Teh Siew Hua *v* Tan Kim Chiong
[2010] SGHC 172

Case Number : Divorce Petition No 2178 of 1991; (Summons No 600037 of 2010)
Decision Date : 04 June 2010
Tribunal/Court : High Court
Coram : Steven Chong J
Counsel Name(s) : Lim Hui Min (Legal Aid Bureau) for the Petitioner; The Respondent in person.
Parties : Teh Siew Hua — Tan Kim Chiong

Limitation of Actions

4 June 2010

Steven Chong J:

Introduction

1 This was an application by Mdm Teh Siew Hua ("the Petitioner") under s 112(4) of the Women's Charter (Cap 353, 2009 Rev Ed) to vary an order made by the High Court in a Decree Nisi granted on 30 January 1992, some 19 years ago.

2 At the end of the hearing, I granted the Petitioner's application, but in view of the novel point this case raised under the Limitation Act (Cap 163, 1996 Rev Ed) ("the Act"), I now give the reasons for my decision. I was informed by counsel for the Petitioner, Ms Lim Hui Min, that the situation faced by the Petitioner is not an uncommon one and therefore it would be useful for a reasoned decision to be delivered.

Background

3 The marriage between the Petitioner and Mr Tan Kim Chiong ("the Respondent"), solemnised on 4 January 1965, was dissolved by a Decree Nisi dated 30 January 1992 granted by K S Rajah JC. It was further ordered in para 1 of the Decree Nisi that:

> The Respondent do transfer his interest in the matrimonial property known as "Blk 813 Tampines Street 81, #11-544, Singapore 1852" to the Petitioner.

4 The Decree Nisi was made absolute on 26 May 1992, but the Respondent took no steps to comply with the order and transfer his interest in the matrimonial property (now known as "Blk 813 Tampines Street 81, #11-544, Singapore 520813") to the Petitioner. On her part, the Petitioner took no steps to compel the Respondent to effect the transfer until recently, in November 2009, when she requested that the Respondent do so. As the Petitioner was getting on in years, she decided to take steps to regularise the situation to ensure that her beneficiaries, *ie* her children, would not face difficulties from the Respondent should she pass away.

5 The Respondent, however, refused to comply, and asked for the property to be sold and the proceeds to be divided equally. Such a course of action being unacceptable to the Petitioner, she then applied, via the Legal Aid Bureau, to vary the Decree Nisi by including the following two orders:

1. That the Respondent is to sign all the necessary documents to effect the transfer of the matrimonial flat referred to in paragraph 1 of the Decree Nisi within 7 days of the service of this order on the Respondent by ordinary post ("the stipulated time").

2. That should the Respondent fail to sign the necessary documents to effect the said transfer within the stipulated time, the Registrar of the Supreme Court is to be empowered to sign all the necessary transfer documents on his behalf.

Issues

6 The Respondent challenged the application on the sole basis that he had no knowledge of the order because both the petition and the consequent order were not served on him. This initially posed difficulties to the Petitioner since the order was made some time ago and she was unable to fully explain the circumstances under which the order came to be made. Eventually, however, the Legal Aid Bureau managed to retrieve the court file and an affidavit was filed to exhibit the earlier affidavit of service which was filed for the Decree Nisi. It was clear from the affidavit of service that the Respondent had knowledge of the petition. Given that it happened so long ago, it was perhaps understandable that the Respondent was unable to recall the precise circumstances under which the order was made.

7 Although this effectively disposed of the objection raised by the Respondent, I expressed concern at the hearing that there might be a question of a time bar. The Decree Nisi was granted in 1992, but the Petitioner had failed to take any step to enforce the order therein for 19 years. In particular, I queried whether:

(a) the application was time-barred under s 6(3) of the Act;

(b) the application required the leave of court under O 46, r 2(1)(a) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("ROC");

(c) the application was time-barred under s 9(1) of the Act; and

(d) the application was defeated by acquiescence, laches or delay.

8 Counsel for the Petitioner, Ms Lim, was able to expeditiously furnish me with a clear and comprehensive set of submissions and authorities which addressed these questions, and I would like to record my deep appreciation and gratitude to her and the Legal Aid Bureau for their assistance in this matter, as well as for the commendable work that they do.

