

ABR v ABS
[2009] SGHC 196

Case Number : D 1701/2008, RAS 40/2009

Decision Date : 31 August 2009

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Lee Yuk Lan (Benedict Chan & Co) for the appellant/plaintiff; Ranjit Singh (Francis Khoo & Lim) for the respondent/defendant

Parties : ABR — ABS

Civil Procedure – Stay of proceedings

31 August 2009

Tan Lee Meng J:

1 The appellant, [ABR], appealed against the order made by District Judge Doris Lai on 7 April 2009 that the divorce proceedings instituted by him in Singapore be stayed for a period of four months from the date of the order. The purpose of the stay of four months was to enable his wife, [ABS], to take further steps in relation to the divorce proceedings instituted by her in India, failing which [ABR] is at liberty to apply for leave to proceed with the divorce proceedings in Singapore.

2 [ABR] and [ABS] were married in [C], India, on 27 February 2002 in accordance with the provisions of the Hindu Marriages Act 1955. As [ABR], a Singapore permanent resident, was then working in Singapore, he and his wife came to Singapore soon after the marriage. [ABS] became a Singapore permanent resident in September 2002. The couple purchased a Housing and Development Board ("HDB") flat and their only child, a daughter named [B], was born in [C] on 1 October 2002.

3 According to [ABS], their marriage faced problems soon after the couple came to Singapore. Various accusations were hurled by [ABS] and [ABR] against each other and it serves no purpose at this juncture to consider them. What needs to be noted is that after the couple went to India in November 2005 to attend the wedding of [ABS]'s brother, [ABS] remained in India with her daughter, [B].

4 In March 2006, [ABR] commenced proceedings in India for the restoration of conjugal rights under the Indian Hindu Marriage Act 1955.

5 One month later, in April 2006, [ABS] commenced divorce proceedings in Singapore (D 1954/2006/F). At that time, [ABR], who was of the view that India was the more appropriate forum for resolving his matrimonial problems, filed an application for a stay of the divorce proceedings in Singapore on the ground that he had a pending application before the [C] court for the restoration of conjugal rights. However, his application for a stay of the Singapore proceedings was dismissed with costs by the District Court on 17 August 2006.

6 After succeeding in fending off [ABR]'s application for a stay of the Singapore divorce proceedings, [ABS] did not proceed with her case diligently. According to her, she was in no position to proceed with her divorce proceedings in Singapore timeously as she was living with her parents in [C]. After [ABS] and her lawyer failed to appear for a pre-trial conference, her divorce proceedings in Singapore were struck out on 7 July 2007.

7 Four months later, [ABS] commenced divorce proceedings in [C], India on 12 November 2007.

8 Subsequently, on 9 April 2008 [ABR] commenced divorce proceedings in Singapore. This time round, it was [ABS] who applied to stay the Singapore proceedings on the ground that India is the more appropriate forum.

9 As for whether an action in Singapore should be stayed on the ground that there is a more appropriate forum, in *Brinkerhoff Maritime Drilling Corp v PT Airfast Services Indonesia* [1992] 2 SLR 776, Chao Hick Tin J, who delivered the judgment of the Court of Appeal, stated at [35] as follows:

Lord Goff, who delivered the judgment of the House in [*Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460], to which the other four Law Lords agreed, restated the law ... which is summarized in the third cumulative supplement to *Dicey & Morris on Conflict of Laws* (11th Ed) at para[s] 393-395 as follows:

- (a) the basic principle is that a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, ie in which the case may be tried more suitably for the interest of all the parties and the ends of justice; ...
- (d) the court will look to see what factors there are which point to the direction of another forum, as being the forum with which the action has the most real and substantial connection, eg factors affecting convenience or expense (such as availability of witnesses), the law governing the transaction, and the places where the parties reside or carry on business;
- (e) if at that stage the court concludes that there is no other available forum which is clearly more appropriate it will ordinarily refuse a stay;
- (f) if there is another forum which *prima facie* is clearly more appropriate the court will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should not be granted, and, in this inquiry, the court will consider all the circumstances of the case. But the mere fact that the plaintiff has a legitimate personal or juridical advantage in proceeding in England is not decisive; regard must be had to the interests of all the parties and the ends of justice.

10 It is also worth noting that in *Peters Roger May v Pinder Lillian Gek Lian* [2006] 2 SLR 381, V K Rajah J noted at [20] as follows:

A court has to take into account an entire multitude of factors in balancing the competing interests. The weightage accorded to a particular factor varies in different cases and the ultimate appraisal ought to reflect the exigencies dictated by the factual matrix. Copious citations of precedents and *dicta* are usually of little assistance and may in reality serve to cloud rather than elucidate the applicable principles.

11 Compared to some other applications for a stay of proceedings, the present case is quite uncomplicated. Indeed, it is quite interesting that [ABR], who had wanted the divorce proceedings instituted by [ABS] in Singapore in 2006 to be stayed on the ground that India is the more

appropriate forum, is now arguing that Singapore is the more appropriate forum. On the other hand, [ABS], who had taken the position in 2006 that Singapore was the more appropriate forum for her divorce proceedings is now arguing that India is a more appropriate forum than Singapore.

12 [ABS]'s counsel, Mr Ranjit Singh ("Mr Singh"), urged the court to note that by the time [ABR] had commenced divorce proceedings in Singapore on 9 April 2008, [ABS] had already commenced divorce proceedings in India on 12 November 2007, almost five months earlier. He also pointed out that although both parties are Singapore permanent residents and [ABR] is working in Singapore, they and their only child, [B], are Indian citizens. Furthermore, both [ABS] and [B] now live in India and [B] is presently being educated in India. The amount of maintenance to be awarded to [ABS] and [B] must also be considered in the context of the standard of living in India. Mr Singh submitted that this and issues relating to care and custody of [B] and access to [B] by the parent not having custody are best left to the Indian courts. He referred to *Mala Shukla v Jayant Amritanand Shukla* [2002] 3 SLR 295, where Woo Bih Li J stated at [55] and [56] as follows:

[55] As regards custody of and access to the children, they are children of Indian citizens and are residing in India. India is the most appropriate forum to make orders in respect of them.

[56] Even for maintenance, while a court may wish to consider the previous standard of living of the family in Singapore, it may also want to consider the cost of living at the place where the mother and children are at present residing.

13 One connection with Singapore is the couple's HDB flat, which is presently occupied by [ABR]. An Indian court can deal with the division of this matrimonial asset with no difficulty. It is worth noting that in *Low Wing Hong Alvin v Kelso Sharin Leigh* [2001] 1 SLR 173, Lee Seiu Kin JC rightly noted at [21] that:

"It is more important that the same court consider and decide these matters [meaning the divorce and ancillary matters such as custody and access] than to divide the issues to be decided in separate courts simply because the assets are in another jurisdiction".

14 After taking all the circumstances into account, I had no doubt that India is, without more, the more appropriate forum and that the District Judge's order that the Singapore proceedings be stayed for merely four months to enable [ABS] to take further steps in the divorce proceedings in India is fair and should be upheld. Indeed, the period of four months expires a few days after the hearing of this appeal. I thus dismissed [ABR]'s appeal with costs.

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