relate to those circumstances. While the Court of Appeal was commenting in the context of s 119, the variation of an order for maintenance under s 118 should also, in my view, be based on material changes that relate to circumstances prevailing at the time the order for maintenance was made. Therefore, to succeed in the Application, Mr Singh needed to show that there had been a material change in the circumstances existing when the Order was made. The question was whether the two grounds put forward by Mr Singh satisfied the test? I was not satisfied that they did. I will explain. However, before I consider the two grounds, I make two observations.

First Observation – the Application is Fundamentally Flawed

28 It is worth reiterating that Mr Singh alleged that the Expenses were $1,138.54 (see [14] above, using the higher of the two available figures). The Expenses allegedly covered the monthly expenses of both Mr Singh and Mdm Koshy. The total cash inflow for both of them was, however, $1,557 (see [21]–[22] above), being the total of $460 from Mr Singh's CPF Retirement Account, $797 that Mdm Koshy received under various arrangements and $300 monthly from the Daughter. On the face of it, without even adjusting the Expenses to take into account the challenges made by Mdm Gordip as to their reasonableness and whether they were solely attributable to Mr Singh and Mdm Koshy, it seemed self-evident that Mr Singh and Mdm Koshy were capable of making their ends meet, given the positive delta between the total cash inflow and Expenses. That delta of $418.46 was more than sufficient for Mr Singh to pay the monthly sum of $150 to Mdm Gordip under the Order. This seemed to me to be an insurmountable roadblock to the success of the Application.

Second Observation – Veracity of Mr Singh's Allegations

29 The first observation dovetails neatly into the second. The fact that Mr Singh attempted to rescind the Order on the ground that he *could not* afford to pay maintenance when *he could* scarred his credibility somewhat. The affidavits that Mr Singh filed in the Application were redolent with the refrain that he was without income and unable to make ends meet. As it turned out, he was in a position to not only make ends meet but also to meet his obligation under the Order. That this only came to light after the relevant information was ferreted out by counsel for Mdm Gordip cast a pall over the Application. Mr Singh was not exactly forthcoming and candid on the facts.

30 The position that he took in his first affidavit filed in support of the Application was that his only monthly cash inflow was the $460 from his CPF Retirement Account. He did not disclose that the said $797 was being received by him on behalf of Mdm Koshy nor that they were also receiving $300 from the Daughter as she was living with them. In his third affidavit, he maintained the position that his sole income was the said $460 though he did disclose this time the said $300 from the Daughter. Mdm Gordip then sought and obtained Mr Singh's bank statements which showed quite clearly that money was being received on Mdm Koshy's behalf. It was only in his fourth affidavit filed in reply that he conceded that there were other cash inflows and explained their sources. No explanation was offered as to why he had initially omitted to make the relevant disclosures. Also, there was a glaring failure to address these omissions and the implications of the additional cash inflow in the written submissions filed on Mr Singh's behalf. It did seem to me that Mr Singh was being economical with the facts in making his case to the court. These payments were clearly relevant since the Expenses, which were a critical plank in Mr Singh's assertion that he was financially drained, included the expenses incurred by Mdm Koshy. I did not find this to be satisfactory.

31 It would seem that the veneer of financial distress that Mr Singh painted was exactly that, a veneer. Taking the two observations together, the Application was tainted by a lack of *bona fides* and ought to have been dismissed for these reasons alone (on its own, the first observation was already fatal). For completeness, however, I nonetheless considered the two grounds that Mr Singh put forward in support of the Application. I now turn to them.

The Cancer

32 It cannot be disputed that in December 2014, Mr Singh was diagnosed with Cancer. The medical reports that he produced attested to that fact unequivocally. The medical report dated 15 March 2016 stated that the Cancer was surgically removed on 23 December 2014 and that he was being monitored for any further signs of cancer. He was in remission. *The same medical report also stated that he was well.* This clearly suggested that he was able to return to work. No medical evidence to the contrary was offered to disabuse me of this conclusion. Neither was his age nor any other medical condition offered by Mr Singh as reasons for not being able to work. In his affidavit filed on 16 May 2016 – his third affidavit – he asserted that he felt pain in his legs and hands, and occasionally his stomach when he pushed Mdm Koshy around in a wheelchair. However, he did not suggest in that affidavit, or for that matter in his other three affidavits, that he was unable to return to work because of the impact of the Cancer. Indeed, such an assertion would have been met with some scepticism by me given that: (a) the report of his medical examination on 21 December 2015 suggested that there was no recurrence of the Cancer; and (b) as recently as 15 March 2016, he was clinically regarded as well based on his last medical review on 23 December 2015.

