

Tan Yan Ling Kyna v Chan Wei Zhong Terence
[2014] SGHC 195

Case Number : Originating Summons (Family) No 35 of 2014, (Registrar's Appeal from State Courts No 91 of 2014)
Decision Date : 03 October 2014
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Ng Pui Khim (Wu LLC) for the plaintiff; Judy Ang (Straits Law Practice LLC) for the defendant.
Parties : Tan Yan Ling Kyna — Chan Wei Zhong Terence

Family law – Bars

3 October 2014

Judgment reserved.

Choo Han Teck J:

1 This is an appeal by the defendant/husband against the order of the District Court made on 16 January 2014 granting the plaintiff's application to file a writ of summons for dissolution of their marriage notwithstanding that three years have not lapsed since the date of their marriage, namely 26 November 2012. Section 94(1) of the Women's Charter (Cap 353, 2009 Rev Ed) provides as follows:

Restriction on filing of writ for divorce during first 3 years of marriage

94.—(1) No writ for divorce shall be filed in the court unless at the date of the filing of the writ 3 years have passed since the date of the marriage;

(2) The court may, upon application being made in accordance with the Rules of Court, allow a writ to be filed before 3 years have passed on the ground that the case is one of exceptional hardship suffered by the plaintiff or of exceptional depravity on the part of the defendant, but if it appears to the court at the hearing of the proceedings that the plaintiff obtained leave to file the writ by any misrepresentation or concealment of the nature of the case, the court may, if it grants an interim judgment, do so subject to the condition that no application to make the judgment final shall be made until after the expiration of 3 years from the date of the marriage, or may dismiss the proceedings without prejudice to any proceedings which may be brought after the expiration of the said 3 years upon the same, or substantially the same, facts as those proved in support of the proceedings so dismissed;

(3) In determining any application under this section for leave to file a writ before the expiration of 3 years from the date of the marriage, the court shall have regard to the interest of any child of the marriage and to be question whether there is reasonable probability of a reconciliation between the parties before the expiration of the said 3 years;

(4) The court may, before determining an application under this section, refer the differences between the parties to a Conciliation Officer so that a reconciliation between the parties might be effected; and

(5) Nothing in this section shall be deemed to prohibit the filing of a writ based upon matters which have occurred before the expiration of 3 years from the date of the marriage.

2 The plaintiff is 25 years old and the defendant is 26. Nothing is stated in their affidavits as to their occupation and income, save that the plaintiff works in the "IT industry" and the defendant is a "dealer". The parties had been seeing each other for seven years prior to their marriage. The plaintiff says that she had been intimate with the defendant since she was 17. They have no children.

3 The plaintiff applied to file a writ for the dissolution of marriage on the ground of exceptional hardship. She produced a psychiatric report from Dr Adrian Wang, dated 8 January 2014 in which Dr Wang states that he had interviewed the plaintiff twice in 2013, and he concluded that he diagnosed the plaintiff as suffering from "major depressive disorder". According to his report, "[the plaintiff] fulfils all the diagnostic criteria for this illness. Of particular significance are persistent sense of gloominess, loss of interest and pleasure, and lack of drive and energy". He also says that the defendant's physical and verbal aggression has been the main causative factor for the plaintiff's major depressive disorder.

4 The plaintiff also adduced a police report dated 25 December 2013 complaining about an incident in Korea on 5 January 2013 as well as an incident on 22 October 2013. She says that as a result of these incidents, and the advice of her parents, she left the matrimonial home on 15 November 2013. The two incidents complained of in the police report concerned the allegations that the defendant punched her feet and her face in the two respective dates. Ms Ng Pui Khim, counsel for the respondent, submitted that there were at least six "particular occasions and numerous other occasions" since 2007 that the defendant had abused the plaintiff. The evidence of abuse does not support counsel's submission in the number of incidents. They were also disputed by the defendant in his version of events, but more importantly, only two of the alleged incidents occurred during the marriage. The plaintiff relied on incidents that happened many years before their marriage in November 2012.

5 Although a police report was made, that report was clearly made to serve the purpose of the plaintiff's application. The plaintiff left the matrimonial home in November 2013, lodged the police report in December 2013, and filed the application (for leave to file the writ of summons) in January 2014. No medical evidence was adduced. Furthermore, even from the plaintiff's account the two incidents did not result in serious injury to her. She did not seek medical attention in either case. I will not dwell on these incidents because they are disputed and should rightly be considered at a full trial. However, assuming that the plaintiff's version were to be accepted for the purposes of this appeal, I am nonetheless of the view that they do not constitute sufficient cause to bring the plaintiff's case within the ground of "exceptional hardship" in s 94(2) of the Women's Charter such as to warrant the grant of leave to file a writ of summons for dissolution of marriage before the expiry of three years from the date of marriage.

6 The statutory moratorium of three years is to impress upon married couples that marriage is not an event that one can sign in and out as they fancy. In the meantime, there are alternative remedies and relief in cases of abuse and they include applications for a personal protection order. The aggrieved party may also leave the other party, as this plaintiff has done. The moratorium is intended to hold out the hope of reconciliation – and who is to say that even in extreme cases of abuse, the abuser may not see the error of his or her ways and reconcile with the other?

7 I am of the view that the circumstances of this case do not meet the requirements in s 94 of the Women's Charter. The defendant's appeal is therefore allowed. The order below is set aside. I will not order costs in this case but in future, applications under similarly inappropriate circumstances may

be dismissed with costs against the applicant.

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