

ANH v ANI
[2014] SGHC 184

Case Number : Divorce Transferred No 3521 of 2012
Decision Date : 07 October 2014
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Tan Ai Ling Jinny and Choo Jin Hua (Wee, Tay & Lim LLP) for the plaintiff/husband; Gill Carrie Kaur (Harry Elias Partnership LLP) for the defendant/wife.
Parties : ANH — ANI

Family law – Custody – Access

Family law – Custody – Care and control

Family law – Maintenance – Child

Family law – Maintenance – Wife

Family law – Matrimonial assets – Division

7 October 2014

Judgment Reserved

Choo Han Teck J:

1 This case concerns issues of (1) access to child; (2) division of matrimonial assets; (3) maintenance of ex-wife; and (4) maintenance of a child. The plaintiff/husband is a full Professor in a local university. He is 45 years old and holds a doctorate in economics. The defendant/wife is an Assistant Professor in the same local university. She is 42 years old and holds a doctorate in applied mathematics. The parties were both born in China, but now have different nationalities. The husband is a Canadian citizen whereas the wife is a New Zealand citizen. They married on 4 August 1993 in Zhejiang, China. They lived together first in Canada, later New Zealand and are now residing in Singapore. The parties have a 14 year old daughter who is enrolled in an international school in Singapore. In December 2011, the husband moved out of the matrimonial home. On 20 July 2012, the husband filed for a writ of divorce. The wife filed a defence and counterclaim on 16 August 2012. On 21 August 2013, the District Court granted the interim judgment for divorce on the basis of unreasonable behaviour on the part of both parties under s 95(3)(b) of the Women’s Charter (Cap 353, 2009 Rev Ed). As the value of the matrimonial assets is worth more than \$1.5m, the ancillary matters were transferred to the High Court.

2 The parties have agreed that they would have joint custody of their daughter, with care and control to the wife. They have not agreed on the husband’s access. The husband’s lawyers say that the husband has not seen the daughter since June 2012 and that the wife has denied him access to the daughter. The wife denies that she refused the husband access to the daughter, but rather, the daughter herself refuses to see him. The wife’s lawyers submit that access should be arranged between the husband and the daughter as she is a teenager now. I agree with the submissions by the wife’s lawyers. The daughter is now mature and is able to decide for herself if she wants to see

her father, and if so, when. I therefore refrain from granting an order for access.

3 I now deal with the daughter's maintenance. There is an interim order for maintenance by consent. That order states that the husband is to pay \$2,500 monthly for the daughter's maintenance. On top of that, the order provides that the husband is to pay for the child's education, medical and dental expenses and enrichment classes. The husband's lawyers say that the husband pays about \$5,837 monthly. The wife's lawyers say that the daughter's monthly maintenance is \$6,695. The wife, in her first affidavit of assets and means, also attributes half of the car expenses (amounting to \$230 monthly) as those for the daughter. This brings the daughter's monthly maintenance to \$6,925 if the wife is to be believed. The husband's lawyers dispute this amount. They say that the amount is inflated. Instead, the husband's lawyers submit that (1) the husband should pay only \$2,000 monthly maintenance and (2) continue to pay for the daughter's fees for school (after subsidy from the parties' employer) and music examinations and her medical expenses.

4 After reviewing the evidence before me, I am inclined to believe that the wife has inflated the amount claimed for the daughter's maintenance. I base this on the monthly withdrawals made by the wife. In January to March 2012, the wife withdrew \$1,000 to \$1,300 monthly from her own bank account. In May 2012, the wife withdrew \$2,000 from her own account, and another \$800 from the parties' joint bank account. In August 2012, the wife withdrew \$1,300 from her bank account. She withdrew \$1,800 in September 2012. These show that the wife has inflated her claims for her daughter's maintenance. I therefore accept the husband's proposal but increase the daughter's proposed monthly maintenance from \$2,000 to \$2,500. In my view, this amount is reasonable. \$2,500 monthly maintenance is sufficient for the upkeep of the daughter. While I do recognise that the husband's proposal does not provide for him paying for the daughter's enrichment classes and music lessons, which may be of considerable expense, I am of the view that the wife should bear these expenses. It is the responsibility of both parties to maintain their daughter under s 68 of the Women's Charter. The wife is a woman of means – she works as an assistant professor in a local university earning more than \$10,000 monthly pay after paying taxes. She cannot abdicate her parental responsibility by making the husband pay for the daughter's enrichment classes and music lessons as well. If this were the case, the husband will almost single-handedly be maintaining the daughter.

