

Ong Boon Huat Samuel v Chan Mei Lan Kristine
[2006] SGCA 26

Case Number : CA 38/2006, SUM 1754/2006
Decision Date : 08 August 2006
Tribunal/Court : Court of Appeal
Coram : Chan Sek Keong CJ; Tan Lee Meng J; Woo Bih Li J
Counsel Name(s) : Ooi Oon Tat (Asia Ascent Law Corporation) for the appellant; Koh Tien Hua and Nicole Loh (Harry Elias Partnership) for the respondent
Parties : Ong Boon Huat Samuel — Chan Mei Lan Kristine

Civil Procedure – Appeals – Leave – Husband in matrimonial proceedings appealing to Court of Appeal against High Court's decision in appellate capacity on ancillary matters – Whether husband's failure to apply for leave to appeal to Court of Appeal ground for striking out appeal – Paragraphs 2, 10(2) Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order 2003, paras 1(2), 2 Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) (Amendment) Order 2004 (Cap 322, S 632/2004)

8 August 2006

Woo Bih Li J (delivering the grounds of decision):

The issue

1 Summons No 1754 of 2006 filed by Chan Mei Lan Kristine (“the Wife”) raised the question as to whether Samuel Ong Boon Huat (“the Husband”) required leave to appeal to the Court of Appeal from a decision of a judge of the High Court, made on 7 March 2006, when the Wife’s divorce petition was filed on 17 July 2003.

The background

2 The parties were married on 1 July 2000. However, after one unsuccessful attempt at presenting a divorce petition, the Wife filed a divorce petition on 17 July 2003 on the ground of unreasonable behaviour on the Husband’s part. A decree *nisi* was granted on 19 September 2003.

3 There were no children from the marriage and the ancillary matters with regard to maintenance for the Wife and the division of matrimonial property were heard by a district judge on 18 April 2005 who made the following orders:

- (a) The Wife was entitled to 18.56% of the net total value of both properties at 259 Onan Road (“the matrimonial home”) and 373 Onan Road, #01-10 Malvern Springs (“the Malvern Springs property”) which, using the Husband’s amended calculations, amounted to \$22,596.64.
- (b) The Husband was given the option either to sell the Malvern Springs property or he could retain it upon paying the Wife the said \$22,596.64.
- (c) The matrimonial flat was to be sold within six months.
- (d) No order was made on the other claims of both parties.
- (e) The Husband was to pay \$1 per month as maintenance to the Wife.

(f) The Husband was to pay to the Wife the costs of the divorce petition fixed at \$1,500 and the costs of the ancillary proceedings fixed at \$2,000.

4 Both parties appealed to the High Court against certain orders. The Wife appealed against the order in respect of the maintenance for her but withdrew her appeal when the appeals were first heard. The parties attempted to settle the Husband's appeal which was in respect of the order granting the Wife 18.56% of the net total value of the matrimonial home and the Malvern Springs property. The attempts failed and the Husband eventually proceeded with his appeal. It was heard by Andrew Phang Boon Leong J (as he then was) who varied the Wife's share of both properties from 18.56% to 15% on 7 March 2006. The value of the 15% share amounted to about \$18,000.

5 Being dissatisfied with Phang J's decision, the Husband filed an appeal, being Civil Appeal No 38 of 2006, on 4 April 2006.

6 In turn, the Wife filed the application mentioned in [1] above to have the Husband's appeal struck off on the basis that he was required to obtain leave to appeal to the Court of Appeal but had not done so.

7 The thrust of the Wife's application relied on certain transfer orders made by the Chief Justice. Before we refer to these orders, it should be borne in mind that prior to such orders, divorce petitions and ancillary matters pertaining thereto were heard by the High Court at first instance.

8 However, in 1996, the Chief Justice, acting under s 28A of the Supreme Court of Judicature Act (Cap 322, 1993 Rev Ed) ("SCJA"), made the Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order (Cap 322, S 110/1996) ("the 1996 Transfer Order"). This order came into operation on 1 April 1996.

