

Abdul Aziz bin Mohamed Yatim v Rubiah bte Rahmat
[2006] SGHC 231

Case Number : OS 650142/2003, RAS 720029/2005
Decision Date : 14 December 2006
Tribunal/Court : High Court
Coram : Sundaresh Menon JC
Counsel Name(s) : Soraya Hafsa bte Ibrahim (Soraya H Ibrahim & Co) for the appellants; Mohamed Hashim (Mohamed Hashim & Madelene Sng) for the first respondent
Parties : Abdul Aziz bin Mohamed Yatim — Rubiah bte Rahmat

Contempt of Court – Civil contempt – Whether civil contempt proceedings pending against contemnor may be continued against contemnor's personal representative after death of contemnor – Section 10(1) Civil Law Act (Cap 43, 1999 Rev Ed), O 15 r 6A, O 15 r 7 Rules of Court (Cap 322, R 5, 2006 Rev Ed)

Contempt of Court – Civil contempt – Whether order of court enforceable by committal proceedings against third party who was actively involved in contemnor's breach – Whether committal proceedings against third party may commence and continue even after death of contemnor

14 December 2006

Judgment reserved.

Sundaresh Menon JC

1 This case raises some issues that concern aspects of the court's power to uphold its authority and secure obedience to its orders by authorising the initiation of committal proceedings.

2 The respondent, Mr Abdul Aziz bin Mohamed Yatim, was divorced from his wife, the defendant, Madam Rubiah Binte Rahmat ("Madam Rubiah"), on 24 July 2002. The decree of the Syariah Court of the same day gave custody of the sole child of the marriage to Madam Rubiah and further provided that the respondent would have access at stated times and days each week. The order of the Syariah Court in respect of the care and control of their child was registered as an order of the District Court on 18 August 2003 ("the Court Order"). By virtue of s 53(3) of the Administration of Muslim Law Act (Cap 3, 1999 Rev Ed) the order of the Syariah Court when registered acquired the same force and effect for the purposes of enforcement as if it had originally been obtained in the District Court.

3 According to the respondent, Madam Rubiah had breached the Court Order. On 27 October 2003, he obtained leave to commence committal proceedings against the defendant for the alleged breach. He then filed a summons against her on 5 November 2003. A penal notice had not been appended to the Court Order and because of this, no order was made by the learned District Judge who heard the matter. The respondent appealed successfully to the High Court and the matter was then remitted to the District Court. However, before it could be restored for hearing, a tragic development overtook the case. Madam Rubiah passed away.

4 The respondent then applied for an order to be allowed to prosecute the contempt proceedings against Madam Rubiah's personal representative, Mr Abu Hasrin bin Rahmat ("Mr Abu Hasrin"). The respondent also applied for leave to commence proceedings against Madam Rubiah's parents, Mr Mustafa bin Kassim @ Rahmat bin Abu Kasim ("Mr Mustafa") and Madam Nuria bin Wahnani

("Madam Nuria"). The basis for the latter application was that Mr Mustafa and Madam Nuria had allegedly abetted the alleged breach of the Court Order by Madam Rubiah.

5 This application came before the learned District Judge on 30 May 2006 and he ordered, *inter alia*, that the committal proceedings be allowed to continue against Mr Abu Hasrin in his capacity as personal representative of Madam Rubiah. In addition, the learned District Judge gave liberty to the respondent to apply for an order of committal against Madam Rubiah's parents. Mr Abu Hasrin, Mr Mustafa and Madam Nuria (collectively "the appellants") appealed against these orders and the appeal came before me.

The effect of Madam Rubiah's death on the pending committal proceedings

6 The principal thrust of Mr Abu Hasrin's case is that the respondent cannot proceed against the personal representative of Madam Rubiah because the right of action in question abates upon Madam Rubiah's death. The contention is that because contempt proceedings are quasi-criminal in nature, they are personal to the alleged contemnor and cannot survive her death. In response, the respondent relies on several statutory provisions, namely s 10(1) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("the CLA") and O 15 rr 6A and 7 of the Rules of Court (Cap 322, R5, 2006 Rev Ed) ("the ROC"), and a number of precedents to contend that the proceedings should be allowed to continue notwithstanding the death of Madam Rubiah.

