Ho Kiang Fah v Toh Buan Eileen
[2009] SGHC 19

Case Number : DA 6/2008

Decision Date : 16 January 2009

Tribunal/Court : High Court

Coram : Chan Sek Keong CJ

Counsel Name(s) : The appellant in person; Yap Teong Liang (T L Yap & Associates) for the respondent

Parties : Ho Kiang Fah — Toh Buan Eileen

Family Law

16 January 2009

Chan Sek Keong CJ:

Introduction

1 This was an appeal by Ho Kiang Fah ("the appellant") against the decision of the district judge ("the DJ") in *Eileen Toh Buan v Ho Kiang Fah* [2008] SGDC 191, in which the DJ:

(a) granted a dissolution of the marriage between the appellant and his wife, Eileen Toh Buan ("the respondent"), based on the respondent's claim that the marriage had broken down irretrievably in that the parties had lived apart for a continuous period of at least four years immediately preceding the filing of the divorce suit (see s 95(3)(*e*) of the Women's Charter (Cap 353, 1997 Rev Ed)); and

(b) dismissed the appellant's counterclaim for the marriage to be dissolved on the ground that the marriage had broken down irretrievably in that the respondent had deserted the appellant for a continuous period of at least two years immediately preceding the filing of the divorce suit (see s 95(3)(*c*) of the Women's Charter).

2 Dissatisfied with the DJ's decision, the appellant appealed to this court on the ground that the DJ should have dismissed the respondent's claim and allowed his counterclaim.

The facts

3 The appellant is a retiree. He was formerly a vice-president of a bank. In 1995, he decided to switch his career and become a lawyer. As a result, he was unemployed from 1995 to 1999. His yearly income also dropped from $120,000 in the early 1990s to $24,000 in 2000. Apart from the matrimonial property, the parties co-own another property ("the Parc Oasis property"). The appellant also owns two properties in his own name, in respect of which he has been collecting rent. In his affidavit filed on 9 November 2007, the appellant stated that he had been admitted to the Singapore Bar in 1998.

4 The respondent is currently an assistant vice-president of a bank. From 1995 to 1999, after the appellant left his previous banking job, the respondent provided him with an allowance of $500 every month as well as a supplementary credit card until she left the matrimonial property. Since the appellant's career switch in 1995, the respondent has been paying for the expenses of the parties'

children ("the children"). She has also been making mortgage payments in respect of the Parc Oasis property from her Central Provident Fund account.

5 The respondent moved out of the matrimonial property on 4 July 2002 with the children. She filed divorce proceedings on 13 November 2006, more than four years after the parties' separation. The appellant did not deny that the respondent had lived apart from him for more than four years. His complaint was that the respondent had no justification to leave the matrimonial home; therefore, she had deserted him, and the DJ should have found accordingly and should have allowed his counterclaim.

6 At the trial, the DJ accepted the respondent's testimony. He found that the respondent had reasonable cause to leave the matrimonial home on 4 July 2002 due to the appellant's unreasonable expectation that the respondent would shoulder the family's financial burden as well as the appellant's unreasonable behaviour in physically abusing or threatening the respondent and the children on 9 December 2001 and 3 July 2002. In my view, even though there might have been doubts as to whether the appellant had indeed abused the respondent and the children as alleged, there was no question that the respondent had not deserted the appellant. Accordingly, there was no reason for me to disturb the DJ's findings of fact on this issue.

My decision

7 No legal consequences turned on whether the marriage in this case was dissolved on the ground that it had broken down irretrievably in view of the requisite period of separation stipulated in s 95(3)(*e*) of the Women's Charter having been satisfied (as the respondent contended) or, alternatively, in view of the requisite period of desertion set out in s 95(3)(*c*) of the Women's Charter having been fulfilled (as the appellant alleged). This was a case where the self-esteem of the appellant compelled him to appeal so as to have his version of the breakdown of the marriage (*viz*, that the respondent had deserted him without any justification) vindicated by the court. With respect, the appeal was an exercise in futility as there was no basis on which this court could find fault with the DJ's ruling that the condition set out in s 95(3)(*e*) of the Women's Charter had been satisfied and that the respondent had not deserted the appellant. Regrettably, the appellant found it difficult to understand why that was the case, as evinced by the fact that, after I had dismissed the appeal, he applied (unsuccessfully) to submit further arguments on a ground which was a non-starter (*viz*, that the appeal had been heard in chambers).

Conclusion

8 The appeal was accordingly dismissed with costs to the respondent, which I fixed at $3,000. I also ordered that the release of the security for the respondent's costs of the appeal be worked out between the parties.

Coda

9 At the conclusion of the hearing of this appeal, I informed the appellant that I would give written grounds to explain my decision since he did not appear to have understood the material legal considerations in a case of this nature. In the present case, the respondent was entitled to have her marriage to the appellant dissolved as there had been a continuous period of separation of more than four years immediately preceding the filing of the divorce suit, *even if* the separation had come about because the respondent had deserted the appellant. The alleged matrimonial fault on the part of the respondent could not debar her from the relief which she was entitled to under the law, and the court had a judicial duty to grant her a dissolution of the marriage since she had succeeded in showing that

the condition set out in s 95(3)(*e*) of the Women's Charter had been satisfied. The respondent's said matrimonial fault (if indeed there was any) would only be relevant to the respondent's claims in relation to ancillary matters. I would add that, if the appellant had considered that his ground of divorce should be accorded priority over the ground of divorce advanced by the respondent, he should have taken the initiative to commence divorce proceedings instead of waiting until the respondent had filed the action in the court below and then canvassing his ground of divorce as a counterclaim in that action.