Mok Kah Hong
v
Zheng Zhuan Yao

[2016] SGCA 8

Court of Appeal — Civil Appeal No 177 of 2013 (Summons No 240 of 2015)
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Steven Chong J
11 March; 15 May; 22 July; 10 September 2015

Contempt of court — Civil contempt
Contempt of court — Court's powers
Contempt of court — Criminal and non-criminal contempt distinguished
Contempt of court — Sentencing — Principles

4 February 2016

Steven Chong J (delivering the judgment of the court):

Introduction

1 The family justice regime in Singapore rests on the power of the court to achieve a just and equitable division of matrimonial assets upon the breakdown of a marriage. This objective, however, cannot be equitably achieved if parties are allowed to conceal assets and act in wilful disobedience of judgments or orders of the court. The former is generally addressed by way of drawing adverse inferences in the exercise of the court's power to divide matrimonial assets. The latter falls to be dealt with by the law of contempt, where contemnors may be committed to prison or fined for failing to comply with judgments or orders of the court. Regrettably, this was an unfortunate

case involving *both* elements, where the husband had concealed assets *and* had embarked on a course of conduct in wilful defiance of several judgments and orders made by the court.

2 At the hearing of the substantive appeal, we agreed with the High Court Judge ("the Judge") that an adverse inference ought to be drawn against the husband for the wholly unsatisfactory manner in which he had disclosed his assets in the course of the matrimonial proceedings. We applied an uplift of 40% to the known value of the husband's assets and awarded the wife a share of 35% of the gross value of the husband's assets (*ie*, after the application of the uplift). We also affirmed in full the Judge's orders as regards the lump sum maintenance that the husband had been ordered to pay the wife. The husband failed to comply with our orders and the wife applied for the husband to be committed to prison for his contempt of court. After a series of applications which culminated in the committal proceedings, we held the husband in contempt and sentenced him to eight months' imprisonment, suspended for a period of four weeks to enable the husband to effect compliance with the order. Even then, the husband failed to comply and he has since commenced his term of imprisonment on 9 October 2015. We now set out the reasons for our decision at each stage of the committal proceedings, from the wife's application for the insertion of a penal notice against the husband up to the sentencing of the husband after holding him in contempt of court.

The facts

The marriage

3 The parties were married on 25 July 1983. They have a son, Mr Tay Daxian, who is now 24 years old. Throughout the marriage, the husband was

the sole breadwinner, while the wife was the homemaker. She was primarily responsible for raising the son and she managed the household with the aid of domestic helpers.

4 The husband has had a mistress, Madam Pok Poh Choo ("Mdm Pok"), since 1989. He has two children by Mdm Pok and he successfully kept this secret from the wife and the son for many years.

5 The husband first wrote to the wife on 22 August 2008 through his solicitors, proposing a divorce on account of the irretrievable breakdown of their relationship. This was followed by another letter dated 30 December 2009, also through his solicitors, stating that he intended to commence divorce proceedings.

The divesting of assets

6 The husband eventually commenced divorce proceedings on 26 February 2010. At that point in time, in anticipation of the inevitable divorce, the husband engaged in a course of conduct to divest himself of his assets. These findings are detailed in the judgment of the High Court dealing with the ancillary matters of the divorce (see *Zheng Zhuan Yao v Mok Kah Hong* [2014] SGHC 84 ("the Judgment")). For present purposes, we will provide a brief summary of the facts that are relevant to the contempt proceedings before us.

7 The husband owned, *inter alia*, a property at Stevens Court ("the Stevens Court property"), a freehold development located along Stevens Road. It appears from the evidence that the parties had lived at the Stevens Court property with their son from around 1994 onwards. Therefore, although the husband had maintained throughout the course of the matrimonial proceedings

that the Stevens Court property was a gift from his father, it could not be seriously disputed that it was in fact a matrimonial asset pursuant to s 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed). On 19 January 2010, the husband mortgaged the Stevens Court property to the Oversea-Chinese Banking Corporation Limited ("OCBC Bank") without informing the wife. This was about one month prior to the husband's filing for a divorce. Prior to this, the Stevens Court property appeared to be unencumbered.

8 On or about 21 January 2010, the husband allegedly pledged his 1m shares in First Grade Agency Pte Ltd ("First Grade"), a company he was a director of, to his father's sister, Madam Tay Ban Geok ("Mdm Tay") in return for a loan of S$1m. This occurred only two days after the husband had mortgaged the Stevens Court property. The husband claimed that the proceeds from the loan had been used to pay off his business debts. No documentary evidence was, however, adduced by the husband in support of such an assertion.

9 On 11 June 2010, which was *after* the commencement of divorce proceedings, the husband transferred his 3m shares in Tay Aik Leng Holding Investment Pte Ltd ("Tay Aik Leng") to his father, Mr Tay Jui Chuan ("Mr Tay"). According to the certificate of stamp duty, the transfer was made for a consideration of S$3m. The husband, however, claimed that he did not receive any consideration for the transfer and that the form was merely filled up as a formality. He alleged that he was only holding the shares in Tay Aik Leng as a nominee of his father, Mr Tay.

10 This was followed by a transfer of his 1m shares in Inhil Investment Pte Ltd ("Inhil") to his father's brother, Mr Teh Jui Kern ("Mr Teh"), on 1 September 2010. With reference to a consolidated summary of share

transfers adduced by the husband, the transfer was made for a nominal consideration of S$1. As with the case in Tay Aik Leng, the husband maintained that he was only a mere nominee of the Inhil shares.

The injunction

11 On 15 September 2010, the wife obtained an injunction against the husband from dissipating, disposing and/or dealing with, in any way, the Stevens Court property and the husband's shareholdings in various companies, including First Grade, Tay Aik Leng and Inhil. The husband, subsequently, in breach of the injunction, *further mortgaged* the Stevens Court property surreptitiously. This was only revealed when the husband produced a printout at a hearing before the Judge on 4 September 2013, wherein it was reflected that there was an *additional* mortgage loan account which was not reflected in his earlier affidavit.

The proceedings before the High Court

12 The dispute concerning the division of matrimonial assets and maintenance came before the Judge, who delivered his oral judgment with brief reasons on 28 November 2013. The written grounds of decision (*ie*, the Judgment) were thereafter released on 29 April 2014.

13 The Judge made a number of adverse findings as regards the husband's conduct in divesting himself of his assets. First, in relation to the Stevens Court property, the Judge observed that the husband had obtained a further mortgage in breach of the court injunction. The Judge also rejected the husband's claim that he had used the loan proceeds to pay off his business debts. It was observed that the husband was unable to adduce *any* documentary evidence of the purported losses or transactions entered into by

the company. Apart from his self-serving bare allegations, the husband also gave contradictory accounts under cross-examination and in his various affidavits regarding the use of the loan proceeds and the quantum of the losses suffered from his business venture. The Judge also observed that the initial mortgage with OCBC Bank was "rather conspicuously registered" on 28 January 2010 (at [22]), which was just within a month *before* the husband commenced divorce proceedings on 26 February 2010 and within a month *after* he had expressed his intention to seek a divorce in the letter dated 30 December 2009. Accordingly, the Judge drew an adverse inference against the husband and found that the OCBC Bank mortgages were not *bona fide* liabilities. They were therefore to be excluded in determining the value of the Stevens Court property.

14 In relation to the husband's pledging of his 1m shares in First Grade, the Judge found the husband's evidence that the loan proceeds (amounting to S$1m) were allegedly used to pay off his business debts was "far from clear or convincing" (at [40]). The husband constantly vacillated between the position that the pledge was for a loan already disbursed to him and that the cash advances from Mdm Tay and/or First Grade to him (or his creditors) were disbursements out of the S$1m loan. In addition, the Judge also observed that the pledge was "rather conspicuously executed just a month prior to the [husband]'s filing for a divorce" (at [40]). In summary, the Judge found that the pledge was not genuine and had been fabricated for the purposes of the matrimonial proceedings.

15 As regards the husband's claim that he did not receive any consideration for the transfer of his 3m shares in Tay Aik Leng to Mr Tay (*ie*, his father), the Judge observed that the husband had given different explanations to account for the transfer. The Judge acknowledged that the

husband's vacillations cast "a long shadow of doubt" on his evidence that he was merely a nominee of the shares in Tay Aik Leng for his father (at [47]). After finding that the shares did form part of the pool of matrimonial assets, the Judge rejected the husband's claim that he was only a nominee shareholder and proceeded to attribute a value of S$3m (*ie*, the stated consideration on the share transfer form) to the shares.