7 In my judgment, the starting point of the analysis is the recognition that not every right of action survives the death of one of the parties. For instance, steps in a divorce proceeding can rarely be taken if either party dies before the decree has been obtained: *Purse v Purse* [1981] Fam 143 ("*Purse*") at 151 citing *Beaumont v Beaumont* [1933] P 39. As noted in *Purse* at 151, the fact of death generally renders the process meaningless. Similarly, orders for maintenance or custody cease upon the death of the party in whose favour it is made: *Sivakolunthu Kumarasamy v Shanmugam Nagaiah & Anor* [1987] SLR 182 ("*Sivakolunthu*").

8 The judgment of the Court of Appeal in *Sivakolunthu* was delivered by Chan Sek Keong JC (as he then was) and the following observation at 190-191 is instructive:

The nature of these proceedings is substantially a claim to enforce the settlement order which at the death of KT Arasu had not been carried out. There is still a *res* before the court. *The performance of the settlement order is not dependent upon KT Arasu being, alive, unlike an order for maintenance or custody.* (emphasis added)

9 It is evident from this passage that the Court of Appeal considered that the question in each case depends upon the nature of the proceedings. This is consistent with the following recent pronouncement of the English Court of Appeal in *Janan Harb v His Majesty King Fahd bin Abdul Aziz* [2006] 1 WLR 578 at [16]:

[I]t is clear that the real question is whether following the death of the King further proceedings can be taken. The answer to the question depends first on the nature of the further proceedings ... I then come to the second matter, the true construction of the relevant statutory provisions.

10 The present proceedings are for civil contempt as distinct from criminal contempt. Nonetheless, it is settled law that proceedings for civil contempt are quasi-criminal in nature and attract many of the procedural safeguards familiar to criminal law, including the imposition of a higher burden of proof upon the prosecuting party and the vesting in the alleged contemnor of a right to be apprised of the case against him and of the right to be heard. This is evident from such precedents

as *Re Bramblevale Ltd* [1970] Ch 128, which was accepted in *Polygram Records Sdn Bhd and Others v Phua Tai Eng* [1984-1985] SLR 810 and in *Allport Alfred James v Wong Soon Lan* [1988] SLR 987 (later reversed by the Court of Appeal but not on this point). Perhaps the clearest articulation of the relevant principles is contained in the decision of Yong Pung How CJ in *Summit Holdings Ltd v Business Software Alliance* [1999] 3 SLR 197 where he said as follows at [17]:

There are many differences between a criminal charge and the statement under O 52. However contempt of court, whether civil contempt or criminal contempt, is an offence of a criminal character and must be proved beyond reasonable doubt: *Re Bramblevale Ltd* [1970] Ch 128. The purpose of the statement is to set out distinctly the grounds which the applicants are proceeding upon and to allow the respondents to have the opportunity of answering them, and, in this respect, its rationale is similar to that of a criminal charge, which is required to be sufficiently particularised so that accused knows the case that he is meeting and has the opportunity of refuting the allegations.

11 The gravamen of the offence is in the disobedience of an order of court by a person subject to it. These facets of the nature of a civil contempt suggest that such proceedings are personal to the alleged contemnor and can only be prosecuted against him or her. In the same way that criminal proceedings are not brought against the representatives of dead persons, proceedings, even in respect of a civil contempt, being essentially criminal in nature, should similarly not be brought or allowed to be prosecuted against the personal representatives of an alleged contemnor who has passed away. In *Hambly v Trott* (1776) 1 Cowp. 371, 98 E.R. 1136 at 1138, Lord Mansfield famously remarked that "all private criminal injuries or wrongs, as well as all public crimes, are buried with the offender." In my judgment, this is correct. Once an alleged contemnor dies, the proceedings die with him.

