

Tjia Alicia (m.w.) v Aspin Suryanna
[2007] SGHC 104

Case Number : DT 3117/2004
Decision Date : 28 June 2007
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Carrie Ho (JC Ho & Kang LLC) for the petitioner; Syn Kok Kay (Patrick Chin Syn & Co) for the respondent
Parties : Tjia Alicia (m.w.) — Aspin Suryanna

28 June 2007

Lee Seiu Kin J:

1 On 29 July 2004 the petitioner (“wife”) filed for divorce against the respondent (“husband”) based on his unreasonable behaviour. The husband filed an answer and objected to the divorce, but did not file a cross-petition. On the day of the hearing, 11 August 2005, the parties agreed to settle the divorce amicably and the wife obtained leave to amend the grounds of divorce to two years desertion by the husband from June 2002. A decree nisi was granted based on the amended petition and ancillary matters were adjourned to chambers. The hearing before me was on the issues of division of matrimonial assets and maintenance.

2 The parties met when the wife was 20 years old and attending the first year of university. The husband is nine years older than her. About a year later, on 24 August 1977, they got married against the wishes of the wife’s family. After marriage the wife stopped her university studies in compliance with the husband’s wishes. She moved into the husband’s parents’ home in Medan, Indonesia. After a year they moved out to live on their own. They have three sons, born in 1979, 1981 and 1984. Sometime in 1996 the wife decided to move to Singapore in order to look after their three children who were attending schools here. The husband visited them once a month, staying about a week each time. These visits stopped from June 2002.

3 The wife’s position is that she had given up her university education for marriage and had no qualifications. When the divorce was filed in 2004, they had been married for almost 27 years. She had borne and raised three sons. Given her background she would have no prospects of any employment. The husband is a businessman who ran a business selling motorcycle spare parts in Medan and Jakarta. The wife claimed that his turnover was about \$2m each month.

4 The husband however claimed that he had assigned away his business in order to repay a loan he owed. He exhibited a document made out in the Indonesian language and which, according to the translation he provided, showed that on 9 January 2002 he took a loan of 15 billion Rupiah from Primkop Bais TNI (Primary Cooperative of Strategic Intelligence Service, Indonesian National Army) as working capital. As collateral for the loan he had pledged his business and a number of land and buildings located in Medan and Jakarta. A document dated 5 February 2004 showed that he had defaulted on the loan, as a result of which the collateral had been transferred to Primkop Bais TNI. The husband claimed that he was presently merely employed to run the business as operations manager and was paid a monthly salary of about \$12,400. As evidence of this, he exhibited pay slips for monthly wages amounting to about 75 million Rupiahs issued by Primkop Bais TNI for January to March 2006.

5 The wife disputed that the husband had lost his business. She pointed to the following points that raised doubts as to the veracity of the husband's claims in this respect:

(a) In his affidavit filed on 13 May 2005 filed in respect of the wife's application for interim maintenance, the husband made no mention of the loan he now claims he had taken out in 2002 nor, more importantly, of the default and subsequent transfer of the business and assets to Primkop Bais TNI a year earlier, in February 2004. Indeed, in paragraph 11 of that affidavit, he spoke in terms that indicated that the business was still his, asserting that his "principal business in Indonesia" was that of dealing in motorcycle spare parts and how he purchased such parts from China and Taiwan for sale "from my 2 places of business namely in Medan and Jakarta". He described how he had problems with his debtors and how the fluctuation of the Rupiah created difficulty for his business. He said that in a good year, he would make profits of US\$100,000 to US\$120,000 but in a bad year he would incur losses. He said that during the "recent tsunami disaster" he had many customers in Aceh who had either lost their lives or could not pay debts owed to him. The last two sentences are very telling: "Although profits are said to be made in a good year such profits are never in actual cash. They are represented in the stocks which remained in my business and the amount of cash that I had taken for myself as expenses and the amount of money I give to the Petitioner consists mainly of rolling the cash in the course of my business."

(b) The husband had withdrawn a total of US\$4.4 million from various bank accounts in Singapore in August and September 2003. Therefore at the time he did not need to take any loan from Primkop Bais TNI in 2002 as he had alleged.

(c) There was no document evidencing the loan from Primkop Bais TNI other than the agreement he had exhibited. For example there is no evidence of the injection of the amount of the loan by Primkop Bais TNI into the business.

(d) Under Indonesian law, a man cannot assign any real property owned by him without the written consent of his wife. Further, some of the properties allegedly transferred to Primkop Bais TNI were in their joint names. The husband had admitted in paragraph 9 of his third affidavit filed on 15 August 2006 that the wife had never given any such consent. It is surprising that Primkop Bais TNI would grant any loan secured by real property without obtaining the consent of the wife. In any event the real property in question could not have been transferred to Primkop Bais TNI.

