

Eng Poh Su (now known as Eddy Eng Poh Su) v Yap Ah Ho (now known as Yap Yujing Josephine)
[2001] SGHC 60

Case Number : OS 7001/2001
Decision Date : 27 March 2001
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Troy Yeo Siew Chye (Leo Fernando) for the petitioner; Raistlina Kwek (Rodyk & Davidson) for the respondent
Parties : Eng Poh Su (now known as Eddy Eng Poh Su) — Yap Ah Ho (now known as Yap Yujing Josephine)

Civil Procedure – Appeals – Leave to appeal – Whether leave of court required for appeals in respect of matrimonial matters under Pt X of Women's Charter (Cap 353, 1997 Ed) – s 21 Supreme Court of Judicature Act (Cap 322, 1999 ED) – Women's Charter (Cap 353) Pt X

: This originating summons concerns the issue whether s 21 of the Supreme Court of Judicature Act (Cap 322, 1999 Ed) applies to appeals arising from matrimonial proceedings in the Family Court of the Subordinate Courts. The said s 21 reads:

(1) Subject to the provisions of this Act or any other written law, an appeal shall lie to the High Court from a decision of a District Court or Magistrate's Court in any suit or action for the recovery of immovable property or in any civil cause or matter where the amount in dispute or the value of the subject matter exceeds \$50,000 or such other amount as may be specified by an order made under subsection (3) or with the leave of a District Court, a Magistrate's Court or the High Court if under that amount.

The applicant is the petitioner in DP 939/2000. In this originating summons, he seeks leave to appeal against the decision made by a district judge on 25 October 2000, whereby he was ordered:

- (a) to pay \$3,500 per month as interim maintenance for his three children and \$100 per month for his former wife with effect from 1 October 2000;
- (b) to continue paying the housing loan instalments; and
- (c) to pay costs fixed at \$800.

The district judge made no order for the payment of arrears of \$4,500.

The originating summons has been worded incorrectly as one seeking leave to appeal against the district judge's decision on 13 November 2000 refusing the petitioner leave to appeal to the High Court against the said order of 25 October 2000.

The facts leading to this originating summons

The petitioner and the respondent were married in 1981. They have three children from their marriage.

On 3 October 2000, the petitioner was granted a decree nisi on the ground of the respondent's unreasonable behaviour. The ancillary matters were adjourned to be dealt with in chambers at a later date.

The respondent applied for and obtained the said interim maintenance order on 25 October 2000. On 1 November 2000, the petitioner lodged a notice of appeal against this order but was advised by the Registrar of the Subordinate Courts that the district judge was of the opinion that leave to appeal was required pursuant to s 21 of the Supreme Court of Judicature Act.

The petitioner applied for such leave accordingly. On 13 November 2000, the district judge dismissed that application and refused the petitioner leave to appeal.

On 28 December 2000, the petitioner was granted an extension of time to file a notice of appeal to the High Court against the order of 13 November 2000 refusing him leave to appeal. That notice of appeal was filed on 3 January 2001. On the same day, the petitioner took out the present originating summons in the High Court.

The issues

Two questions arise here:

(1) Is leave of court required under s 21 of the Supreme Court of Judicature Act to appeal from a decision of the subordinate courts in respect of matrimonial matters under Pt X of the Women's Charter (Cap 353, 1997 Ed)?

(2) If the answer to the first question is 'yes', should the High Court grant the petitioner leave to appeal in the circumstances of the case?

My decision

By virtue of the Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order (Cap 322, O 1, 1997 Ed) ('the Transfer Order') issued by the Chief Justice pursuant to s 28A of the Supreme Court of Judicature Act, all proceedings under the present s 59 and Pt X of the Women's Charter (and also the Guardianship of Infants Act) commenced in the High Court on or after 1 April 1996 were transferred to be heard and determined by the district court. Paragraph 3 of the Transfer Order provides that the district court shall have jurisdiction to hear and determine the said proceedings regardless of the monetary amount involved. Paragraph 6 provides that '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'.

The interim maintenance order in question was made pursuant to ss 113 and 127 of the Women's Charter which read:

113 The court may order a man to pay maintenance to his wife or former wife

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(a) during the course of any matrimonial proceedings; or

(b) when granting or subsequent to the grant of a decree of divorce, judicial separation or nullity of marriage.

...