33 It is axiomatic that the burden was on Mr Singh to establish that there had been a material change in the circumstances. Mr Singh had to show that his financial situation had deleteriously changed such that he was unable to discharge his obligation under the Order. He therefore had to proffer cogent and persuasive evidence (see *eg*, *Morris Richard Neil v Morris Carolina Hernandez* [2012] SGHC 177, where the court held at [14] that sufficient

evidence was required of a material change in circumstances to justify the variation of a maintenance order under s 118; and, *Tan Huan Eng Agnes Florence v Trevor Symes* [2005] SGDC 83 (cited in Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at p 895), where the Family Court stated that the applicant must prove the allegation with *cogent convincing evidence* so that an application was not used as the back door to appeal against a maintenance order) that the Cancer or its lingering effects materially impeded him from returning to work thereby causing a deprivation of income necessary to enable performance of his obligation under the Order. He had in my view fallen short of proving that. In the light of the evidence before me, I was unable to conclude that the Cancer prevented him from returning to the workforce.

34 In fact, I harboured doubts that the Cancer was at all a relevant factor in Mr Singh's deliberation on whether he should return to work. He was diagnosed with the Cancer in December 2014. However, he stopped work in November 2014, not because of any symptoms caused by the latent cancer, but instead to care for Mdm Koshy. It was Mdm Koshy's situation that in fact caused him to stop work. That would perhaps explain why Mr Singh had refused to return to work despite being medically assessed to be well. His true reason for not wanting to return to work was not the Cancer but his insistence on remaining Mdm Koshy's caregiver. The very fact that he was able to care for Mdm Koshy's daily needs, take her for her medical appointments and "push her around in a wheel chair" did suggest that the Cancer no longer troubled him and was not an obstacle to the resumption of work.

35 In these circumstances, I concluded that the Cancer did not precipitate a material change in the circumstances, *ie*, a loss of income. It did not therefore afford a foundation for rescission of the Order under s 118.

Mdm Koshy's condition

36 In January 2014, Mdm Koshy was diagnosed with brain tumour and underwent surgery to remove the same. While the surgery succeeded in removing the tumour, it did not unfortunately provide a complete solution. Post-surgery, as of 13 March 2014, Mdm Koshy was assessed as having no mental capacity though it could not be conclusively said then that her condition was permanent. In a medical memo dated 19 June 2014, she was said to require moderate assistance with her daily activities. The recommendation was that devices be installed in her home to assist her in her daily function. Finally, in a medical memo dated 5 May 2016, she was diagnosed as being fully dependent on a caregiver. The medical report identified Mr Singh as that caregiver. The diagnosis also noted that she was prone to occasional seizures.

37 It seemed clear that I must accept, which I did, that Mdm Koshy had no mental capacity and was in need of a caregiver to attend to her daily needs. However, concluding as such did not lead in my view to the ineluctable conclusion that the caregiver *must* be Mr Singh. Obviously, if the caregiver had to be Mr Singh, the consequence would arguably be the loss of income on his part, which would in turn, pave the way for the argument that he had suffered a material change in the circumstances warranting an adjustment, if not a rescission, of the Order, assuming of course that the first observation (see [28] above) was disregarded. The pivotal question in my view was therefore whether it was necessary for Mr Singh to be the caregiver in the

circumstances. Framed another way, was Mr Singh's insistence on being the caregiver reasonable in the circumstances? If the answers to both questions were in the negative, then the axis upon which Mr Singh's argument turns, that he had suffered a loss of income, would no longer exist. In the final analysis, I answered both questions in the negative. I was of the view that Mr Singh did not necessarily have to play the role of the caregiver to Mdm Koshy, his insistence of playing that role not being reasonable *in the circumstances*. I hasten to add that I am not suggesting that it was unreasonable for Mr Singh, as a husband, to want to be the caregiver to Mdm Koshy. However, Mr Singh had competing obligations which he was duty bound to manage. Therefore, his insistence on being the caregiver and in the process, subordinating and perhaps disregarding his obligation to Mdm Gordip, was not reasonable. I consequentially concluded that Mr Singh was able to return to work and would therefore suffer no loss of income.

