

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHCR 9

Suit No 37 of 2016 (Summons No 1909 of 2016)

Between

Pereira Dennis John Sunny

... Plaintiff/Respondent

And

Faridah bte V Abdul Latiff

... Defendants/Applicant

JUDGMENT

[Courts and Jurisdiction]–[High Court]–[Jurisdiction]
[Muslim Law]–[Syariah Court]–[Jurisdiction]
[Civil Procedure]–[Stay of Proceedings]
[Civil Procedure]–[Inherent Powers]

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Pereira Dennis John Sunny

v

Faridah bte V Abdul Latiff

[2016] SGHCR 9

High Court — Suit No 37 of 2016 (Summons No 1909 of 2016)
Colin Seow AR
27 May; 16 June 2016

1 July 2016

Judgment Reserved.

Colin Seow AR:

Introduction

1 Summons No 1909 of 2016 (“the Application”) is an application taken out by Faridah bte V Abdul Latiff (“the Defendant”) seeking a stay pursuant to section 17A(3)(a) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (“the SCJA”) of proceedings in High Court Suit No 37 of 2016 (“the Civil Proceedings”) commenced by her husband, Pereira Dennis John Sunny (“the Plaintiff”). At the time of the hearings for the Application, there was a pending Originating Summons No 49735 taken out by the Defendant in the Syariah Court (“OS 49735 (Syariah Court)”) on 29 March 2016, seeking an order for divorce vis-à-vis the Plaintiff.

2 Originally taken out on 6 November 2015 by way of an originating summons but since having been ordered by a Judicial Commissioner on 5

January 2016 to be converted into a writ action, the Civil Proceedings seeks, *inter alia*, declarations by the High Court on the Plaintiff's rightful beneficial shares in respect of four properties held in the parties' joint names. Following the conversion ordered by the Judicial Commissioner, the Plaintiff filed and served his Statement of Claim in the Civil Proceedings on 23 February 2016.

3 The material parts of section 17A of the SCJA which are of key relevance to the Application are reproduced herein below:

Civil jurisdiction — concurrent jurisdiction with Syariah Court in certain matters

17A.—(1) Notwithstanding sections 16 and 17 [which deal with the High Court's general and specific civil jurisdiction], the High Court shall have no jurisdiction to hear and try any civil proceedings involving matters which come within the jurisdiction of the Syariah Court under section 35(2)(a), (b) or (c) of the Administration of Muslim Law Act (Cap. 3) in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law.

(2) Notwithstanding that such matters come within the jurisdiction of the Syariah Court under section 35(2)(d) or (e), 51 or 52(3)(c) or (d) of the Administration of Muslim Law Act, the High Court shall have jurisdiction as is vested in it by any written law to hear and try any civil proceedings involving matters relating to —

- (a) maintenance for any wife or child;
- (b) custody of any child; and
- (c) disposition or division of property on divorce.

(3) Where civil proceedings involving any matter referred to in subsection (2)(b) or (c) and involving parties who are Muslims or were married under the provisions of the Muslim law are commenced in the High Court, the High Court shall stay the civil proceedings —

- (a) involving any matter referred to in subsection (2)(b) or (c), if the civil proceedings are commenced on or after the commencement of proceedings for divorce in the Syariah Court or after the making of a decree or order for divorce by the Syariah Court or on or after the registration of any divorce under section 102 of the

Administration of Muslim Law Act (Cap. 3) between the same parties, unless a Syariah Court commencement certificate in respect of the civil proceedings has been filed with the High Court;

[...]

[emphasis in underlined italics added]

4 Sections 35(2)(d) and 52(3)(d) of the Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) (“the AMLA”) referred to in the provisions cited above, and which deal with the jurisdiction of the Syariah Court, provide as follows:

Jurisdiction

35.—(1) [...]

(2) The [Syariah] Court shall have jurisdiction to hear and determine all actions and proceedings in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law and which involve disputes relating to —

[...]

(d) the disposition or division of property on divorce or nullification of marriage; [...]

[...]

Provisions consequent on matrimonial proceedings

52.—(1) [...]

[...]

(3) The [Syariah] Court may, at any stage of the proceedings for divorce or nullity of marriage or after making a decree or order for divorce or nullity of marriage, or after any divorce has been registered under section 102 before 1st March 2009, on the application of any party, make such order as it thinks fit with respect to —

[...]

