Neo Mei Lan Helena v Long Melvin Anthony (Yeo Bee Leong, co-respondent) [2002] SGHC 162

Case Number : Div P 1678/2000, RA 720040/2001

Decision Date : 29 July 2002

Tribunal/Court : High Court

Coram : Woo Bih Li JC

Counsel Name(s) : Palakrishnan SC and Malathi Das (Palakrishnan & Partners) for the petitioner; MP Rai (Cooma & Rai) for the respondent

Parties : Neo Mei Lan Helena — Long Melvin Anthony (Yeo Bee Leong, co-respondent)

Family Law – Maintenance – Husband engineering job relocation and termination to avoid paying maintenance – Husband's onus of proof – Lump sum payment – Factors in determining whether lump sum payment appropriate – Currency of maintenance – General rule in determining currency of maintenance

Family Law – Matrimonial assets – Division – Husband's pre-marital CPF moneys – Whether such moneys matrimonial assets – Whether property bought with such moneys a matrimonial asset – Whether proceeds from sale of property a matrimonial asset – s 112 Women's Charter (Cap 353, 1997 Ed)

Family Law – Matrimonial assets – Division – Needs of children to be taken into account – Whether correct to determine proportion of division first and then adding premium to wife's share to take into account her and the children's needs

Family Law – Matrimonial assets – Division – Wife's insurance policy, jewellery and shares – Whether subject to division

JUDGMENT

Cur Adv Vult

GROUNDS OF DECISION

INTRODUCTION

1. Melvin Anthony Long and Neo Mei Lan Helena were married on 14 July 1984. They have three children. After about 16 years, their marriage failed, and the wife petitioned for a divorce. A Decree Nisi was granted on 21 November 2000. However, for convenience, I will refer to the parties as 'the Husband' and 'the Wife' respectively.

2. At the hearing of the ancillaries, the District Court made various orders. The Husband is appealing to the High Court against some of the orders. I set out below only those orders which he has appealed against:

> '2. The parties shall be entitled to the following properties:
>
> (a) Chesters
>
> (b) Hensman
>
> (c) Murdoch
>
> in the proportion of 60% to the wife and 40% to the husband;

But (i) the Chesters property shall be transferred to the wife upon her paying the husband 40% of the value (40% of A$225,000)

(ii) the husband shall have the option to purchase the share of the wife in Hensman by paying the wife 60% of the net value (60% of A$67,000)

(iii) the wife shall have the option to purchase the share of the husband in Murdoch by paying the husband 40% of the value (40% of A$185,000)

5. The wife shall be entitled to the amount of S$187,000 of the husband's CPF monies in his ordinary account and usual consequential orders as per the standard CPF charge terms.

6. The husband shall pay the wife the amount of S$4,500 a month for the maintenance of the three children.

7. The husband shall pay the wife the lump sum maintenance of S$240,000; the amount shall be satisfied from the husband's share of the three properties from the amount due to him by the wife or his share of the sale proceeds; the balance shall be in instalments of S$1,000 a month provided that should the husband withdraw any monies from his CPF account, he shall pay the wife the balance of the lump sum maintenance immediately after such withdrawal.'

THE THREE PROPERTIES: CHESTERS, HENSMAN AND MURDOCH

3. The District Court granted the Wife 60% of each of the above three properties Chesters, Hensman and Murdoch in Australia and the Husband 40% . The reason for this is stated in para 26 of the Grounds of Decision ('GD'):

'26 This was a marriage of 16 years. For 9 years until 1993, both parties worked full time and they pooled their resources. They operated a joint account. They made many joint purchases of assets. After 1993, only the husband was working. The wife took care of the home. For a number of years, she alone took care of the children in Australia as the husband was working in Singapore. Parties also had the assistance of the wife's family. The indirect contribution of the wife had to be given due recognition. All except two of the properties they bought were in joint names. Even for the properties in the sole name of the husband, a substantial portion of the repayments were made through rentals earned from the properties. The wife, being physically in Australia, was managing and maintaining the properties. I also attributed the financial assistance obtained by the wife from her family members as her contributions to the family. In respect of the financial and non-financial contributions, it would be an appropriate case for equal division, whether or not the assets were paid by the wife or the husband and whether or not they were in joint or sole name. However, the wife had to provide not only for her but also a roof for the three children. I therefore felt it fair that she be given a 10% premium in the division in respect of the three real properties in Australia.'