38 The foundation of Mr Singh's submission was that he must be the caregiver for Mdm Koshy. I had difficulty with that. The predicament that Mr Singh faced as a result of Mdm Koshy's disability was resolvable by ensuring that there was *a caregiver* for Mdm Koshy and *not* that that caregiver *was Mr Singh*. Based on a broad analysis of the Expenses, the cash inflow of Mr Singh and Mdm Koshy, and an income based on his last drawn salary as a security guard, a return to employment would arguably have enabled Mr Singh to cover the cost of a caregiver – say a helper – and at the same time meet his obligation under the Order. Mr Singh skirted this point, which was in my view a pertinent one.

39 It must be remembered and emphasised that remarriage is not a free pass to avoiding pre-existing financial obligations owed to the family from an

earlier marriage. It seems settled law that remarriage *per se* should and does not affect or compromise the pre-existing obligations that a husband owes to the wife and children from a previous marriage. That said, the fact that the husband has fresh financial commitments to his new family as a result of remarriage could be a factor in the investigation into whether there has been a material change of circumstances. It must not be forgotten that the Women's Charter recognises, in s 46, that the foundation of the union of marriage is consortium – the obligation that is imposed on spouses to co-operate and support each other, safeguard the union and provide for the children of the marriage. This manifests itself in part in an obligation on the husband under s 69 to maintain the wife and under s 68 for the parents to provide for the children. The remarriage of the husband brings into play these obligations as regards his new family. These obligations will obviously have to be balanced against the pre-existing obligations to the family from the previous marriage. While severance of the consortium through divorce does not impact the obligations to the children, at least until they are able to sustain themselves, the position of the wife is perhaps not quite the same. In this regard, it must also be remembered that the purpose of maintenance for the wife from the previous marriage is financial preservation, *ie* to assist her to transit to a post-divorce life as she has been economically disadvantaged by the erstwhile role of homemaker and the consequent reduction or loss of earning capacity. A balance therefore has to be struck and a new equilibrium achieved between the countervailing demands placed on the husband by his family from the previous marriage and his present family.

40 However, as the obligations to the new family are assumed in the context of pre-existing obligations to the earlier family, it is axiomatic that the reasonableness of the former and indeed the reasonableness of the husband's

conduct in assuming or incurring them, must be examined with rigour where they are relied on to vary the latter. The court must be persuaded that the effect of those commitments is such that they cripple or emasculate the husband's ability to perform his pre-existing obligation to the family from the previous marriage. Accordingly, the reasonableness of the conduct in assuming these obligations and the reasonableness of the amounts involved assume primacy. In making that assessment, without attempting to be exhaustive, the court's approach ought to be dictated by the reasonableness of the husband's conduct as examined from three facets:

(a) The reasonableness of the commitments that the husband has assumed whether as regards his new family or otherwise, bearing in mind the pre-existing obligations he owes to the family from the previous marriage;

(b) Whether the husband and his new family have explored and exhausted all reasonable solutions that would enable him to perform his obligations on "both sides of the fence"; and

(c) The financial circumstances and needs of the family from the previous marriage.

Accordingly, where an applicant expects sacrifices from the family from the previous marriage with no proportionate and corresponding adjustments by his new family, that would not in my view be reasonable. Further, where the husband has failed or refused to trim his own expenses so that he can "balance the books", that would in my view not be reasonable conduct as well. As a further illustration, where the husband has assumed liabilities which in the circumstances of his pre-existing obligation would be regarded as less than

prudent or simply not necessary, that would not be reasonable conduct. For example, if the obligations have no material connection with the needs of the new family, it may be examined through a quite different lens. The court may very well be a lot less sanguine about accepting such conduct as being reasonable. Of course, the milieu should also include considerations of the needs of the family from the previous marriage. If their needs are not as dire and pressing as compared to that of the present family, an argument may exist for swinging the pendulum in favour of the latter. In the final analysis, it is a question of striking a balance between two competing obligations. The husband, having placed himself in this position, has to moderate and modulate both his and the expenses of his new family and make reasonable efforts to find reasonable solutions in order to enable him to perform his obligations to both families.