16 In relation to the husband's transfer of his 1m shares in Inhil to Mr Teh (*ie*, his father's brother), the Judge found that the shares had been placed in the husband's name to hold on behalf of Mr Tay or, at the very most, that it was a gift. In the circumstances, it was held that the Inhil shares did not form part of the matrimonial assets for division.

17 Apart from the specific assets mentioned above, the Judge acknowledged that the husband also failed to disclose multiple other assets in the course of the matrimonial proceedings, such as his properties in Australia and Malaysia, an Indonesian property, and his shareholdings in numerous foreign companies. The Judge provided a summary of his findings (at [83]–[86]):

> 83 [The husband]'s evidence on the witness stand was quite appalling. He was often contradictory and his favourite refuge and refrain was "I cannot remember". He claimed that this was either because of the stroke he suffered in or around April 2010 or that it was "so long ago". However, every now and then in parrying counsel's questions, he showed he was not as mentally handicapped as he claimed. Despite claiming debilitation from a stroke, there was evidence that he was gambling by June or July 2010 and was able to travel from Australia to Resorts World Sentosa no less to do so.
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> 84 [The husband] also made many claims of failed businesses, losing huge sums of money at various times, huge debts to diverse persons or companies and having had to pay off persons. However, he was unable to name these persons or companies and constantly lapsed into his convenient refrain that the businesses were in Indonesia and that these

> payments were to government officials. However, as [the husband] repeatedly conceded in cross-examination, he could and did not produce a single shred of evidence to show any evidence of these claims and allegations made by him. Another standard refrain was that in Indonesia, business was done differently and nothing could be in writing. Yet he was able to file some 12 affidavits, obtain affidavits from persons in Indonesia and adduce Notarised Statements from Indonesia backing his claims that the shares in his name had been transferred.
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> 85 There was also clear evidence that [the husband] had not made full and frank disclosure of his assets. On the contrary, he tried to hide his assets and was frequently caught out on his inconsistent affidavits and cross-examination thereon. A clear pattern emerged – each time discovery was made of an asset, [the husband] belatedly admitted it and attempted to give some explanation or excuse as to his non-disclosure. [The husband] also dissipated his assets such as by mortgaging the matrimonial home or "pledging" his shares for loans, of which he was unable [to] state with any clarity or adduce any documentary evidence as to how the monies obtained were spent. Yet for all his claims of impecuniosity, [the husband] continued to spend large sums of money on his credit card and was still financially supporting a second family.
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> 86 I also came to the conclusion that [the husband]'s family was assisting him in these ancillary proceedings. [The husband] was the eldest and legitimate son of his father, who is obviously a very successful businessman in Indonesia with a stable of companies. His paternal aunt, [Mdm Tay], also appeared as a very successful business woman of the same ilk. He also had uncles and brothers or step brothers who are in these family businesses run by [the husband]'s father and relatives. He also seemed to have good friends, one of whom commenced an action against him for an alleged debt, just after these divorce proceedings began, but filed a Notice of Discontinuance, which [the husband] failed to disclose in timely fashion, *before* the full debt was paid.
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> [emphasis in original]

18 The Judge ordered the husband to discharge all mortgages and encumbrances at his cost on the title of the Stevens Court property within four months from the date of the order and to transfer the Stevens Court property to the wife free from all encumbrances. As regards maintenance, the husband

was ordered to pay the wife a lump sum of S$1,152,000 in two tranches: the first within six months from the date of the order and the second within 12 months from the date of the order. The husband was also ordered to pay the wife S$8,000 per month from the date of the order and that these monthly sums so paid in the interim were to be deducted from the two instalments stated above.

The insertion of the penal notice before the High Court

19 From the oral grounds dated 28 November 2013, the Judge had specifically provided for the penal notice to be imposed against the husband. Thereafter, the husband's solicitors filed written submissions on 10 January 2014 to object to the inclusion of the penal notice. This was shortly followed by a response from the wife's solicitors to support the Judge's decision to include the penal notice.

20 Both parties appeared before the Judge on 5 February 2014 for clarification of the oral judgment. The Judgment had not been released at that point in time. In the course of the hearing, submissions were made by both parties on the issue of whether the penal notice should be inserted in the order of court. After hearing the parties' arguments, the Judge made the following orders:

> I order that penal notice remains. Draft Order/Judgment will be amended only for the charging order re CPF funds.

21 The husband remained undeterred and in a subsequent hearing before the Judge on 25 March 2014, it was once again argued that a penal notice could not be inserted vis-à-vis an order for the *payment of money*. It was also submitted that a penal notice may be inserted in orders pertaining to maintenance, but *not* for orders involving the division of matrimonial assets.

Notwithstanding the husband's arguments, the Judge held that the previous orders were to stand.

22 As mentioned above, the Judgment was only released on 29 April 2014. At [105(h)] of the Judgment, the Judge explicitly made the following order:

> if [the husband] disobeys these orders made herein, he will be liable to process of execution, for the purposes of compelling him to obey the same.

Therefore, in the amended order of court filed on 29 May 2014, the penal notice was specifically inserted against the husband.

The appeal

23 The husband appealed against the whole of the Judge's decision while the wife appealed against part of the decision. Both parties came before us for the substantive appeal on 13 October 2014.

24 After hearing the arguments by both parties, we delivered our *ex tempore* oral judgment, in which we made a number of adjustments to the Judge's decision on the division of matrimonial assets:

(a) The Indonesian property should have been added to the pool of matrimonial assets. In the absence of any evidence to the contrary, it should have been included at the value of S$3.2m based on the unchallenged forensic investigator's report adduced by the wife.

(b) In relation to the shares in Sindoko Pte Ltd, the husband should be taken as owning 75% of these shares, and not only 25% as found by the Judge. On the basis of the full value of the company being

S$2.65m, a 75% interest in that company will translate to a value of $1.9875m, which was to be added to the pool of matrimonial assets.

(c) The Judge had taken the value of the known matrimonial assets as being approximately S$10m and then applied an uplift of about 26% or 27% to arrive at an aggregate valuation of S$13m for the total asset pool. We agreed with the Judge that an adverse inference should be drawn against the husband on account of the wholly unsatisfactory manner in which his assets were disclosed. An uplift of 40% should instead be applied to the value of the known matrimonial assets, *ie*, S$14,385,364.63, to arrive at a total gross value of S$20,139,510.48.

(d) The Judge awarded the wife a share of 35% and we were satisfied that this was correct in the circumstances of the case. However, we took the view that the percentage was to apply to the *husband's share of the matrimonial assets*. In other words, the wife was to retain all of the assets in her own name, which were valued at approximately S$431,359.92. Over and above that, she was entitled to 35% of S$20,139,510.48 (*ie*, the gross value of the husband's assets *after* the application of the uplift), which worked out to S$7,048,828.67. Therefore, including the assets that are already in her name, she would be left with approximately S$7,480,188.59.

25 On the issue of maintenance, we were of the view that the Judge was correct in his findings, both as to the monthly allowance and the duration. In the circumstances, we affirmed the Judge's order on maintenance in full (including the lump sum payments that were to be made).

26 The issue as regards the penal notice was not brought up specifically during the course of the hearing although the husband had raised the issue in

the appellant's case. To that end, we did not make any observations as regards the penal notice since both parties appeared to accept that the insertion of the penal notice by the High Court was *not* disturbed on appeal.

The insertion of the penal notice before the Court of Appeal

27 After the conclusion of the substantive appeal, both parties could not agree on the extraction of the order of court due to a number of outstanding issues. One of the issues turned out to be the insertion of the penal notice. The wife took the view that the penal notice should also be inserted in the order of the Court of Appeal, given that it had been included in the amended order of the High Court dated 29 May 2014 (see [22] above). The husband objected to the wife's request on the basis that the Court of Appeal did not explicitly address the insertion of the penal notice.

28 This culminated in the wife taking out Summons No 201 of 2015 ("SUM 201/2015") for the following orders:

(a) that a penal notice be inserted in the judgment of the Court of Appeal dated 13 October 2014 (*ie*, the substantive appeal); and

(b) that the timeframe within which the husband has to pay the wife the sum of S$7,048,828.67 be specified as "4 months from the date of the CA Judgment".

