

ADJ v ADK
[2014] SGHC 92

Case Number : Originating Summons No 1109 of 2012
Decision Date : 05 May 2014
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Plaintiff in person; Alice Tan (A C Fergusson Law Corporation) for the Defendant.
Parties : ADJ — ADK

Civil procedure – appeals – leave

5 May 2014

Judgment reserved.

Judith Prakash J:

Introduction

1 Until 21 December 2011, ADJ, the plaintiff-husband herein was married to ADK, the defendant-wife. On that date, an interim judgment for divorce was made on an uncontested basis on the ground that the plaintiff had behaved in such a way that the defendant could not reasonably be expected to live with him. The plaintiff was not happy with this outcome. He filed an application for the interim judgment to be rescinded. This application having failed, he then appealed against the decision to the High Court. His appeal was heard by Choo Han Teck J (“the Judge”) who dismissed it. Throughout the proceedings, the plaintiff has acted in person.

2 By this originating summons, the plaintiff seeks leave of court to appeal to the Court of Appeal against the decision of the Judge. The Judge’s reasons for his decision are found in his written judgment identified as *AWN v AWO and another appeal* [2012] SGHC 228 (“the Judgment”).

3 The defendant resists this application on the basis that the plaintiff has failed to satisfy any of the three prescribed circumstances required for leave to appeal. Ms Alice Tan (“Ms Tan”), counsel for the defendant, argues that:

- (a) there has been no prima facie error of law applied to this matter by the courts;
- (b) there is no question of general principle to be decided for the first time; and
- (c) there is no question of law on which a decision by a higher tribunal would be of public advantage.

The issues that I need to decide are encompassed in the circumstances described in sub-paragraphs (a) to (c) above.

Background

4 The plaintiff and the defendant were married in September 2007. In July 2008, they had a son. In September 2010, the plaintiff filed an originating summons in the Family Court asking for the sole

care and custody of the son. The defendant resisted this application and while the custody proceedings were on-going, on 3 October 2011, she filed divorce proceedings ("D 4739").

5 The plaintiff filed a memorandum of appearance in D 4739 on 13 October 2011 in which he indicated his intention to contest the divorce proceedings and to apply for the custody, care and control of the son. Thereafter, however, the plaintiff did not file a defence to the claim for divorce. In due course, D 4739 was listed for hearing in chambers as an uncontested matter. As such on the appointed date, 21 December 2011, interim judgment was granted without a hearing at which the parties needed to attend.

6 The plaintiff says that on 21 December 2011, he went to the Family Court to attend a hearing in accordance with the "NOTICE OF HEARING OF WRIT/PETITION" which had been sent to him. He registered himself electronically at 2.10pm and waited outside the chambers of the court. At 2.50pm, seeing that there was no activity, he approached the court's Help Centre and was informed that there was no hearing that he could attend and that his attendance had been dispensed with. He found out subsequently about the interim judgment issued that day.

The plaintiff's various applications

7 On 14 March 2012, the plaintiff filed a summons in D 4739 in which he asked for the interim judgment to be rescinded pursuant to s 99(2) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Charter"). This application came on for hearing before a District Judge ("the DJ") on 2 August 2012. The plaintiff represented himself whilst the defendant was represented by Ms Tan. During the hearing, the plaintiff made lengthy submissions.

8 At the end of the hearing, the DJ dismissed the plaintiff's application and explained to him that the interim judgment stood. The plaintiff was upset and made the following protest:

Then what is the purpose of coming to Court? We are going towards the path of divorce, not issue, but cannot be that these allegations are wrong. My child is wrong, it should not be this way, should be amicable. Right now, the next follow up, the purpose of coming to this Court, if already decided December 2011 someone made a mistake then and asked me to wait, then you all proceed further. There is one date, they asked me to follow up, you asked me to wait and I did, then how come I went to the Court on that day and they told me I need not attend. There is something, someone made a genuine mistake, should not be the way. Someone has to dig into it. It doesn't make logical societal good sense, for the value of it. You are actually encouraging it. I followed this accordingly. And now someone told me need not come.