(d) the disposition or division or property on divorce or nullification of marriage.

Issues before this court

5 The two primary issues that emerged in the course of counsel’s submissions at the hearings can be summarised as follows:

(a) whether the Civil Proceedings was “commenced on or after the commencement of proceedings for divorce in the Syariah Court”, such that the Civil Proceedings must be stayed pursuant to section 17A(3)(a) of the SCJA; and

(b) if not, whether there is any other basis upon which this court should nevertheless order a stay of the Civil Proceedings.

6 I shall deal with these issues in sequence.

Issue One: whether the Civil Proceedings was “commenced on or after the commencement of proceedings for divorce in the Syariah Court”, such that the Civil Proceedings must be stayed pursuant to section 17A(3)(a) of the SCJA

7 According to the express wording of section 17A(3)(a) of the SCJA (see [3] above), “the High Court *shall* stay the civil proceedings [...] if the civil proceedings are *commenced on or after the commencement of proceedings for divorce in the Syariah Court* [...] between the same parties, unless a Syariah Court commencement certificate in respect of the civil proceedings has been filed with the High Court” (emphasis added).

8 The Defendant’s counsel in his submissions contends that the Civil Proceedings was “commenced on or after the commencement of proceedings for divorce in the Syariah Court”, on the following grounds:

(a) the date of commencement of proceedings for divorce in the Syariah Court was not the date OS 49735 (Syariah Court) was taken out by the Defendant (*ie*, 29 March 2016) (see [1] above), but rather an earlier date on which the Plaintiff had submitted a registration form (“the Registration Form”) to the Syariah Court, purportedly to initiate his own application for divorce vis-à-vis the Defendant at the time. The submission of the Registration Form took place on 28 July 2015, way before the commencement of the Civil Proceedings which, at its earliest, was 6 November 2015 and, at its latest, would be 23 February 2016 (see [2] above) ; and

(b) the Registry of the Syariah Court, in response to a letter by the Defendant’s counsel dated 13 April 2016 requesting to “advise the date where [sic] the parties [...] commenced their divorce proceedings”, had confirmed by way of its letter dated 19 April 2016 stating that “[o]ur records show that [the Plaintiff] submitted the registration form on 28 July 2015”.¹

9 The Plaintiff’s counsel in her submissions argues to the contrary that the correct date of commencement of the Syariah Court divorce proceedings should take reference from the time when OS 49735 (Syariah Court) was taken out, as opposed to the date the Plaintiff submitted the Registration Form to the Syariah Court. In support, the Plaintiff’s counsel drew attention to the standard form adopted by the Syariah Court for the Registration Form, where it included, *inter alia*, the following fields to be completed by the submitting party:²

¹ Defendant’s affidavit dated 19 April 2016, at Tab 1.

² Plaintiff’s affidavit dated 3 May 2016, at pp 14 and 27.

Section C: Marriage Details**27 Reason for filing application with Syariah Court***

| | | | |
|---|-----------------------|---|-----------------------|
| 1 | Marriage Counsel[ing] | 3 | Revocation/Remarriage |
| 2 | Divorce | 4 | Nullity |

[...]

Section H: Marriage Counsel[ing]

[...]

105 **On a scale of 10 to 1, rate your *chances of proceeding with divorce* after attending marriage counselling, with 10 being the Highest and 1 the Lowest.***

[emphasis in bold in original; emphasis in italics added]

10 In particular, the Plaintiff's counsel argues that field number 105 excerpted above does not accord with the Defendant's case that the submission of the Registration Form amounted to a commencement of divorce proceedings in the Syariah Court. The Plaintiff's counsel further alludes to a Syariah Court brochure which stated, *inter alia*, the following:³

How do I commence divorce proceedings?

To commence divorce proceedings, you must file the following documents:

- *originating summons*
- *completed case statement (Form 7 for male plaintiff / Form 8 for female plaintiff)*

Your case statement **MUST** specify the ground or grounds for divorce which you are relying upon (Please see the types of divorce mentioned above). Incompatibility is not a valid ground for divorce.

³ Plaintiff's affidavit dated 3 May 2016, at pp 30-32.