29 The parties appeared before us on 11 March 2015. At that point in time, the husband was still represented by Tan See Swan & Co ("TSS & Co"). After hearing the parties' arguments, we allowed the wife's application in SUM 201/2015. We also clarified that our earlier order that the wife was entitled to 35% of the husband's pool of matrimonial assets was *not* for 35%

of an *in specie* recovery, but 35% of the husband's assets which had a gross value of S$20,139,510.48. We therefore ordered the husband to pay the sum of S$7,048,828.67 and the balance of the lump sum maintenance order, which stood at S$1,136,800, within one month. The order of the Court of Appeal was to be extracted with the penal notice in the terms set out in the wife's application, the reasons for which are explained below (see [39]–[54]).

The application for leave to commence committal proceedings

30 After the hearing on 11 March 2015, the order of court ("the 11 March Order") reflecting the penal notice and the one-month time period for compliance was extracted by the wife's solicitors. The wife's solicitors then proceeded to electronically serve the orders of court on TSS & Co, the husband's solicitors on record, on 27 March 2015 and 31 March 2015. TSS & Co replied by letter dated 30 March 2015, to inform the wife's solicitors to serve the orders of court "directly and personally" on the husband as it had not received further instructions from the husband following the hearing of 11 March 2015. Thereafter, multiple unsuccessful attempts were made by the wife's solicitors to effect personal service of the 11 March Order on the husband. The husband could not be located at all three locations, *ie*, his last known residential address at Spanish Village, the Stevens Court property and the registered address of a company which the husband was a shareholder of.

31 This development prompted the wife to file Summons No 226 of 2015 ("SUM 226/2015") on 7 April 2015 for dispensation of service or, in the alternative, substituted service. This was followed soon after by the husband's application on 14 April 2015 by his new counsel, Mr Ragbir Singh s/o Ram Singh Bajwa ("Mr Bajwa") of Bajwa & Co, for an extension of time to comply with the 11 March Order in Summons No 228 of 2015 ("SUM

228/2015"). The very next day, on 15 April 2015, the wife applied for leave to commence committal proceedings against the husband in Summons No 229 of 2015 ("SUM 229/2015"). A supporting affidavit by the wife and the statement pursuant to O 52 r 2(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") were also filed at the same time.

32 The parties appeared before us on 15 May 2015. At the conclusion of the hearing, we made the following orders:

(a) the husband's application for an extension of time by way of SUM 228/2015 was dismissed;

(b) the wife's application for dispensation of service on the husband by way of SUM 226/2015 was allowed; and

(c) the wife's application for leave to commence committal proceedings against the husband by way of SUM 229/2015 was allowed.

33 In addition, we also ordered the husband to be present at the next hearing, which was to be scheduled in July 2015.

The order of committal

34 On the very same day, upon the court granting leave to the wife to commence committal proceedings, the wife filed Summons No 240 of 2015 ("SUM 240/2015"), for the husband to be committed to prison for contempt of court. It was stated, *inter alia*, that the husband had failed to pay the sum of S$7,048,828.67 and the balance lump sum maintenance of S$1,136,800 to the wife, within the one-month period as stipulated in the 11 March Order.

35 The parties appeared before us again on 22 July 2015 for the hearing of SUM 240/2015. At the conclusion of the hearing, we were satisfied that the nature of the husband's contempt was such that a sentence of incarceration for a substantial period was warranted. The only impediment that stood in the way of us pronouncing and imposing such a sentence on that day was the husband's claim, based on some medical evidence, that he might not be suitable for a sentence of incarceration. In the circumstances, we considered it prudent to have the husband present himself to the prison's medical service for assessment and for confirmation that the prison's medical service could cope with the husband's medical condition. We directed the Singapore Prison Service ("SPS") to arrange for the medical assessment as soon as possible and that we would reconvene for the pronouncement of the sentence after receiving the medical report. Apart from that, we also directed the husband to immediately surrender whichever passports he had to the court, and that he was not to leave Singapore without the prior leave of the court.

The sentence

36 The husband duly presented himself for the medical review on 30 July 2015. After reviewing the medical reports and the husband's current medical condition, the medical director of Parkway Shenton Pte Ltd confirmed that the prison's medical service was able to manage the husband's medical condition adequately while in prison. This was confirmed in a letter dated 3 August 2015 by the chief medical officer of the SPS.

37 Both parties then appeared before us on 10 September 2015 for sentencing. After reviewing the facts and having considered a number of precedents that were cited by the parties in the course of the hearing, we sentenced the husband to eight months' imprisonment. It was also

acknowledged that the husband had been given numerous opportunities to purge his contempt, but in keeping with the precedents dealing with similar factual matrices, we granted the husband a final indulgence by suspending the sentence for a period of four weeks to enable him to take steps to effect compliance with the order. We also ordered the husband's passport to continue to be held by the court in the meantime.

Analysis

38 Having set out the relevant facts throughout the entire course of the committal proceedings, we now give the reasons for our decision at each stage of the proceedings. We will explain our decision with reference to the applicable legal principles at each stage of the committal proceedings. It is hoped that this will provide some useful guidance to our courts in dealing with cases of contempt involving disobedience of court orders. For ease of reference, we will segment the proceedings in the following manner:

(a) the insertion of the penal notice and specification of timeframe for compliance;

(b) the application for leave to commence committal proceedings;

(c) the conviction; and

(d) the sentencing.

We will address the parties' submissions as and where appropriate in the course of our analysis below.

Insertion of the penal notice and timeframe for compliance

39 The wife relied on three principal arguments in support of the insertion of the penal notice. First, she highlighted that the penal notice had been inserted in the order granted by the High Court. This was after the Judge had heard substantive arguments on the specific issue of whether it was appropriate to include the penal notice. Given that the Judge's decision to include the penal notice was not disturbed on appeal, the wife submitted that the penal notice should likewise be included in the order of the Court of Appeal. Secondly, the wife argued that she needed to avail herself of all possible avenues of enforcing the judgment of the court, given the husband's history of displaying utter lack of respect and regard for the various orders of court. Thirdly, the wife contended that the husband's conduct in breaching the various court orders had caused her "severe financial hardship". She highlighted that the husband had breached the Judge's order in refusing to redeem the mortgage and that this had resulted in the repossession of the Stevens Court property, thereby causing her to be evicted. Consequently, she had to expend her already limited financial resources to find alternative accommodation for herself.

40 The husband maintained the position that it was not appropriate to insert the penal notice in the Court of Appeal's judgment, given that it only entailed the payment of a specific monetary sum, as opposed to other positive acts that had to be performed by him. The husband argued that the inclusion of the penal notice by the Judge had to be considered in the context of the order which required the husband to discharge the mortgage and all encumbrances on the Stevens Court property within four months of the order. This stood in contrast with the judgment of the Court of Appeal, where the husband was merely ordered to pay the wife a monetary sum of S$7,048,828.67 (in relation

to the division of matrimonial assets). Apart from that, the husband also argued that he was incapable of making any payment due to his impecuniosity. He stressed that his inability to pay could not be regarded as a form of disobedience or blatant disregard of the court order, given that the law provides for other modes of enforcement, such as the commencement of bankruptcy proceedings. Finally, the husband also adduced evidence to demonstrate his poor health and unsuitability for imprisonment. He asserted that an order of committal would be an obviously impracticable and an unnecessarily harsh remedy in light of his poor health and financial status.

41 At the outset, we note that the initial order granted at the substantive appeal only required the husband to pay the wife the sum of S$7,048,828.67, being her share of the matrimonial assets, and the balance lump sum maintenance of S$1,136,800, with no specified timeframe within which the payments had to be effected. The significance of imposing a timeframe for payment of a judgment debt will be elaborated upon below but in short, it is to ensure that the judgment debtor knows exactly *how and when* he is obliged to comply with an order of court for the purposes of committal proceedings. In this regard, O 45 r 1 of the ROC stipulates that a judgment or order for the payment of money, not being a judgment or order for the payment of money into court, may be enforced by one or more of the following means:

> (*a*) writ of seizure and sale;
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> (*b*) garnishee proceedings;
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> (*c*) the appointment of a receiver;
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> (*d*) *in a case in which Rule 5 applies*, an order of committal.
>
> [emphasis added]

O 45 r 5(1)(*a*) provides that where a person required by a judgment or order to do an act "within a time specified in the judgment or order refuses or neglects

to do it within that time", then, subject to the ROC, the judgment or order may be enforced by one or more of the following means:

> (i) with the leave of the Court, *an order of committal*;
>
> …
>
> (iii) subject to the provisions of the Debtors Act (Cap. 73), an order of committal against that person or, where that person is a body corporate, against any such officer.
>
> [emphasis added]

Therefore, in a case where a judgment or order for the payment of money does not specify the timeframe within which the debtor has to comply (which is typically the case in most monetary judgments), enforcement by way of committal will not be available. It also bears noting that a judgment or order to pay money to another party typically does not *require* a specific time within which payment has to be effected, as opposed to a judgment or order for a positive act (*ie*, apart from the payment of money) to be done. Therefore, a judgment or order to pay money will, in most instances, be left open-ended as to the time for compliance.

