

QU v QV
[2007] SGHC 140

Case Number : DA 23/2006

Decision Date : 30 August 2007

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Koh Tien Hua (Harry Elias Partnership) for the appellant; Yap Teong Liang (T L Yap & Associates) for the respondent

Parties : QU — QV

Civil Procedure – Contempt of court – Civil contempt – Time frame for compliance before contempt proceedings taken – Order 45 r 5 Rules of Court (Cap 322, R 5, 2004 Rev Ed) – Section 52 Interpretation Act (Cap 1, 2002 Rev Ed)

[EDITORIAL NOTE: The details of this judgment have been changed to comply with the Children and Young Persons Act and/or the Women's Charter]

30 August 2007

Tay Yong Kwang J:

1 The appellant ("the wife") is the respondent in Divorce Petition No. 1063 of 2004 while the respondent here ("the husband") is the petitioner in the said divorce proceedings. The parties were married on 10 July 1998. They have one child, a son, now 5 years old. On 29 March 2004, the husband commenced divorce proceedings to dissolve the marriage on the ground of the wife's unreasonable behaviour. A decree nisi was granted.

2 On 24 January 2005, the husband obtained an order of court from District Judge Jocelyn Ong on the ancillary matters ("the ancillary order of 24 January 2005"). Besides providing for the sale of the matrimonial home, this order granted the husband (at paragraph 5(a) of the same):

"sole custody, care and control of the child of the marriage, [JS] and the [wife] to surrender the child's passport and birth certificate to the [husband]. The [wife] shall be at liberty to apply for access."

3 The husband alleged that the wife had failed to comply with the ancillary order of 24 January 2005 by not handing over custody of the child and by failing to surrender his passport and birth certificate. The husband then applied for leave to proceed against the wife for contempt of court pursuant to O 52 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed). The Statement of Facts dated 28 April 2006, prepared pursuant to O 52 Rule 2(2), set out the following grounds for the application:

(a) On 24th January 2005, the [husband] obtained an Order of Court. On 8th March 2006, the said Order endorsed with the Penal Notice was served personally on [the wife].

(b) On 7th March 2006, the [wife's] application to set aside the Order of Court dated 24th January 2005 was dismissed by the Honourable District Judge Ms Carol Ling. On 21st March 2006 the Honourable District Judge Mr Jeffrey Sim granted the [wife's] application for a stay of the Order of Court dated 24th January 2005 pending the outcome of the appeal. On 26th April 2006,

the Honourable Justice Belinda Ang dismissed the [wife's] appeal in RAS 25/2006.

(c) The [wife] has failed to hand over the child of the marriage to the [husband] pursuant to the Order dated 24th January 2005 on 26th April 2006 after the appeal was dismissed. Further, the [wife] failed to surrender the child's passport and birth certificate to the [husband].

(d) On 22nd August 2005, the Honourable District Judge Ms Shobha Nair made, inter alia, interim orders in OSF 98/2005 that the [husband] has access to the child of the marriage from 7.00pm to 8.00pm daily and between 2.00pm to 6.00pm every Sunday.

(e) On 26th April 2006 and 27th April 2006, the [wife] failed to allow the [husband] to have access to the child of the marriage, JS.

4 [The wife] is therefore in contempt of paragraph 5(a) of the Order of Court dated 24th January 2005 and is in contempt of the orders for access given by the Honourable District Judge Ms Shobha Nair.

4 Leave was granted to the husband to proceed with an application for an order of committal against the wife.

5 The husband's application was heard before District Judge Jocelyn Ong ("the DJ") who found the wife guilty of contempt of court as she had deliberately refused to comply with the ancillary order of 24 January 2005. The DJ then imposed a fine of \$1,000 on the wife and ordered her to pay the costs of the committal proceedings fixed at \$1,500.

6 The wife appealed to the High Court against the DJ's decision. I dismissed her appeal and ordered her to pay costs of \$3,000 which was to be paid out from the security furnished by her for the appeal. She has now appealed to the Court of Appeal against my decision.