The person who files the originating summons is known as the plaintiff. The other party is known as the defendant. At all court sessions, the plaintiff and the defendant are required to bring their identification cards for verification.

[emphasis in bold in original; emphasis in italics added]

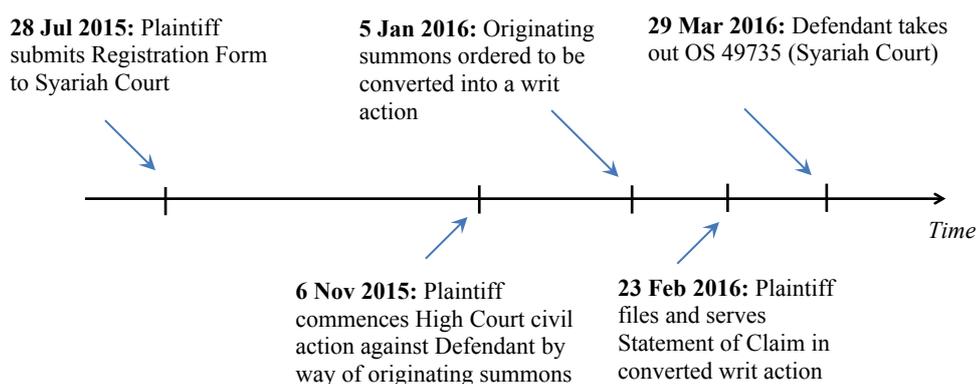
The decision on Issue One

11 I have no doubt given the materials adduced by the Plaintiff’s counsel that the date of commencement of divorce proceedings in the Syariah Court between the parties was the date when OS 49735 (Syariah Court) was taken out by the Defendant (*ie*, 29 March 2016). As regards the letter from the Registry of the Syariah Court (see [8(b)] above), it simply indicated the date when the Plaintiff submitted the Registration Form. Nowhere in the letter did the Registry of the Syariah Court further communicate that the date indicated was to be taken as the date on which proceedings for divorce between the parties commenced. Furthermore, I also note from my perusal of the High Court’s records that the learned Judicial Commissioner, in ordering the conversion of the Civil Proceedings into a writ action (see [2] above), had minuted down his observation that “there is no divorce proceeding pending” as at the date of his order (*ie*, on 5 January 2016). The Judicial Commissioner’s observation is material as it was (a) made about five to six months after the Plaintiff had submitted the Registration Form to the Syariah Court, and (b) expressed in the face of the Defendant’s written submissions tendered for that particular hearing which contended that the parties were already “undergoing divorce proceedings” at the time.⁴ I find no reason at all to contradict or depart from the learned Judicial Commissioner’s observation in this regard.

⁴ Defendant’s Submissions dated 5 January 2016, at [14].

12 Accordingly, I find that the Civil Proceedings cannot be said to have “commenced on or after the commencement of proceedings for divorce in the Syariah Court”. There is therefore no basis for this court to invoke section 17A(3)(a) of the SCJA to order a mandatory stay of the Civil Proceedings in the present case.

Diagram 1:



13 For completeness, it should also be mentioned that section 17A(3)(b) of the SCJA, which deals with stay of High Court civil proceedings where the proceedings were commenced *before* Syariah Court divorce proceedings are commenced, does not apply to the present situation because its scope is limited only to matters involving child custody:

Civil jurisdiction — concurrent jurisdiction with Syariah Court in certain matters

17A.—(1) [...]

(2) Notwithstanding that such matters come within the jurisdiction of the Syariah Court under section 35(2)(d) or (e), 51 or 52(3)(c) or (d) of the Administration of Muslim Law Act, the High Court shall have jurisdiction as is vested in it by any written law to hear and try any civil proceedings involving matters relating to —

- (a) maintenance for any wife or child;
- (b) custody of any child; and

(c) disposition or division of property on divorce.

(3) Where civil proceedings involving any matter referred to in subsection (2)(b) or (c) and involving parties who are Muslims or were married under the provisions of the Muslim law are commenced in the High Court, the High Court shall stay the civil proceedings —

[...]

