

Choo Guay Tin v Lee Mong Seng
[2001] SGHC 65

Case Number : Div P 4420/1998
Decision Date : 30 March 2001
Tribunal/Court : High Court
Coram : G P Selvam J
Counsel Name(s) : Lim Poh Choo (Alan Shankar & Lim) for the petitioner; Lim See Wai Victor (Hoh & Partners) for the respondent
Parties : Choo Guay Tin — Lee Mong Seng

Family Law – Maintenance – Wife – Whether lump sum maintenance appropriate

Family Law – Matrimonial assets – Division – Family business – Appropriate date for valuation of business

Family Law – Matrimonial assets – Matrimonial home – Husband withdrawing money on overdraft after wife commences divorce proceedings – Whether husband ought to be responsible for repayment of overdraft – How net proceeds of sale of matrimonial property ought to be divided

JUDGMENT:

Grounds of Decision

1. There are two appeals before me. Both arose from Divorce Petition No 4420 of 1998. The parties married young. The husband had not attained the legal age of majority when they were married in 1963. After 35 long years and 4 grownup children the wife filed the present petition. The eldest, a daughter, was 34. The youngest, a son, was 26. It was not a smooth marriage. Earlier the wife filed a divorce petition in 1994. Then she reconciled and withdrew it the next year. In 1997 she filed another divorce petition. Once again she reconciled and withdrew it the next year. She filed the present petition on the ground that the marriage had irretrievably broken down because the husband had behaved unreasonably. The husband had alienated himself from his wife and children. According to the wife the husband had another woman in Malaysia. The glue that held them to the bond of marriage was a business. It was a transport business called Blue and White Bus Transport Service.

2. A decree nisi was made without contest on 23 March 1999. Consequential matters were adjourned to be heard in chambers. Ancillary matters were heard and orders were made on 5 July 2000 in the Subordinate Court. Both parties were dissatisfied with the orders made by the District Judge and appealed to High Court Judge. I heard the appeals and varied the orders made by the District Judge. The husband was not happy with the orders and has appealed against the order made by me. The purpose of this judgment is to state the reasons for my decision.

3. The orders made by the District Judge were as follows :

"1. the matrimonial property known as No. 18D Lorong 102 Changi Road, shall be sold in the open market and the proceeds of sale, less the outstanding loan is to be divided equally between the parties.

2. the respondent shall be responsible for the repayment of the overdraft of \$250,000 and the interest thereon.

3. the petitioner shall be given the first option either solely or with any nominee, to be exercised within one (1) month of the Decree Nisi Absolute, to purchase the respondent's share in the matrimonial property.

4. the parties do appoint an accountant to value the business of Blue & White Bus Transport Service within three (3) months with expenses to be borne equally, and the net assets shall be divided equally between the parties.

5. the respondent shall be given the first option, to be exercised within one (1) month after valuation, to purchase the petitioner's share in Blue and White Bus Transport Service.

6. the respondent shall pay the petitioner lump sum maintenance of \$70,000.00 and the said sum is to be deducted from his share of the net proceeds of sale of the matrimonial property.

7. costs to the petitioner fixed at \$3,500.

8. parties be at liberty to apply."

The wife's appeal

4. The wife was dissatisfied with two of the orders, the first relating to the Changi road property. The next was in respect of the business.

5. As to the Changi Road property she wanted it transferred to her as the sole owner free of any encumbrance. She wanted it freed from the mortgage securing an overdraft loan of \$250,000 and interest.

6. As to the business, she wanted it valued as at 1 December 1998 and not the current value.

The husband's appeal

7. The husband was dissatisfied with paragraph 2 (repayment of the overdraft amount plus interest) and paragraph 6 (the lump sum maintenance and its deduction from his share of the proceeds of the matrimonial property).

8. As to the former, he wanted the nett proceeds to be divided. As to the latter he wanted to pay a monthly maintenance of \$700.

My decision

9. My decision in respect of both appeals was as follows :

"RA 720052 of 2000

1. the appeal be allowed as follows :

(i) the Order of Court made the 5th day of July 2000 in respect of the matrimonial property to stay save that the appellant/petitioner shall be given 70% and the respondent 30% of the net proceeds from the sale of the matrimonial property;

(ii) the prayer in the divorce petition shall be amended to give accord to this variation; and

(iii) the Order of Court made the 5th day of July 2000 in respect of the business known as Blue & White Bus Transport Service to stay save that the valuation is to be as of the 1st day of December 1998.

(2) the respondent do pay the appellant/petitioner costs in the ancillary proceedings and the appeal to be agreed or taxed; and

(3) parties be at liberty to apply. "

"RA 720054 of 2000

1. the appeal be dismissed.

2. the appellant/respondent do pay the petitioner the cost of this appeal to be agreed or taxed; and

3. parties be at liberty to apply."

10. Four matters require explanation :

(i) the proportion of division of the property

(ii) the addition of \$250,000 before the division

(iii) the date of valuation of the business

(iv) the lump sum maintenance

Lumpsum maintenance

11. I shall first deal with the lump sum maintenance. Like the District Judge I was of the view that this was an eminently appropriate case for a lump sum maintenance award. An order for a monthly maintenance would result in the wife getting the run around. He would not make regular payment. Knowing the history of the husband that was patent. Additionally the husband had the funds to meet the award.

Date of valuation

12. Now I turn to the date of business valuation. The relationship between the spouses as regards a family business in general should be treated as a virtual or quasi partnership. This means an importation of the principles of equity to resolve the disputes between the "partners". In this case the District Judge applied the principle of "equity in equality". That was a just and equitable decision. In any event neither party challenged it. The District Judge, however, ordered a division on the basis of available assets without specifying the cut-off date.

13. The relationship of partnership including a family business which can rightly be signified as a partnership imports the principles of good faith and fiduciary obligations. Applying these principles I held that the valuation must be as at 1 December 1998. It was the date on which the notional partnership was effectively terminated. The history of the relationship between the

parties was uneven. The husbands conduct was unreasonable and unfair towards the wife. He would have grossly run down the assets of the business. A valuation after the asset-stripping would be unfair and inequitable to the wife. If the husband has not engaged in asset-stripping the valuation date would make no difference to him. So the notional state of dissolution was the appropriate date for the valuation.

Addition of \$250,000

14. That brings me to the property. The District Judge held that the overdraft obligation must fall on the husbands shoulders. This was because "he had deliberately withdrawn this sum of \$250,000 after the divorce proceedings had been instituted". The evidence pointed to him pocketing that amount. This reconfirms the husbands propensity to run down the assets to the detriment of the wife. It was a fraud to the wife. It was against the principles of justice and fairness. I therefore agreed with and affirmed the decision of the District Judge on this point.

Division of property

15. Finally I advert to the division of the property. I ordered a division of 70:30 in favour of the wife. I based it on the fact that the wife made a greater indirect contribution. Although the husband had made a substantial down payment, subsequent contributions of the wife were substantially greater. The adjustment I made was to give effect to the sense of proportionality.

GP Selvam

Judge

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