Lee Pauline Bradnam v Lee Thien Terh George
[2006] SGHC 84

Case Number : OS 123/2006

Decision Date : 18 May 2006

Tribunal/Court : High Court

Coram : Yeong Zee Kin AR

Counsel Name(s) : Anamah Tan and Veronica Joseph for the plaintiff; Koh Tien Hua and Tan Shin Yi for the defendant

Parties : Lee Pauline Bradnam — Lee Thien Terh George

18 May 2006 *Judgment reserved.*

AR Yeong Zee Kin:

1. The issue before me is whether an order for periodic maintenance falls within the definition of a judgment within the Reciprocal Enforcement of Commonwealth Judgments Act (RECJA), and is thus registrable under the Act. Having heard submission of counsel, I am of the view that periodic maintenance orders are not registrable or if they are, it is neither just nor convenient to register the periodic maintenance order in this case.

Brief facts

2. The Plaintiff and the Defendants were married in Singapore in 1982; they have 3 children from their marriage. The marriage broke down and the children are now living with the Plaintiff in Australia; the Defendant resides in Singapore.

3. In 2002, the Defendant commenced divorce proceedings in Australia and *decree absolute* was made on 29 June 2003. In respect of ancillary matters, a Child Support Agreement was entered into on 28 August 2003. The Child Support Agreement was registered as an Order of Court on 15 June 2005. Upon its registration, the Family Court of Australia in Melbourne noted:

> … that the parties have entered into a child support agreement pursuant to which the husband pays periodic child support for each of the children in the sum of $24,266.66 per annum together with tuition expenses at Knox Private School and private health insurance at the current rate. Whilst all 3 children are children in respect of whom a child support agreement can operate, the periodic child support is the equivalent of $1,400 per week. As each child ceases to be covered by the child support agreement, the weekly payment of child support will be reduced by the amount of child support previously payable in respect of the child in respect of whom the child support agreement no longer operates. However it is the intention of the parties that, upon the younger two children attaining the age of 17 years, the parties will do all acts and things necessary to consent to an order being made pursuant to Section 66L(1) of the Act which provides that the husband provide periodic child maintenance equivalent to that payable under the child support agreement for that child after the expiration of the child support agreement and notwithstanding that the child has attained the age of 18 years and to enable the child to complete his first degree at a tertiary education institution.

4. Under the Child Support Agreement, the Agreement was to have been registered at a child support agency. However, the agency declined to register the Agreement as the Defendant was not a

resident in Australia for tax purposes at the time the Agreement was entered into.

5. The Defendant breached the Order by failing to pay maintenance for the children; arrears stood at AUD$132,179.28 at the time when the originating summons was filed. As the Plaintiff believed that the Defendant has assets in Singapore, she instructed solicitors to register the Order made by the Family Court of Australia in Singapore under the Reciprocal Enforcement of Commonwealth Judgments Act (RECJA).

Whether maintenance orders are registrable judgments

6. The Minister of Law, via Declaration under Section 5 of the RECJA, has extended the RECJA to the Family Court of Australia. A judgment under the RECJA means:

> any judgment or order given or made by a court in any civil proceedings, … whereby any sum of money is made payable, …

7. Under section 3 of the RECJA, an application may be made and the High Court may, if it is just and convenient for the judgment to be enforced in Singapore, order the judgment to be registered accordingly. There are, however, some restrictions to registration under sub-section (2).

8. For a judgment to be registrable under the RECJA, it has to be for a sum of money that is payable. Drawing an analogy from cases where a foreign judgment is enforced locally under common law, the foreign judgment sought to be registered has to be final and conclusive: *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2001] 3 SLR 418; [2002] SGCA 18. The requirement for final and conclusiveness is also a prerequisite for registration under the RECJA: section 3(2)(e)—

> *Restrictions on registration.*
>
> (2) No judgment shall be ordered to be registered under this section if—
>
> …
>
> (e) the judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment; …

9. Hence, a judgment that is registrable under the Act must be final and conclusive in the sense that no appeal is pending. Put in another way, since only judgments whereby a sum of money is made payable are registrable under the Act, a foreign judgment has to be one for a defined sum and which is payable immediately before it can be considered for registration. Although, to my mind, it is conceivable that a judgment which is for a defined sum payable in defined traunches — where the amount payable and the date payable is clearly defined — may also be registrable.

10. In contrast, an order for maintenance (except for an order for lump sum maintenance payable immediately) is characterised by the fact that the sums due are payable periodically and due only in the future. A plaintiff who has obtained an order for periodic maintenance — as in this case, for $1,400 weekly until the child turns 17 — cannot convert such an order into its equivalent in a lump sum and demand that sum immediately: she has to go before the court that made the periodic maintenance order to vary it, and if it is converted into a lump sum maintenance order, certain discounts would typically be made.