9 On 13 August 2012, the plaintiff filed an appeal against the decision of the DJ. In the meantime, the plaintiff had been unsuccessful in obtaining sole custody of the son: joint custody had been awarded to both parents with care and control to the defendant and access to the plaintiff. The plaintiff filed an appeal against this decision as well.

10 Both appeals were heard by the Judge at the same time and the Judgment contains his grounds for dismissing both of them. The plaintiff subsequently filed two separate applications for leave to appeal to the court of appeal, one in respect of each set of proceedings. I heard both applications. I dismissed the application for leave to appeal in respect of the custody issue but reserved my decision in relation to the application for the rescission of the interim judgment.

11 I think it is pertinent to emphasise that the plaintiff conducted both sets of proceedings entirely by himself although he may have had some assistance in preparing part of his submissions. He

appeared before me on no fewer than three occasions and spoke at length on each of those occasions. The plaintiff is in his mid-forties and was previously an officer in the navy. He is currently an independent contractor. He speaks English fluently although somewhat idiosyncratically.

The reasons for the decisions made by the DJ and the Judge

12 The DJ gave brief oral reasons for her decision when she dismissed the plaintiff's application for rescission. She noted that under s 99(2) of the Charter, any person may apply for rescission of an interim judgment by reason of material facts not having been brought before the court. Under s 99(3), the party against whom the interim judgment was granted may apply for a rescission but there is no specific reason stated in the provision. However, this was not the section relied on. She held that it was for the judge to decide, after having considered all the circumstances of the case, whether the interim judgment ought to be rescinded. She noted that English authorities had held that to rescind an interim judgment, cause such as that the judgment had been obtained by collusion or by reason of material facts not having brought before the court would have to be shown.

13 On the facts of the case before her, the plaintiff was aware of the divorce proceedings: he sent e-mails to the Family Court after being served with the documents and he attended the pre-trial conferences. While he had filed his memorandum of appearance, he did not file any pleadings subsequently. The plaintiff had also admitted that he was informed by the Help Centre that he needed to file his Defence and Counterclaim if he wanted to contest the divorce and that he would need court approval for an extension of time as he was late in doing so. Yet no application was filed. The plaintiff claimed that he had called the defendant's lawyer to seek consent for the extension of time but that the calls were unsuccessful. The DJ noted that he could then have applied for leave to file his pleadings out of time but he did not do so.

14 In his affidavits and at the hearing the plaintiff stated that his basis for setting aside the interim judgment was that he did not agree with the matters set out in the defendant's Statement of Particulars filed in support of the divorce. It also appeared that the plaintiff was not saying that he did not want a divorce: in his affidavit he said that since parties had been separated for three years, he wanted the defendant to re-file her proceedings based on three years' separation and he would then consent.

15 Having considered the above circumstances, the DJ concluded that there was no basis on which to rescind the interim judgment. The judgment had been validly granted and the mere fact that the plaintiff did not agree to the grounds for divorce did not invalidate it and was not in itself a valid ground for rescission.

16 On appeal to the Judge, the plaintiff repeated many of the arguments raised before the DJ. The Judge noted that the plaintiff had made unnecessarily lengthy submissions and the only vaguely viable ground he was relying on to rescind the interim judgment was his allegation that he had not been given a chance to be heard in the proceedings. He alleged he was not kept informed of the defendant's filing of her statement of claim for uncontested divorce proceedings alleging his unreasonable behaviour; the defendant's request for and the court's subsequent granting of dispensation of the parties' attendance at the uncontested divorce hearing; and the setting down of the action for hearing.

17 The Judge noted that all these complaints had been made before the DJ and her notes showed that she was of the view that the plaintiff had been aware of the divorce proceedings at every stage.

18 The Judge then observed that an application under s 99(2) of the Charter was not the proper

avenue to seek relief. To succeed in such an application the applicant had to show cause why the judgment should not be made final by reason of material facts not having been brought before the court. In doing so, the applicant must satisfy the court that the non-disclosure of such facts vitiates the foundation of the interim judgment. In the appeal, the plaintiff had not shown that there were any material facts which were not disclosed in the making of the interim judgment which would have fundamentally affected it. The plaintiff's motivation seemed to be his unhappiness with being labelled as having behaved "unreasonably". On the appeal, the plaintiff had expressed his hope that the interim judgment could be rescinded so that a miracle could happen to lead to reconciliation with the defendant. This was plainly not a good ground for rescinding an interim judgment.