127(1) During the pendency of any matrimonial proceedings or when granting or at any time subsequent to the grant of a decree of divorce, judicial separation or nullity of marriage, the court may order a parent to pay maintenance for the benefit of his child in such manner as the court thinks fit.

(2) The provisions of Parts VIII and IX shall apply, with the necessary modifications, to an application for maintenance and a maintenance order made under subsection (1).

Section 137 of the Women`s Charter provides:

(1) All decrees and orders made by the court in proceedings under this Part shall be enforced, and may be appealed from, as if they were decrees or orders made by the court in the exercise of its original civil jurisdiction.

(2) There shall be no appeal on the subject of costs only.

`This Part` refers to Pt X of the Women`s Charter in which ss 113 and 127 are located. By virtue of the Transfer Order, the definition of `court` in s 92 of the Women`s Charter has been modified to mean a district court and `the court` in s 137 of the Women`s Charter therefore refers to the district court notwithstanding the words `original civil jurisdiction` which are clearly appropriate only for the High Court as the district court has no appellate civil jurisdiction.

Before 14 November 2000, the view generally held was that s 137 of the Women`s Charter and s 21 of the Supreme Court of Judicature Act must be read together so that an appeal emanating from the district court in matrimonial matters is subject to the limitations in s 21 of the Supreme Court of Judicature Act. On 14 November 2000, GP Selvam J delivered his judgment in **Zaleha bte Rahman v Chaytor** [2001] 1 SLR 459.

Chaytor`s case (supra) concerns two spouses who are Muslims. In April 2000, the husband decided to end the marriage by pronouncing a `talak`. The wife did not dispute the pronouncement but disagreed with the reasons cited by him in support thereof and wanted the Syariah Court to rule on the talak. That issue and all ancillary matters were not yet resolved at the time of the hearing before GP Selvam J.

On 16 June 2000, the wife took out a summons under s 69(1) and (2) of the Women`s Charter, asserting that her husband had neglected and refused to maintain her and their four-year-old daughter since May 2000. Section 69(1) and (2) of the Women`s Charter read:

(1) Any married woman whose husband neglects or refuses to provide her reasonable maintenance may apply to a District Court or a Magistrate`s Court

and that Court may, on due proof thereof, order the husband to pay a monthly allowance or a lump sum for her maintenance.

(2) A District Court or a Magistrate`s Court may, on due proof that a parent has neglected or refused to provide reasonable maintenance for his child who is unable to maintain himself, order that parent to pay a monthly allowance or a lump sum for the maintenance of that child.

The husband argued that the wife`s claim for maintenance did not come within the ambit of s 69 of the Women`s Charter as she was no longer a wife. A district judge heard the summons and ordered the husband to pay interim maintenance of \$1,500 per month for the wife and \$1,000 per month for the daughter until the conclusion of the proceedings in the Syariah Court.

The wife filed a notice of appeal against the district judge`s decision but was informed by the Registry of the Subordinate Courts that leave to appeal was required under s 21 of the Supreme Court of Judicature Act. The wife`s solicitors wrote to the Registry, arguing that leave was not required in the case as the amount in dispute far exceeded the minimum of \$50,000 provided in the said s 21. Their reasoning went as follows: the wife`s claim for the maintenance of the daughter was \$2,367 a month and the amount awarded was \$1,000 a month. The difference was \$1,367 per month and, on the basis that the four-year-old daughter would be entitled to maintenance for the next 17 years (when she would reach the age of 21), the `amount in dispute` was therefore \$278,868 (calculated at \$1,367 x 12 months x 17 years).

The district judge desired to hear arguments on this issue. The wife subsequently filed an application seeking leave to appeal to the High Court. The district judge dismissed the application on the ground that leave to appeal was required and that leave would not be granted in the circumstances of the case. The wife then appealed against the refusal of leave to appeal.

On the merits of the application, GP Selvam J disagreed with the district judge and held that leave ought to have been granted. However, the judge went on to say:

12 ... But there is a twist to the whole thing for no leave was required for the wife`s appeal to the High Court. The notice of appeal ought not to have been rejected.

13 When the appeal opened before me I read s 77 of the Charter to counsel before me. This section provides as follows:

(1) Subject to the provisions of this Part and Part VII, an appeal shall lie from any order or the refusal of any order by a District Court or a magistrate`s court under this Part and Part VII to the High Court exercising appellate civil jurisdiction under the provisions of the Supreme Court of Judicature Act (Cap 322).

