

Takahashi Kenji v Koh Hiang Pin
[2012] SGHC 171

Case Number : Divorce Petition No 1192 of 2009 (Registrar's Appeal No 150 of 2011)
Decision Date : 15 August 2012
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Robert Leslie Gregory (M/s L G Robert) for the appellant; Ng Shoo Cheng (Cheng & Co) for the respondent.
Parties : Takahashi Kenji — Koh Hiang Pin

Family Law, Insolvency Law – Bankruptcy

15 August 2012

Choo Han Teck J:

1 This was an appeal by the plaintiff–Husband against the decision of the Family Court on ancillary matters arising out of the divorce of the parties. The appeal was fixed for hearing before me in chambers on 17 July 2012. At the hearing and before substantive arguments were heard, counsel for the defendant–Wife (the Respondent in this appeal), Ms Ng Shoo Cheng (“Ms Ng”) raised the issue of the Husband’s bankruptcy. Ms Ng objected on the ground that the Husband had not obtained the “previous sanction of the Official Assignee” to maintain the present action as required under s 131(1) (a) of the Bankruptcy Act (Cap 20, 2009 Rev Ed).

2 The Husband was made a bankrupt on 7 January 2010 but it was only when the affidavit of assets and means was filed by the Husband on 30 July 2010 that it was disclosed that the Husband was a bankrupt. Ms Ng and counsel for the Husband, Mr Robert Leslie Gregory (“Mr Robert”), confirmed that the issue of the Husband’s bankruptcy was discussed between them then, but because neither was sure whether the Official Assignee’s consent was needed, no objection was thus raised at that stage. The hearing before the Family Court on ancillary matters was held on 24 August 2011.

3 The effect of the Husband’s non-compliance with the requirement to seek the “previous sanction of the Official Assignee” to maintain the current action renders the proceedings below null and void. To this end, Mr Robert sought to salvage the situation with two arguments. First, he submitted that as the Official Assignee’s sanction had now been given the day before the hearing before me, his consent had retrospective effect to cure the previous non-compliance. Plainly, the Official Assignee’s consent cannot be granted retrospectively, which was also the point made in *Standard Chartered Bank v Loh Chong Yong Thomas* [2010] 2 SLR 569. Second, Mr Robert suggested that it was open to this court to grant retrospective leave to salvage the matter. Retrospective leave can be granted by the court to save proceedings otherwise rendered null by operation of s 76(1)(c) (ii) of the Bankruptcy Act where a creditor seeks to proceed against the bankrupt in respect of a debt. Section 76(1)(c)(ii) provides that such action cannot proceed without “leave of the court”. In contrast, s 131(1)(a) requires the “previous sanction of the Official Assignee” for the bankrupt to maintain the action. The court cannot usurp the function of the Official Assignee where it is statutorily provided that it is the Official Assignee’s sanction which is required.

4 In the circumstances, I ordered the matter to be remitted to the Family Court for re-hearing upon proof that the Official Assignee's sanction has been obtained. This will likely cause no hardship as the submissions and affidavits will largely be as before. The Husband will, however, be free to raise before the Family Court any argument that he might have used in this appeal before me.

Copyright © Government of Singapore.