19 In the circumstances, the Judge took the view that there was no merit in the appeal and dismissed it.

The plaintiff's submissions on the application

20 I heard the parties on three separate occasions over three half days. Most of the time was spent on the plaintiff's submissions. He had filed a lengthy affidavit in support of his application which contained both assertions of fact and submissions. It also contained many derogatory references to the defendant and her lawyer as well as to the Judge. The plaintiff was long-winded and repetitive so I will summarise his main points very briefly.

21 First, the plaintiff dealt with the Judgment. He noted that the salient facts had been summarised but asserted that the Judge was not cognisant of the full background of the case. He took issue with the statement in the Judgment that the divorce was granted "on the ground of irretrievable breakdown of the marriage" because he himself had never regarded the marriage as irretrievably broken down and had stated so on many occasions. In the course of so doing he described the defendant as "my deluded psychotic wife" and criticised the Legal Aid Bureau for granting her legal aid to deprive his son "of his healthy contact with his previous involved father [meaning, the plaintiff] and mentally sound paternal family".

22 He also took issue with the statement in the Judgment that the ground for the divorce was the "husband's unreasonable behaviour". He asserted that most if not all of the defendant's assertions of unreasonable behaviour had been "premeditated fabrication and some artfully discernible misrepresentation such as violence, restricting access to her parents ... etc" and that he had refuted such allegations in his affidavit.

23 The plaintiff took issue with the Judge's description of his ground of appeal as vaguely viable. He asserted that he had in fact not been informed of the uncontested divorce proceedings and had not been given a decent chance to be properly heard in the proceedings. Thus he had been prejudiced. He said he had made a conscientious effort to participate but due to "opposing attorney underhanded unprofessionalism (*sic*) underhanded thwarting stance" he had not been heard. Contrary to the views of the Judge and the DJ that he had been aware of the proceedings at every stage, in fact he had at best been only partly aware of the divorce proceedings.

24 The above assertion was, however, in my view, contradicted by what the plaintiff went on to say. In respect of what he knew, the plaintiff referred to his email of 25 October 2011. There, he had stated that on 24 October 2011 he had approached the Help Centre for clarification and necessary actions in relation to the false matters recited in the defendant's Statement of Particulars in D 4739.

25 He was told by the officers at the Help Centre that he had to file a Defence and Counterclaim by 26 October 2011. The plaintiff then told the officers that he needed an extension of time as he

could not meet the deadline. He was advised to ask the defendant's lawyer if she would agree to the extension. The plaintiff then called Ms Tan's office three times the same day but Ms Tan either kept silent upon hearing his request or just hung up the phone or ran him off. He did not call again for fear of being accused of harassment. The court officer also advised him to write in for an early status conference which the defendant did the same day.

26 At this point it should be noted that the plaintiff did not explain why he did not file the Defence and Counterclaim in time or apply to court for an extension of time. It must also be emphasised that the plaintiff was fully cognisant of the facilities available to help litigants in person such as himself. Indeed, he availed himself of them.

27 Having set out the factual background, the plaintiff then addressed the Judge's holding that an application under s 99(2) of the Charter was not the proper avenue for him to seek relief. He retorted that he was not a lawyer and therefore did not know what the proper avenue was. He said the DJ and the Judge should have told him this during the hearing. He was not happy either with the Judge's description of his motivation as being his unhappiness with being labelled "unreasonable" as he regarded the "charges" against him as being very serious and putting his liberty, integrity and dignity at stake. He asserted that his reputation had been tarnished and his "career/job/professional/emotional/financial [position]" have suffered as a result.

28 The plaintiff submitted that there was no merit and no good grounds for divorce made out at all in D 4739. He thought he had not been given an opportunity to be heard; that the Judge had not paid full attention to his submissions and had been influenced "by the opposing artful representing attorney". In his view, the Judge, the DJ and the other district judge who handled the custody matter had a common "utilitarian" approach to family justice that prioritised or inclined towards the objectives of women and leant towards the interests of women and court efficiency over those of male litigants/fathers/husbands and this resulted in the court "unknowingly suppressing mercilessly the howl of the victimised male litigants".