(2) All appeals brought under this section shall be by way of rehearing and the High Court shall have the like powers and jurisdiction on the hearing of such appeals as the Court of Appeal has on the hearing of appeals from the High Court under the Supreme Court of Judicature Act.

(3) No appeal made under the provisions of this Part and Part VII from any order shall operate as a stay of such order unless the High Court or the District Court or the magistrate's court so directs.

The provision for appeal to the High Court against the maintenance orders has been with us for a very long time. It was included on the Married Women and Children (Maintenance) Ordinance of 1949. It was retained by its successor, the Charter. There was a requirement of \$100 per month before an appeal could be entered. The threshold limit was removed by Act 26 of 1980.

14 'This part' in s 77 is Part VIII which comprises of ss 68 to 79. They deal with maintenance of wife and children. It is necessary now to set parts of the preceding section and the following two sections of the Charter.

The judge then set out ss 76, 78 and 79 of the Women's Charter and continued:

16 I have always understood s 77 of the Charter as conferring unrestricted appellate power to the High Court. Except for matters which are ensnared by 'Subject to the provisions of this Part and Part VII' the appellate power of the High Court under s 77 of the Charter is exclusive.

...

18 The power to entertain such an appeal is unaffected by s 21(1) of the Supreme Court of Judicature Act ('the Judicature Act'). ...

19 Counsel for the husband referred to s 79(2) of the Charter. He said that this section read with the 'Subject to' in s 77 means that appeals are governed by the Rules of Court ('the Rules'). This in turn imports the \$50,000 test.

20 In my judgment there is a fundamental flaw in the husband's contention. In the regime of the law the tail is not permitted to wag the dog. The lower power has no power to overpower a higher power. Rules of Court cannot, accordingly, cut down the power of the High Court to entertain appeals under s 77 of the Charter. The purpose of the O 55C and O 55D of the Rules is to regulate the traffic of appeals to the High Court. Provisions in O 55C and 55D relating to obtaining leave to appeal do not apply to appeals under s 77 of the Charter. They apply only to appeals under s 21 of the Judicature Act. The wife's appeal was not an appeal under s 21 of the Judicature Act. The opening words of s 21 of the Judicature Act make it plain that appeals under s 77 of the Charter are excluded from it. Accordingly the \$50,000 requirement and the rules relating to it do not apply to appeals under s 77 of the Charter.

21 Counsel for the husband next contended that if the monetary limit of \$50,000 did not apply to s 77 of the Charter it will open the flood gates. There are two answers to this concern of the husband. First, the basic concern of matters relating to maintenance of wives and children and family violence is freedom from fear, violence and financial hardship. What is at stake is not just monetary value but values of family life. Appropriate cases deserve the time

and attention of the mature mind of the High Court judge. Sometimes it is the small thing, like the snail in the ginger beer bottle, that makes the smart law. If, therefore, the number of unmerited appeals to the High Court will increase so be it, so that the merited will not be muzzled. The second answer is that the High Court judges have the requisite wits to weed out the undeserved appeals. Section 77 of the Charter has been with us since 1949 and the High Court has not been flooded with appeals under it. This is because the thought of an appeal directs the judge below to decide with thought and thoughtfulness. There is a well-built body of law to sieve out inappropriate appeals.

GP Selvam J concluded from the above analysis that leave to appeal to the High Court was not required.

The case before me also concerns an interim maintenance order for the wife and the children but is one made under ss 113 and 127 instead of s 69 of the Women's Charter. While appeals from decisions made under s 69 are governed by s 77, appeals from those made under ss 113 and 127 fall within the ambit of s 137. Although s 127(2) incorporates Pt VIII, in which s 77 (on appeals) appears, with the necessary modifications, the provision that governs appeals from decisions under ss 113 and 127 should rightly be s 137. It must be borne in mind that s 77 was and still is concerned with appeals to the High Court while s 137 was meant to cover appeals to the Court of Appeal before the Transfer Order.

Following from GP Selvam J's reasoning, if s 77 of the Women's Charter can be read as 'conferring unrestricted appellate power to the High Court', free from the fetters in s 21 of the Supreme Court of Judicature Act, I do not see why s 137 of the Women's Charter cannot be read the same way. 'An appeal shall lie from any order' (s 77 of the Women's Charter) do not differ in substance from 'All decrees and orders ... may be appealed from' (s 137 of the Women's Charter). Section 137 of the Women's Charter does not state that it is subject to other written law while s 21 of the Supreme Court of Judicature Act is so qualified. Section 137 can therefore be construed as conferring a right of appeal independently of and unaffected by s 21 of the Supreme Court of Judicature Act. Such a result will also avert the anomalous situation in which a maintenance order made under s 69 is appealable as of right while another made subsequently in divorce proceedings (which may very well adopt the earlier maintenance order) is appealable subject to a monetary limit.