12 It is noteworthy that Mr Mohamed Hashim who appeared for the respondent was not able to support his contention, that such proceedings could be brought or pursued against the personal representatives of an alleged contemnor, with even a single authority directly on the point. It is also significant that in the leading textbook on the subject, Sir David Eady and Professor A.T.H. Smith eds., *Arlidge, Eady & Smith on Contempt* (Sweet & Maxwell : London, 2005) ("*Arlidge et al on Contempt*"), the learned authors at paras 12-99 to 12-123 do not list the personal representative of an alleged contemnor among those who may be liable for civil contempt. The underlying justification for this is both philosophical and practical. In principle, criminal responsibility must lie squarely on the shoulders of those who commit the offence. A proxy cannot be made to take the responsibility for another's crimes. Moreover, as a matter of practicality, if an alleged contemnor has the right to be heard, how is this to be given effect where she is no longer alive? Furthermore, if an adverse finding were made, is the court to impose a fine or a term of imprisonment against the representative, who may have had nothing to do with the offence to begin with? In my judgment, this would plainly be wrong.

13 Mr Mohamed Hashim submitted that one should not "confuse substance and punishment". He suggested that notwithstanding Madam Rubiah's demise, it would nonetheless be possible for the court to make a finding of contempt against the personal representative of Madam Rubiah without imposing any punishment. In my judgment, this is untenable. First, it appears to me that the exercise would be entirely academic. Furthermore, it would be wrong to divorce a finding of guilt in quasi-criminal proceedings from the necessary consequences that ought to follow upon that finding. Criminal law is penal in nature. In the context of contempt proceedings, the primary objective of committal proceedings is to uphold the authority of the court by securing compliance and/or punishing non-compliance with its orders. A mere declaration of breach in the present circumstances would tend to undermine that objective.

14 I turn then to consider the cases cited by Mr Mohamed Hashim in support of his position. The first of these is *Mosey v Mosey and Barker* [1956] P 26 ("*Mosey*"). There, an order was made against the husband, upon the dissolution of a marriage, securing an annual sum for the maintenance of the wife and their child that was to be agreed upon or referred to the district registrar. The husband died before the security had been specified and the wife applied to enforce the order against the executor of the husband's estate. It was held that the order had laid down what was to be done and how it was to be done, and on the basis of the maxim *certum est quod certum reddi potest* (it is certain if it is capable of being rendered certain), it was held that the order created an enforceable claim, which survived the husband's death.

15 In my judgment, there are at least three features of that case which render it inapplicable to the present circumstances. First, *Mosey* was not a case that concerned contempt proceedings at all. Rather, it involved a purely civil matrimonial dispute where the maintenance sum that was to be paid was secured against the husband's real property. The real effect of the decision there was that the wife should be allowed to enforce her rights under the maintenance order against the husband's estate. The present case, being quasi-criminal in nature, concerns an action that is directed against the person rather than her estate. In my judgment, this makes the present case of a fundamentally different nature to *Mosey*.

16 Second, the court in *Mosey* found it significant that the court order was specifically intended to provide for the wife even after the husband's death (see at 41). Civil contempt proceedings, on the other hand, are not generally intended to survive the alleged contemnor's death. Third, the order in *Mosey* gave rise to an enforceable claim. Here, the committal proceedings are in their infancy. There has been no determination as to whether Madam Rubiah was, in fact, in violation of the Court Order. Contrary to the respondent's assertion, the Court Order does not, in itself, give rise to an enforceable *claim* against Madam Rubiah or her estate. It merely states the obligations of the parties in relation to the care and custody of their child and it is a matter yet to be proved that the Court Order had in fact been breached.

17 The respondent's reliance upon the Court of Appeal decision in *Sivakolunthu* is similarly fruitless. In that case, an order had already been made for the sale of certain property and for the division of the proceeds of the sale between the parties before the husband had passed away. Again, there was no question of contempt in that case. The issue was whether the order for sale of a property and for the division of the proceeds of the sale could be acted on and in that context the court held that there was a subsisting order of the court which was enforceable against the husband's estate. Indeed, as noted in the passage from the case that I have quoted at [8] above, the key point there was that the performance of the order in question was not dependent upon the person being alive.

