

Ishwaribai Ramchand Daswani v Mohanlal Ramchand Daswani
[2009] SGHC 65

Case Number : Suit 39/2007, SUM 3252/2008
Decision Date : 23 March 2009
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Tan Yew Cheng (Leong Partnership) for the plaintiff; Joseph Chen and Joseph Tan (Joseph Chen & Co) for the defendant
Parties : Ishwaribai Ramchand Daswani — Mohanlal Ramchand Daswani

Civil Procedure

23 March 2009

Lee Seiu Kin J :

1 This is an application by the defendant to set aside orders 2 and 3 of the following order of court made on 24 July 2007 ("the Order") by Lai Siu Chiu J ("Lai J"):

"**UPON THE TRIAL** coming for hearing this day **AND UPON HEARING** Counsel for the Plaintiff and the Defendant, **BY CONSENT IT IS ORDERED** that:-

1. The Defendant shall pay the Plaintiff 95% of the current open market value of the property at 51, Simei Rise, #05-43 Savannah Park Condominium, Singapore within 90 days from the date of this Order;
2. The Defendant shall within 90 days account to the Plaintiff for all her assets including but not limited to monies in banks, cash kept in the house safe at the Savannah Park property, gold coins and gold bars;
3. The Defendant pays to the Plaintiff all sums found to be due to her upon the taking of such account;
4. Costs of the proceedings to the Plaintiff to be taxed, unless otherwise agreed;
5. Parties have liberty to apply in relation to Orders 1 and 2 above."

[emphasis in original]

2 It should be noted at the outset that the Order is expressed to be made by consent. At that time, the defendant was represented by Mr Suppiah Thangaveloo ("Mr Thangaveloo") of M/s Thanga & Co. The trial of the action had been fixed for five days, from 23 to 27 July 2007. The trial lasted only two days. On the morning of the second day, counsel asked for an adjournment to take instructions from their clients. This resulted in the making of the Order. The plaintiff is the mother of the defendant and the Order went right into the heart of her claim which was for:

- (a) the return of the plaintiff's money that was withdrawn by the defendant to purchase the Savannah Park Condominium;

(b) an account of the plaintiff's assets such as monies in banks, cash kept in the house, gold coins and gold bars kept by the defendant; and

(c) payment of such monies found to be due upon taking of account.

3 In the months following the making of the Order, the defendant endeavoured to comply with it. On 6 August 2007, the defendant's solicitors requested the plaintiff to set out all the questions that the plaintiff had in respect of the bank accounts pursuant to order 2 of the Order. The plaintiff's solicitors replied on 14 August 2007 with a list of 13 questions to which the defendant's solicitors replied on 4 September 2007. However the plaintiff was not satisfied with the answers and on 9 November 2007, her solicitors gave notice that the answers were not acceptable. The defendant then wrote to the plaintiff on 19 November 2007 revealing two bank accounts hitherto not disclosed. On 28 November 2007 the plaintiff's solicitors gave notice that the plaintiff would seek redress in court.

4 Then in late 2007 or early 2008, the defendant discharged Mr Thangaveloo. On 9 January 2008, the defendant's present solicitors M/s Joseph Chen & Co ("M/s Joseph Chen"), filed a notice of change of solicitors.

5 On 19 February 2008, the plaintiff filed Summons No 757 of 2008 ("Sum 757/08") to apply, *inter alia*, for a variation of order 1 of the Order (prayer 1) and to order the defendant to file an affidavit to account for the assets of the plaintiff pursuant to order 2 of the Order (prayer 2). Prayer 3 asked for leave to cross-examine the defendant on such affidavit. On 4 March 2008, M/s Joseph Chen filed the defendant's affidavit in response to Sum 757/2008. On 10 March 2008, Lai J heard counsel for the parties, at which hearing the defendant was represented by his new counsel Mr M Ravi and Joseph Chen. At the end of the hearing Lai J varied order 1 of the Order in substantially the same manner as that prayed for in prayer 1. As regards prayer 2, counsel for the defendant was recorded as saying this to the court:

As for prayers 2 and 3, defendant has in his affidavit given an account of what the plaintiff asked. He has no objection to being cross-examined but he has given an account on the questions asked of him by the defendant [sic]. I leave it to court.

In the event, Lai J granted an order in terms of prayers 2 and 3. It should be noted that two months after the new solicitors had commenced acting for the defendant, there was no inkling that there was anything wrong with the Order.

6 On 23 April 2008, the order of court pursuant to Sum 757/2008 was settled by Lai J in the presence of the parties' solicitors. The following additional orders were made pursuant to the defendant's oral application:

(a) Joint inspection of the Hongkong and Shanghai Banking Corporation (HSBC) safe deposit box to be conducted by 8 May 2008;

(b) Plaintiff's solicitors to write to Vina Daswani (plaintiff's daughter) to ask her to return to Singapore as soon as possible to hold joint inspection of the Standard Chartered safe deposit box.

7 Joint inspection of the HSBC safe deposit box was carried out on 3 June 2008. There were a few other attempts to comply with the Order and subsequent amendments thereof before the present summons was filed by the defendant on 24 July 2008, exactly one year to the day that the Order was made.

8 In his supporting affidavit the defendant claimed that Mr Thangaveloo had not shown him the exact terms of the Order and also that the former had not properly advised him of the legal situation. He also alleged that Mr Thangaveloo had exerted duress and undue influence on him. He listed a litany of Mr Thangaveloo's wrongdoings in his affidavit, but did not explain how it was that this application was not made soon after he had appointed new solicitors on 9 January 2008, but more than six months later, when he was facing difficulty in rendering an account.

9 I should note that the order complained of pertains to the rendering of an account, something that he would have to do if he had custody of or interfered with the plaintiff's property. On 24 July 2007, his then solicitor had represented to Lai J that he agreed to render an account and the plaintiff had agreed to settle the suit on the terms of the Order. Thereafter, parties attempted to carry out the terms of the Order while, at various times, clarifying and modifying it. Even after the defendant appointed new solicitors, this went on for some six months before the defendant took up the present summons and made very serious allegations against his previous solicitor. The manner in which the matter has developed does not support the veracity of the defendant's claims in his affidavit. But even if they are true, the circumstances of the case are such that it would be severely prejudicial to the plaintiff's interest to set the Order aside. For these reasons, I dismissed the summons. If the defendant can prove his case in respect of Mr Thangaveloo, he would have to seek his recourse against him.