6 The husband's explanation pertaining to sub-paragraph (a) above is found in paragraph 13 of his third affidavit filed on 15 August 2006 where he states as follows:

"13. During the period leading to the interim order for maintenance my spirit was brutally bruised by the application and assertions of the Petitioner. Indignation overcame me completely and my lassitude was so deep I could not rouse myself to action. It was in such circumstance that I did not give the proper instructions to my then solicitors. This became painfully apparent when my present solicitors alerted me to this anomaly. I pray to this Honourable Court not to regard this inadvertence on my part as absolutely bad. Sometimes when one is placed in adverse circumstances, the line creeps upon you and before you know it you are standing on the other side. In any case, Primkop gave me indulgence to pay back the debts. It was only in December 2005 that I was made to take only salary."

I found this a rather glib and unbelievable explanation. Glib because those were empty words and he had chosen not to display further documents (which there would have been no lack of if his business had indeed been transferred to Primkop Bais TNI) to support his contention. Unbelievable because of the unequivocal manner in which he had described the business as his own in his earlier affidavit.

7 On the evidence before me I found that the husband was still the owner of the business and

proceeded on the basis that his earning capacity remained unchanged.

8 Proceeding firstly on the issue of division of matrimonial assets, the evidence from the affidavits show that the parties have or once had the following matrimonial assets:

- (a) Assets in the joint names of both parties totalling \$3.78m, comprising:
 - (i) Bedok Court penthouse valued at \$1,200,000;
 - (ii) Bedok Court apartment: \$580,000; and
 - (iii) Japan Macro Fund: \$2,000,000.
- (b) Assets in the wife's name totalling US\$730,000 and \$40,000 comprising:
 - (i) US\$500,000 received by the wife in November 2001;
 - (ii) US\$227,000 taken by the wife's brother and sent to her in August 2003; and
 - (iii) Total of \$40,000 in cash sent by the wife to her two brothers.
- (c) Assets in the husband's name totalling about US\$4.15m and \$150,000 comprising:
 - (i) US\$4.15 million in bank accounts;
 - (ii) Mercedes Benz motorcar valued at \$100,000;
 - (iii) Nissan X-Trail motorcar valued at \$30,000; and
 - (iv) Insurance policies valued at \$22,000.

These assets are worth a total of US\$4.88m and \$3.97m.

9 There is no dispute that the assets were solely the result of the husband's efforts. The wife's contributions to the 27-year marriage were mainly in terms of consort and child-bearing as well as raising the children. I assessed that a fair and equitable distribution would be in the ratio of 35% to the wife and 65% to the husband. Accordingly I made the following orders in relation to the distribution of the specific assets which appear to me to be the most expedient, having regard to the parties' places of residence and the locations of those assets:

- (a) The Japan Macro Fund is to be split between the wife and the husband in the ratio of 35:65;
- (b) The Bedok Court penthouse and apartment are both to be sold within six months and the proceeds divided in the ratio 35:65 to the wife and husband. However the wife has the first option to buy over these properties at the price valued by a single valuer chosen by consent of both parties;
- (c) The Mercedes Benz motorcar to be sold and the net proceeds divided in the ration 35:65 to the wife and husband; and
- (d) The remaining assets of \$40,000 in the wife's name and \$52,000 in the husband's name (comprising the Nissan X-Trail motorcar valued at \$30,000 and insurance policies with total surrender value of \$22,000) to be settled by the wife paying the husband \$8,000 which may be done by way of setoff.

10 As regards maintenance, I had earlier found that the husband was not an employee but ran his own business. As this is an indeterminate sum, I approached the issue from the point of view of the wife's position regarding the sum that she required, on the basis that he should continue to support

her in the manner to which she is accustomed, but taking into consideration the fact that after divorce both parties would suffer a drop in the standard of living arising simply from the fact that there are now two households. The wife tabulated monthly expenses amounting to about \$14,800. However I was of the view that a reduced sum of \$10,000 would be appropriate in the circumstances. This compares favourably with the interim maintenance order of \$8,000 per month but is a big increase from the husband's position of \$2,000 (a position that I would describe as wholly unreasonable).

11 I was also of the view that, given the difficulty of enforcement of maintenance payments in the circumstances of this case, and the fact that the husband had substantial assets in Singapore, it would be appropriate to order the maintenance to be paid in one lump sum. This would also enable parties to get on with their lives. Given the wife's age, I was of the view that the appropriate multiplier would be seven years. I therefore ordered the sum of \$840,000 to be paid as lump sum maintenance and that this was to be paid out of the husband's share of the Japan Macro Fund or the sale of the Bedok Court apartments.

12 I made no order as to costs.

13 Both parties have filed an appeal against my decision, the husband on 21 March 2007 and the wife on 22 March 2007.

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