

Zaleha Bte Rahman v Chaytor
[2000] SGHC 232

Case Number : MSS 3175/2000 (RA 720071/2000)
Decision Date : 14 November 2000
Tribunal/Court : High Court
Coram : G P Selvam J
Counsel Name(s) : Mary Edmonds (Chiang Wee & Partners) for the complainant; Mirza Namazie (as counsel) and Alice Yeo (Tan Peng Chin & Partners) for the respondent
Parties : Zaleha Bte Rahman — Chaytor

Civil Procedure – Appeals – Appeal to High Court against maintenance order by district court – Whether leave to appeal required – ss 69, 77 Women's Charter (Cap 353) – s 21(1) Supreme Court of Judicature Act (Cap 322) -O 55C, O 55D Rules of Court

: This is an appeal against a decision refusing leave to appeal from the district judge in Chambers to the High Court. It arose from an application by a wife for maintenance for herself and her daughter under the Women's Charter (`the Charter`). The spouses are Muslims. Alan James Chaytor @ Mohammed Shah Azlan married Zaleha bte A Rahman on 10 December 1995 at the Registry of Muslim Marriages in Singapore. They have a daughter. She was born on 5 December 1996. In April this year the husband decided to end the marriage. To give effect to his decision he pronounced a **talak**. I need not state the reasons he cited in support of the **talak**. The wife does not dispute the pronouncement of the **talak**. She disagrees with the reasons asserted by the husband. She wants the Syariah Court to rule on the **talak**. That issue and all ancillary issues remain to be resolved by the Syariah Court.

Meanwhile, the wife on 16 June 2000 took out a summons under ss 69(1) and (2) of the Charter. It reads as follows:

(1) Any married woman whose husband neglects or refuses to provide her reasonable maintenance may apply to a District Court or a magistrate's court and that court may, on due proof thereof, order the husband to pay a monthly allowance or a lump sum for her maintenance.

(2) A District Court or a magistrate's court may, on due proof that a parent has neglected or refused to provide reasonable maintenance for his child who is unable to maintain himself, order that parent to pay a monthly allowance or a lump sum for the maintenance of that child.

The wife asserted that her husband had neglected and refused to maintain her and their four year old daughter. She said that before February 2000 the husband paid her a monthly maintenance of some \$7,400. He also paid some household bills. For February, March and April 2000 he paid only \$2,500 each month. In May 2000 he stopped paying even that. This prompted her to take out the maintenance summons.

The husband's primary response to the summons was that the wife's claim for maintenance for herself did not fall within s 69(1) of the Charter. She was not a wife any longer, he said. He wanted it dismissed. The summons was heard by a district judge. The judge declined to dismiss the summons. On 24 August 2000 she ordered the husband to pay a monthly maintenance of \$1,500 for the wife

and \$1,000 for the child. The order in favour of the wife was to stand until the conclusion of the proceedings in the Syariah Court.

The wife was unhappy with the decision of the district judge. So she filed a notice of appeal on 30 August 2000. On the same day the district judge became aware of the appeal. At once she formed the view that the wife had no right of appeal and that leave was required. Accordingly the District Court Registry rejected the notice of appeal.

The wife's lawyers wrote back differing with the district judge on the right of appeal. This was what she said:

With due respect, we beg to differ from the Honourable district judge's indication that leave is required. In accordance with s 21(1) of the Supreme Court of Judicature Act leave is required when the amount in dispute or the subject matter is \$50,000 or below. In the above matter, the amount claimed by the complainant for the maintenance of the child of the marriage is \$2,367 a month and the amount awarded by the Honourable district judge is \$1,000. As the child is presently about four years old, on the basis that the child is entitled to maintenance till she is 21 years old, ie for the next 17 years, the amount in dispute or subject matter is \$278,868 (\$1,367.00 x 12 x 17). Thus it far exceeds the threshold limit of \$50,000 under s 21(1) and no leave is required.

The district judge desired to hear arguments on the issue. On 31 August 2000 the wife filed an application seeking leave to appeal to the High Court. The application was heard by the same district judge who made the order. She dismissed the application for leave to appeal. The wife has appealed to the High Court judge-in-chambers against the dismissal of the application for leave. I heard the wife's appeal.

The husband too was unhappy with the district judge hearing the maintenance summons under s 69(1) of the Charter. He too wanted to appeal to the High Court. So he applied for leave to appeal. The district judge gave him leave to appeal on the jurisdiction issue. The husband's appeal has not been heard and I am not concerned with it.