42 The critical importance of the requirement set out in O 45 r 5(1)(*a*) of the ROC was highlighted in the decision of this court in *QU v QV* [2008] 2 SLR(R) 702. In that case, the ancillary order of court had granted the respondent sole custody, care and control of the child of the marriage. The appellant was ordered to surrender the child's passport and birth certificate to the respondent. The appellant failed to comply with the order and committal proceedings were commenced by the respondent against the appellant. The District Court found the appellant in contempt and imposed a fine of S$1,000. This was upheld by the High Court on appeal (see *QU v QV* [2007] 4 SLR(R) 588). When the matter came before the Court of Appeal, Chan Sek Keong CJ, in delivering the grounds of decision of the court, held (at [19]):

> There appears to be no local judicial decision on the question whether a party can be punished for contempt of court for disobeying a court order directing him to do a positive act (such as the acts to be done by the appellant under the Ancillary Order in the present appeal) where that court order does not specify a time for doing the act in question. However, in our view, the answer seems obvious as a matter of law and justice in the context of the power to punish a person for contempt of court by imprisonment or imposition of a penalty. It is contrary to all notions of justice that a person could or should be punished for omitting to do an act stipulated in a court order when he does not know or is not certain when such omission constitutes a breach of the court order. In the present case, it is true that the appellant had plenty of time to deliver the child's birth certificate to the respondent, but, in our view, the meaning of O 45 r 5(1)(*a*) should not be determined on the facts of a specific case. That rule is explicit in its prescription that a court order requiring a person to do an act *must* specify a time frame for doing that act before the party subject to the court order can be committed for breaching it. [emphasis in original]

A distinction was also drawn between an order requiring a person to *abstain* from doing an act and an order requiring a person to *do* an act within a specified time. In the former scenario, time is not critical in so far as the failure to abstain from doing the act at *any* time constitutes a breach of the order. This stands in contrast to the latter scenario, where the party has to be told "by when he must do the act" (at [21]).

43 Returning to the facts of the present case, given that the issue concerning the insertion of the penal notice was not specifically dealt with in the course of the substantive appeal, coupled with the fact that the order only required the husband to pay the specified sums of money without specifying any timeframe within which the payment had to be effected, the wife's application in SUM 201/2015 was a necessary precursor to any commencement of committal proceedings against the husband.

44 There exists a mechanism for the court to *subsequently* make an order requiring an act stipulated in an *earlier* order of court to be performed within a specific timeframe under O 45 r 6(2) of the ROC:

> (2) Where, notwithstanding Order 42, Rule 6(1), or by reason of Order 42, Rule 6(2), a judgment or order requiring a person to do an act *does not specify a time within which the act is to be done*, the Court shall *have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.* [emphasis added]

45 However, we should make it clear that not every default of an order for the payment of a monetary sum would justify the imposition of a time frame for payment as a precursor to the commencement of committal proceedings. In *MP-Bilt Pte Ltd v Oey Widarto* [1999] 1 SLR(R) 908 ("*MP-Bilt*"), G P Selvam J made the following observations on the insertion of a time limit within which a monetary sum is to be paid (at [49]):

> The new common form of judgment was introduced in Singapore in 1970 and is still in use. When a plaintiff obtains a judgment for money he can avail himself the same execution process irrespective of whether the cause of action is founded on common law or equity. However, there is one important point to note. It arises from the double dimension of the relief of specific performance: one relating to procedural law and the other substantive law. The change in procedure did not change the substantive law. *In either case if the judgment creditor desires to avail himself of committal proceedings he must ask for insertion in the judgment or order a time limit within which the money is to be paid. In which case material must be placed before the court to enable it to exercise its discretion. It will not be given as a matter of course. Without the insertion of the time limit there can be no committal proceedings.* Without it, it is not an order for specific performance in its true sense and form. All that is procedural law. That does not alter the substantive law governing debt, damages and specific performance. [emphasis added]

46 In our judgment, there must be sufficient material before us to warrant the exercise of our discretion under O 45 r 6(2). We should emphasise that the

exercise of the court's discretion under O 45 r 6(2) will necessarily turn on the precise facts of each case. The type and nature of material to support such applications is likely to differ, depending on the subject matter of the substantive case. In most cases, evidence demonstrating some form of contumelious conduct, as in the present case, will likely suffice. In contrast, a one-off failure to comply with an order for the payment of money is unlikely to be a sufficient basis for the court to exercise its discretion.

47 In the exercise of discretion under O 45 r 6(2), the court will also have to take into account, amongst other factors, any potential prejudice which may be occasioned to the person having to comply with the order of court. For instance, in cases where administrative or logistical difficulties are likely to arise in the course of effecting compliance with the judgment or order, the court will have to adopt a practical approach in balancing the interests of both parties. Meanwhile, in the event that the person has *not* manifested *any* intention to comply with the judgment or order, the court should be slow to accede to any request for an extended timeframe for compliance as that may have the unintended effect of further delaying or frustrating the applicant's attempt to enforce the judgment or order. As with any typical application for an extension of time, the exercise of the court's discretion will mainly turn on the precise facts of each case.

48 The husband's primary argument to oppose the wife's application was premised on the distinction between the nature of the orders made by the High Court and the Court of Appeal. The husband claimed that the usage of committal proceedings as a mode of enforcement should be confined to a judgment or order for the doing of a positive act, *apart from the payment of money*. He argued that the inclusion of the penal notice by the High Court must be seen in the context of the order which required him to discharge the

mortgage and all encumbrances on the Stevens Court property within four months of the order. We rejected the husband's arguments. It is clearly stated under O 45 r 1(1) of the ROC that a judgment or order for the *payment of money* may be enforced by way of an order for committal, *in a case in which Rule 5* (*ie*, O 45 r 5 of the ROC) *applies*. As we have explained above, O 45 r 5 merely sets out the requirement for the order to include the time within which the person has to do an act in order for committal proceedings to be available.

49 Therefore, a distinction must be drawn between a judgment or order for the payment of money within a specified time, for which O 45 r 5 is applicable, and a judgment or order for the payment of money *simpliciter* without a specified timeframe, for which O 45 r 5 is not available. An order of committal is only available as a mode of enforcement in the *former* situation. Therefore, the husband's contention that a penal notice should *never* be inserted in relation to a judgment or order for the payment of money fails to recognise the above distinction.

50 Further, the husband also sought to rely on his poor health and alleged unsuitability for imprisonment as a basis to resist the insertion of the penal notice. This was, in our view, wholly unmeritorious as the husband was not seeking to argue that he was unable to perform his obligations pursuant to the judgment on account of his alleged ill-health, but that he was not a suitable candidate for imprisonment. While the husband's poor health and alleged unsuitability for imprisonment may be a relevant consideration in determining the appropriate *sentence* to be imposed, as will be discussed further below, it has no bearing on the issue of whether the husband should be held *liable* for contempt of court. It is settled law that apart from the imposition of a custodial sentence, the court may also impose a fine as punishment even in cases of

contempt by disobedience (see *eg*, *Summit Holdings Ltd and another v Business Software Alliance* [1999] 2 SLR(R) 592 ("*Summit Holdings*") at [53] and *Heatons Transport (St Helens) Ltd v Transport and General Workers' Union* [1973] AC 15). In fact, a fine is often regarded as an appropriate remedy in cases where the disobedience is of a less serious nature, or where the contempt is technical in nature and did not cause substantial prejudice to either the opposing party or the due administration of justice. Therefore, we were of the view that the court should only take into account factors such as the contemnor's health and suitability for imprisonment at the *sentencing* stage, and that it would be premature for the court to disallow the wife's application for the insertion of the penal notice on account of the husband's poor health and alleged unsuitability for imprisonment.