(b) involving any matter referred to in subsection (2)(b), if proceedings for divorce are commenced in the Syariah Court or a decree or order for divorce is made by the Syariah Court or a divorce is registered under section 102 of the Administration of Muslim Law Act between the same parties after the commencement of the civil proceedings, unless a Syariah Court continuation certificate in respect of the civil proceedings has been filed with the High Court.

[emphasis in underlined italics added]

Issue Two: whether there is any other basis upon which this court should nevertheless order a stay of the Civil Proceedings

14 The enquiry does not simply end upon the determination of Issue One in the Plaintiff’s favour. In accordance with section 17A(3)(a) of the SCJA, no mandatory stay of civil proceedings will be granted if the conditions set out therein are not met. But neither the express provisions of the SCJA nor those of the AMLA go further to preclude the court from exercising its residual power to grant a *discretionary* stay in appropriate cases. In this regard, it is common ground between the parties in the Application that such residual power, if called upon, could potentially be exercised pursuant to O 92 r 4 of the Rules of Court (Cap 322, R 5, 2007 Rev Ed) (“the ROC”) which is applicable to civil court proceedings:

Inherent powers of Court (O. 92, r. 4)

4. For the avoidance of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make *any order* as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[emphasis added]

15 The parties, however, disagree with each other as to whether the circumstances of the present case justify the invocation of the court’s “inherent powers” to order a discretionary stay of the Civil Proceedings. Arguing for the grant of such a stay, the Defendant’s counsel maintains, *inter alia*, several points of contention which may be summarised as follows:⁵

(a) the continuation of the Civil Proceedings is an abuse of court process, in that the Plaintiff has simultaneously commenced this proceedings as well as the divorce proceedings via the Registration Form submitted to the Syariah Court on 28 July 2015 “with clear knowledge that in the course of a divorce, other ancillary matters including the disposition and division of matrimonial properties will also be dealt with by the Syariah Court, without the need for intervention by the civil courts”;

(b) it is vexatious for the Plaintiff “to bring two actions where one will do” (*ie*, the Plaintiff initiated divorce proceedings in the Syariah Court on 28 July 2015 and subsequently commenced the Civil Proceedings in the High Court);

(c) although the proceedings for divorce in the Syariah Court and the Civil Proceedings are two separate and distinct actions in two different courts, the Civil Proceedings “may still be construed as an abuse of process as the subject matter which is to be determined is one and the same, *i.e.* parties’ respective interests on the matrimonial properties”;

⁵ Defendant’s Further Submissions dated 31 May 2016, at pp 9-11.

(d) as Muslim law principles will not be applied by the High Court in the determination of interests in matrimonial properties between parties who are Muslims or who were married under the provisions of Muslim law, allowing the Civil Proceedings to continue “would be against Parliament’s intention to empower the Syariah Court to have exclusive jurisdiction over divorce matters involving Muslims”; and

(e) refusing the grant of a stay of the Civil Proceedings “may bring forth a worrying precedent in that Muslims may now have a separate avenue to decide on the division of their interests in matrimonial properties upon divorce, without having regard to the considerations of the Syariah court, which is a clear intrusion of its powers, as well as the contravention of the exclusive-jurisdiction-provisions under the AMLA”.

16 The Plaintiff’s counsel, on the other hand, argues that there should not in any event be a discretionary stay of the Civil Proceedings for reasons which are summarised as follows:⁶

(a) the Defendant has demonstrated bad faith in taking out the Application for a stay after having “fully participated” in the Civil Proceedings to the point where it is effectively now ready for trial;

(b) section 35A of the AMLA (see [20] below) clearly envisages that civil proceedings in the High Court involving the disposition or division of property on divorce can continue without “any permission from the Syariah Court”, where the High Court proceedings was

⁶ Plaintiff’s Further Submissions dated 31 May 2016, at pp 4-10.

commenced *before* proceedings for divorce are commenced in the Syariah Court;

(c) the Defendant’s concerns with the concurrent jurisdiction of the High Court over the present underlying dispute are unfounded given that the Defendant has to date undisputedly yet to serve her papers in OS 49735 (Syariah Court) on the Plaintiff; and

(d) the circumstances of the present case do not fulfil the touchstone of “need” such as to warrant the invocation of the court’s “inherent powers” to stay the Civil Proceedings (see *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821 at [27] (“*Wee Soon Kim*”) – a Court of Appeal decision cited and relied upon by both counsel in the course of their submissions in the present case).