4. Mr M P Rai, Counsel for the Husband, submitted that the Husband did not dispute that the matrimonial assets should be divided equally between the Husband and Wife. However, he submitted that the District Court erred in granting the Wife a further 10% of the three properties. The Wife's indirect contributions had already been taken into account in reaching an equal apportionment. To grant a further 10% was a duplication. The interest of the children of the marriage could be met by ordering a transfer of one property to the Wife, upon her paying the Husband's share, which was in fact ordered. There was no reason for the division of all three properties to be affected.

5. Mr Palakrishnan SC, Counsel for the Wife, submitted that under s 112(2)(c) Women's Charter, the District Court was entitled to take into account the needs of the children in the division of matrimonial

assets. He submitted that in arriving at the equal division initially, the District Court had taken into account the past non-financial contributions of the Wife whereas the further 10% was to take into account the future needs of the children. There was no duplication.

6. He also relied on a lecture given by Justice Prakash at the Eighth Singapore Law Review Lecture to support his submission.

THE WIFE'S ENTITLEMENT TO S$187,000 IN THE HUSBAND'S CPF ACCOUNT

7. Aside from the three properties, the District Court divided the rest of the matrimonial assets equally, between the Husband and the Wife as stated in para 26 of the GD which I have cited above.

8. As each of the parties had monies in his/her account with the Central Provident Fund ('CPF'), the District Court divided these monies equally and found that the Husband had $187,000 more than the Wife in his CPF account.

9. Paragraph 29 of the GD states:

> '29 …. For the CPF funds, I divided the entire balance of both parties in the ordinary, special and medisave account equally. As a result, there was an amount of $187,000 which the husband had in (*sic*) access of the wife and I accordingly ordered that this amount be charged against the husband's monies in his CPF ordinary account as the wife's share of his CPF assets. The usual CPF standard clauses on the charge was incorporated.'

10. However, as it turned out, these two sentences were not accurate.

11. First, the District Court took into account not only the balance in the respective CPF accounts of the parties. It had also taken into account the Wife's shares which had been bought with monies from her CPF account. The details were as follows:

	The Wife	The Husband
Shares (CPF investment account)	S$ 99,117	
Monies in CPF account	S$132,000 (ordinary)	S$563,000 (ordinary)
	S$ 14,725 (special)	S$ 35,000 (special)
	S$ 10,532 (medisave)	S$ 24,000 (medisave)
	S$265,374	S$622,000

12. Secondly, the Husband's excess was S$182,813, say S$182,000, and not S$187,000. This was conceded by Mr Palakrishnan.

13. Having said that, I note that the GD had also listed some monies in the Wife's bank accounts and the Husband's. The Husband had slightly more i.e between S$2,000 to S$2,500 more, depending on the exchange rate of some of the foreign currencies in the Husband's bank accounts. However, this could not account for the difference of $5,000 between $187,000 and $182,000. Besides, the District Court did not say it had taken the monies in the bank accounts into consideration. It may also be that the $187,000 figure was a typographical error and should have read $182,000 instead.

14. Accordingly, the $187,000 granted to the Wife should be amended to $182,000.

15. Besides this point, Mr Rai submitted that the pre-marital balance in the Husband's CPF account should not have been taken into account as matrimonial assets. For this purpose, he relied on *Lam Chih Kian v Ong Chin Ngoh* [1993] 2 SLR 253. However, there was no evidence about the pre-marital balance in the Husband's CPF account and Mr Rai sought leave to adduce fresh evidence in respect of that balance.