The applications in the Family Court

7 To facilitate a better understanding of the various applications before the Family Court, they are set out chronologically below:

29 March 2004	The husband filed Divorce Petition No. 1063 of 2004
13 July 2004	Decree Nisi was granted
24 January 2005	The ancillary order of 24 January 2005 was made
19 April 2005	Decree Nisi was made Absolute
22 June 2005	The husband filed OSF No. 98 of 2005 to seek an order that the wife return the child to his lawful custody, care and control pursuant to the ancillary order of 24 January 2005

22 August 2005	DJ Shobha Nair adjourned OSF No. 98 of 2005 pending the outcome of the wife's application to set aside the ancillary order of 24 January 2005, ordering the wife in the meantime to give the husband access to the child between 7pm and 8pm daily and from 2pm to 6pm on Sundays
2 September 2005	The wife filed SIC No. 14083 of 2005 in the Divorce Petition to set aside the Decree Nisi and Decree Absolute and the ancillary order of 24 January 2005
23 January 2006	DJ Carol Ling started hearing the above SIC
7 March 2006	DJ Carol Ling dismissed the said SIC
8 March 2006	The husband took over custody, care and control of the child
9 March 2006	The wife filed Summons No. 3432 of 2006 in OSF No. 98 of 2005 for interim custody, care and control of the child. Deputy Registrar Regina Ow , at an interim pre-trial conference, ordered the husband to return the child to the wife and the access orders granted by DJ Shobha Nair on 22 August 2005 to continue, pending clarification by the said DJ on her orders
10 March 2006	The wife appealed against DJ Carol Ling's decision
16 March 2006	The wife filed Summons No. 3814 of 2006 for stay of the ancillary order of 24 January 2005 pending appeal
21 March 2006	DJ Shobha Nair clarified that the interim orders made by her on 22 August 2005 were to continue until the outcome of the wife's application to set aside the ancillary order of 24 January 2005 and not until the next hearing of OSF No. 98 of 2005. DJ Jeffrey Sim granted her the wife the stay sought by her
26 April 2006	Belinda Ang J dismissed the wife's appeal against DJ Carol Ling's decision of 7 March 2006
28 April 2006	The husband filed Summons No. 6060 of 2006 for leave to apply for a committal order. Leave was granted to him to do so in respect of the alleged failure by the wife to comply with the ancillary order of 24 January 2005
2 May 2006	The husband next filed Summons No. 6204 of 2006 pursuant to the leave given above

10 May 2006

OSF No. 98 of 2005 was heard. Summons No. 3432 of 2006 was dismissed and the wife was ordered to return the child to the husband.

The DJ's findings

8 The wife was cross-examined at the hearing below. The DJ noted that the contempt proceedings alleged non-compliance with the ancillary order of 24 January 2005 after the appeal to Belinda Ang J was dismissed as well as the failure to comply with DJ Shobha Nair's order of 22 August 2005. Since the leave granted to the husband to apply for an order of committal was confined to the alleged breach of the ancillary order of 24 January 2005, the DJ decided that the only ground that the husband could proceed on was that alleged breach. For this, she relied on O 52 r 5(3) of the Rules of Court which states:

Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the statement under Rule 2.

9 The DJ disagreed with the wife's argument that contempt proceedings could apply only to orders that required the alleged contemnor to do a positive act within a specified period. It was submitted by the wife that the ancillary order of 24 January 2005 did not require such a positive act (such as returning the child to the husband) to be done and all that the said order stated was that care and control was given to the husband. The DJ held that what was required to establish contempt was a deliberate act breaching an order of court (citing *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others (No. 2)* [2005] 3 SLR 60) and that the standard of proof in such proceedings was proof beyond a reasonable doubt. Further, she held, the wife's submissions ignored the fact that the ancillary order of 24 January 2005 required her to surrender the child's passport and birth certificate to the husband.