9 Paragraph 2 of the 1996 Transfer Order stipulated, *inter alia*, that any proceeding under Pt IX of the Women's Charter (Cap 353, 1985 Rev Ed) commenced in the High Court on or after 1 April 1996 "shall be transferred to and be heard and determined by a District Court". Part IX of the then Women's Charter has been renumbered as Pt X in the 1997 Revised Edition of the Women's Charter.

10 Paragraph 6 of the 1996 Transfer Order stated that appeals from decisions of the District Court to the High Court and thereafter "shall be as specified in the Rules of Court". However, there was no specific provision in the 1996 Transfer Order requiring leave to appeal to the Court of Appeal.

11 Another transfer order was then made by the Chief Justice which came into operation on 15 December 2003. This was the Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order 2003 (Cap 322, S 557/2003) ("the 2003 Transfer Order"). For present purposes, the material parts of that order were paras 2 and 10 which state:

Proceedings transferred to District Court

2.—(1) Subject to sub-paragraph (2), any proceedings under —

(a) section 59 and Part X of the Women's Charter (Cap. 353); or

(b) the Guardianship of Infants Act (Cap. 122),

commenced in the High Court on or after 15th December 2003 shall be transferred to and be

heard and determined by a District Court.

(2) In matrimonial proceedings under Part X of the Women's Charter transferred to a District Court under sub-paragraph (1), where —

(a) an application is made for the division of matrimonial assets;

(b) the application is contested; and

(c) the gross value of the matrimonial assets is asserted by any party to the proceedings, in the manner required by the Registrar of the Subordinate Courts, to be of or above the value of \$1.5 million,

the proceedings shall, upon the direction of the Registrar of the Subordinate Courts that the ancillary issues are ready for hearing, be transferred to and be heard and determined by the High Court.

(3) In sub-paragraph (2), "gross value of the matrimonial assets" means the total value of the assets, disregarding any outstanding liabilities attaching thereto or any personal liabilities.

Revocation and savings

10.—(1) The Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order (O 1) is revoked.

(2) Notwithstanding sub-paragraph (1), the revoked Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order shall continue to apply to proceedings under section 59 and Part X of the Women's Charter (Cap. 353) and the Guardianship of Infants Act *commenced before 15th December 2003 as if that Order had not been revoked.*

[emphasis added]

12 As can be seen, the crux of para 2(2) of the 2003 Transfer Order is that where matrimonial proceedings include a contested application for the division of matrimonial assets asserted to be of or above the value of \$1.5m, the matrimonial proceedings are then to be transferred back to, and be heard by, the High Court subject to the saving provision in para 10(2) ("the Saving Provision").

13 We would add that para 6 of the 2003 Transfer Order had a minor difference as compared with para 6 of the 1996 Transfer Order but that difference is irrelevant for present purposes.

14 The Chief Justice then made another transfer order in 2004, the Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) (Amendment) Order 2004 (Cap 322, S 632/2004) ("the 2004 Transfer Order"), which came into operation on 1 November 2004. The material part of the 2004 Transfer Order states:

Citation and commencement

1.—(1) This Order may be cited as the Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) (Amendment) Order 2004 and shall come into operation on 1st November 2004.

(2) Paragraph 2 shall apply to any appeal to the Court of Appeal *from any decision made by the High Court on or after 1st November 2004 in the exercise of its appellate jurisdiction* with respect to any proceedings heard or determined by the District Court pursuant to the Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order 2003 (G.N. No. S 557/2003).

Deletion and substitution of paragraph 6

2. The Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order 2003 is amended by deleting paragraph 6 and substituting the following paragraph:

"Appeals

6.—(1) An appeal shall lie to the High Court from a decision of a District Court in any proceedings heard and determined by the District Court pursuant to this Order, regardless of the amount in dispute or the value of the subject-matter.

(2) *Except with the leave of the Court of Appeal or a Judge of the High Court, no appeal shall be brought to the Court of Appeal from a decision of the High Court in respect of any appeal heard by the High Court pursuant to sub-paragraph (1), regardless of the amount in dispute or the value of the subject-matter.*

(3) Rule 31 of the Women's Charter (Matrimonial Proceedings) Rules (Cap. 353, R 4, 2004 Ed.) shall not apply to any proceedings under section 59 and Part X of the Women's Charter (Cap. 353) which, pursuant to this Order, are heard and determined by a District Court, and the procedures for appeals from such proceedings to the High Court and thereafter to the Court of Appeal shall be as specified in the Rules of Court (R 5, 2004 Ed.).".