16. Mr Rai also submitted that monies in CPF accounts should be treated differently from other matrimonial assets because such monies were forced savings meant for retirement. Accordingly, he submitted that there should not be an equal division of the combined monies in the CPF accounts but rather that the Wife should be entitled to 30% only. For this point, Mr Rai relied on an unreported judgment of Prakash J in Divorce Petition No 1147 of 1995, *Yah Cheng Huat v Ong Bee Lan* in which the wife was granted 30% of the combined monies in the CPF accounts. However, he accepted that there were other High Court cases in which the wife was granted 50% of such monies.

17. Mr Palakrishnan objected to fresh evidence being admitted in respect of the Husband's pre-marital balance in his CPF account. He stressed that there was a long history of litigation on the present disputes. The Husband did not raise this point at the first hearing before the District Court on 2 July 2001. It was only at the adjourned hearing of 4 July 2001, when the District Court was about to give its decision, that the Husband's Counsel applied to adduce such fresh evidence and seek an adjournment. This was refused by the District Court.

18. In addition, Mr Palakrishnan submitted that the additional evidence would not be material as there was a difference between the old s 106 Women's Charter and the current s 112 Women's Charter.

19. The current s 112(10) Women's Charter states:

> '(10)
>
> For the purposes of this section, "matrimonial asset" means -
>
> (a) any asset acquired before the marriage by one party or both parties to the marriage -
>
> (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
>
> (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
>
> (b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,
>
> but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.'

Section 112(10)(a)(i) is new while s 112(10)(a)(ii) is similar, but not identical, to the old s 106(5).

20. It was submitted for the Wife that the parties' monies in their respective CPF accounts had been used

to buy an apartment in Dairy Farm estate in Singapore. Subsequently, that property was sold at a profit and the monies withdrawn from the CPF accounts were paid back into those accounts. Accordingly the Husband's pre-marital CPF monies would still constitute matrimonial assets under s 112(10)(a)(i).

21. As regards the question whether monies in CPF accounts should be treated differently, Mr Palakrishnan submitted that the *Yah Cheng Huat* case was decided under the old s 106 Women's Charter and in particular s 106(1), (3) and (4). Under that regime, where the matrimonial asset is obtained through the sole effort of one of the parties, the court should be inclined towards giving that party a greater proportion (see the old s 106(4)). However, under the current and applicable s 112 Women's Charter, this inclination was done away with. He also relied on the case of *Yow Mee Lan v Chen Kai Buan* [2000] 4 SLR 466 in which this amendment was explained by Prakash J herself. At para 30 of the judgment in that case, Prakash J said:

> '30 The enactment of s 112 in 1996 removed the dichotomy which the previous legislation had contained: the difference in approach to the division of assets that had been acquired by the joint efforts of the parties from the approach taken to the division of those that had been acquired by the sole efforts of one of them. In the context of the famous and often analysed s 106, the efforts that resulted in any particular asset falling into one category or the other were financial efforts only and when it was established that only one party had financed an acquisition, the court had to give that party a greater share in that asset. On the other hand, when assets had been acquired by joint efforts, the court had a freer hand in dividing them though there was a suggestion that the court should divide them equally.'

WIFE'S ASSETS WHICH WERE NOT TAKEN INTO ACCOUNT BY THE DISTRICT COURT

22. Mr Rai submitted that the District Court omitted to take into account some of the Wife's assets in the division of matrimonial assets:

(a) An insurance policy valued at S$110,000.

(b) Her Australian shares valued at A$19,568.

(c) Her jewellery valued at S$4,000.

23. Mr Palakrishnan accepted that the Wife's insurance policy was not mentioned in the GD. However, he pointed out that its maturity date is May 2060. The Wife's Australian shares were also not mentioned in the GD but her jewellery was mentioned at para 20. He submitted that the Australian shares should not be taken into account as they were for the benefit of the children and the amount was negligible.

FURNITURE

24. Mr Rai submitted that the Husband should be granted half of the value of the furniture in the property at Chesters Way. This was valued at A$40,000 by the Husband.

25. In my view, this claim was a non-starter. The Wife had offered the furniture to the Husband save for a piano which she had purchased for A$5,000. The Husband did not take up the offer and Mr Rai confirmed to me that the Husband did not want the physical furniture but the cash instead.