The decision on Issue Two

17 The Defendant’s arguments relating to abuse of court process and vexation (see [15(a)]-[15(b)] above) are fundamentally premised on her case that Syariah Court divorce proceedings were commenced on 28 July 2015. As I have held at [11] above, this is an incorrect position to take in the present case. The facts as determined show that the proceedings for divorce only commenced when the Defendant herself later took out OS 49735 (Syariah Court) on 29 March 2016 (see Diagram 1 at [12] above). These arguments therefore fall by the wayside.

18 With regard to the Defendant’s contention in [15(c)] above, this is essentially an argument of duplicity of proceedings between a civil court and the Syariah Court. In the parliamentary debates on the Administration of Muslim Law (Amendment) Bill (No 18 of 1998) (“the Bill”), the Minister who

moved the Bill explained the rationale behind the proposed amendments formally conferring the High Court with concurrent jurisdiction over certain matters that may be heard by the Syariah Court, as follows (see *Singapore Parliamentary Debates, Official Report* (30 June 1998) vol 69 at col 443 (Abdullah Tamugi, Minister for Community Development and Minister-in-charge of Muslim Affairs)):

Let me reiterate that this Bill seeks to enable established practices which have worked satisfactorily to continue. What the Bill proposes is that, as a base, the Syariah Court would have jurisdiction over all matters presently within its jurisdiction where the parties are Muslims or were married according to Muslim law. However, parties can agree to go to the Civil Courts for disputes over maintenance, custody of children and division of matrimonial property. Where there is no agreement, a Muslim party can only go to the Civil Courts if he first obtains leave from the Syariah Court. A grant of such leave by the Syariah Court can be challenged. Ultimately, the Syariah Court's Appeal Board will decide on the issue. To avoid duplicity of proceedings, the Bill provides that where one court has jurisdiction over a matter, the other court will cease to have any jurisdiction over that matter.

19 I consider it important to state my respectful view that one of the key (and perhaps quite fairly unspoken) principles of interpreting parliamentary debates reports is that the reader must always be open to appreciate that speeches made in Parliament are often – and indeed usually necessarily – pitched at a certain level of generality given the limited time within which Parliament must hope to discuss and debate important issues of law, policy and governance optimally. The legislative amendments flowing from the Bill under consideration in the present case is no exception, all the more so given that the Bill supplements and the Act supplements surrounding the Bill clearly and unambiguously demonstrate that, at the granular level of the legislative amendments, duplicity of proceedings between the High Court and the Syariah Court is precluded for several save for one specified category of matters. This ‘excepted’ category is that which precisely pertains to “disposition or division

or property on divorce”, where High Court civil proceedings were commenced *before* Syariah Court divorce proceedings are commenced.

20 Perhaps the clearest testament and illustration of this is manifested in the juxtaposition of subsection 35A(1) with subsection 35A(2) in the AMLA. Both of these provisions were, among others, introduced to the AMLA following the passing of the Bill:

Leave to commence or continue civil proceedings involving disposition or division of property on divorce or custody of children

35A.—(1) Any person who, *on or after the commencement of proceedings for divorce in the [Syariah] Court* or after the making of a decree or order for divorce by the [Syariah] Court or on or after the registration of a divorce under section 102, *intends to commence civil proceedings* in any court involving any matter relating to ***the disposition or division of property on divorce or custody of any child*** where the parties are Muslims or were married under the provisions of the Muslim law, *shall apply to the [Syariah] Court for leave to commence the civil proceedings.*

(2) *Where proceedings for divorce are commenced in the [Syariah] Court* or a decree or order for divorce is made by the [Syariah] Court or a divorce is registered under section 102 *after civil proceedings between the same parties are commenced* in any court involving any matter relating to ***the custody of any child***, any party who intends to continue the civil proceedings *shall apply to the [Syariah] Court for leave to continue the civil proceedings.*

[...]

[all emphasis added]

21 In the light of the above legislative context, the Defendant’s suggestion that it may be an “abuse of process” that the subject matter to be determined between the Civil Proceedings and Syariah Court proceedings “is one and the same” therefore cuts no ice since the legislature had by legislative drafting clearly allowed an ‘excepted’ category of matters (*viz.* the “disposition or division or property on divorce”) to still hold in spite of its intention to apply a

general policy of non-duplicity of proceedings vis-à-vis matters falling within the concurrent jurisdiction of the High Court.