10 The DJ noted that the wife's defence was her reliance on the order of 9 March 2006 made by Deputy Registrar Regina Ow, that pending the outcome of Summons No. 3432 of 2006, the child was to be returned to the wife forthwith with access granted to the husband along the same terms as those set out by DJ Shobha Nair on 22 August 2005. The wife maintained that she had no intention of breaching the ancillary order of 24 January 2005 as she believed or was told that she had custody, care and control of the child by virtue of the order of 9 March 2006.

11 The DJ rejected the wife's defence. She held that the order of 9 March 2006 did not grant the wife custody, care and control of the child as alleged and found the wife "clearly lying" during cross-examination. At any rate, the DJ said, whatever misunderstanding that the wife had should have been dispelled by 21 March 2006 when DJ Shobha Nair clarified her order at the request of the wife's solicitors which arose in the following way. After the wife's application to set aside the ancillary order of 24 January 2005 was dismissed by DJ Carol Ling on 7 March 2006, the husband's solicitors wrote to the wife's solicitors to make arrangements for the handover of the child and his documents. The wife's solicitors disputed the interpretation of the order of 22 August 2005, holding the view that the said order granted interim access to the husband until the next hearing of OSF No. 98 of 2005. The wife's solicitors therefore sought clarification from DJ Shobha Nair who clarified that the order made by her was to stand pending the outcome of the wife's application to set aside the ancillary order of 24 January 2005 and not until the further hearing of said OSF. The DJ was therefore of the opinion that there could be no misunderstanding or misinterpretation after 21 March 2006. The DJ further held that the order made on 9 March 2006 could not override the ancillary order of 24 January 2005.

12 The DJ was therefore of the view that when the wife's appeal was dismissed by Belinda Ang J on 26 April 2006, the ancillary order of 24 January 2005 remained valid and effective and it was incumbent on the wife to comply with its terms. On 5 May 2006, the wife handed over the child's passport to the husband. On 10 May 2006, she returned the child to him after the dismissal of Summons No. 3432 of 2006. At the time of the hearing of the contempt proceedings on 16 May 2006, the wife had not handed over the birth certificate. The birth certificate was handed over to the husband only after the DJ had found the wife guilty of contempt of court.

13 The DJ was left with no doubt that the wife had deliberately refused to comply with the ancillary order of 24 January 2005. She concluded her judgment as follows:

18 ... She did not like the Order and simply refused to obey it. After her appeal to set aside the Ancillary Order was dismissed on 26th April 2006, she continued to disobey the Order notwithstanding the clarification by DJ Shobha Nair on 21st March 2006, of which she was well aware. She stubbornly insisted on her own "interpretation" of the various orders even after it was made clear to her that her interpretation was incorrect and she continued to act in defiance and contempt of the Ancillary Order. She cannot rely on a deliberate misinterpretation to excuse her breach.

19 I thought a fine would be appropriate in this case and as it involved a custody issue, I imposed a fine of only \$1,000. As costs follow the event I also ordered the wife to pay costs. The hearing took half a day. I noted the husband's submission that the proceedings could have been shortened had the wife admitted her contempt and I fixed costs at \$1,500.

The appeal in the High Court

14 The wife's solicitors cited *Lowe and Sufrin's The Law of Contempt*, 3rd edition, and submitted before me that a person may be punished for contempt of court only if the terms of the order allegedly breached are clear and unambiguous, the alleged contemnor had proper notice of the terms and the breach is proved beyond reasonable doubt. It was argued that the ancillary order of 24 January 2005, while clear in requiring the wife to hand over the passport and the birth certificate, did not specify a time within which this was to be done. The wife's solicitors relied on O 45 r 5(1) of the Rules of Court which provides:

Where –

(a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under Order 3, Rule 4; ...

then, subject to these Rules, the judgment or order may be enforced by one or more of the following means:

(i) with the leave of the Court, an order of committal; ...

It was thus submitted that as there was no time specified in the ancillary order of 24 January 2005 for the wife to perform the matters in issue, she could not possibly have acted in contempt of the order.