26. In the circumstances, I am of the view that the Husband should not be granted anything for the furniture and the Wife is entitled to keep it and deal with it as she wishes.

MAINTENANCE: (A) FOR THE THREE CHILDREN AND (B) THE LUMP SUM FOR THE WIFE

27. Mr Rai said that the aggregate of S$6,500 per month maintenance for the children (S$4,500) and the Wife (S$2,000) was initially ordered on 30 August 2000 as interim maintenance pending the hearing of the ancillaries. At that time, the Husband was employed by a Singapore company Cisco Systems (USA) Pte Ltd. Although this is a Singapore company, I will refer to it as 'Cisco USA' which is the description used by the District Court. The Husband's basic salary was S$170,000 per annum. However, the Husband was posted to Sydney to work for Cisco Systems Australia Pty Ltd ('Cisco Australia') with effect from 1 January 2001 and his annual salary was reduced to A$155,000 per annum. Moreover, even that employment was terminated effective 16 March 2001 before the District Court's decision on 4 July 2001. The Husband said he could not get a job since and he exhibited a few letters from prospective employers in Australia to support his contention. He was still unemployed as at the date of the hearing before the District Court.

28. The District Court had this to say about the change of employment at the beginning of 2001 and the termination on 16 March 2001 (see paras 31, 36 to 38, 41 and 42 of the GD):

> '31 The husband was working as a Training Manager with Cisco when the proceedings started. Before January 2001, he worked in Singapore with Cisco USA. In January 2001, he moved to Sydney to work with Cisco Australia. There was however no formal contract between him and Cisco Australia and the document produced by him to prove his income with Cisco Australia was issued by Cisco USA. On 16 March 2001, his employment with Cisco Australia was terminated. No reason was given for the termination. The husband's counsel informed the wife's counsel of the husband's termination of employment only in May 2001. The letter exhibited as evidence of the termination was not a termination letter given to the husband but a letter dated 22 May 2001 addressed to "whom it may concern". At the time of hearing, he had not found another job despite make various applications.
>
> 36 The wife's counsel submitted that the circumstances of the change and the subsequent termination of his employment were highly suspect. There was no formal contract between him and Cisco Australia while there was a very comprehensive contract with Cisco USA. The attachment of earnings order took effect from October but he changed employer in January 2001. The termination of employment with Cisco Australia took effect from 16 March 2001 but notice was not given to the wife's counsel until May 2001 and this was after a court hearing in May 2001 ordering him to produce letters from Cisco USA and Cisco Australia on his entire remuneration package. The wife also pointed out that as late as February 2001, he still had the use of an American Express Corporate card from Cisco USA as shown by the credit card statement exhibited. The husband's third affidavit was signed on 16 March 2001, the alleged day his service was terminated and that affidavit mentioned nothing about the termination of his employment.
>
> 37 I agreed with the wife that the circumstances concerning the husband's employment status were suspicious.
>
> 38 The husband also blamed the wife for not getting employment in Australia and said that the wife could easily get a job because she was a graduate and qualified. However, at the same time, he said that it was difficult for him to get (*sic*) at job in Australia ….
>
> 41 I found that many items of expenses given by both parties were excessive. They were certainly beyond the parties' financial abilities. As stated earlier, the circumstances surrounding the employment status of the husband were suspicious. The husband had not shown that the reduction in his salary and the loss of his job were due to circumstances beyond his control. In any event, the husband's

earning capacity would be relevant even if he was unemployed. In my view, it was totally irresponsible for the husband to suggest in his affidavit that he should not pay any maintenance, even for the children, for 12 months since he was unemployed. The children would still need to go to school, be fed and clothed even if their father was without a job and he could not just leave it to the wife, who had not been working for the last 8 years, to bear all the expenses of the children. His counsel changed the position during hearing and offered A$500 a month until October 2001 and thereafter at A$1,000 a month.