Preliminary Observations on s 112(4) of the Women's Charter

9 The power of the court to vary an order as to the division of matrimonial assets is to be found in s 112(4) of the Women's Charter, which reads:

The court may, *at any time it thinks fit*, extend, vary, revoke or discharge any order made under

this section, and may vary any term or condition upon or subject to which any such order has been made.

[emphasis added]

10 It has been suggested that an order for the division of matrimonial assets is a "one-off order" and as such, does not allow for variation: Leong Wai Kum, *Principles of Family Law in Singapore* (Singapore: Butterworths Asia, 1997) at p 910, approved in *Lee Kok Yong v Lee Guek Hua (alias Li Yuehua)* [2007] SGHC 26 at [16]. Nonetheless, the court can vary such an order if it is appropriate to do so, such as where the court order is unworkable or did not provide for a particular situation or contingency which has arisen subsequent to the order: *Nalini d/o Ramachandran v Saseedaran Nair s/o Krishnan* [2010] SGHC 98 at [13].

11 The express wording of s 112(4) of the Women's Charter ([9] above), in particular the operative phrase " *at any time it thinks fit*", appears to suggest that the power it confers on the court to vary or revoke any previous order cannot be extinguished by the mere lapse of time. Whether this suggestion is correct, however, would depend on further consideration of the provisions of the Act since, as McGee, *Limitation Periods* (London: Sweet & Maxwell, 5th Ed, 2006) ("McGee") points out at para 1.046:

[I]t follows from the absence of any common law concept of limitation that in the event of a lacuna in the statutory provisions, no limitation period will apply.

Whether the Application was Time-Barred under s 6(3) of the Act

12 Section 6(3) of the Act provides:

An action upon any judgment shall not be brought after the expiration of 12 years from the date on which the judgment became enforceable and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of 6 years from the date on which the interest became due.

13 "Action" is defined in s 2 of the Act as including "a suit or any other proceedings in a court". It followed, therefore, that if the Petitioner's application was "an action upon any judgment", it would have been time-barred by the operation of s 6(3) of the Act.

14 In my view, the Petitioner's application was not "an action upon any judgment", and s 112(4) of the Women's Charter was therefore not subject to s 6(3) of the Act.

15 The Act was based on the UK's Limitation Act 1939 (2 & 3 Geo 6, c 21) (see [50] of the Court of Appeal's judgment in *Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129 ("*Caesars Palace (CA)*"), s 2(4) of which was *in pari materia* with s 6(3) of the Act, while s 31 read:

"Action" includes any proceedings in a court of law, including an ecclesiastical court.

Following the final report of the Law Reform Committee on *Limitations of Actions* (1977) (Cmnd 6923), the Limitation Act 1939 was subsequently re-enacted as the Limitation Act 1980 (c 58), s 24(1) of which was identical to s 2(4) of the Limitation Act 1939 and s 6(3) of the Act, save that the limitation period was reduced from 12 years to 6 years, while the definition of "action" in s 38(1) of the Limitation Act 1980 remained the same as in s 31 of the Limitation Act 1939.

16 Given the history of the Act, English judgments on the scope of s 2(4) of the Limitation Act 1939 and s 24(1) of the Limitation Act 1980 are highly persuasive authorities on the interpretation of s 6(3) of the Act. Indeed, the Court of Appeal in *Caesars Palace (CA)* stated at [53] that:

> In our view, since [the Act] can be traced back to the 1939 UK Limitation Act, Brandon J's decision in *Berliner Industriebank* is authoritative on the ambit of ss 6(1)(*a*) and 6(3) of [the Act] …
>
> [emphasis added]

The reference is to *Berliner Industriebank Aktiengesellschaft v Jost* [1971] 1 QB 278 ("*Berliner Industriebank*"), which was itself founded on the reasoning employed in an earlier case, *W T Lamb & Sons v Rider* [1948] 2 KB 331 ("*Lamb*").