51 Finally, the husband also sought to rely on his purported impecuniosity as a ground to resist the wife's application. It was argued that his failure to comply with the court's earlier orders was due to his *inability* to pay, as opposed to any *refusal* to pay or *neglect* on his part. This was also, in our view, wholly devoid of any merit since the husband had failed to produce *any* supporting evidence to establish that he was not in a position to satisfy the previous court orders. More pertinently, it will be recalled that we had, in the course of the substantive appeal, already made the finding that the husband had assets amounting to S$20,139,510.48. In the circumstances, the husband's contention that he did not have the means to comply with our earlier orders was no more than an attempt to relitigate the issues already decided in the substantive appeal. In any event, the husband did not seek to argue that he was unable to discharge his obligations under the judgment as a result of any material change in circumstances *after* the conclusion of the substantive

appeal. As such, the husband's attempts to portray himself as an impecunious debtor were diametrically opposed to our earlier findings.

52 In arriving at our decision to grant the wife's application in SUM 201/2015, we were satisfied that there was sufficient material before us to warrant the exercise of our discretion under O 45 r 6(2). We took into account the fact that the husband had already, at that point in time, breached various other court orders. These include the additional mortgage that the husband had obtained in breach of the injunction, the failure to comply with the Judge's order to discharge all mortgages and encumbrances on the Stevens Court property, and his selective attempts at complying with the maintenance payments ordered by the court. In fact, when the parties appeared before us on 11 March 2015, we were informed that the Stevens Court property had been repossessed by the mortgagee bank and that the wife had been evicted from the property. As regards the maintenance payments, the evidence before us demonstrated that the husband had been extremely uncooperative in complying with the Judge's orders. As a result, the wife had to commence MSS 1607/2014 to compel the husband to pay the maintenance arrears. Although the husband initially complied with the enforcement order pursuant to MSS 1607/2014, he ceased making further payment after the delivery of our *ex tempore* judgment for the substantive appeal. Thereafter, the wife filed a further enforcement application in MSS 5389/2014 to compel the husband to effect the maintenance payments in accordance with the Judge's order. The wife's counsel also highlighted the fact that the husband had filed an application to: (a) stay the wife's enforcement proceedings in MSS 5389/2014; and (b) vary the lump sum maintenance order in the Judgment. This was in spite of the fact that we had already *affirmed* the Judge's order on the issue of maintenance in the substantive appeal. In the absence of any evidence to

suggest any material change in circumstances *after* the substantive appeal, the husband's attempt to vary the lump sum maintenance order was no more than a disingenuous attempt to frustrate the wife's enforcement proceedings by way of relitigating the issues already decided in the substantive appeal. In the circumstances, after considering the evidence before us and the arguments put forth by both parties, we allowed the wife's application to: (a) insert the penal notice in the order of court against the husband; and (b) specify a timeframe within which the husband had to comply with his payment obligations under the order of court.

53 As regards the appropriate timeframe to be specified in the order of court, the wife took the position that the time period for compliance ought to be "4 months from the date of the CA Judgment [*ie*, the date of the substantive appeal]". Given that we had delivered our judgment on the substantive appeal on 13 October 2014, the four-month time period requested by the wife would have expired in February 2015, which had already lapsed by the time the parties appeared before us on 11 March 2015. In our view, this was prejudicial to the husband since he would by then already be in contempt of court.

54 In the circumstances, we ordered the husband to pay the sum of S$7,048,828.67 being the wife's share of the matrimonial assets and the lump sum maintenance of S$1,136,800 *within one month of the date of the hearing* (*ie*, 11 March 2015). We also gave directions for the order in relation to the substantive appeal to be extracted with the penal notice in the terms set out in the wife's application. The husband was therefore given the opportunity to comply with our earlier order, after having been apprised of the potential consequences of non-compliance by way of the penal notice.

Application for leave to commence committal proceedings

55 Before addressing the facts that are relevant to the wife's application for leave to commence committal proceedings, we first make a number of preliminary observations on the applicable legal principles governing such applications.

56 There are two stages to the committal of a non-complying party. The first stage involves the leave application to commence committal proceedings against the respondent (see O 52 r 2 of the ROC). Once leave has been granted, the second stage involves the actual application for an order of committal against the respondent. This application has to be made within 14 days of the grant of leave (see O 52 r 3(3) of the ROC).

57 The threshold for the grant of leave at the first stage of the committal proceedings is that of a *prima facie* case of contempt. In *BMP v BMQ and another appeal* [2014] 1 SLR 1140 ("*BMP v BMQ*"), the respondent husband had appealed against the lower court's order granting leave to the applicant wife to apply for committal on the basis of his alleged non-compliance with a Mareva injunction. In allowing the appeal, the High Court espoused a number of useful observations on the applicable threshold for the grant of leave under O 52 r 2 of the ROC. In brief, the requirement for leave prior to any commencement of committal proceedings essentially serves as a procedural safeguard. It is one of the procedural rules put in place to ensure that the liberty of the alleged contemnor is not, in any way, compromised due to the summary and quasi-criminal nature of the court's jurisdiction in civil contempt. To this end, the applicant is required to provide full and frank disclosure of the background facts to the application. The proper procedure

must also be strictly complied with before the court will grant leave to commence committal proceedings.

58 In the course of hearing the leave application, the court must be mindful not to venture into or purport to decide the substantive merits of the committal application, which is properly the subject matter for adjudication at the second stage (*ie*, the actual application for the order of committal). From a perspective of fairness, it is only at the second stage that the respondent, having been given adequate particulars of the charges against him, will have ample opportunity to deny the allegations and provide an explanation for his non-compliance at the committal hearing. From a practical perspective, this principle works both ways. If the respondent's position directly addresses the substantive issues arising out of the alleged contempt, such as where he admits non-compliance but relies on the argument that the non-compliance does not, in any event, amount to a contempt of court, he should only put forth his case at the second stage of the proceedings, as opposed to raising it prematurely at the leave stage (see *Ang Boon Chye and another v Ang Tin Yong* [2011] SGHC 124 ("*Ang Boon Chye*") at [13]).

59 To that end, a respondent's objection to a leave application will succeed if it can be shown that there are exceptional circumstances directly impinging on the applicant's entitlement to apply for leave to commence committal proceedings. In *Ang Boon Chye*, Kan Ting Chiu J provided (at [12]) a number of examples which a respondent may rely on to resist an application for leave to commence committal proceedings:

> (a) the Order of Court had been complied with;
>
> (b) the plaintiffs waived their rights to the accounts;
>
> (c) the plaintiffs had undertaken not to take out committal proceedings.

The common thread that runs through these three grounds is that they directly impinge on the applicant's right to apply for an order of committal *without* delving into the substantive merits of whether the respondent ought to be committed. For the avoidance of doubt, the examples provided by Kan J in *Ang Boon Chye* are not intended to be exhaustive.

60 Under O 52 r 2(2) of the ROC, an application for leave to commence committal proceedings must be supported by a statement setting out:

(a) the name and description of the applicant;

(b) the name, description and address of the respondent sought to be committed; and

(c) the grounds on which his committal is sought.

A supporting affidavit will also have to be filed by the applicant, verifying the facts relied on in the statement. In this respect, a court hearing the application for leave will have to review the originating summons (or summons, as the case may be), the statement and the supporting affidavit to ensure that a *prima facie* case of contempt has been established. If any of the aforementioned documents do not satisfy the requirements set out in O 52 r 2(2), the application may be dismissed by the court, even if no such objection was raised by the respondent to the application.