15 In so far as handing over custody of the child was concerned, it was argued that the wife was

not in breach of the ancillary order of 24 January 2005 as there was in fact a subsequent order made in OSF No. 98 of 2005 when the Family Court was aware that the ancillary order of 24 January 2005 had been obtained unilaterally. Once the said OSF and the applications therein were heard on 10 May 2006 and an order was made that the child be returned to the husband, the wife complied. If the wife, as found by the DJ, "did not like the Order and simply refused to obey it", she would not have obeyed the order made on 10 May 2006 ordering her to hand over the child.

16 The wife's solicitors further argued that the clarification by DJ Shobha Nair on 21 March 2006 was made immediately before the hearing of the wife's application for a stay of the ancillary order of 24 January 2005 and that DJ Shobha Nair did not indicate that her clarification was to bind subsequent courts hearing the matter.

17 The husband's solicitors, on the other hand, argued that when an order of court did not specify a time frame for the doing of certain things, the party in question must perform those things within a reasonable time. The wife claimed before the DJ that she had sight of the ancillary order of 24 January 2005 since August or September 2005. There was no stay of the ancillary order of 24 January 2005 until 21 March 2006 and even this lapsed upon the dismissal of the wife's appeal to the High Court on 26 April 2006. It followed that she had failed to comply with the said order between September 2005 and 21 March 2006 and again after 26 April 2006. On this point in the husband's submissions, it must be borne in mind that the Statement of Facts filed for the purposes of obtaining leave to commence the contempt proceedings relied only on the wife's conduct post-26 April 2006 (see [3(c)] above). I therefore disregard the allegation of contempt prior to that date.

18 On 2 May 2006, the wife's solicitors wrote to the husband's solicitors to say that:

1 ...

2 Our client is not agreeable to the handing over of the passport. Your client can easily leave the country with[JS].

3 We suggest that the passport be held by us as stakeholders.

This, the husband submitted, was nothing more than an excuse to avoid complying with the ancillary order of 24 January 2005.

19 The husband further submitted that the order of 9 March 2006 in OSF No. 98 of 2005 was, at the highest, dealing only with access rights pending the hearing of the wife's application. It did not grant the wife interim care and control of the child. There was no order which superseded the ancillary order of 24 January 2005 which remained valid and enforceable, particularly after 26 April 2006, and the wife offered no reason why she refused to hand over the child after that date.

20 Section 8 of the Subordinate Courts Act (Cap 321, 2007 Revised Edition) provides:

(1) The subordinate courts shall have power to punish for contempt of court where the contempt is committed –

(a) in the face of the court; or

(b) in connection with any proceedings in the subordinate courts.

(2) Where contempt of court is committed in the circumstances mentioned in subsection (1),

the court may impose imprisonment for a term not exceeding 6 months or a fine not exceeding \$2,000 or both.

...

21 I reiterate here the purpose and principles of contempt of court proceedings as enunciated by the Court of Appeal in *Pertamina Energy Trading Ltd v Karaha Bodas* [2007] 2 SLR 518:

22 It is imperative to note, at the outset, that the doctrine of contempt of court is not intended, in any manner or fashion whatsoever, to protect the dignity of the judges as such; its purpose is more objective and is (more importantly) rooted in the public interest.

...

28 It should also be borne in mind that a court will not make a finding of contempt of court lightly.

...

31 The law with respect to this particular issue is now well-established: the standard of proof is the *criminal* standard of proof beyond a reasonable doubt ...

...

82 The following observations in a leading textbook are also apposite ... :

It is no defence to contempt proceedings to allege that the order should not have been made, or has been discharged. An order of the court must be obeyed while it stands, and a breach is still contempt even if, at a later stage, the order is in fact discharged. *The same principle applies if the original order was wrongly made; the defendant's remedy is to apply for its immediate discharge while keeping to its terms.*

22 More recently (after the hearing of the present appeal), V K Rajah JA in *You Xin v PP* [2007] SGHC 120 at [14] said:

It is settled law that a single, paramount and broad principle underlines the law of contempt. It was noted by Sir John Donaldson MR in *Attorney-General v Newspaper Publishing Plc* [1988] Ch 333 ... that "[t]he law of contempt is based upon the broadest of principles, namely that the courts cannot and will not permit interference with the due administration of justice". It is important to note that it is justice itself that is flouted by contempt of court, *not* the individual court or judge who is attempting to administer it. The overriding object of contempt of court is not merely to protect the dignity of the courts but essentially to protect the administration of justice. To that extent the term contempt of court is in reality a misnomer.