17 In *Lamb*, the plaintiffs obtained judgment against the defendant for the price of goods sold and delivered in December 1938, but no steps were taken to enforce the judgment until March 1946. Since more than 6 years had passed, the plaintiffs needed leave to proceed to execution under Ord 42, r 23(a) of the UK's Rules of the Supreme Court, 1883 ("RSC") (similar to O 46, r 2(1)(a) of the ROC (see below at [30])). Before the English Court of Appeal, the plaintiffs contended that they did not require leave to issue execution, on the ground that Ord 42, r 23 was *ultra vires* the statutory right, contained in s 2(4) of the Limitation Act 1939, to issue execution at any time up to 12 years. In particular, it was contended that proceeding to execution counted as "any proceedings in a court of law" in s 31 of the Limitation Act 1939 and was therefore "an action upon any judgment" in s 2(4).

18 Rejecting this contention, Scott LJ held at 338 that s 2(4) of the Limitation Act 1939 dealt only with the substantive right to sue for and obtain a judgment, while RSC Ord 42 was only concerned with the procedural machinery for enforcing a judgment that had already been obtained. Scott LJ then concluded that:

> The two subjects were formerly quite independent and distinct, the one from the other, and we are quite unable to attribute to the definition of "action" in the Limitation Act, 1939, the effect of merging the two together.

19 This reasoning was followed by Brandon J in *Berliner Industriebank*, the facts of which are immaterial for present purposes, where he concluded at 293 that:

> … the word "enforceable" in section 2(4) of the Limitation Act, 1939… means "enforceable by action on the judgment" and not "enforceable by execution on the judgment."

20 It is clear, therefore, that *Lamb* and *Berliner Industriebank* viewed s 2(4) of the Limitation Act 1939 as being concerned with the substantive right to bring a fresh action on a judgment, and not the procedural right of execution of an existing judgment, which was considered a separate right.

21 This result was endorsed, albeit reluctantly, by a unanimous House of Lords in *Lowsley v Forbes (trading as L E Design Services)* [1999] 1 AC 329 ("*Lowsley v Forbes*"). In that case, the plaintiffs obtained judgment against the defendant in February 1981, but the judgment remained unenforced till the plaintiffs obtained leave to execute the judgment under Ord 46, r 2(1)(a) of the UK's Rules of the Supreme Court 1965 (SI 1965 No 1776) (the successor to RSC Ord 42, r 23(a) and identical to O 46, r 2(1)(a) of the ROC (see below at [30])). One of the questions before the House of Lords was whether s 24(1) of the Limitation Act 1980 barred the plaintiffs from proceeding to execution.

22 Lord Lloyd of Berwick, delivering the judgment of the House, disagreed with the reasoning of Scott LJ in *Lamb*, but held that it must have been taken by Parliament to represent the existing law when Parliament accepted the recommendations of the Law Reform Committee and enacted s 24(1) of the Limitation Act 1980 with no changes other than the reduction of the limitation period from 12 years to 6 years. Consequently, Lord Lloyd held at 342 that:

> "Action" in s 24(1) means a fresh action, and does not include proceedings by way of execution.

23 The interpretation established by *Lamb* and *Lowsley v Forbes* was confirmed again by the English Court of Appeal in *Ridgeway Motors (Isleworth) Ltd v ALTS Ltd* [2005] 1 WLR 2871 ("*Ridgeway Motors*"), where a judgment for costs was obtained by the appellant in 1998, but the judgment debt remained unpaid till 2004. When the respondent, as judgment creditor, presented a winding up petition, the appellant applied to strike out the petition, contending that it fell within the definition of "action" in s 38(1) of the Limitation Act 1980, and as such it was statute-barred under s 24(1) of the 1980 Act.

24 Mummery LJ stated at [29] that, notwithstanding the extended definition of "action" in s 38(1) of the Limitation Act 1980:

> "An action upon a judgment" has been treated since *WT Lamb & Sons v Rider* [1948] 2 KB 331 by the courts, by the Law Reform Committee and by Parliament itself as having the special or technical meaning of a "fresh action" brought upon a judgment in order to obtain a second judgment, which can be executed.

At the same time, Mummery LJ did not regard a winding up petition as a process of execution of the judgment on which the petition was based. Instead, he considered that a winding up petition was *sui generis*, but in any event not within s 24(1) of the 1980 Act and therefore not statute-barred.