The district judge gave the grounds of her decision even though she was not required to do so. In her grounds she reaffirmed her decision that leave was required. She did not explain why. But it would appear that her decision was premised on the conclusion that the amount in dispute on the value of subject matter was below \$50,000. The district judge then went on to consider the merits of the application.

The district judge referred to **Lee Kuan Yew v Tang Liang Hong & Anor** [1997] 3 SLR 489 which was cited by the husband's counsel. This was a decision of the Court of Appeal. It was an appeal under s 34(2)(b) of the Supreme Court of Judicature Act (Cap 322). That section provided that: 'Except with the leave of the Court of Appeal or a judge, no appeal shall be brought to the Court of Appeal where the only issue in the appeal related to costs'. Yong Pung How CJ in a joint judgment of the Court of Appeal said at p 496:

There are at least three limbs which can be relied upon when leave to appeal is sought: (1) prima facie case of error; (2) question of general principle decided for the first time; and (3) question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

The district judge said:

Only the first limb, that is whether there had been a prima facie case of error, was in issue. In coming to my decision, I took into consideration all the factors listed in s 69(4) of the Women's Charter. I found that the wife's expenses were exaggerated. Similarly, \$2,367 per month for a child aged three was grossly excessive. The wife's counsel emphasised the lifestyle and standard of living, which she and the child were used to prior to the breakdown of marriage. However this was only one factor which the court had to consider in arriving at the quantum of maintenance. In the circumstances, there was no merit in the wife's application for leave and I therefore dismissed her application.

The merits of an application for leave to appeal to the High Court, if such leave is required, should be measured by the level of hardship to the wife and children under Part VIII and the severity of violence under Part VIII. If in fact the wife received more than \$7,400 before February 2000, a maintenance of \$2,500 would not adequately alleviate their hardship. For this reason leave ought to have been given. But there is a twist to the whole thing for no leave was required for the wife's appeal to the High Court. The notice of appeal ought not to have been rejected.

When the appeal opened before me I read s 77 of the Charter to counsel before me. This section provides as follows :

(1) Subject to the provisions of this Part and Part VII, an appeal shall lie from any order or the refusal of any order by a District Court or a magistrate's court under this Part and Part VII to the High Court exercising appellate civil jurisdiction under the provisions of the Supreme Court of Judicature Act (Cap 322).

(2) All appeals brought under this section shall be by way of rehearing and the High Court shall have the like powers and jurisdiction on the hearing of such appeals as the Court of Appeal has on the hearing of appeals from the High Court under the Supreme Court of Judicature Act.

(3) No appeal made under the provisions of this Part and Part VII from any order shall operate as a stay of such order unless the High Court or the District Court or the magistrate's court so directs.

The provision for appeal to the High Court against maintenance orders has been with us for a very long time. It was included on the Married Women and Children (Maintenance) Ordinance of 1949. It was retained by its successor, the Charter. There was a requirement of \$100 per month before an appeal could be entered. The threshold limit was removed by Act 26 of 1980.

`This part` in s 77 is Part VIII which comprises of ss 68 to 79. They deal with maintenance of wife and children. It is necessary now to set parts of the preceding section and the following two sections of the Charter.

76	(1)	If in the opinion of the District Court or the Magistrate`s Court the matters in question between the parties or any of them would be more conveniently dealt with by the High Court, the District Court or the Magistrate`s Court may refuse to make an order and in that case there shall be no appeal from its decision.
	(2)	The High Court or a Judge thereof shall have power, by order in any proceedings in the High Court relating to or comprising the same subject-matter as the application refused or any part thereof under sub-s (1), to direct the District Court or the magistrate`s court to rehear or determine the same.
78		The High Court shall have the jurisdiction and powers which belong to and are exercisable by a District Court or a magistrate`s court under this Part.
79	(1)	All applications to a District Court or a magistrate`s court under this Part and Part VII shall be made and heard in the same manner and in accordance with the same procedure as applications for summonses are made and heard by the District Court or the Magistrate`s Court under the provisions of the Criminal Procedure Code (Cap 68) and an application for maintenance under this Part and Part VII shall be deemed to be a complaint for the purposes of that Code.
	(2)	The Rules of Court for the time being in force made under the provisions of the Supreme Court of Judicature Act (Cap 322) and applicable to appeals from District Courts brought under section 21 of that Act shall apply to all appeals brought under section 77.