61 The importance of the O 52 r 2(2) statement cannot be understated. It is a fundamental rule of justice that a person being called upon to answer a charge must first know the precise case that he has to meet and should be accorded ample opportunity to refute the allegations. To this end, the O 52 r 2(2) statement serves a crucial role in enabling the respondent to know the case that has been put forth against him. It also functions as the boundaries of

the applicant's case, such as to prevent the applicant from relying on grounds that have been omitted from the statement. This safeguards the interests of the respondent, whose liberty is at stake. This was reiterated by Yong Pung How CJ in the High Court decision of *Summit Holdings* (at [14]–[15]):

> 14 Order 52 r 5(3) makes it clear that, unless the court hearing the application gives leave, the applicant at the hearing of the application for an order of committal *can only rely on the grounds set out in the statement accompanying the ex parte application for leave to apply for a committal order*.
>
> 15 This was not an appropriate case for granting leave for the applicants to rely on those grounds not in the statement for the following reasons. First, the rules concerning an application for committal would *normally have to be strictly construed and complied with*. The manner in which O 52 is drafted envisage that *all the evidence adduced is confined strictly to the grounds that are relied upon by the applicants moving for contempt*. This is without prejudice to the court's power to order an amendment under O 20 r 8 which allows correcting defects and errors in the proceedings, which is not applicable here.
>
> [emphasis added]

The learned Chief Justice further observed (at [17]) that the rationale behind the O 52 r 2(2) statement was similar to that of a criminal charge, which is required to be sufficiently particularised such that the accused knows the case he has to meet and has the opportunity to refute the allegations that have been put forth against him. It was emphasised (at [18]) that:

> Here the respondent would be seriously prejudiced if it did not know the precise case which it would have to meet, especially in relation to what orders or undertakings it had breached, or acts done which allegedly amounted to an interference with the administration of justice. …

62 As a starting point, the test is whether the O 52 r 2(2) statement is of sufficient particularity such that it gives the respondent adequate information to enable him to meet the charges against him: *BMP v BMQ* at [25]; see also *Harmsworth v Harmsworth* [1987] 1 WLR 1676 at 1683. The test is to be

applied with reference to and from the perspective of a reasonable person in the position of the alleged contemnor reading the O 52 r 2(2) statement in a fair and sensible manner. In other words, if it is possible for a reasonable person, having regard to the background against which the committal proceedings have been commenced, to be in doubt as to what is, in substance, the breach as alleged by the applicant, such an O 52 r 2(2) statement would be regarded as defective or otherwise faulty (see *Chiltern District Council v Keane* [1985] 1 WLR 619 at 622). Owing to the need for strict procedural compliance in cases where the liberty of the respondent is involved, in such circumstances, the court will invariably dismiss the leave application.

63 If an application for leave should be dismissed on account of insufficient particulars in the O 52 r 2(2) statement, the court has jurisdiction to entertain a fresh application founded on the same allegations of contempt, so long as the procedural rules are satisfied and the O 52 r 2(2) statement is in the proper form (see *Harmsworth v Harmsworth* at 1687 *per* Woolf LJ and *Jelson (Estates) Ltd v Harvey* [1983] 1 WLR 1401).

64 An issue that may arise is the extent to which an applicant may, in the process of drafting an O 52 r 2(2) statement, refer to the contents of a separate document. It is appropriate to refer to Nicholls LJ's judgment in *Harmsworth v Harmsworth*. In that case, the husband appealed against a committal order on the basis that the notice, the equivalent of our O 52 r 2(2) statement, did not contain sufficient particulars and that the judge's findings went beyond the scope of the notice. The English Court of Appeal allowed the appeal in part in so far as the judge at first instance took into account matters that went beyond the scope of the notice. Nicholls LJ made the following salient observations (at 1683):

> … In satisfying this test it is clear that in a suitable case if lengthy particulars are needed, they *may be included in a schedule or other addendum either at the foot of the notice or attached to the notice so as to form part of the notice rather than being set out in the body of the notice itself. But a reference in the notice to a wholly separate document for particulars that ought to be in the notice seems to me to be a quite different matter.* I do not see how such a reference can cure what otherwise would be a deficiency in the notice. As I read the Rules and as I understand the decision in *Chiltern District Council v. Keane*, the Rules require that the notice itself must contain certain basic information. *That information is required to be available to the respondent to the application from within the four comers of the notice itself.* From the notice itself the person alleged to be in contempt should know with sufficient particularity what are the breaches alleged. A fortiori, in my view, where the document referred to is an affidavit, which does not set out particulars in an itemised form, but which leaves the respondent to the committal application to extract and cull for himself from an historical narrative in the affidavit relevant dates and times and so forth, and to work out for himself the precise number of breaches being alleged and the occasions on which they took place. [emphasis added]

65 From the above excerpt, it is clear that references may be made to the contents of documents other than the O 52 r 2(2) statement *provided* they "form part of the notice". In this regard, the nature of the document referred to and the manner in which the document is referred to are relevant considerations in the court's determination of whether such references should be allowed. For starters, if an *additional* document, such as a schedule or an addendum, is "attached to the notice so as to form part of the notice" (*Harmsworth v Harmsworth* at 1683), such a reference would generally be allowed in so far as it enables a more efficient presentation and comprehension of the particulars of the alleged contempt.

66 In contrast, references to other documents such as the affidavit filed in support of the leave application which do not form part of the notice would not be permitted (see also *Syarikat M Mohamed v Mahindapal Singh & Ors*

[1991] 2 MLJ 112 at 115 and *Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors* [2012] 3 MLJ 458 ("*Lim Pang Cheong*") at [37]). In any event, the purpose of the accompanying affidavit is for the applicant to verify the truth of the contents of the statement, and is *not* meant to supplement the O 52 r 2(2) statement. It is also the case that defects in the O 52 r 2(2) statement cannot be cured by way of submissions from counsel, either orally or in writing: *BMP v BMQ* at [24]. The rationale for this distinction, given the quasi-criminal nature of committal proceedings, is to ensure the information relied on by the applicant is "*available to the respondent to the application from within the four comers of the notice itself*".

67 Ancillary to the test of sufficient particularity is the consideration of whether the court may exercise its discretion to treat a case of an insufficiently particularised statement as an irregularity which may be waived. In this regard, O 2 r 1(1) of the ROC provides:

> **Non-compliance with Rules (O. 2, r. 1)**
>
> **1.**—(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

68 In *BMP v BMQ*, Lionel Yee JC held (at [26]) that the court may only exercise its discretion to waive irregularities in committal applications in exceptional circumstances in the absence of the alleged contemnor's consent. We agree. A distinction is to be drawn between committal proceedings and other applications given that the liberty of the alleged contemnor is at stake in the former case. Consistent with the position on references that may be made

to additional sources of information, a higher standard must therefore be observed as regards an applicant's compliance with the procedural rules and safeguards in the law of committal. We find it useful to refer to Nicholls LJ's observations in *Harmsworth v Harmsworth* (at 1684) on the distinction between regular civil proceedings and committal proceedings:

> … But there is this difference between a committal application and other applications. Such is the importance which the law attaches to the liberty of the subject that normally the procedural rules must be strictly complied with in the case of a committal application, and it would only be in an exceptional case that in the absence of the consent of the respondent it would be just to waive an irregularity in a committal application. Hence it would be only be in an exceptional case that, in the absence of such consent, the court would exercise its discretion and waive such an irregularity.

In this regard, provisions allowing the court to waive any irregularity or non-compliance in procedure, such as O 2 r 1(1) of the ROC, should be interpreted in the proper context and not be extended indiscriminately to committal proceedings.

69 The court in *BMP v BMQ* further observed (at [26]) that a distinction should be drawn between failure to observe procedural safeguards and mere technical irregularities. In contrast to the former, the court may waive irregularities but only if they are purely technical in nature: see also *Arthur Lee Meng Kwang v Faber Merlin Malaysia Bhd & Ors* [1986] 2 MLJ 193 and *Lim Pang Cheong* at [29]. We add the further caveat that the distinction is not premised on the harm or prejudice suffered by the alleged contemnor. Save for exceptional circumstances, it is therefore irrelevant whether harm has been occasioned to the alleged contemnor as a result of the applicant's failure to comply with the procedural rules. For instance, an applicant should not be allowed to file a further affidavit to supplement a defective O 52 r 2(2)

statement on the basis that no prejudice is occasioned to the respondent. As we have emphasised above, the test of sufficient particularity of an O 52 r 2(2) statement is a *procedural safeguard* which has to be strictly complied with. The fact that the respondent may have been apprised of the grounds by way of other means is not a sufficient basis for the court to exercise its discretion to waive the procedural impropriety. While the distinction between the failure to observe procedural safeguards and mere technical irregularities may not be apparent at times, the court will have to adopt a sound and pragmatic approach which balances the rights of both the applicant and the respondent. On one hand, the recognition that the liberty of the respondent is at stake, as in the case of criminal proceedings, usually entails strict compliance with procedure. On the other hand, the court should also be mindful of allowing unmeritorious respondents to escape liability on account of overly technical objections. As was observed by Woolf LJ in *Harmsworth v Harmsworth*, while the court should recognise that the liberty of the respondent is at stake in committal proceedings, it should not allow that fact to produce a result which makes a mockery of justice (at 1686). Having set out the applicable legal principles governing such leave applications, we now go on to consider the arguments relied upon by both parties.