42 However, even the A$1,000 a month offered by the husband was obviously insufficient. ….'

29. Mr Rai submitted that the District Court had erred in concluding that the circumstances of the termination of the Husband's employment were suspicious. He submitted that the Wife could have checked on the circumstances but did not do so even though the termination letter mentioned a contact telephone number and an e-mail address for inquiries. He submitted the burden was on the Wife to prove her suspicions. He relied on another unreported decision of Prakash J in Divorce Petition No 202 of 1999, *Wong Wai Leng Laura v Yap Thiam Nguan*.

30. Accordingly, he submitted that the maintenance was exorbitant. He also submitted that even if I was not prepared to accept that the Husband's employment had been terminated, the Husband was earning a smaller sum in Australia than in Singapore.

31. Secondly, he submitted that the District Court should have taken into account the Husband's debts like his debts to the Singapore Inland Revenue and his debts to credit card companies.

32. Thirdly, he submitted that the District Court erred in granting a lump sum maintenance of S$240,000 to the Wife based on S$2,000 per month x 10 years (i.e 120 months).

33. The District Court's reason for the lump sum maintenance is stated in para 43 of the GD and elaborated in para 44:

'43 As to the maintenance of the wife, I agreed with her that she should be given a lump sum maintenance in so far as the husband had the resources to pay. The husband had blatantly defaulted in the payment of the interim maintenance. It was probable that he would default in future maintenance, especially that of the wife.

44 I calculated the amount of lump sum maintenance to be S$240,000, based on the monthly sum of S$2,000 a month for the period of 10 years. The husband would receive a certain amount from the share of the three properties in Australia. This should be paid over to the wife to satisfy the lump sum maintenance. If he did not want to retain the Hensman property, he would have about $190,000 being 40% of the value of the three properties at $477,000. If he decided to keep the Hensman property, he would have about $123,000, being $190,000 less $67,000, the value net of loan of the Hensman property. The balance should then be paid in monthly instalments of S$1,000. He had the option of withdrawing his CPF monies when he decided not to return to Singapore permanently. When he so withdrew the CPF monies, he should use them to pay the rest of the lump sum maintenance. I agreed that other than these sums of monies, he had no other substantial assets.'

34. Mr Rai did not dispute the multiplier of ten years. His submission was that the fear of the Husband failing to pay the monthly maintenance was not a sufficient reason to warrant an order for the lump sum maintenance. He relied on an unreported decision of Michael Hwang JC in Divorce Petition No 838 of 1991, *Seow Soo Huan v Lauw Boon Pek*. There the court declined to order a lump sum maintenance after citing various factors.

35. Mr Rai further submitted that the Husband was expecting to get something from the three properties which he could use so as to move on with his life. With the District Court's order, he would be crippled. Mr Rai stressed that although the Husband had monies in his CPF account, he could withdraw the monies only if he was prepared to undertake that he would not work in Singapore again. I would add that the undertaking is a requirement of the relevant authority before allowing a foreign worker to withdraw his CPF monies before a specified retirement age. Mr Rai said that the Husband could not give the undertaking and withdraw his CPF monies as he was still considering working in Singapore because that was where he had got his highest income of S$170,000 per annum.

36. Mr Palakrishnan urged me to conclude that the Husband's relocation to Australia was to thwart the Wife's efforts to get maintenance.

37. Furthermore, the purported termination should not be accepted at face value. He stressed the following:

(a) The reasons given by the District Court.

(b) After the Husband was ordered to produce letters from Cisco USA and Cisco Australia on his entire remuneration package, the Husband belatedly produced the alleged letter of termination. In addition, notwithstanding the alleged letter of termination, he was still obliged to but failed to produce the letters on his entire remuneration packages prior to the alleged termination. On this point, Mr Rai countered with the Husband's explanation that as his services had been terminated, Cisco Australia had refused to entertain 'any request for information or documents' (see para 5 of the Husband's affidavit filed on 11 June 2001). I should point out that had the entire remuneration package been disclosed, it would have also disclosed the bonuses and stock options, if any, that the Husband had received. The quantum of the bonuses and stock options could not be obtained from the terms of employment. Moreover, as regards the terms of employment, Cisco USA's terms were disclosed but not Cisco Australia's. The Husband had alleged that, as far as he knew, there was no formal contract with Cisco Australia but Mr Palakrishnan did not accept this given the existence of comprehensive terms with Cisco USA.