5 I now deal with the division of matrimonial assets. The parties rightly do not dispute that the Singapore properties, namely the matrimonial home and Property M are part of the pool of matrimonial assets.

6 I start with Property M. It is worth \$2.474m, with no outstanding mortgage. It was purchased in 2007 for \$1.535m. The wife's lawyers say that Property M was financed with monies from the parties' joint bank accounts. Therefore, the financial contribution made by each of the parties corresponds to their respective contributions to the joint bank accounts. According to the wife's lawyers, the wife contributed 27.885% of Property M's purchase price whereas the husband contributed the remaining 72.115%. The wife's lawyers base these percentages on the parties' respective contributions towards the joint bank accounts. They say the wife contributed \$959,271.68 whereas the husband contributed \$2,480,818.74 as at December 2011. The husband's lawyers dispute these percentages. In this regard, they refer to a table in the husband's first affidavit. That table states that the husband contributed 76.5% of the monies in the joint accounts, whereas the wife contributed the remaining 23.5%. The husband's lawyers also say that the husband has been paying 75% of the monthly mortgages for the property while the wife pays 25%. The percentage financial contributions submitted by the parties are close (they shows that the husband paid for about 75% of the purchase of Property B) and show that it is clear that the husband contributed more towards the purchase of Property M financially.

7 The matrimonial home is worth \$3.2m, with an outstanding mortgage of \$878,214.38. It was purchased in 2010 for \$2.483m. The parties own the matrimonial home as tenants-in-common with equal shares. The wife's lawyers submit that the matrimonial home was financed in the following manner. First, the husband paid 64.66% (or \$321,101.56) towards the \$496,000 downpayment. The wife paid for the remaining 35.34% (or \$175,498.44). Second, mortgage payments from May 2010 to August 2014 as follows:

(a) From May 2010 to January 2012, the husband paid \$252,675 whereas the wife paid \$122,325;

(b) From February 2012 to April 2012, the husband paid \$30,321 whereas the wife paid \$14,679;

(c) From May 2012 to October 2012, the husband paid \$55,688.05 whereas the wife paid \$34,311.95;

(d) From December 2012 to August 2014, the husband paid \$247,500 whereas the wife paid \$82,500.

According to the wife's lawyers, the husband therefore contributed \$907,285.61 (or 67.9%) whereas the wife contributed \$429,314.39 (or 32.1%) towards the purchase of the matrimonial home. The husband has not provided any helpful material in support of his direct financial contribution.

8 There is a major disagreement over whether two properties in China form part of the pool. The first is located in Yiwu ("Yiwu property"), owned by the wife's parents. The Yiwu property is now worth \$300,000, with no outstanding mortgage. The second property is located in Ezhou ("Ezhou property"), owned by the husband's parents. That property is now worth \$80,000. The Yiwu property was purchased for \$170,000, of which \$100,000 was a loan from the parties. The balance \$70,000 came from the wife's parents. The wife's lawyers say that this property should be excluded from the pool and retained in her parents' names, or alternatively, if this asset is to be included, only the loan amount of \$100,000 should form part of the pool of matrimonial assets. There is no basis to exclude the Yiwu property from the pool of matrimonial assets entirely. However, I am prepared to include the loan amount of \$100,000 as part of the matrimonial pool. The Ezhou property was purchased for \$40,000, wholly financed by the parties. The Ezhou property is registered under the names of the husband's parents. But the husband's parents have signed a notarisation stating that this property belongs to the parties and not them. As is the case with the Yiwu property, the wife's lawyers say that the Ezhou property should be excluded from the pool of matrimonial assets. I reject this as the Ezhou property was purchased with the parties' monies after the marriage. The property therefore falls within the definition of a matrimonial asset under s 112(10) of the Women's Charter.

9 The other assets that form part of the pool of matrimonial assets are:

(a) the husband's assets in units in a Canadian retirement fund and monies in bank accounts held solely, totalling \$232,255.21;

(b) the wife's car, bank accounts, a Canadian RRSP account, personal belongings and monies in bank accounts held in her sole name totalling \$74,018.28; and

(c) monies in the parties' joint bank accounts totalling \$29.99.