70 At the hearing of the wife's application for leave to commence committal proceedings, the husband was represented by Mr Bajwa. In the course of the hearing, Mr Bajwa did not dispute the fact that the husband had failed to comply with the 11 March Order. Instead, he sought to rely on the same objections raised by the previous solicitors (*ie*, TSS & Co) in the course of resisting the wife's application for the insertion of the penal notice, in that an order for payment of a monetary sum could not be enforced by way of committal proceedings. That was essentially the *only* argument that Mr Bajwa

relied on in opposing the wife's application for leave to commence committal proceedings against the husband. In the course of doing so, Mr Bajwa relied extensively on the recent Malaysia High Court decision of *Lee Lay Ling v Goh Kim Nam (Cheah Pei Ching, co-respondent)* [2014] 8 MLJ 805 ("*Lee Lay Ling*").

71 As we have already discussed at [41]–[49] above, the provisions set out in O 45 r 1(1)(*d*) and O 45 r 5(1) of the ROC suggest that a distinction ought to be drawn between a judgment or order for the payment of money within a specified time, to which an order of committal is available as a mode of enforcement, and a judgment or order for the payment of money *simpliciter* without a specified timeframe, to which an order of committal will *not* be available. Nevertheless, given that Mr Bajwa has relied substantially on *Lee Lay Ling* for the proposition that *all* monetary judgments cannot be enforced by way of committal proceedings, we will explain why this case is of no assistance to the husband's objection.

72 In *Lee Lay Ling*, the applicant wife had sought to have the respondent husband committed for failing to make various payments as ordered by the court in the course of matrimonial proceedings. The question before the court was whether a mere failure or refusal to comply with an order of court to make payments (whether by way of lump sum or instalment payments) constitutes an act of contempt so as to entitle the other party to commence committal proceedings against the defaulting party. At the outset, the court observed that a judgment creditor would typically commence execution proceedings against the judgment debtor for recovery of the amounts that are payable under the order of court. Therefore, the question was whether, *apart from execution proceedings*, the husband may also be committed for failing to discharge his obligation to make monetary payments pursuant to the order of court.

S Nantha Balan JC considered himself to be in the invidious position of having to choose between two conflicting Malaysia Court of Appeal decisions, which he had observed (at [19]), were both binding on him. The first was *Hong Leong Bank Bhd v Phung Tze Thiam* [2008] 4 CLJ 742 ("*Hong Leong Bank*"), which stood for the proposition that a "money judgment" was "not a judgment requiring the performance of an act", and therefore could not be enforced by means of committal proceedings. The second was *Hong Kwi Seong v Ganad Media Sdn Bhd* [2013] 2 MLJ 251 ("*Hong Kwi Seong*"), where a differently constituted Court of Appeal expressly disagreed with its earlier decision in *Hong Leong Bank*. We will discuss these two Malaysian cases in greater detail below.

73 Returning first to the decision of *Lee Lay Ling*, Balan JC preferred the position in *Hong Leong Bank*. The learned judge therefore arrived at the conclusion (at [19]) that the disobedience by a judgment debtor in respect of his obligations under a monetary judgment was not within the purview of the law of contempt. In arriving at this view, Balan JC also adopted a restrictive interpretation of O 45 r 5 of the Malaysia Rules of Court 2012 (*in pari materia* with O 45 r 5 of the ROC). It was observed that a mere obligation to pay under a judgment *per se* was not an obligation which falls within O 45 r 5, and that it could not amount to the "doing of an act" (at [23]). The learned judge also provided an example of an order which might possibly fall within the scope of O 45 r 5 (at [24]):

> So, for instance, if there is an *additional obligation* that has to be done which is coupled with a payment obligation, then perhaps it may be construed as the doing of an act, which, if disobeyed, could expose the disobedient party to committal proceedings. … where [the respondent] is obliged to dispose of the matrimonial home *and* divide the proceeds *and* pay [the applicant] her share of the proceeds … assuming [the respondent] does sell the matrimonial home and decides to keep the proceeds all to himself, then his failure to pay [the

> applicant] her share of the proceeds will, in my view, fall within O 45 r 5 in the sense that [the respondent] was supposed to do an act *within a particular time frame* but failed or refused to do so. … [emphasis added]

74 Before expressing our views on the decision in *Lee Lay Ling*, it is perhaps appropriate to first examine the two conflicting Malaysia Court of Appeal decisions that confronted the learned judge. After all, the decision in *Lee Lay Ling* was premised on one of the two conflicting decisions. In *Hong Leong Bank*, the respondent employee had brought proceedings against the appellant bank for constructive dismissal. He succeeded at first instance and the bank was ordered to pay him backwages. This was, however, subsequently reversed by the Court of Appeal, who ordered the employee to refund the sum paid to him within 30 days of the court's order. The employee, however, refused to comply and the bank applied for leave to commit the employee for contempt of court. At the outset, it should be noted that the decision in *Hong Leong Bank* probably turned on the holding that the application had been wrongly made to the Court of Appeal when it should have been heard by the High Court instead (at [3]). Nevertheless, the court went on to observe that the substance of the order under consideration was a "money judgment and not a judgment requiring the performance of an act" (at [5]). On that basis, the order of court could not be enforced by way of committal proceedings. In arriving at this conclusion, the Malaysia Court of Appeal relied on two English decisions, namely, *In re Oddy, Major v Harness* [1906] 1 Ch 93 ("*Re Oddy*") and *Iberian Trust, Limited v Founders Trust and Investment Company, Limited* [1932] 2 KB 87 ("*Iberian Trust*").

75 The approach adopted in *Hong Leong Bank* was, however, met with disapproval in *Hong Kwi Seong*, where a differently constituted Court of Appeal observed that it was "unable to agree with the decision of the Court of

Appeal in *Hong Leong Bank*, that a money judgment directing [the employee] to repay the money could not be enforced by committal proceedings" (at [14]). It was held that the specific terms of the judgment or order were of "overriding importance" (at [15]), as they had to be construed by the court in order to ascertain the legal effect as to whether the defendant was required to do an act within a specified timeframe and whether the defendant had refused or neglected to do so within that timeframe. On the facts of that case, the court held that the terms of the order clearly directed the appellant to pay the judgment sum in five instalments on or before the respective dates. This fell within the scope of O 45 r 5(1)(*a*)(i) since the appellant was clearly directed to do an act within a specified timeframe.

76 Having considered the three decisions set out above, we express the following observations. First, as was highlighted above, it appears that the decision in *Hong Leong Bank* was mainly based on two English decisions, namely *Re Oddy* and *Iberian Trust*. We are, however, of the view that both *Re Oddy* and *Iberian Trust* do not stand for the broad proposition that *all* monetary judgments cannot be enforced by way of committal proceedings. In *Re Oddy*, the order in question was for the plaintiff *to recover* from the defendant a sum of money, being the amount of loss occasioned to the trust estate. After the delivery of the original judgment, the plaintiff applied for the order to be supplemented by directing the defendant to pay the plaintiff the sum in question within four days of service of the order. The English Court of Appeal reversed the lower court's decision to allow the plaintiff's application. It was held that an order for the recovery of money could not be supplemented by an order fixing a time for the payment of money by the defendant so as to found a right to issue a writ of attachment against the defendant in default of payment within the stipulated time. In our view, *Re Oddy* illustrates the

importance of framing the order of court in an appropriate manner as it will have a material downstream impact on the modes of enforcement available at the plaintiff's disposal. In this regard, we find it useful to refer to the following observations made by Vaughan Williams LJ in *Re Oddy* (at 98):

> … In the first place I agree with the argument that was put forward by counsel for the appellant, that to make this four-day order is not to enforce the original order. In my judgment, it is to add a new order to the original order. And further, it would not be true to say that the four-day order, so far as it fixes a time, is an order which in the ordinary course ought to have been added to the order that the plaintiff do recover. Not only have I never known such a thing done, but it would very often defeat the very object of drawing up the order in that form. Plaintiffs are sometimes very anxious to get an order in that form, because it enables them to get immediate execution. *There is a manifest difference between an order for payment by a trustee and an order that the plaintiff do recover, in considering the question what may be done to complete or supplement the order. In this particular case we do not exactly know what led the plaintiff to take the order in this form, but we know that he did so. We also know that if the plaintiff had not brought the order to the registrar in that form, the registrar would never have made it in that form.* I think that this appeal must be allowed with costs. [emphasis added]

In our view, *Re Oddy* stands for the proposition that a judgment for the recovery of a sum of money cannot be supplemented by an order for payment within a limited time. The plaintiff in *Re Oddy* had, for reasons only known to itself, extracted the order in the form where it was to recover the money from the defendant. In other words, the defendant was not expressly named as an obligor in the order of court. The onus was therefore placed on the plaintiff to recover the sum of money from the defendant. That was, in our view, not an appropriate order for enforcement by way of committal proceedings since the defendant had not been ordered to do anything. *Re Oddy* should not be regarded as having laid down the strict rule that *all* monetary judgments cannot be enforced by way of committal proceedings.