Decision

29 As I pointed out at the beginning of this judgment, the litigant who seeks leave to appeal has to show that at least one of the three criteria applies in his case. The plaintiff being a layman did not address any of these criteria directly although I drew his attention to them at the start of the first hearing. Ms Tan for the defendant submitted that he had not met any of the prerequisites for leave and that the application should be dismissed.

30 I reserved judgment in order to go through the plaintiff's submission in more detail to ascertain whether or not he could satisfy any criterion. After having conducted this exercise, I hold that he cannot do so. I set out, briefly, my reasons for thus holding.

31 The first matter to consider is whether there has been an error of law on the face of the record. The plaintiff would probably say that there was because a divorce was granted without a hearing at which he could contest the allegations made by his wife. The plaintiff's application for rescission of the interim judgment was, however, founded on s 99(2) of the Charter which requires him to establish that there has been non-disclosure of a material fact leading to the grant of the interim judgment.

32 The plaintiff could not establish that because he was not able to point to anything which the defendant should have disclosed and did not. The plaintiff did not agree with the allegations of unreasonable behaviour that the defendant made but these were assertions which it was up to him to

disprove by filing a defence and counterclaim and contesting the divorce. That the plaintiff considered the allegations to be untruthful could not amount in itself to concealment of material facts. As far as the record went, the divorce was handled in accordance with the procedures laid down by the Women's Charter (Matrimonial Proceedings) Rules (Cap 353, R 4, 2006 Rev Ed). In the absence of the proper pleadings filed by the plaintiff, the divorce had to be treated as uncontested. I respectfully agree with both the DJ and the Judge that the plaintiff's rescission application did not meet the requirements of s 99(2).

33 The second ground is that there is a question of general principle to be decided for the first time. I have not been able to discern such a question in the present case. The legal principles in relation to the grant of a divorce on the basis of one party's unreasonable behaviour are well established and not in doubt. Taken at face value, the particulars set out in the defendant's Statement of Particulars which included allegations of physical and verbal abuse visited on her by the plaintiff as well as of her being in fear of his uncontrolled temper were sufficient, if not rebutted, to support the plea for a divorce on the ground of unreasonable behaviour. While the plaintiff had entered a memorandum of appearance to the divorce action he did not file any pleading which formally contested these allegations and accordingly the action was treated in the usual way as an uncontested one. The court has well-settled and published rules which permit the *ex parte* hearing of uncontested suits. Nothing in these circumstances gives rise to any novel question of general principle.

34 The plaintiff seems to be under the impression that divorce and the grounds for the same should be consensual. That is not and has never been the law. The plaintiff's misguided belief cannot be the basis on which to formulate a question of law where none exists.

35 By the same token, there is in this case no question of law in which a decision by a higher tribunal would be of public advantage. The principles and procedures involved in the case are well established; no further elucidation is required.

36 The complaints made by the plaintiff against the Judgment, the Judge and the DJ are misconceived. Both were fully cognisant of the facts and the plaintiff's own state of knowledge. An objective reading of the Judgment reveals that the decision was arrived at after a careful and complete consideration of the facts and the duties of an appellate judge. There was no bias against the plaintiff on the basis of his gender by the judicial officers; nor indeed does such bias exist in the law.

37 As was amply demonstrated by the way that the plaintiff conducted his case, he is intemperate, verbally abusive and not able to take a detached or objective view of the situation. He has little, if any, insight into his own behaviour and how his words impact others. The plaintiff is in his present situation because he did not act on the advice he was given by the Help Centre to file his pleading and/or get an extension of time to do so. Further, after the interim judgment was granted, he attempted to set it aside on a ground that he could not satisfy. Since failing in this application he has dragged the defendant back to court on several occasions for the appeal and the present application since neither could be disposed of in one sitting. The plaintiff has been given every opportunity to make his case but he has not been able to put forward grounds that would entitle him to leave to appeal.

38 In the result, this application must be dismissed. The plaintiff shall pay the defendant's costs as taxed or agreed.

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