

Tan Sue-Ann Melissa (m.w.) v Lim Siang Bok Dennis
[2003] SGHC 295

Case Number : Div P 958/1998, RAS 720069/2003
Decision Date : 27 November 2003
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : S Thulasidas (Ling Das and Partners) for appellant/respondent; Lawrence Fong Kok Liong (Lawrence Fong and Associates) for respondent/petitioner
Parties : Tan Sue-Ann Melissa (m.w.) — Lim Siang Bok Dennis

1 This was an appeal against the decision of the District Judge who dismissed the respondent's application for an order that he ceased paying the maintenance of \$2,000.00 per month payable by him to the petitioner, his former wife, pursuant to the consent Order of Court dated 24 April 2002. In the Notice of Appeal, which I heard, he made the same application for cessation of the payment of maintenance. Alternatively, he asked that the sum of monthly maintenance be reduced to \$500.00.

2 At the conclusion of the hearing of the appeal, it was clear that both parties had fallen upon bad times. On the evidence, the respondent could only afford to pay \$1,100.00 per month as maintenance. The petitioner had tried to improve her earnings, but her business attempts had not been successful. I indicated that she should find employment. She has filed a notice of appeal. I set out the circumstances and the reasons for the my orders.

Background

3 The parties were married on 17 May 1990. There are no children of the marriage. On 30 July 1998 the marriage was dissolved.

4 Although the respondent had agreed to pay maintenance of \$2,000.00 a month, it was clear that his agreement was no reflection of his earning capacity. He had agreed as part of the global settlement of the ancillary issues of maintenance, arrears of maintenance and division of matrimonial property. In his solicitors' letter of 22 April 2002 it was stated the respondent's agreement to pay \$2,000.00 p.m. "was not to be regarded as a reflection of (the respondent's) earning capacity or income" but "shall be regarded as a sum (the respondent) was prepared to pay towards a global settlement of this matter."

5 The respondent, an advocate and solicitor, was earning about \$7,000 per month in January 1999. Unfortunately, he sustained a serious back injury and was operated on in October 1999. He was unemployed up to August 2000. In September 2000, he started work at Earth Essence Holdings Pte Ltd at a gross salary of \$4,000.00. His take-home pay was \$3,200.00. By January, 2002, his monthly salary was \$5,000.00. Unfortunately, the company did badly. In January, 2002 the respondent had to leave his employment. He was jobless for 2 months.

6 At the time of the consent order on 24 April 2002, the respondent had resumed the practice of law in M/s Ling Das & Partners at a pay of \$3,000.00 a month. He entertained the hope that his income would improve substantially so that he could continue to meet his commitment for maintenance. He explained that owing to the September 11 crisis, SARS and the poor economic situation, he could not generate the income. Further, his performance was affected by his back injury. He worked on the average 3 to 4 days. He could not work full time.

7 The respondent struggled to meet the monthly maintenance payments. To be up to date in

his payment of arrears of maintenance, he borrowed from the partners of his law firm. It was confirmed in evidence that the partners of the law firm had lent him \$28,000.00 in total to help him pay the maintenance. On his income of \$3,500.00 per month, which he was receiving during the hearing of the appeal, he said it was not possible for him to pay \$2,000.00 per month.

8 On the evidence, the respondent is indebted to credit card companies and to the law firm the sum of \$88,062.88.

9 The petitioner has a small annual income. She runs a small business. She breeds champion dogs and sells small quantities of paraphernalia and bric-a-brac for dogs. She stated that her monthly expenditure at all material times has been \$2,215.00. Of the expenses, the bulk was made up of rental at \$1,215.00 and her monthly food bills amounted to about \$600.00. It was argued on her behalf that the consent order was made 13 months earlier and there had not been any material change of circumstances to warrant any variation of the consent order for maintenance.

10 I was satisfied that the respondent had, out of the best of intentions, wrongly anticipated that his income would improve, after his injury was over and after he resumed his practice in which he had earned about \$7,000.00 per month. His assumptions, and his optimistic forecast, were made known to the petitioner before the consent order was made.

11 Where the assumptions of the earning capacity made by the respondent, which he in turn made known to the petitioner, proved to be unattainable in the months following the consent order, despite the reasonable exertions of the respondent, it seemed to me that the course of events amounted to a change in material circumstances within the meaning of section 118 of the Women's Charter. I was satisfied that he had with the best intentions in the world miscalculated what he could earn on his return to the practice of law and made a commitment which he could not later fulfilled despite the best efforts from him. He was simply not in a position to pay the maintenance at \$2,000.00 per month.

12 I also indicated that the petitioner had to knuckle down and find some gainful employment. She might have to trim her expenses, especially the matter of the high rental.

13 In the circumstances, I made the orders I did

Appeal allowed in part