25 Mummery LJ did not consider this to be an unsatisfactory result, as he accepted at [31] that there were good policy reasons for distinguishing between action and execution:

> There is, in my opinion, much to be said for the submission of Mr Anthony Mann QC, appearing as counsel for the plaintiff judgment creditors in *Lowsley v Forbes* [1999] 1 AC 329, 333:
>
> > "… Limitation statutes are intended to prevent stale claims, to relieve a potential defendant of the uncertainty of a potential claim against [him] and to remove the injustice of increasing difficulties of proof as time goes by. These considerations do not apply to execution. If it is unfair to have a judgment debt outstanding with interest running at a high rate, the debtor has the remedy of paying the debt or taking out his own bankruptcy if he cannot pay it."

26 I was of the opinion that the interpretation adopted by the English courts in *Lamb*, *Berliner Industriebank*, *Lowsley v Forbes* and *Ridgeway Motors* on s 2(4) of the Limitation Act 1939 and s 24(1) of the Limitation Act 1980 was also the interpretation to be given to s 6(3) of the Act for two reasons.

27 First, the earliest version of the Act – the Limitation Ordinance 1959 (Ord No 57 of 1959) – was enacted long after *Lamb*, and it was to be presumed that Parliament, in adopting the English regime set out in the Limitation Act 1939, was aware of the interpretation given to s 2(4) of the latter Act by the English courts. Further, the fact that the Act was re-enacted a number of times thereafter, with no adverse comment by Parliament on the interpretations adopted by the English courts, led to the inference that, as Lord Lloyd commented at 342 in *Lowsley v Forbes*, "Parliament [had] given its

blessing to *W T Lamb & Sons v Rider*…"

28 Second, the interpretation adopted by the English courts has also been accepted by the local courts. In *Tan Kim Seng v Ibrahim Victor Adam* [2004] 1 SLR(R) 181, our Court of Appeal commented on s 6(3) of the Act and stated at [29] that:

> …one must bear in mind the distinction between "execution" and "an action upon any judgment". In *Halsbury's Laws of England, Vol 28* (4th Ed, Reissue, 1997) at para 916, the learned authors stated the following in a footnote, in commenting on the equivalent English provision:
>
> > [A]n action upon a judgment applies only to the enforcement of judgments by suing on them and does not apply to the issue of executions upon judgments for which the leave of the court is required, after six years have elapsed, by RSC Ord 46 r 2(1)(a); in matters of limitation the right to sue on a judgment has always been regarded as quite distinct from the right to issue execution under it, but the court will not give leave to issue execution when the right of action is barred: …

Although no citation was provided, it was clear that the passage quoted from *Halsbury's Laws of England* was derived from *Lamb* and *Berliner Industriebank*.

29 Similar endorsements of the English judgments can be found in [53] of *Caesars Palace (CA)* (see above at [15]), as well as [63] to [68] of *Desert Palace Inc (trading as Caesars Palace) v Poh Soon Kiat* [2009] 1 SLR(R) 71 ("*Caesars Palace (HC)*") (which was not overruled by the Court of Appeal on this point).

30 On the basis of these authorities, I therefore decided that the Petitioner's application was not "an action upon any judgment" within s 6(3) of the Act as it was not a "fresh action" brought on a judgment in order to obtain a second judgment, and consequently was not barred after the lapse of 12 (or more) years.

31 This conclusion raised the question as to when, if ever, s 6(3) of the Act would bite, given that a judgment creditor who brought a fresh action on a judgment (which was not executed) would simply end up with a new judgment which he would then have to take further steps to execute.

32 To understand the ambit of s 6(3) of the Act, it is necessary to appreciate some of the legal history behind the enforcement of judgments. There are two ways of enforcing judgments: by action and by execution (see *Caesars Palace (HC)* at [63]). As McGee states at para 17.003 (see also *Lamb* at 336):

> The practice of bringing an action on a judgment was common in the days when the common law presumption was that a judgment was satisfied after a year and a day if no execution had been issued. In such cases the only way to "enforce" the judgment was by an action of debt upon it. Even today bringing a second action in this way is a matter of right, although the court may decline to give judgment in the second action if it regards it as an abuse of process. In determining whether it is an abuse of process, the availability of execution is a relevant factor.

In fact, there is authority to the effect that an action on a judgment will be dismissed as an abuse of the process of the court if the ordinary process of execution was available: *Pritchett v English and Colonial Syndicate* [1899] 2 QB 428, 435 (per Lindley MR); *E D & F Man (Sugar) Ltd v Haryanto* [1996] Times LR 491 ("*Haryanto*"), 492 (per Leggatt LJ).