It is also difficult to justify the quantification of the amount in dispute in maintenance orders by looking at the amount ordered per month without considering the fact that the amount is a recurring obligation which may run for years. It would seem strange that an order for say \$40,000 per month for the next 12 months is not appealable as of right (especially if arrears are ordered to be paid as well) whereas an order for say \$60,000 as a once-only lump sum payment is when the earlier example involves a much higher stake. Indeed someone has suggested tongue-in-cheek that a judge can change his decision from one appealable as of right to one appealable subject to the grant of leave by simply modifying a maintenance order of say \$60,000 **per month** to one of \$2,000 **per day** ! I am using these figures as a mere simplistic illustration of the rather strange result that may arise when computing 'the amount in dispute' in maintenance matters in this manner. I am mindful of course that 'the amount in dispute' has to be considered in the way instructed by the Court of Appeal in **Augustine v Goh Siam Yong** [\[1992\] 1 SLR 767](#).

This decision will not affect matters for which no monetary value can be attached (such as custody of and access to children) but will affect orders pertaining to division of matrimonial assets. Such

orders are appealable as of right under s 137 of the Women's Charter as well. This is not necessarily undesirable nor is it likely to result in a deluge of appeals. Firstly, most orders on division of matrimonial assets are likely to involve an 'amount in dispute' of more than \$50,000 anyway and would therefore be appealable as of right even if s 21 of the Supreme Court of Judicature Act is applicable. Secondly, many appeals on maintenance and/or division of matrimonial assets also involve the question of custody of and access to children (a matter appealable as of right). The district judge hearing such ancillary matters would be looking at the overall picture when deciding on the orders to make. There would necessarily be an interplay of the various ancillary matters. For instance, the spouse to whom custody of the children is given would need to house them and this may result in a division of matrimonial assets that would cater to this need. Similarly, if custody of the children is granted to the husband, there would be no question of paying maintenance to the wife for the children. If the wife appeals against the decision on custody and succeeds, the question of maintenance immediately revives and the High Court would need to consider that question as well in the appeal. Therefore, if leave to appeal is required for the monetary matters and an appeal pertaining to custody and access is to be lodged, the appellant would be in the odd position of having the right to appeal against one part of the district judge's order and having to apply for leave for the other aspects when all the issues are closely interlinked. I understand that the Family Court has sought to address this by not requiring leave to appeal in cases where an appeal is sought against a matter not involving a monetary value together with one involving such.

Counsel for the respondent relies on Supreme Court Practice Direction No 6 of 2000 ('Appeals on Ancillary Matters or Custody Matters from the Family Court to the High Court') issued on 17 August 2000 as further support for her contention that leave to appeal is required here. She points out that para 1 of the Practice Direction states that 'appeals against final orders made by a District Judge in chambers on ancillary matters in divorce proceedings under the Women Charter ... are governed by Order 55C of the Rules of Court' and O 55C makes reference to s 21 of the Supreme Court of Judicature Act. Insofar as this argument seems to be using a Practice Direction to interpret and qualify statutory provisions, I need only repeat GP Selvam J's reminder that 'the tail is not permitted to wag the dog' and his reasoning in para 20 of his judgment (cited earlier). In any event, it is clear from para 2 of the Practice Direction that it was issued 'to facilitate the conduct of appeal hearings' in the High Court and does not purport to state the law on the right of appeal. The reference to O 55C is merely to emphasise that such appeals do not come within O 55D which, if applicable, provides for the record of appeal and other procedural aspects of appeals before the High Court. It is because O 55D is not applicable to the matters listed in the title of Practice Direction No 6 of 2000 that the Practice Direction was issued.

As I have come to the conclusion that leave to appeal is not required in this case, there is no need for me to go into the second question of whether such leave ought to be granted. I made no order as to costs in this originating summons as it concerns a moot point deserving clarification by the High Court. I granted the petitioner an extension of one week to file his notice of appeal against the district judge's decision made on 25 October 2000 and gave him leave to withdraw the appeal against the refusal of leave as it is no longer relevant.

Outcome:

Orders accordingly.