(c) The letter of termination was dated 22 May 2001 although the Husband's termination was effective 16 March 2001. It was not even a termination letter as such, as noted by the District Court. If the termination was genuine, the Husband could not be unaware of the termination until May 2001 when he disclosed the letter.

(d) It was not known who purportedly signed the alleged letter of termination on behalf of the Group Manager, Human Resources.

38. Mr Palakrishnan did not accept that the burden of proof was on the Wife to prove her suspicions. Rather, it was for the Husband to establish his allegations. The decision in *Wong Wai Leng Laura* was because of the peculiar facts there.

39. As for the Husband's debts, Mr Palakrishnan submitted that this point had already been raised during arguments for interim maintenance. Also, the Husband had deliberately failed to pay his Singapore income tax so as to use it to counter the Wife's application for maintenance.

40. As for the credit card debts, Mr Palakrishnan pointed out, as an illustration, that one of the statements of account was in relation to a corporate credit card and not the Husband's own credit card. Furthermore, that illustration referred to a statement of account dated 13 February 2001. It was addressed to the Husband and below his name was the name of the company 'CISCO SYSTEMS USA P L'. It was also

addressed to Cisco USA's address. Yet the Husband was supposed to have ceased being employed by Cisco USA with effect from 1 January 2001. In addition, Mr Palakrishnan submitted that there was no documentary evidence for some of the alleged credit card expenses.

41. As regards the lump sum maintenance, Mr Palakrishnan stressed the Husband's default in paying maintenance even when he was working for Cisco USA and Cisco Australia. He also submitted that the Husband could give the undertaking to withdraw the monies in his CPF account as he was not interested in coming back to work in Singapore. He had not exhibited any letters from potential employers in Singapore to demonstrate his attempts to find a job here, even though his highest salary was derived from Singapore.

CURRENCY OF MAINTENANCE

42. Mr Rai submitted that as the expenses of the Wife and the children were incurred in Australia, the maintenance should have been granted in the currency of Australia.

43. Mr Palakrishnan submitted that the currency of maintenance had not been raised before the District Court.

44. Furthermore, while he could not dispute that the expenses were incurred in Australia, he pointed out that the Wife had submitted the expenses in Singapore currency and she did distinguish between the two currencies in her affidavits.

MY DECISION

The three properties

45. Section 112(1) Women's Charter gives the court power to order a division of matrimonial assets, when granting or subsequent to the grant of a decree of divorce, in such proportions as the court thinks just and equitable.

46. Section 112(2) provides that:

> '(2) It shall be the duty of the court in deciding whether to exercise its power under subsection (1) and, if so, in what manner, to have regard to all the circumstances of the case, including …. '

Various factors are set out, one of which is the needs of the children of the marriage.

47. However, it is my view that the needs of the children are taken into account in order to determine the division. It is not correct to determine the division and then add a premium to take into account the needs of the children. There was nothing in the lecture given by Justice Prakash which would lead to such a conclusion. In addition, I do not see why the 10% should apply to all the three properties.

48. In my view, the needs of the children have already been taken into account when the District Court ordered that the Chesters property be transferred to the Wife upon her paying the Husband his share. It is not as though the Wife is unable to pay the Husband's share unless that share is reduced from 50% to 40%.

49. Accordingly, the District Court's order in respect of the division of the three properties is varied in that the Wife's proportion is 50% and the Husband's proportion is 50% also. The consequential orders of the District Court in respect of the three properties remain, subject to the variation as mentioned.

The Wife's entitlement to S$187,000 in the Husband's CPF account

50. As I have said, the Wife's entitlement to the monies in the Husband's CPF account should be reduced, in the first instance, to S$182,000.

51. As for the question whether the Husband's pre-marital CPF balance should be excluded from the pool of matrimonial assets, it is true that in the *Lam Chih Kian* case, the Court of Appeal considered the post-marital CPF monies only as matrimonial assets. However, I agree with Mr Palakrishnan that that decision was under the old s 106 Women's Charter and that the current s 112(10)(a)(i) is new.