33 While it is true that, in practice, actions on judgments are now very rare for this reason (see Oughton, Lowry and Merkin, *Limitation of Actions* (LLP: London, 1998) ("*Limitation of Actions*"), p 137-138), they are nonetheless still maintainable in exceptional circumstances, and it is in those cases that s 6(3) of the Act remains relevant. Indeed, at para 4.15 of the Law Reform Committee's final report on *Limitations of Actions* ([15] above), after recommending the reduction of the limitation period in s 2(4) of the Limitation Act 1939 (the equivalent of s 6(3) of the Act) from 12 years to 6 years, the Law Reform Committee commented:

> If these recommendations are accepted, there will in future rarely be any advantage in attempting to enforce a judgment by means of a fresh action, since the period for execution itself will be at least as long as that for the further action. *It would, however, possibly be to a judgment creditor's advantage to sue on the judgment so as to give himself a fresh limitation period (running from the judgment in the new action), since he would not then be dependent on the exercise of the court's discretion to extend the time for enforcing the earlier judgment by execution. But such a situation would not often occur…*
>
> [emphasis added]

34 A fresh action on a judgment was held not to be an abuse of process and therefore allowed in the following cases: in *Haryanto*, where execution was unavailable as the defendant went to great lengths to evade payments due from him under various judgments and arbitration awards; in *Bennett v The Governor and Company of the Bank of Scotland* [2004] EWCA Civ 988, where the defendant bank commenced the new action in order to preserve its rights to take bankruptcy proceedings against the plaintiff pending the uncertain outcome of an appeal to the House of Lords; and in *Kuwait Oil Tanker Company SAK v Al Bader* [2008] EWHC 2432 (Comm), where the plaintiffs instituted the fresh action, a few days before the expiry of the 6 year limitation period under s 24(1) of the Limitation Act 1980, out of an abundance of caution, as it was feared that efforts to recover the judgment debt from the defendant in Switzerland might be prejudiced should the first judgment cease to be enforceable in England on the expiry of the limitation period.

Whether the Application required the Leave of Court under O 46, r 2(1)(a) of the Rules of Court

35 O 46, r 2(1)(a) of the ROC provides:

> **When leave to issue any writ of execution is necessary (O. 46, r. 2)**
>
> **2**. – (1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases:
>
> (a) where 6 years or more have lapsed since the date of the judgment or order;
>
> …

36 O 46, r 1 provides that, unless the context otherwise requires, "writ of execution" includes a writ of seizure and sale, a writ of possession and a writ of delivery.

37 Given that the Petitioner's application, if granted, would not result in the issuance of a writ of execution within the meaning of O 46, r 1 (as she had been in possession of the matrimonial property continually since 1991), there would be no necessity for her to seek the leave of court under O 46, r 2(1)(a) of the ROC.

38 Ms Lim submitted that the Petitioner's application under s 112(4) of the Women's Charter was therefore neither a fresh action nor a process of execution. Instead, it was of a *sui generis* nature, just as a winding up petition was regarded as *sui generis* by Mummery LJ in *Ridgeway Motors* (see above at [24]). A winding up petition is strictly speaking not a form of execution (assuming the petitioner is a judgment creditor) as it may lead to the company being wound up with no recovery accruing to the petitioner. It cannot, in such a case, be said that the petitioner is enforcing the judgment he had obtained, if he does not receive the very satisfaction or relief which the judgment would have otherwise entitled him to. Creditors sometimes adopt this route in order to claim tax reliefs for bad debts rather than for the purposes of enforcing a judgment debt. Viewed in this way, a winding up petition may indeed be characterised as *sui generis*, as it was in *Ridgeway Motors*. However, I was not convinced that this was the right way of viewing the matter in the present case, for it seemed to me that the application was indeed a process of executing the Decree Nisi, albeit one that would not require a writ of execution or possession. Although couched as an application to vary, it was effectively an application to enforce the earlier order (since the Petitioner was seeking the very relief the Decree Nisi entitled her to). However, it was not necessary for me to decide the exact juridical nature of the Petitioner's application in order to grant it. Suffice it to say that it is not governed by O 46, r 2(1)(a) of the ROC.