23 I do not accept the wife's submissions relating to the absence of a time frame within which she was required by the ancillary order of 24 January 2005 to comply with its terms. An order of court takes effect from the date it is pronounced unless the court specifies otherwise in the said order or decides subsequently to stay the same. Although O 42 r 6(1) of the Rules of Court states that a judgment or order which requires a person to do an act must specify the time after service of the judgment or order, or some other time, within which the act is to be done, that is subject to O 42

r 6(2) which exempts orders requiring payment of money, giving of possession of immovable property or delivery of movable property. The handing over of the child's passport and birth certificate would fall within the last category of exempted orders and, by logical extension, so could the child himself. Even if the child was excluded from the exemptions, there was still no excuse for not handing over the documents timeously.

24 O 45 r 5 of the Rules of Court does not mean that where a judgment or order does not specify a time frame, contempt proceedings can never be taken out. In such a situation, it behoves the applicant in contempt proceedings to prove that a reasonable time for compliance had elapsed. Similarly, s 52 of the Interpretation Act (Cap 1, 2002 Revised Edition), which relates to the construction and interpretation of written law, states:

Where no time is prescribed or allowed within which anything shall be done, that thing shall be done *with all convenient speed* and as often as the prescribed occasion arises.

(emphasis added)

Alternatively, the applicant can apply under O 45 r 6(2) for the court to fix a time within which an act is to be done but that is really quite unnecessary here because compliance required no more than bringing the child and the documents to the husband or asking him to go to her home to pick him up together with the documents in issue. That could have been done on the day that Belinda Ang J dismissed the wife's appeal if the wife had genuine regard for all orders of court and not just those in her favour. If the wife's submissions are correct, it would mean that she could ignore with impunity the ancillary order of 24 January 2005 until the husband takes the further step of applying for a time frame for compliance. In my view, that cannot be correct.

25 The wife ought to have complied with the ancillary order of 24 January 2005 after it was served on her or her solicitors. She certainly should have complied with it by the time her appeal was dismissed by the High Court. There could have been no ambiguity by 26 April 2006 (when Belinda Ang J dismissed the wife's appeal) that "sole custody", which was given to the husband, meant that it was incumbent on her to hand over the child to the husband and that liberty for her to apply for access could only mean that the child was no longer to be in her custody. She was represented by solicitors. She has shown no impediment to such compliance save for her own intransigence and purported misunderstanding of the orders of court. It was clear that the husband wanted the child and the documents handed over as ordered. It was equally clear that the wife was determined not to do that. She had embarked on a series of excuses and applications in order to justify her non-compliance. Then she feigned misunderstanding of the various orders of court generated by the applications. Her arguments about the absence of a time frame for compliance were therefore disingenuous because there could be no doubt that she would not have complied within any specified time even if it were printed in bold letters in the order of court. Indeed, her main excuse for not complying was that there was a subsequent order of court contradicting the ancillary order of 24 January 2005 and not that she did not know when or what to do in order to comply. I agree with the DJ that, in any event, any alleged misunderstanding ended when DJ Shobha Nair made the clarification sought.

26 The DJ came to her conclusion that the wife deliberately flouted the ancillary order of 24 January 2005 after hearing her oral testimony in court. She was conscious of the standard of proof required in such proceedings. It is established law that an appellate court should defer to the trial judge's findings in such a situation. No submissions were made before me regarding the amount of the fine (\$1,000) imposed or the order made as to costs of the contempt proceedings.

27 Accordingly, I affirmed the decision of the DJ and dismissed the appeal with costs fixed at \$3,000 to be paid by the wife to the husband, such costs to be paid by means of the security deposit furnished by the wife for this appeal.

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