52. In my view, s 112(10)(a)(i) applies to the situation where the parties' CPF monies have been used to purchase the apartment in Dairy Farm estate because the parties were residing there (see para 29 of the Wife's Affidavit of Means). Even though this matrimonial home was subsequently sold and the sale proceeds were used to reimburse the CPF accounts from which the monies had been drawn, the monies which were returned to the CPF accounts remained matrimonial assets. According to the Wife, the surplus arising from the profit was used to acquire other matrimonial assets like:

(a) a 1991 Ford Falcon

(b) a 1974 Mercedes

(c) the Chesters Way property (see GD para 13)

53. Although Mr Rai had sought to argue that not all the monies in the Husband's CPF account had been used to buy the Dairy Farm apartment, he was not able to establish this, even if the fresh evidence which he had sought to adduce had been allowed. That fresh evidence was simply a statement of his CPF account as at 13 July 1984, one day before the marriage. Besides, his argument might have been effectively countered by the 'first in, first out' principle, but I need say no more thereon.

54. At this stage, I would mention that I disallowed Mr Rai's application to adduce the fresh evidence in respect of the Husband's pre-marital CPF balance even if I had an unfettered discretion to do so because:

(a) The Husband had had more than ample time to obtain such evidence but did not think of doing so until the eleventh hour when the District Court was about to deliver its decision. Even then, he did not have the evidence and was seeking an adjournment.

(b) If I were to admit such evidence, I would have to give the Wife an opportunity to obtain and produce evidence of her pre-marital CPF balance.

(c) In any event, the fresh evidence was unlikely to make a material difference to the substantive dispute.

55. I would also mention that I also disallowed Mr Rai's application to adduce fresh evidence as to which party was earning dividends from shares because that evidence was not material. Indeed, Mr Rai did not attempt to illustrate its materiality in the course of the substantive arguments.

56. As regards the question whether CPF accounts should be treated differently from other matrimonial assets, I accept Mr Palakrishnan's argument that the decision of Prakash J in the case of *Yah Cheng Huat* was based on the old s 106 Women's Charter.

57. I am of the view that there is nothing in the current s 112 Women's Charter and nothing in the facts

before me which would require me to treat monies in CPF accounts differently from other matrimonial assets which have been acquired by the sole effort of one of the parties.

58. Accordingly, the District Court's order as regards the Wife's entitlement to monies in the Husband's CPF account is varied only by reducing the sum from $187,000 to $182,000. The usual consequential orders regarding a charge thereon remain.

Wife's assets which were not taken into account by the District Court

59. As regards the Wife's insurance policy, she has to continue paying the insurance premiums on it and she had said it was taken out for the security of the children in case something happens to her. I am of the view that the policy need not be taken into account in the division of matrimonial assets.

60. The Wife's Australian shares should be taken into account. There is a limit as to how far the argument about the children's security or welfare should go and it is not as though the Wife is penniless. I round up the value of the Australian shares to A$20,000 and grant the Husband half the value thereof i.e A$10,000. The Wife may se-off the A$10,000 against any arrears of or future maintenance payable for herself. This set-off does not apply to maintenance payable for the children.

61. The Wife's jewellery is mentioned in para 20 of the GD and was probably taken into account by the District Court before giving the Wife an equal proportion in the matrimonial assets. In any event, the jewellery is personal to her and the value is only A$4,000. Furthermore, the Husband's excess in the bank accounts comprising S$2,000 to S$2,500 has not been divided into two. I am of the view that the value of the jewellery need not be divided into two to give the Husband cash in lieu of jewellery.

Furniture

62. I have already said above that the Husband's claim for half of the value of the furniture is a non-starter.

Maintenance: (a) for the children and (b) the lump sum for the Wife

63. For the reasons given by the District Court and as elaborated by Mr Palakrishnan, I am of the view that the circumstances relating to the posting of the Husband to Sydney and the termination of his employment thereafter were more than suspicious. The posting was engineered by the Husband. Also, if his services were indeed terminated on 16 March 2001, the termination was also engineered by him. He did all these things to avoid paying maintenance to the Wife and the children. On this point, I reiterate what the District Court said in para 7 of the GD i.e that the Husband had said he did see the children regularly as he did not want to be served with a summons for maintenance enforcement.

