IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2016] SGHCF 14

HCF/District Court Appeal No 49 of 2016
(HCF/Summons No 264 of 2016)

In the Matter of FC/Divorce No 793 of 2015

Between

TQU

… Applicant

And

TQT

… Respondent

JUDGMENT

[Civil Procedure] – [Extension of time]

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TQU
v
TQT

[2016] SGHCF 14

High Court — HCF/DCA No 49 of 2016 (HCF/Summons No 264 of 2016)
Choo Han Teck J
17 October 2016

25 October 2016 Judgment reserved.

Choo Han Teck J:

1 Three wars were fought the day after Carthage and Rome realised that they could not live together side by side. The Punic Wars as they are known lasted more than a century from 261 BCE.

2 This summons arose from the third of three divorce trials in the long drawn matrimonial dispute between the husband and the wife. In this summons, the applicant (husband) seeks an extension of time to file his appellant's case which fell due on 12 September 2016. The applicant (husband) married the respondent (wife) a long time ago on 6 March 1990. They have a daughter who is now 23 years old and two sons who are 19 and 18 years old. In December 2001 the wife filed the first of three divorce suits against the husband. The claim, which was based on the ground of unreasonable behaviour of the husband was challenged by the husband, and after a trial on the merits, the suit was dismissed in May 2005. In December

2010 the wife filed the second divorce action on the ground of four years separation with effect from 17 March 2006 but when the husband challenged the action the wife amended the action and claimed a divorce on the ground of unreasonable behaviour. The second action was also contested and eventually dismissed. The wife then filed the third divorce suit on 26 February 2015 on the ground that they had been separated for four years preceding the divorce application, namely, from 28 June 2010. The husband counterclaimed on two grounds, first, on the ground of unreasonable behaviour on the part of the wife, and secondly, on the ground of desertion. This third divorce action was also contested and the trial lasted six days.

3 The learned district judge allowed the wife's claim for divorce on the ground of a four-year separation. She also allowed the husband's counterclaim for divorce on the ground of desertion, but she dismissed the husband's counterclaim on the ground of unreasonable behaviour. The husband, fearing that the rejection by the learned district judge of the wife's conduct would be prejudicial to him at the ancillary proceedings, intends to appeal the judge's dismissal of that ground but says that he is out of time in filing the appellant's case which was due on 12 September 2016. He filed this application for an extension of time on 9 September 2016 under Rule 834 of the Family Justice Rules 2014 ("FJR"). He claims that he needs a further four to six weeks because he would like to consult a lawyer for the appeal and has been told by the lawyers he has consulted that unless he has an extension of time, they are not able to accept his brief and represent him. The wife objects to this application and claims that the husband is delaying proceedings to deprive her of her share of the matrimonial assets. The ancillary proceedings have not yet begun.

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4 Rule 827 of the FJR states the obligation of the appellant to file and serve his/her case on the respondent:

> **Record of appeal and Appellant's Case**
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> (1) Within one month after service of the notice referred to in rule 826(3), the appellant must —
>
> (a) file the record of appeal, and subject to rule 828, the Appellant's Case referred to in that rule; and
>
> (b) serve a copy each of the record of appeal and the Appellant's Case on every respondent to the appeal or his solicitor.
>
> …
>
> (5) Where an appellant fails to comply with paragraph (1), the appeal shall be deemed to have been withdrawn, but nothing in this rule shall be deemed to limit or restrict the powers of the Family Division of the High Court to extend time.

5 Rule 834 of the FJR provides that the court may grant an extension of time in this case:

> **Extension of time**
>
> **834**. Without prejudice to the power of the Family Division of the High Court under rule 15, to extend the time prescribed by any provision of this Division, the period for filing and serving the notice of appeal under rule 825 may be extended by the Court below on application made before the expiration of that period.

6 In exercising its discretion on whether to grant an application for an extension of time, the court takes into account the following factors:

(a) Length of the delay;

(b) Reasons for the delay;

(c) Merits of the appeal, *ie*, chances of the appeal succeeding if time is extended; and

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(d) Prejudice to the respondent if the application is granted.

7 At the time I heard this application, about five weeks had passed since the appellant's case was due on 12 September 2016 and seven months since the Notice of Appeal was filed on 7 April 2016. This is not an insignificant length of time. I find that the husband's reason for his inability to retain a lawyer to represent him is unconvincing. Having filed the Notice of Appeal on 7 April 2016, the husband had around six months to retain and instruct counsel for the purpose of the appeal.