[emphasis added]

15 For the purposes of the applications before us, the most significant change effected by the 2004 Transfer Order is found in the new para 6(2) read together with para 1(2) of the 2004 Transfer Order. For the first time in the various transfer orders, it is stated specifically that leave to appeal to the Court of Appeal from a decision of the High Court, when exercising its appellate jurisdiction, is required. We will refer to such a decision as "an appellate decision" of the High Court for convenience. For completeness, we should add that the substance of the old para 6 under the 2003 Transfer Order was reiterated in the new para 6(3).

16 The new para 6(2) still applies today. Mr Koh Tien Hua, counsel for the Wife, contended that because para 1(2) of the 2004 Transfer Order stipulates that the new para 6 shall apply to any appellate decision of the High Court made on or after 1 November 2004 and because Phang J's decision was made on 7 March 2006, the Husband was required to obtain leave to appeal to the Court of Appeal which he had not done.

17 The Husband's primary contention was that leave was not required. However, presumably as a matter of caution, he filed an application (after the Wife's application to strike out the appeal was filed) for an extension of time to apply for leave should we determine that leave was required.

18 Mr Ooi Oon Tat, counsel for the Husband, relied on the Saving Provision because the Wife's divorce petition was filed on 17 July 2003, *ie*, before the cut-off date of 15 December 2003.

Significantly, the 2004 Transfer Order had left the Saving Provision intact.

19 Nevertheless, Mr Koh relied heavily on para 1(2) of the 2004 Transfer Order. He submitted that the intention of the 2004 Transfer Order was to require leave to be obtained for any intended appeal from an appellate decision of the High Court on or after 1 November 2004, irrespective of when a divorce proceeding had been presented. However, there was no evidence before us of the intention behind the 2004 Transfer Order. In any event we had to consider the 2003 Transfer Order, as amended, in its entirety.

20 Mr Koh also had another argument. He pointed out that in *IW v IX* [2006] 1 SLR 135 ("*IW*"), the Court of Appeal had accepted that leave to appeal must be obtained in respect of a custody order made by the High Court after 1 December 2004 even though the divorce petition there was filed on 19 October 2001 *ie*, before the cut-off date stipulated in the Saving Provision.

21 We shall deal with the case of *IW* first. It is significant to note that in *IW* the parties had accepted that leave to appeal must first be obtained. That is why the Court of Appeal proceeded on that basis in that case. Also, apparently, the Saving Provision was not brought to the attention of the Court of Appeal. Accordingly, in our view, *IW* was of no assistance to the issue facing us, *ie*, whether the Saving Provision still applies in the face of para 1(2) of the 2004 Transfer Order.

22 If Mr Koh's submission was correct, it would mean that the Savings Provision would be rendered nugatory. On the other hand, it is possible to reconcile the Saving Provision with para 1(2) of the 2004 Transfer Order. The approach will then be first to see when the divorce petition is filed. If it is filed before 15 December 2003, then para 1(2) does not apply at all and no leave to appeal to the Court of Appeal is required.

23 Secondly, if the divorce petition is filed after 15 December 2003, then the date of the appellate decision of the High Court becomes relevant. If that decision is before 1 November 2004 then, again, no leave to appeal to the Court of Appeal is required. However, if the divorce petition is filed on or after 15 December 2003 and if the appellate decision of the High Court is made on or after 1 November 2004, then leave to appeal to the Court of Appeal is required. In our view, that is the correct position.

24 We would also add that although the earlier written submissions for the Wife relied on O 56 r 3 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) and s 34 (meaning s 34(2)(a)) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) to support the contention that leave to appeal to the Court of Appeal was required, Mr Koh orally informed us that he was not relying on s 34(2)(a) for that contention. Accordingly, we need not say anything else about s 34(2)(a).

25 In the circumstances, we dismissed the Wife's application with costs and the Husband's application for an extension of time to apply for leave to appeal became academic.

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