10 I am of the view that an equal division in this case would be just and equitable. The parties

have been married for close to 20 years. Equality of division is neither ideal nor the norm (*Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 at [55]), but for long marriages such as this, the courts tend to lean towards equality of division. That is because there is no formula or means to determine the differential between the financial and non-financial contribution of the parties with precision. An equal division is also probably the closest the courts can give effect to the parties' declaration in their matrimonial vow of treating both of them as one. Thus in the absence of a better formula, the courts will regard equality as justice. The Court of Appeal in *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 approved the High Court order of equal division where the homemaker wife of 22 years who brought up the couple's three sons. Similarly, the High Court in *MZ v NA* [2006] SGHC 95 also refused to interfere with the District Court order that the homemaker wife (of 20 years, and who brought up the couple's two children) should get just as much as the husband of their matrimonial assets.

11 There is no need to award maintenance for the ex-wife in this case. Maintenance of an ex-wife supplements the division of matrimonial assets and is awarded only to even out any remaining financial inequities after division (*BG v BF* [2007] 3 SLR(R) 233 at [74]–[75]). In my view, the financial inequities have been evened out with the division of matrimonial assets. The wife is also able to adequately provide for herself. As mentioned, she is a woman of means. She is only 42 years old and can work for a long period of time.

12 The parties are to bear their own costs. I will hear them if they are unable to decide on the manner of dividing the assets.

13 Lawyers in ancillary hearings sometimes do not have important information readily at hand. In this regard, I have added in this judgment, a list of information that I think is essential (see Annex). This list is a modified version of that provided by the wife's lawyers. Counsel should ensure that those information are provided before they make their respective submissions as to the strengths, merits and special circumstances of their clients' cases.

ANNEX: LIST OF INFORMATION

General information of parties

- 1 Name
- 2 Citizenship/ PR status
- 3 Date of Birth
- 4 Educational/Vocational Qualifications (and where these qualifications are from)
- 5 Current occupation and organisation
- 6 Occupation history where relevant
- 7 Income of each party, including bonuses, both gross and after tax
- 8 Special circumstances (*eg*, major illness; bankruptcy *etc*) with relevant supporting documents
- 9 Other immediate family members of the parties (*eg*, parents), and whether parties are contributing to the finances of these family members
- 10 Where each party is residing now, and what expenses are incurred in relocation

Divorce

- 11 When was writ of divorce filed?
- 12 Date of interim judgment
- 13 Grounds for divorce and brief background if necessary

Maintenance for Ex-Wife

- 14 What is the amount proposed by each party?
- 15 Is the maintenance sought one of lump sum or monthly?
- 16 Is the maintenance backdated and if so, why?
- 17 Expenses with supporting documents and if they are disputed
- 18 If wife is not working, does she have the means to work?
- 19 Does husband have means to pay?

Children

General Information

- 20 Name(s) of child/children
- 21 Date of Birth of child/children
- 22 Education/ School
- 23 Occupation (if applicable)
- 24 Income of children (if any) (*eg*, National Service, Scholarships) with supporting documents
- 25 Special circumstances (*eg*, major illness, special needs) with supporting documents

Custody, care and control

- 26 Do the parties agree on joint custody? If not, what are the reasons for sole custody?
- 27 Who should get care and control and why?
- 28 Psychologist and social welfare reports (if there are any)
- 29 What is in the child's /children's best interest?

Maintenance

- 30 What is the amount proposed by each party?

- 31 Is the maintenance lump sum or monthly?
- 32 Is the maintenance backdated and if so, why?
- 33 Expenses with supporting documents and if they are disputed
- 34 Do the respective parties have the means to pay?

Matrimonial Assets

35 It is preferable for parties to prepare combined list/joint table of matrimonial assets, highlighting disputes on financial contributions and value.

36 It is preferable for parties to value assets at the same date and where possible, agree on joint valuation

37 Real property:

- (a) Address
- (b) Whether the property is in sole name or joint names?
- (c) Initial Purchase Price
- (d) Date of purchase
- (e) Mode of financing, repayment and financial contributions of each party
- (f) Current Value
- (g) Date of Valuation
- (h) Current outstanding mortgage
- (i) Is the property subject to any encumbrance?

38 Bank accounts, shares, trusts, other assets:

- (a) Current value and date
- (b) Whether in sole name or joint names
- (c) Respective financial contributions
- (d) Any outstanding loans?
- (e) Any encumbrance?

39 Any undeclared assets for which adverse inferences should be drawn?

40 Contributions (both financial and non-financial) made by the parties