8 Furthermore, I find that there is little chance that the husband's appeal against the learned district judge's dismissal of the grounds of unreasonable behaviour of the wife would succeed even if time is extended for the husband to file his case. The husband was previously a doctor who ran his own clinic and also operated a bubble tea shop in the same premises as his clinic. The wife is an accountant but had worked as the husband's clinic assistant. In her grounds of decision, the learned district judge summarised the husband's allegations of unreasonable behaviour by the wife as follows:

(a) The husband alleged that the wife complained to the Central Provident Fund ('CPF') Board that the husband did not make CPF contributions to a staff of the clinic and bubble tea shop. The CPF Board fined both husband and wife when it was found that the wife was the one responsible for filing the CPF forms and in charge of paying the staff. In December 2001 the wife resigned from the husband's clinic and complained to the CPF Board that the husband did not pay her CPF contributions. The husband was charged in court. When the CPF found that it was the wife who had completed the forms

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declaring that she had left the clinic, the husband was acquitted by the court.

(b) When the wife was working for the husband's bubble tea shop, she stole medicine from his clinic (which shared premises with the bubble tea shop) and sold them illegally at the bubble tea shop. The wife then complained to the Ministry of Health ('MOH') and the Singapore Medical Council ('SMC') that the husband sold controlled medicine illegally. The husband was charged in court but was acquitted when the court found that it was the wife who sold the medicine at the bubble tea shop without the husband's knowledge.

(c) The wife then complained to the Corrupt Practices Investigation Bureau ('CPIB') that the husband bribed two of his patients to testify for him. She also complained to the police on the ground of extortion when the patients wanted to be paid $3,000 for testifying. After a 15-day trial the husband was acquitted when it was found that the wife had offered the two patients $50,000 if they did not testify.

(d) The wife also complained to MOH and the Health Sciences Authority ('HSA') that the husband illegally imported medicine from Malaysia. MOH and HSA officers raided the clinic but could not find any such medicine. Subsequently, the wife informed the authorities where exactly the medicine could be found. Not only was it in a counter that only the wife had access, but the allegation of illegal importation did not convince the HSA that an offence had been committed by the husband because the costs of the medicine did not justify the transport costs of importation.

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(e) In August 2001, the wife complained to the Ministry of Environment ('MOE') that the bubble tea shop did not display its licence. For this a verbal warning was issued to the husband. The wife then went to the MOE and terminated the bubble tea licence and the husband had to reapply for a new licence. The husband managed to reinstate the license. The wife then complained to the MOH that the bubble tea shop and the clinic were sharing premises, forcing the husband to close down the bubble tea shop.

(f) In April 2002, the wife complained to the police that the husband forged her signature to cash a cheque. The police found that the signature was in fact that of the wife's, and no action was thus taken against the husband.

(g) In September 2003, when the husband was facing the corruption charges, the wife applied for an injunction to freeze his bank account so that he could not afford to engage a lawyer. Her application was dismissed with costs fixed at $300. The husband deducted that sum from the maintenance, but she then applied for enforcement of her maintenance. She had also applied to garnish his bank account for failing to pay her costs in her maintenance appeal. His account was suspended initially but after it was ascertained that the costs was protected by a security payment that was still in the High Court, the assistant registrar reinstated the husband's account.

9 The learned district judge also noted the husband's allegations on the wife's unreasonable behaviour towards the children:

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(a) The wife had complained to the police against the husband for child abuse in June 2004. The police investigated but found no cause for action.

(b) In January 2006, the wife had beaten one of the children so badly the child had to be treated in a hospital, but the husband pleaded with the police not to prosecute the wife.

(c) Sometime in July 2005, the wife returned home one morning and was unable to open the gate. The manner in which she attempted to force it open agitated the family's two Rottweiler dogs and when one of their children (then aged 7) ran out on hearing the wife's shouting, the dogs attacked the child so severely that the child's ear was bitten off. The wife subsequently claimed an increase in maintenance on the ground that eventually the child would require reconstructive surgery. Her application was denied. That decision seemed more inclined against finding merit in the wife's claim for an increase in maintenance than the fact that the child would require surgery in the future.