18 The respondent also relied upon *Purse* ([7] *supra*). In *Purse*, a husband was granted a decree nisi, which was made absolute in the absence of the wife, from whom he had separated earlier and was not in contact with. The husband died and the wife subsequently discovered that the marriage had been dissolved. The Court of Appeal allowed the wife's application seeking to void the decrees nisi and absolute on the ground that the petition for divorce had not been served on her and that she had had no opportunity to defend it. The court held that while steps could not be taken in proceedings pending before a court to obtain a decree nisi or absolute where a spouse died before such a decree had been granted, a divorce suit did not automatically abate where there was still a *res* before the court in respect of which the court could exercise its appellate powers. *Purse* is, again, different from the present proceedings against Madam Rubiah because there is no *res* in the present case upon which a court can act for the reasons I have set out above at [11]-[13].

19 Finally, reliance was placed on *Sher Singh v R P Kapur* [1968] AIR Punj 217, where it was held that the death of the party *initiating* contempt proceedings did not prevent the matter proceeding. The death of the complainant presents a fundamentally different situation than does the death of the alleged contemnor. The decision in *Sher Singh v R P Kapur* rests on the principle that "once the proceedings get going, it becomes a matter between the contemnor on the one hand and the court of which the contempt is stated to have been committed, on the other": see at 223. That is correct because it is the court that acts to uphold its order. But this only highlights the difficulty with the respondent's position in the present case. The death of the person *against whom the proceedings are brought* presents a considerable obstacle since she is very much integral to the process.

20 In my judgment, the nature of civil contempt proceedings is such that these are personal to the contemnor and the precedents cited to me do not persuade me that the proceedings should be allowed to continue after the death of the alleged contemnor. I turn to examine whether there is any statutory language that changes this. In my judgment, there is not. The respondent, places some reliance first on s 10(1) of the CLA, which states that "on the death of any person, all causes of action subsisting against or vested in him shall survive against, or as the case may be, for the benefit of his estate." This provision is essentially *in pari materia* with s 1(1) of the UK Law Reform (Miscellaneous Provisions) Act 1934. That provision was enacted to abolish the common law rule that actions in *tort* did not survive for the benefit of or against the estate of a deceased person: see *Harris v Lewisham & Guy's Mental Health NHS Trust* [2000] ICR 707 at [18]. It does not immediately or necessarily follow that proceedings which are quasi-criminal in nature would be saved by this provision. The threshold inquiry in my judgment, is whether the proceedings in question are "causes of action". Diplock LJ (as he then was) in *Letang v Cooper* [1965] 1 QB 232 defined a cause of action as "a factual situation the existence of which entitles one person to obtain from the court a *remedy* against another person." In *Sugden v Sugden* [1957] P 120, Denning LJ stated at 134 – 135:

"Causes of action" in the sub-section means, I think, *rights which can be enforced, or liabilities which can be redressed*, by legal proceedings in the Queen's courts. These now survive against the estate of the deceased person. "Causes of action" are not, however, confined to rights enforceable by action, strictly so called -- that is, by action at law or in equity. They extend also to rights enforceable by proceedings in the Divorce Court, provided that they really are rights and not mere hopes or contingencies. They include, for instance, a sum payable for costs under an order of the Divorce Court, or a right to a secured provision under an order already made against a man before his death: see *Hyde v. Hyde* ([1948] 1 All E.R. 362) and *Mosey v. Mosey & Barker* ([1955] 2 All E.R. 391). (emphasis added)

21 In neither of these formulations is it suggested that criminal or quasi-criminal proceedings are "causes of action" properly understood. Committal proceedings for civil contempt cannot be characterised as a remedy or a right or a liability. Instead, as Lord Donaldson MR said in *Johnson v Walton* [1990] 1 FLR 350 at 353:

Proceedings for contempt of court are always in a special category because they are intended to uphold the authority of the court and to make certain that its orders are obeyed. They are not intended to provide solace or compensation to the plaintiff.