64. I do not agree that, prima facie, it is for the Wife to prove her suspicions. The decision of Prakash J in the case of *Wong Wai Leng Laura* did not go as far as that. In that case, the judge was satisfied with the husband's explanations and accordingly it was then the wife who had to establish her suspicions. It is first for a husband to provide satisfactory evidence to establish that his posting or termination is bona fide. Likewise as regards his attempts to secure another job.

65. In the case before me, the Husband's evidence was far from satisfactory. I do not accept his explanation that it was not possible for him to get information from Cisco Australia after his services were terminated by them. He apparently had no difficulty in getting the alleged termination letter from them two months after the alleged termination. Furthermore, he did not say that he faced a similar difficulty with Cisco USA. In my view, the Husband did not make any genuine attempt to obtain letters from either

employer on his entire remuneration package.

66. As for the debts of the Husband, his liability to the Singapore Inland Revenue arises from his highest income from Singapore. There was no suggestion that at that time, he was unable to pay the maintenance and his income tax which was payable in instalments. There is no valid reason why he cannot pay the tax in instalments. I am of the view that he did not do so so that he could use this outstanding debt as an excuse to reduce the maintenance to be paid by him.

67. As for the credit card debts, he has no business incurring them if he cannot afford to do so. I also note that some of the debts were incurred on a corporate credit card.

68. As regards the question whether a lump sum maintenance should have been ordered, the decision of Hwang JC in the case of *Seow Soo Huan* was on different facts. There, it was not alleged that the husband was a persistent defaulter.

69. Indeed in *Choo Guay Tin v Lee Mong Seng* [2001] 3 SLR 116, Justice G P Selvam was of the view that a lump sum maintenance was appropriate where the husband would not make regular payments, provided the husband was able to pay a lump sum. That was my view too in Divorce Petition No 983 of 1992, *Soh Seng Hwee v Paw Ling Chiang Lina*. The only reason why I nevertheless declined to make a lump sum maintenance order in that case was because there was insufficient evidence before me about the husband's assets and income and I was concerned that a lump sum maintenance order might cripple him.

70. In the present case, I do not have such a fear because the District Court has directed how the lump sum may be paid i.e with most of it being paid with the aid of various set-offs and the balance in instalments. I do not agree with Mr Rai's submission that the Husband will be crippled because he will not receive any monies, after the set-offs, from the three properties. As I have said, he has deliberately failed to obtain letters on his entire remuneration package and he has his earning capacity. If he is truly jobless, that is by his design.

71. The Husband has only himself to blame for the lump sum maintenance. Even when he was earning his highest income from Singapore, he was in default of his maintenance obligations.

72. On the other hand, I accept that the Husband may want to work in Singapore in future and hence he is not able to give the requisite undertaking to withdraw all the monies in his CPF account. The real reason why he has not sought alternative employment here after May 2001 is, as I have said, because of the Wife's legal proceedings. However, again, it is up to him to decide whether to seek employment in Singapore.

Currency of maintenance

73. I accept that, as a general rule, the currency of maintenance should be that of the currency of the country where the expenses, for which maintenance was ordered, were incurred. That country is Australia. No reason was given by Mr Palakrishnan as to why the Wife should be entitled to list the expenses in Singapore currency.

74. Accordingly, I vary the District Court's orders on the currency of maintenance, including the lump sum maintenance, to the currency of Australia. For the avoidance of doubt, the currency of interim maintenance is not affected by my order. If any monies has already been received by the Wife in Singapore currency towards account of maintenance for the children and/or for herself, there is no need to convert such monies to the Australia equivalent. For this limited purpose, the Wife will be deemed to have received the monies in Australian currency.

SUMMARY

75. Accordingly, the District Court's order is varied to the extent I have stated. I will hear the parties on costs.

Sgd:

WOO BIH LI

JUDICIAL COMMISSIONER