

Kishore Shewaram Mohinani v Padmabai d/o Ramchand Ladharam
[2013] SGHC 223

Case Number : Divorce Petition No 2404 of 1996 (Registrar's Appeal from Subordinate Courts No 720008 of 2012)
Decision Date : 24 October 2013
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Manoj Nandwani and Eric Liew (Gabriel Law Corporation) for the appellant; Tan Yew Cheng (Leong Partnership) for the respondent.
Parties : Kishore Shewaram Mohinani — Padmabai d/o Ramchand Ladharam

Family Law – Maintenance – Variation of order – Material change in the circumstances

24 October 2013

Choo Han Teck J:

1 This is an appeal against the decision of the Family Court to dismiss an application by the appellant/husband to rescind a maintenance order made in 1996 in the parties' divorce that he pays the respondent/wife \$2,000 per month. The husband is 64 years of age while the wife is 58. They are both presently unemployed. Their two children are 35 and 33 years of age. The husband's ground for applying to rescind the maintenance order was that the wife recently inherited half of an estate valued at an estimated \$1.8 million. The husband argued that this increase of about \$900,000 in the wife's wealth was a "material change in the circumstances" calling for a rescission of the maintenance order. The Family Court dismissed his application on the basis that he had not made full and frank disclosure of his assets. He appealed and the appeal came before me. The wife was not represented at the hearing on 3 April 2013. Two weeks later I delivered my decision. I allowed the appeal and ordered rescission of the maintenance order as sought by the husband. Within the next few days the wife instructed counsel who then wrote in seeking to make further arguments. I allowed the request for further arguments and heard these arguments on 9 September and 7 October 2013.

2 Having heard further arguments, I remain of the view that the wife's inheritance counts as a "material change in the circumstances" calling for a downward variation of the maintenance order. This is because the inheritance enhances to a not insubstantial extent her ability to meet her expenses, and correspondingly warrants modifying in the husband's favour his obligation to enable her to meet her expenses. In her submissions, the wife cited to me three authorities purportedly in support of her position that there was no "material change in the circumstances", but I fail to see how any of those authorities advance her case. The question before me was not about what would constitute a "material change in the circumstances" justifying an increase rather than decrease in maintenance. In *Chua Chwee Thiam v Lim Annie* [1989] 1 SLR(R) 426, Chan Sek Keong J held that maintenance in that case ought to be reduced because there was clear evidence as to a deterioration in the husband's financial situation since the maintenance order was made. This does not support Miss Tan's argument on behalf of the wife because it does not follow from the decision of Chan J that an adverse change in the husband's circumstances is the only ground for reducing a maintenance order. In *Morris Richard Neil v Morris Carolina Hernandez* [2012] SGHC 177, Lai Siu Chiu J held that reducing maintenance to \$1 was not justified because the husband had not adduced sufficient evidence that the wife was employed. I cannot see how this decision of Lai J helps the

wife, because it surely does not follow that maintenance may only ever be reduced when it is shown that the wife is employed. The circumstances of both parties ought to be considered in order that the impact and significance of the change can be more accurately measured.

3 However, I am now of the view that the maintenance order should not be rescinded entirely but should instead be varied downwards. The increase of \$900,000 in the wife's wealth is certainly substantial, but it is a one-off gain and is not so large that she is set for life, so to speak. She is currently 58 years old, and assuming an average life expectancy of 85 for Singaporean women (see *Wan Lai Cheng v Quek Seow Kee and another appeal and another matter* [2012] 4 SLR 405 at [89]), \$900,000 works out to \$33,333 a year and less than \$2,800 a month for the notional remaining 27 years of her life, which is not a large amount. In particular, I am mindful that as she grows older her medical-related expenses might increase, and perhaps even increase significantly. I am also mindful that the judge below was of the opinion that the husband was not forthright in declaring his assets. In this regard, I have no grounds to disagree with the court below and will take this factor into account. I think that his failure to make full and frank disclosure of his assets is relevant, in that given this failure to disclose, I would infer against him that he is in a position to continue making monthly maintenance payments of under \$2,000 to the wife.

4 For these reasons, I vary my previous order having heard further arguments and order that the husband henceforth pay the wife maintenance of \$1,000 per month.

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