22 Nor is the respondent aided by recourse to the ROC. All that O 15 rr 6A and 7 provide are the *procedures* for continuing an action against the estate of a deceased party, *if* the action does, in fact, survive. Order 15 r 6A establishes the machinery for overcoming difficulties in bringing proceedings against a deceased defendant where no grant of probate or administration has been made to his estate; while O 15 r 7 deals with the change of parties by reason of the death of a party in an action already brought. However, they do not "alter the law as regards the survival of causes of

action" as noted in *Singapore Civil Procedure* (Sweet & Maxwell : Singapore, 2003) ("*Singapore Civil Procedure*") at para 15/7/2.

23 It follows that the civil contempt proceedings cannot be proceeded with against Mr Abu Hasrin in his capacity as the personal representative of Madam Rubiah. The appeal is therefore allowed on this point.

24 Before leaving this, I make one further point. The application to continue the proceedings against Mr Abu Hasrin is also misconceived because it will ultimately be moot. Mr Mohamed Hashim accepted before me that there were no means by which this court could punish the personal representative of Madam Rubiah assuming it did find that Madam Rubiah had breached the Court Order at some stage before she passed away. However, one cannot ignore the fact that she has passed away and any breach of the Court Order cannot be continuing. Therefore, all that the respondent really seeks is a pronouncement that Madam Rubiah was in breach of the Court Order. But in those circumstances, it is not at all apparent what the point would be of making a bare declaration that Madam Rubiah was in contempt.

25 It is apposite here to recall the following *dictum* of Lord Bridge of Harwich in *Ainsbury v Millington* [1987] 1 WLR 379 at 381 (*albeit* in a somewhat different context):

It has always been a fundamental feature of our judicial system that the courts decide disputes between the parties before them; they do not pronounce on abstract questions of law when there is no dispute to be resolved.

26 In my view the outcome of any committal proceedings against Madam Rubiah is now a matter of indifference. Mr Mohamed Hashim submitted that it would not be so and that the respondent was entitled to seek some vindication but as noted in the passage from the judgment of Donaldson MR in *Johnson v Walton* that I have quoted at [21] above, the machinery of committal proceedings is not meant to provide solace to the complainant. Indeed, the result of the committal proceedings against Madam Rubiah or her personal representative would be purely academic and on this basis also, there is no reason why the respondent should be allowed to continue to proceed against Mr Abu Hasrin *qua* Madam Rubiah's personal representative.

27 The respondent placed some reliance upon the following *dictum* of Lord Woolf in *Re M* [1994] 1 AC 377 at 424 - 425:

Nolan LJ, at p. 311, considered that the fact that proceedings for contempt are "essentially personal and punitive" meant that it was not open to a court, as a matter of law, to make a finding of contempt against the Home Office or the Home Secretary. While contempt proceedings usually have these characteristics and contempt proceedings against a government department or a minister in an official capacity would not be either personal or punitive (it would clearly not be appropriate to fine or sequester the assets of the Crown or a government department or an officer of the Crown acting in his official capacity), this does not mean that a finding of contempt against a government department or minister would be pointless. *The very fact of making such a finding would vindicate the requirements of justice. In addition an order for costs could be made to underline the significance of a contempt. A purpose of the courts' powers to make findings of contempt is to ensure that the orders of the court are obeyed.* (emphasis added)

28 The short answer to this, in my judgment, is that the making of a declaratory order in respect of a government official or department *in order to ensure that orders of the court are obeyed*, is

completely different to the making of a finding that there was a breach by a person who since passed away and is therefore immune to any pronouncements made here. The point is further clarified in the following passage from the same judgment at 425:

In cases not involving a government department or a minister the ability to punish for contempt may be necessary. However, as is reflected in the restrictions on execution against the Crown, the Crown's relationship with the courts does not depend on coercion and in the exceptional situation when a government department's conduct justifies this, a finding of contempt should suffice. In that exceptional situation, the ability of the court to make a finding of contempt is of great importance. It would demonstrate that a government department has interfered with the administration of justice. It will then be for Parliament to determine what should be the consequences of that finding. (emphasis added)