11. This touches on the second characteristic of a periodic maintenance order. It is amenable to

variation when there are changes in the circumstances of the parties involved. Its duration may be extended, for example in a case where periodic maintenance for a child originally ordered until he turns 21 is extended when, upon reaching that age, the child is still undertaking tertiary education and requires maintenance to continue. The quantum may also be varied, for example where a husband falls into impecuniosity and can no longer keep up with the periodic maintenance ordered.

12. Based on these reasons, I do not think that maintenance orders that are not lump sum maintenance orders payable immediately are registrable judgments within the meaning of the RECJA. In the event that I am wrong, I am of the view that it is neither just nor convenient to register maintenance orders that are not payable in a lump sum immediately under the RECJA.

Whether just and convenient to register periodic maintenance orders

13. Moving away from the nature of maintenance orders, I consider also the effect of registration. To do so, I contrast registration of foreign judgments under the RECJA and the Maintenance Orders (Reciprocal Enforcement) Act [MO(RE)A]. The RECJA provides for a straight forward regime of registration and enforcement of the registered foreign judgment as though it was 'a judgment obtained or entered upon … in the registering court': s 3(3)(a) RECJA. The Act provides only for a regime of enforcement and does not empower the registering court to vary the registered judgment: s 3(3) RECJA —

> (3) Where a judgment is registered under this section —
>
> …
>
> (b) the registering court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself, *but in so far only as relates to execution* under this section; … [Emphasis mine.]

14. Registering maintenance orders under the RECJA would therefore only allow enforcement. Any variation would then have to be made in the foreign court that made the order. The varied maintenance order will then have to be registered again for enforcement. What then happens to the first registered maintenance order? The RECJA does not specifically provide for revocation of registered judgments.

15. Contrast this with the MO(RE)A, which provides for a comprehensive system not only for registration and enforcement, but also for variation and revocation of maintenance orders thus registered: ss 8 and 9 MO(RE)A —

> **Enforcement of maintenance order registered in a Singapore court.**
>
> **8.** —(1) A registered order may be enforced in Singapore as if it has been made by the registering court and as if that court has had jurisdiction to make it; and proceedings for or with respect to the enforcement of any such order may be taken accordingly.
>
> …
>
> **Variation and revocation of maintenance order registered in a Singapore court.**
>
> **9.** —(1) Subject to this section, the registering court —
>
> (a) shall have the like power, on an application made by the payer or payee under a

registered order, to vary or revoke the order as if that court had had jurisdiction to make it; and

(b) shall have power to vary or revoke a registered order by a provisional order.

16. The MO(RE)A applies to maintenance orders 'which provides for the periodical payment of sums of money towards the maintenance of any person': s 2 MO(RE)A. It specifically empowers the registering court to vary or revoke registered orders. As I have noted above, the nature of maintenance orders that are not payable in a lump sum immediately are such that they are amenable to variation. Registration of maintenance orders should therefore be under the MO(RE)A — or the older Maintenance Orders (Facilities for Enforcement) Act — instead of under the RECJA.

17. For these reasons, I do not think that registering maintenance orders that are not lump sum payable immediately would be just or convenient under the RECJA.

18. Turning to the peculiar facts of the present case. The maintenance orders were obtained in Australia but not registrable there as the Defendant is not a resident for tax purposes. If that is the case, it would mean that his income is probably derived outside of Australia. Assuming that his income is derived in Singapore (since the Defendant is resident in Singapore), it would be imperative that a foreign maintenance order, if registered and enforced in Singapore, should be capable to variation and revocation. The D's earning capacity would be a very relevant factor in the making of maintenance orders that are payable periodically in the future and the court enforcing it will require flexibility to vary it in response to changes in his financial circumstances. I would expect that the court within the jurisdiction where his income is derived would normally be better placed to make, enforce and vary such periodic maintenance orders.

19. It is unfortunate that tax residency is a relevant factor for registration of the child support agreement with the child support agency in Australia. As a result of her inability to register the child support agreement, the Plaintiff is not able to register the Order under the MO(RE)A through the Ministerial channels prescribed in section 6 of the Act. However, I have also to consider the effect of registering such a judgment for periodic maintenance on the Defendant and the ability of the registering court to vary or revoke the registered judgment in response to changing circumstances of parties in the future. For the reasons set out above, I do not think that it would be just or convenient to register the periodic maintenance order in this case under the RECJA.

Plaintiffs' registration of the Order of the Family Court of Australia relating to the Child Support Agreement is set aside.

Copyright © Government of Singapore.