Whether the Application was Time-Barred under s 9(1) of the Act

39 The third question was whether the Petitioner's application was barred under s 9(1) of the Act, which provides:

> No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him, or, if it first accrued to some person through whom he claims, to that person.

40 Notwithstanding that the Petitioner was seeking to compel the Respondent to transfer his interest in the matrimonial property to her, I decided that the application did not fall foul of s 9(1) of the Act, for the simple reason that, as ss 10(1) and 15 of the Act indicate, s 9 of the Act is concerned with an action by a person with legal title to the land against an adverse possessor:

> **Accrual of right of action in case of present interests in land**.
>
> **10**. – (1) Where the person bringing an action to recover land or some person through whom he claims has been in possession thereof and has, whilst entitled thereto, *been dispossessed or discontinued his possession*, *the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance*.
>
> **Right of action not to accrue or continue unless there is adverse possession**.
>
> **15**. – (1) *No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person* in whose favour the period of limitation can run (referred to in this section as *adverse possession*).
>
> (2) Where under this Act any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue unless adverse possession is taken of the land.
>
> (3) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be

deemed to have accrued and *no fresh right of action shall be deemed to accrue unless the land is again taken into adverse possession*.

…

[emphasis added]

41 This is also the position in the UK with regard to the equivalent provisions of the Limitation Act 1980: *Buckinghamshire County Council v Moran* [1990] 1 Ch 623, 644 (per Nourse LJ).

42 There was no question of adverse possession in this case, as the Petitioner had continually been in possession of the matrimonial property even prior to the date of the Decree Nisi. Consequently, the operation of s 9(1) of the Act was not triggered.

Whether the Application was Defeated by Acquiescence, Laches or Delay

43 Section 32 of the Act provides that:

Acquiescence

32. Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence, laches or otherwise.

44 Notwithstanding this provision, however, I decided that the Petitioner's application was not barred on the grounds of acquiescence or laches for three reasons.

45 First, these defences only operate against claims for equitable relief (see *Limitation of Actions*, p 22). As the Petitioner was seeking a statutory remedy under s 112(4) of the Women's Charter, the equitable defences of acquiescence and laches were inapplicable.

46 Second, s 112(4) of the Women's Charter expressly contemplates that the power it confers may be exercised by the court "at any time it thinks fit" (see above at [9]).

47 Third, the operation of the defences of acquiescence and laches is generally contingent on the defendant being unjustly prejudiced by the plaintiff's dilatoriness. As Sir Barnes Peacock stated in *The Lindsay Petroleum Company v Prosper Armstrong Hurd, Abram Farewell, and John Kemp* (1874) LR 5 PC 221, 239-240:

Where it would be practically *unjust* to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in *a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted*, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and *the nature of the acts done during the interval*, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.

[emphasis added]

In this case, no prejudice would have been caused to the Respondent by granting the application, given that he had had 19 years to comply with the order in the Decree Nisi, and that there was no evidence that, during that time, he had relied to his detriment on the Petitioner's failure to enforce the judgment.

Other Considerations

48 As limitation is a defence that must be pleaded by the defendant (see s 4 of the Act and O 18, r 8(1)(a)), and since the Respondent had not specifically pleaded the defence of limitation, I also determined that the Petitioner's application was not barred by the Act on this ground.

49 In addition, I was of the view that it was appropriate for me to vary the original Decree Nisi, under s 112(4) of the Women's Charter, so as to include the two orders prayed for by the Petitioner, as the original order was "unworkable or did not provide for a particular situation or contingency which [had] arisen" (see [10] above), *viz* that the Respondent had refused to comply with the original order in the Decree Nisi for 19 years. I took into account the lack of prejudice to the Respondent (see [47] above), and I noted that the absence of detriment was a material consideration in Tay Yong Kwang J's decision to vary a consent order under s 112(4) of the Women's Charter in [17] of *Nalini d/o Ramachandran v Saseedaran Nair s/o Krishnan* ([10] above).

Conclusion

50 I therefore granted the Petitioner's application and ordered that the Decree Nisi be varied so as to include the two orders in [5] above. In view of the fact that these divorce proceedings had dragged on long enough, and in the interests of helping the parties draw a line under this litigation, I made no order as to costs.