29 Mr Mohamed Hashim exerted some considerable effort to demonstrate from the authorities that the jurisdiction of the court in cases of civil contempt could extend to punishment and could be exercised even if the parties had settled their differences or if compliance was no longer possible or was not going to be forthcoming in any event (see eg the observations of the High Court of Australia in *Witham v Holloway* (1995) 183 CLR 525 as well as the judgment of Sidney Smith JA in *Canadian Transport v Alsbury* (1952) 7 WWR 49 at 75). I accept this is correct but none of this has anything to do with cases when the alleged contemnor has passed away and is beyond the reach of any punishment.

Whether the respondent can proceed with contempt proceedings against the parents of Madam Rubiah

30 I turn to the aspect of the appeal which related to that part of the order of the learned District Judge giving the respondent leave to apply for an order of committal against the parents of Madam Rubiah. There are three short points that arise in respect of this part of the appeal.

31 First, Ms Soraya Ibrahim who appeared for the appellants argued that the order of the Syariah Court was directed against Madam Rubiah solely. Accordingly, it was submitted that as there was no order against Madam Rubiah's parents, no committal proceedings could lie against them. In my judgment, this is misconceived. Once the order of the Syariah Court had been registered as an order of the District Court, it became enforceable in every way as such an order. An order of the court is enforceable by committal proceedings not only against the party named in the order or against whom the order is made, but also against any other person including a third party who is actively involved in the defendant's breach: see *Z Ltd v A-Z & AA-LL* [1982] QB 558.

32 Accordingly, there is no reason in principle why such proceedings could not be maintained against Madam Rubiah's parents even though they were not named as parties in the original proceedings before the Syariah Court.

33 Secondly, Ms Soraya Ibrahim argued that if the proceedings against Madam Rubiah abate with her death, then the proceedings against her parents which are derivative of the primary proceedings against Madam Rubiah should similarly abate. In my judgment, this too is misconceived. The jurisdiction of the court in contempt proceedings rest on punishment as much as on securing compliance. The following passage from *Arlidge et al on Contempt* ([12] *supra*) at para 3-7 explains the point:

Thus, although "civil contempt" is concerned with breaches of court orders or undertakings in civil litigation, which were originally for the benefit of one or other of the parties, the court may wish

in such cases to coerce parties into compliance with its orders; or alternatively, even in this context, it may be primarily concerned to punish disobedience (where the time for compliance has passed). In such circumstances as these, deterrence clearly has a role to play.

34 Although it is possible neither to punish nor to secure compliance on the part of Madam Rubiah (assuming she did breach the Court Order) it remains possible to punish her parents if they have been involved in any breach of the Court Order. Accordingly, this objection fails.

35 Finally, some issue was taken with the procedure adopted in relation to the application. The respondent had applied for an order dispensing with service on Madam Rubiah's parents. The learned District Judge reserved this to the trial judge who would eventually deal with the committal proceedings. In my judgment, there is nothing objectionable in this. The appellants appeared to be under the impression that service had in fact been dispensed with but it is clear from the Notes of Evidence kept by the learned District Judge that this is not so.

36 In the premises, I allow the appeal in respect of the following orders:

(a) That the proceedings be carried on against Abu Hasrin bin Rahmat, the Deceased-Defendant's brother, as personal representative of the Deceased-Defendant in like manner as such proceedings might have been carried on against the Deceased-Defendant if she had not died;

(b) That the name of the personal representative of the Deceased-Defendant be substituted in place of that of the Deceased-Defendant,

and I dismiss the appeal in respect of the following orders:

(c) That the plaintiff be at liberty to apply to this Court for an Order of Committal against Mustafa bin Kassim@Rahmat bin Abu Kasim and Nurlia Binte Wahnan;

(d) That prayer 5 of the Plaintiff's application in Summons In Chambers No. 650270/06 be reserved for the trial judge.

37 As the appellants succeeded on the principal issues dealt with in the appeal but not entirely, I order that the appellants are entitled to half the costs of their appeal. Such costs are to be taxed if not agreed.

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