22 This leads me to the Defendant’s contentions in [15(d)] and [15(e)] above, which are essentially arguments of exclusivity of the Syariah Court’s jurisdiction. It is true that the High Court will not apply principles of Muslim law in the determination of interests in matrimonial properties between parties who are Muslims or who were married under the provisions of Muslim law (see section 17A(7) of the SCJA which provides that “the High Court, in exercising its jurisdiction or powers under [section 17A(2) of the SCJA], shall apply the civil law”). However, it would be a mistake in my view to argue that continuation of the Civil Proceedings “would be against Parliament’s intention to empower the Syariah Court to have exclusive jurisdiction over divorce matters involving Muslims”. That the High Court has concurrent jurisdiction over certain matters with the Syariah Court is to me beyond argument, following the 1999 legislative amendments to the SCJA which expressly conferred on the High Court the jurisdiction to hear and try any civil proceedings involving, *inter alia*, the “disposition or division of property on divorce”. In fact, one might even consider this point to have become so trite that one needs to look no further than two cases recently decided at the High Court level in this regard: see *TMO v TMP* [2016] 2 SLR 1198 at [6]-[10] and *Mohamed Shariff Valibhoy and others v Arif Valibhoy* [2016] 2 SLR 301 at [87]-[89].

23 In any case, even if the concern underlying the Defendant’s contentions in [15(d)] and [15(e)] above is to be understood as a concern about having conflicting outcomes in the High Court and the Syariah Court in the “disposition or division of property on divorce”, it is doubted whether such concern realistically rises to such a level as to justify a stay of the Civil

Proceedings in the present case. Returning to the parliamentary debates on the Bill, the concern regarding any potential conflicting outcomes between the two courts was specifically addressed by the speakers who rose in support of the Bill. Then Senior Minister of State for the Environment Mr Sidek Bin Saniff said in Parliament (see *Singapore Parliamentary Debates, Official Report* (15 April 1999) vol 70 at col 1261 (Sidek Bin Saniff, Senior Minister of State for the Environment)):

Yes, there were concerns expressed on the question of AMLA proposing to allow the Civil Courts to hear ancillary matters on divorce. *True, there are areas where the Civil Courts handling ancillary divorce matters could end up unIslamic in nature, but as explained by Minister Abdullah, they are marginal and there will be sufficient safeguards to avoid such pitfalls.* Meanwhile, there is a lot more to gain when Muslim Singaporeans are allowed to benefit from vast state resources available from the Civil Courts. [emphasis added]

24 Then nominated Member of Parliament Mr Zulkifli Bin Baharudin shared the same view (see *Singapore Parliamentary Debates, Official Report* (15 April 1999) vol 70 at col 1262 (Zulkifli Bin Baharudin, Nominated Member of Parliament)):

Many Singaporeans may be unaware and ignorant of the fact that whenever a case involving matrimonial property and custody is being decided in court and given wide publicity in the press, there is great anxiety and apprehension amongst the Malay-Muslim population because of the concern that the decisions taken by the Civil Court may be in conflict with Islam. *Many Muslims have the perception that there are wide differences between Muslim and civil laws although, in actual fact, there are only slight, if any, differences between Syariah and civil laws relating to the maintenance, custody and division of property on divorce.* [emphasis added]

25 Furthermore, speaking on the Select Committee's report on the Bill, then Minister for Community Development and Minister-in-charge of Muslim Affairs Mr Abdullah Tamugi took pains to put concerns regarding potential conflicting outcomes between the two courts to rest by explaining as follows

(see *Singapore Parliamentary Debates, Official Report* (15 April 1999) vol 70 at col 1249 and 1270 (Abdullah Tarmugi, Minister for Community Development and Minister-in-charge of Muslim Affairs)):

[...] [T]he [Select] Committee finds little cause for concern over possible conflict between Civil and Syariah laws if ancillary matters were heard in the Civil Courts. Some representors, for example, were particularly concerned over how Civil law would apply to disputes on the custody of Muslim children. The [Select] Committee consulted the Attorney-General's Chambers, Muslim lawyers who practise in civil courts and Syariah Court and MUIS and found that there are no differences in basic principles between Syariah law and the Guardianship of Infants Act, as both consider the welfare of the child to be of paramount importance. The AMLA, in addition, also specifically provides for the Civil Courts, in cases where religious issues could be a consideration, to seek advice from the Legal (or Fatwa) Committee of MUIS.