	(3)	Where an appeal is so brought from a Magistrate`s Court, the Rules of Court shall be construed and applied as far as necessary as if references to a District Court were references to a Magistrate`s Court and references to a District Judge were references to a Magistrate.
	(4)	A court before which any application under this Part or Part VII is heard may make such order as to costs as it thinks fit.

Part VII comprises of ss 64 to 67. The subject of Part VII is protection of family members against family violence. It is beyond the power of the mind to put a value to, or determine the amount in dispute in, a family violence case. Part VII is not about money. Its aim is protection against violence.

I have always understood s 77 of the Charter as conferring unrestricted appellate power to the High Court. Except for matters which are ensnared by `Subject to the provisions of this Part and Part VII` the appellate power of the High Court under s 77 of the Charter is exclusive.

One matter which is caught by the `Subject to` provision in s 77 of the Charter is s 76(1). This provides that `If in the opinion of the District Court or the magistrate`s court the matters in question between the parties or any of them would be more conveniently dealt with by the High Court, the District Court or the magistrate`s court may refuse to make an order and in that case there shall be no appeal from its decision`. The provision of ss 76 and 78 of the Charter make it plain that the intention is to provide for easy access to the discretion of the High Court.

The power to entertain such an appeal is unaffected by s 21(1) of the Supreme Court of Judicature Act (`the Judicature Act`). This provides that :

Subject to the provisions of this Act or any other written law, an appeal shall lie to the High Court from a decision of a District Court or Magistrate`s Court in any suit or action for the recovery of immovable property or in any civil cause or matter where the amount in dispute or the value of the subject-matter exceeds \$50,000 or such other amount as may be specified by an order made under subsection (3) or with the leave of a District Court a Magistrate`s Court or the High Court if under that amount.

Counsel for the husband referred to s 79(2) of the Charter. He said that this section read with the `Subject to` in s 77 means that appeals are governed by the Rules of Court (`the Rules`). This in turn imports the \$50,000 test.

In my judgment there is a fundamental flaw in the husband`s contention. In the regime of the law the tail is not permitted to wag the dog. A lower power has no power to overpower a higher power. Rules of Court cannot, accordingly, cut down the power of the High Court to entertain appeals under s 77 of the Charter. The purpose of the O 55C and O 55D of the Rules is to regulate the traffic of appeals to the High Court. Provisions in O 55C and 55D relating to obtaining leave to appeal do not apply to appeals under s 77 of the Charter. They apply only to appeals under s 21 of the Judicature Act. The

wife`s appeal was not an appeal under s 21 of the Judicature Act. The opening words of s 21 of the Judicature Act make it plain that appeals under s 77 of the Charter are excluded from it. Accordingly the \$50,000 requirement and the rules relating to it do not apply to appeals under s 77 of the Charter.

Counsel for the husband next contended that if the monetary limit of \$50,000 did not apply to s 77 of the Charter it will open the flood gates. There are two answers to this concern of the husband. First, the basic concern of matters relating to maintenance of wives and children and family violence is freedom from fear, violence and financial hardship. What is at stake is not just monetary value but values of family life. Appropriate cases deserve the time and attention of the mature mind of the High Court judge. Sometimes it is the small thing, like the snail in the ginger beer bottle, that makes the smart law. If, therefore, the number of unmerited appeals to the High Court will increase so be it, so that the merited will not be muzzled. The second answer is that the High Court judges have the requisite wits to weed out the undeserved appeals. Section 77 of the Charter has been with us since 1949 and the High Court has not been flooded with appeals under it. This is because the thought of an appeal directs the judge below to decide with thought and thoughtfulness. There is a well-built body of law to sieve out inappropriate appeals.

Conclusion

The above analysis compels me to conclude that no leave is required for the appeal and that the rejection of notice of appeal was improper. When the district judge heard arguments on the question of leave she should have accepted the contention of the wife`s Counsel that no leave was required and allowed the appeal to proceed as of right. This did not happen because the reason given by the Counsel was wrong. She did not rely on s 77 of the Charter.

Accordingly, I assert and exercise the authority under s 37(5) read with s 22(2) of the Judicature Act as well as the general supervisory and revisionary jurisdiction under s 27 of the Judicature Act and direct and order that the appeal be allowed to proceed. The wife should be allowed to refile her rejected notice of appeal and prosecute the appeal in accordance with the Rules.

Order on costs below is cancelled. Respondent (husband) shall pay \$500 for the costs below and \$500 for the costs of appeal.

Outcome:

Appeal allowed.