41 I cite two decisions which I believe are useful in shedding light on the issue at hand. I agree with the approach adopted therein. The first decision is *BLD v BLE* [2013] SGDC 333, where a consent order provided, *inter alia*, that the defendant was to pay $2,500 in monthly maintenance for two children. The defendant sought to vary this amount to $1,200. The application was dismissed. Among other arguments, the defendant submitted (at [47]) that his expenses had increased after his remarried and bought a new apartment. On this point, the district judge noted (at [81]) a statement made by her fellow judge in (*Tan Yeow Heng v Siew Yin Kum (mw)* [2010] SGDC 346, which is reproduced as follows:

> For paragraph 4(a), a remarriage per se does not affect the Husband's obligation to pay maintenance. The Husband claims that his remarriage has increased his expenses because he is now the sole breadwinner of his new wife and his stepson. However, he has not explained why his new wife is a housewife. The ex-Wife is working and he clearly expects

> her to work and earn an income. There is no evidence that the new wife is unable to work thereby making it a necessity for the Husband to be the sole breadwinner. If the Husband chose to allow his new wife to be a housewife, I would therefore infer, he has the financial ability to support his new family on his sole income. On top of that, I note that he also has a maid. It is not fair therefore, to push the burden of his decision to be the sole breadwinner of his new family on the ex-wife and son, which is what he is seeking to do. As for his stepson's expenses, I agree with the ex-Wife that the obligation lies mainly with the new wife and her son's natural father. However, I do not fault the Husband for also taking on some responsibility of his new wife's son. It is commendable that he accepts his new wife's son into his family. However, again, his actions should not be at the expense of his own obligations to his ex-Wife and their son. I therefore rejected this as a change that should affect the maintenance of the ex-Wife and their son.

42 In *DX v DY* [2004] SGDC 239, the district judge had to consider, *inter alia*, a husband's request to pay no maintenance for his younger child and have all the maintenance arrears waived. He said that he could not afford to maintain the child and needed to support his new wife and daughter. The judge found that on the evidence, the husband's income had not fallen. She accepted that an increase in expenses would be considered a material change in circumstances, provided the increase in expenses was reasonable and for good reason. In this regard, she inquired if his expenses had increased and held (at [25]):

> Have the husband's expenses increased since August 2003, however? Indeed, he does have a baby daughter and new wife to support now, unlike in August 2003. I do take this into account. However, it does not seem either fair or responsible of the husband to hold the attitude that because he has a new family, he should be able to shed his responsibilities to the old family. *He ought to be the one making sacrifices in his own lifestyle in order to be able to support both the new and the old families.* I see the court's task as one of ascertaining what the increase in expenses are from August 2003 until now, and deciding if they are reasonable, and whether the husband's

> own expenses can be cut down (and by how much they can be cut down) in order to accommodate the increased expenses.
>
> [emphasis added]

43 On the evidence, she did not consider that the husband's expenses had increased by such an amount that it would be impossible for him to absorb the increase in expenses entirely, without decreasing the amount of maintenance that he had been ordered to pay (at [27]).

44 Taking this approach, if returning to work would enable Mr Singh to perform the obligation under the Order and at the same time organise assistance for Mdm Koshy, it would not be reasonable for him to insist on not taking that option. His persistence in being the caregiver would be obstinacy, misguided though it might be, but which the court should not countenance. I noted that Mr Singh did not offer any explanation whatsoever as to why this option was not explored or indeed was not feasible. Circling back to the point I made earlier, a broad analysis of the numbers suggested that if he were to do that, he would be well capable of meeting his obligation under the Order, while at the same time ensuring that Mdm Koshy was sufficiently cared for *in the circumstances*. This ought to be as obvious to Mr Singh as it was to me. His failure or should I say refusal to recognise this did suggest to me a stubborn reluctance on his part to return to work.

45 According to Mr Singh, his last drawn salary was $1,900. Assuming that to be true, it was entirely plausible that with that salary, he would be able to employ a helper to assume the role of the caregiver and have a fairly significant surplus after deducting the cost of the helper's salary and associated costs to meet the Expenses. This would offer a ready solution for Mr Singh in terms of his obligations to Mdm Gordip and Mdm Koshy.