10 In her grounds of decision, the learned district judge noted the wife's responses to the husband's allegations. In brief, the underlying facts were not denied but the wife denied the inferences and added her own impressions to them. For example, she explained that she reported her husband to the police after the Rottweilers attacked their child on the ground that the dogs' licences were issued in her husband's name. She also claimed that there were complaints by the public against the husband's inability to restrain his dogs. The wife denied being ordered to pay the CPF penalty jointly with the husband but instead said that she paid the penalty out of goodwill to resolve the case amicably. She denied offering a bribe to the two patients, claiming

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that had she done so she would have been charged herself. She could not recall if she reported her husband for illegally importing drugs. She maintains that she had not falsely accused her husband of forging her signature on any cheque. The wife also denies that the children are against her even though the trial judge noted that one of the children was found by the school counsellor to be 'suicidal and murderous'. The husband explained that that child in question wanted to return home to kill the mother (the wife). It also transpired that some years later, the three children testified in the divorce action on behalf of the husband against their mother.

11 The learned district judge considered the evidence and concluded that the husband's ground of unreasonable behaviour had not been proved. The learned district judge noted that the most of the events concerned took place more than 10 years ago before or during the period of reconciliation. The learned district judge also observed that the husband did not file any counterclaims on unreasonable behaviour in the first and second divorce applications by the wife. In fact, it was the husband's case at the present divorce application that between 2010 and 2012, the parties had slept together, had dinners and walks together, and had activities with the children together. Given the circumstances and evidence, I agree with the learned district judge that, strange as it might be, the husband had attempted reconciliation with the wife and therefore could not have found it intolerable to live with her up to immediately prior to the filing of the current divorce application. The husband's claims on the unreasonable behaviour of the wife is insufficient but only insofar as they cannot be used to justify a ground for divorce. The facts, if they are indeed true, remain for consideration if necessary in the proceedings for the post-divorce ancillary orders. For the reasons given by the learned district judge, I think that the appeal will not likely succeed.

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12 There is a point that neither side raised at the hearing before me, but from the court's grounds of decision, it seems that the parties had separated since 28 June 2010, the date the learned district judge also found as the commencement of the wife's desertion. If the operative date was indeed 28 June 2010, the husband's claim was correctly granted but the wife's claim ought to have been dismissed. She should not be granted a divorce based on a four-year separation which is a neutral ground with no adverse inference or finding of fault. Desertion is a fault-based ground. The wife cannot avoid the fault of desertion just because the desertion was long enough to satisfy the four-year time period for the no-fault ground of separation. Desertion is a fault that is redeemed only when the guilty party returns and the other spouse accepts the return; it is not cleansed by the mere passage of time. The wife takes the opposite view (in an email after the hearing), namely, that if the learned district judge granted the divorce on her ground of four-year separation, then she ought not to have granted the husband's claim for desertion. She made this submission even though she has not appealed. This point is not relevant to the husband's application before me but may be material to the husband's concerns regarding the future of those past events.

13 The fact remains that the learned district judge made a finding of fact that the parties separated on 28 June 2010. On that basis and also on the wife's desertion, she granted an interim judgment for divorce. The claims by the husband that the wife had acted unreasonably are neither necessary nor sufficient (because they mostly occurred before the reconciliation period) for him to obtain a divorce since he has already succeeded on the ground of desertion. With the perfect lens of hindsight it is obvious that this marriage was doomed 16 years ago. The parties have now been given a divorce with only the ancillaries to be dealt with. For the purposes of the ancillaries, the

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conduct of both parties may still be relevant and they will have to be assessed by the trial judge for their worth in those proceedings. There is no point to continue with the appeal. The parties ought to proceed to have the ancillary claims tried expeditiously — even the Punic Wars ended finally after the third war.

14 I therefore dismiss the husband's application for an extension of time to file his case for appeal. The parties are to proceed with the ancillary proceedings in the family court. Scipio the Roman general said to Hannibal before the Battle of Zama in October 202 BCE to prepare to fight if he found peace intolerable. Things turned nasty for both Carthaginians and Romans thereafter, but then they had no court to ensure a civil or sensible resolution of their quarrel. Here, the recriminations between the husband and the wife are rife, and although the court will no doubt hear all their claims, it is not bound to allow them to dwell on petty points.

- Sgd -
Choo Han Teck
Judge

Applicant in-person;
Respondent in-person.

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