[...]

The Bill has gone through extensive consultations, study and discussions by individuals, organisations and experts and among the Malay MPs and the institutions concerned. I accept that not everyone would accept every amendment to AMLA. Indeed, I think it is unreasonable for us to expect this. But I am, Sir, comforted by the fact that almost everyone agrees that, as a whole, the amendments serve to strengthen the Syariah Court and also MUIS, the two important institutions to Muslims here. [...]

26 Indeed, in my respectful view, should there ever come a point in time in any civil proceedings when the High Court hearing a matter involving the “disposition or division of property on divorce” finds it appropriate to consider any principle of Muslim law, there is every reason and confidence in our system to believe that the High Court, having as it must the cognizance of the potential sensitivities involved, will fully avail itself of any opportunity as permitted by law to be apprised of the relevant principle of Muslim law in order to arrive at a more enlightened decision applying the civil law. Such an approach conceivably can be undertaken pursuant to section 32(7) of the AMLA which provides as follows:

If in any court any question of the Muslim law falls for decision, and such court requests the opinion of the Majlis on the question, the question shall be referred to the Legal Committee [of the Majlis] which shall, for and on behalf and in the name of the Majlis, give its opinion thereon in accordance with the opinion of the majority of its members, and certify such opinion to the requesting court.

27 For the reasons above, I therefore find that the submissions made on behalf of the Defendant are not compelling enough to move this court to order a discretionary stay of the Civil Proceedings pursuant to its “inherent powers” under O 92 r 4 of the ROC, having regard to the touchstone of “need” laid down in *Wee Soon Kim* (see [16(d)] above). This failure on the part of the Defendant is itself sufficient for me to dispose of Issue Two without the need to rule on the merits of the Plaintiff’s allegation of bad faith made against the Defendant (see [16(a)] above).

28 For completeness, I consider it useful to also state for the record that in arriving at my decision on Issue Two, I have carefully considered and dismissed the notion that the expression “disposition or division of property *on divorce*” (emphasis added) in section 17A(2)(c) of the SCJA means that the High Court can only exercise its civil jurisdiction over matters involving disposition or division of property *after* a divorce is ordered or registered pursuant to the provisions of the AMLA. Although none of the parties in the present case appears to have suggested so, such a strict interpretation of the expression cannot in my opinion be sustainable. This is because the same identical expression which also appears in section 52(3)(d) of the AMLA – a provision in relation to which the High Court has concurrent jurisdiction – does not bear out such a narrow and restricted meaning at all:

Provisions consequent on matrimonial proceedings

52.—(1) [...]

[...]

(3) The [Syariah] Court may, at any stage of the proceedings for divorce or nullity of marriage or after making a decree or order for divorce or nullity of marriage, or after any divorce has been registered under section 102 before 1st March 2009, on the application of any party, make such orders as it thinks fit with respect to —

(a) the payment of emas kahwin and marriage expenses (hantaran belanja) to the wife;

(b) the payment of a consolatory gift or mutaah to the wife;

(c) the custody, maintenance and education of the minor children of the parties; and

(d) the disposition or division of property on divorce or nullification of marriage.

[emphasis in underlined italics added]

Conclusion

29 In conclusion, I find that there can be no mandatory stay of the Civil Proceedings given that the facts of the present case do not fall within the scope of section 17A(3)(a) of the SCJA. Neither is a discretionary stay of the Civil Proceedings pursuant to O 92 r 4 of the ROC justified given the absence of compelling reasons offered by the Defendant in the present case. The Application must therefore be dismissed.

30 I will hear the parties on the issue of costs.

Colin Seow
Assistant Registrar

Abdul Rahman Bin Mohd Hanipah (Abdul Rahman Law Corporation) for the defendant/applicant;
Chong Xin Yi (Ignatius J & Associates) for the plaintiff/respondent.