46 While I recognised that a helper might not offer the same care and attention as Mr Singh, in the ultimate analysis, a balance had to be struck simply because Mr Singh was faced with competing obligations. He could not in my view approach the matter solely from the perspective of Mdm Koshy while ignoring the position of Mdm Gordip altogether. In such situations, adjustments were inevitable and necessary. Mr Singh could not in my view insist on matters being viewed through his lens only.

47 In examining the reasonableness of Mr Singh's position and whether the balance was being correctly struck, there was one further consideration which I felt was relevant. The entire approach of Mr Singh assumed that Mdm Koshy's expenses would have to be borne by him solely. Mr Singh's position ignored the fact that Mdm Koshy had four biological children who were all majors and employed. Mdm Koshy's children had obligations to maintain their mother, if indeed she was in dire need. To ignore that, as Mr Singh did, would be unacceptable as a matter of principle.

48 Besides the Daughter, Mdm Koshy's other children surely had to bear some responsibility towards providing for their mother's financial needs if she was unable to do so herself. If they did not, there were options under the Maintenance of Parents Act (Cap 167B, 1996 Rev Ed) ("the MPA") to which resort could be had. When I queried counsel for Mr Singh on why the children of Mdm Koshy, who were married, were not providing for her, he pithily remarked that the relationships were strained. With respect, that was simply not a good enough answer in any circumstance. If they failed or refused to fulfil their obligations, Mr Singh could conceivably seek to apply on her behalf, under s 3(2) of the MPA, as an approved person. If he failed to try to do so, surely he could not use Mdm Koshy's circumstances as a reason for not

performing his obligation to Mdm Gordip. He was effectively turning the problems faced by Mdm Koshy and him into Mdm Gordip's problems. That to my mind was not at all reasonable.

49 I make two further points. First, I had observed that Mr Singh made as an argument for rescinding the Order that the Son should do more to support Mdm Gordip. That seemed a somewhat rich argument when Mdm Koshy's children (at least the married ones) seemed unwilling to do anything at all to support their mother. At least, the Son made monthly contributions of $500 and also paid the home telecommunication charges of $80 a month notwithstanding his somewhat limited circumstances. Mr Singh's unwillingness to pursue relief on Mdm Koshy's behalf against her children under the MPA in such circumstances was difficult to comprehend. Second, again returning to the Son's contribution, it was also rich for Mr Singh to suggest that the Son's contribution of $580 was insufficient when the Daughter was only contributing $300 although she was, like the Son, also residing under the same roof. It should be pointed that the Son was a daily-rated employee and his monthly income ranged between $1,200 and $1,400. Notwithstanding that, he made a total monthly contribution of $580. On the other hand, the Daughter, who drew a salary of $1,400 also as a security officer, made a contribution of only $300. Again, Mr Singh had conveniently glossed over this.

50 The indicia of unreasonable behaviour on Mr Singh's part were therefore quite clear to me. There was a stubborn refusal to return to work and an unwillingness to require Mdm Koshy's children to contribute or contribute more. There was a patent effort to make Mr Singh's problem Mdm Gordip's problem. Against this, Mdm Gordip did require maintenance from Mr Singh.

Her circumstances as outlined above (at [24]–[25]) spoke to that. I was unequivocally of the view that, even allowing for the first and second observations, the balance heavily came down in favour of Mdm Gordip.

Conclusion

51 For the reasons above, I saw no merit in the Application. However one examined the issue, the circumstances did not speak to a "material change in the circumstances". While I had some sympathy for Mr Singh's situation, he did not satisfy the test in law for rescission of the Order. I therefore dismissed the Application. As parties were represented by counsel appointed by the Legal Aid Bureau, and given the circumstances, I made no order as to costs on the Application. I should emphasise that my decision does not cast the balance between Mr Singh and Mdm Gordip in stone. If the circumstances change materially, the parties are at liberty to apply in the future.

Kannan Ramesh
Judicial Commissioner

Alagappan Arunasalam (A Alagappan Law Corporation) for the petitioner;
Gurmeet Kaur d/o Amar Singh (Harjeet Singh & Co) for the respondent.