77 A similar issue arose in the later decision of *Iberian Trust*, where the plaintiff company had obtained an order against the defendant company in the following terms: "that the plaintiffs do have a return of the said shares within fourteen days". The defendant failed to comply with the order and the plaintiff sought to enforce the order by applying for leave to issue writs of attachment against two of the defendant's directors. Luxmoore J rejected the plaintiff's application on a number of grounds, one of which was based on the consideration that an order must in unambiguous terms "direct what is to be *done*" [emphasis added] if the court is to punish a party for not carrying out its order (at 95). On the facts of that case, the learned judge observed that the order did not direct the defendant to *do* anything as it merely stated "that the plaintiffs do have a return of the said shares within fourteen days". In rejecting the plaintiff's application, Luxmoore J also (at 96) referred to the earlier decision of *Re Oddy* for the proposition that:

> … an order to recover money is not an order on the defendants to do anything, and therefore that such order could not be enforced either by a supplementary order for the payment of the money within a fixed time, or by attachment.

78 In our view, the decisions in *Re Oddy* and *Iberian Trust* demonstrate the importance and impact of the manner in which an order of court is framed and extracted in determining whether the order can be enforced by way of committal proceedings. As Luxmoore J had observed in *Iberian Trust*, an order must state in unambiguous terms what had to be done on the part of the defendant in order for committal proceedings to lie against the defendant. This is, in our view, a rule of fairness. A defendant cannot be punished for failing to comply with an order of court if it is unclear what is expected of the defendant.

79 We also recognise that the decisions in *Re Oddy* and *Iberian Trust* are often cited for the proposition that a distinction has to be drawn between an order for the *payment* of money and an order for the *recovery* of money. This distinction is also found in O 45 r 13(1) of the ROC:

> **Enforcement of judgments and orders for recovery of money, etc. (O. 45, r. 13)**
>
> **13.**—(1) Rule 1(1), *with the omission of sub-paragraph (d) thereof*, and Orders 46 to 51 shall apply in relation to a judgment or order for the recovery of money as they apply in relation to a judgment or order for the payment of money.
>
> [emphasis added]

It will be recalled that O 45 r 1(1)(*d*) states that an judgment or order for the payment of money may be enforced by way of an order of committal in a case in which O 45 r 5 applies. Therefore, the omission of O 45 r 1(1)(*d*) from the scope of O 45 r 13 effectively means that a judgment or order for the *recovery* of money *cannot* be enforced by way of an order of committal. In our view, apart from the historical origins of each type of order (see *MP-Bilt* at [47]–[50] for a brief historical account), the distinction between an order for the payment of money and an order for the recovery of money can be rationalised on the basis of the identity of the obligor. In the case of an order for the payment of money, the defendant is ordered to pay the plaintiff a sum of money. In other words, the onus is on the defendant, as the named obligor, to effect compliance with the order. This stands in contrast to an order for the recovery of money, where the onus is on the plaintiff to *recover* the money from the defendant. An order for the recovery of money does not explicitly require the defendant to do a specific act. In the circumstances, the defendant cannot be held liable under the law of contempt in the event that the plaintiff fails to recover the money from the defendant. This was essentially the outcome in both *Re Oddy* and *Iberian Trust*.

80 Therefore, we respectfully disagree with *Hong Leong Bank's* interpretation of and reliance on the earlier English decisions of *Re Oddy* and *Iberian Trust* as having laid down a strict rule that a monetary judgment is not a judgment requiring the performance of an act and therefore incapable of enforcement by way of committal proceedings.

81 Secondly, we agree with the observation in *Hong Kwi Seong* that in ascertaining whether an order of court falls within the scope of an order for the *recovery* of money or an order for the *payment* of money, the specific terms of the order are of primary importance. As we have emphasised above, the identity of the obligor is crucial in determining whether a judgment or order may be enforced by way of committal proceedings. An order must unambiguously direct what is to be *done* if a party is to be punished for failing to comply with the order, as was observed by Luxmoore J in *Iberian Trust*.

82 Thirdly, we are of the view that the holding in *Lee Lay Ling* that monetary judgments can only be enforced by way of execution and not committal proceedings is, with respect, far too broad and cannot be sustained in light of the foregoing analysis. In any event, its reliance on the earlier decision of *Hong Leong Bank* was also doubtful in light of our views that the general principle laid down in that case was based on a different interpretation of the English decisions.

83 We therefore rejected Mr Bajwa's argument and granted the wife's application for leave to commence committal proceedings against the husband after having examined the relevant documents before us, including the summons, the O 52 statement and the supporting affidavit filed by the wife. As highlighted above, there was no dispute that the husband had knowledge of the terms of the 11 March Order, specifically the insertion of the penal notice

and the consequences of non-compliance. The alleged breach on the part of the husband was also uncontroversial, *ie*, that he had failed to comply with the 11 March Order directing him to pay the sum of S$7,048,828.67 and the balance lump sum maintenance amounting to S$1,136,800 to the wife within one month of the order. This was the contemptuous conduct relied upon by the wife and to that end, we were of the view that the O 52 statement was adequately particularised and not lacking or defective in any way. In the circumstances, we allowed the wife's application for leave to apply for an order of committal against the husband.

Conviction

84 Following the grant of the leave application, the wife filed an application for an order of committal against the husband on the very same day. Thereafter, the parties appeared before us on 22 July 2015. As above, we will first make a number of observations as regards the applicable legal principles to this stage of the committal proceedings before applying those principles to the facts of the present case.

85 First, it is well-established that the applicable standard of proof to *both* criminal and civil contempt is that of the *criminal* standard of proof beyond reasonable doubt: *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518 ("*Pertamina Energy Trading Ltd*") at [31]–[32], citing *In re Bramblevale Ltd* [1970] Ch 128 at 137.

86 Secondly, as regards the issue of the requisite *mens rea* to establish contempt for disobedience of court orders, it is accepted that it is only necessary to prove that the relevant conduct of the party alleged to be in breach of the court order was *intentional* and that it *knew* of all the facts which

made such conduct a breach of the order: *Pertamina Energy Trading Ltd* at [51]. This necessarily includes knowledge of the *existence* of the order and its material terms. It is, however, not necessary to establish that the party had *appreciated* that it was breaching the order. Therefore, the *motive* or *intention* of the party who had acted in breach of the order is strictly irrelevant to the issue of liability though it may have a material bearing in determining the appropriate penalty to be imposed.

87 Thirdly, the principle that committal proceedings should not be directed against an impecunious judgment debtor has to be applied carefully as it may be used as a smokescreen for the purposes of relitigating issues already determined by the court. For instance, the husband in the present case has, throughout the entire course of the committal proceedings, consistently adopted the position that he had no means to comply with the order of court. However, the husband has failed to adduce *any* evidence to suggest any material change in circumstances *after* the conclusion of the substantive appeal. In this regard, the husband's contention was no more than an attempt to challenge the findings that we had already made in the substantive appeal, *ie*, that the husband was, in fact, a man of substantial means. It will be recalled that we had assessed the value of the husband's *known* assets at S$14,385,364.63. We then applied an uplift of 40% to that value to arrive at a gross value of S$20,139,510.48. The husband's argument that he had no means to satisfy the judgment, which involved, in any event, the payment of a sum of money which was *less* than the value of the husband's *known* assets, was effectively a collateral attack on our findings made at the substantive appeal.

88 In this regard, we found it instructive to refer to the Canadian decision of *Ontario (Director, Family Responsibility Office) v Buffan* [2013] WDFL

1544 ("*Buffan*"), where the factual matrix was rather similar to that in the present case. In *Buffan*, the husband had, in the course of matrimonial proceedings, acted in an extremely uncooperative manner and refused to comply with various orders of court. He failed to make proper disclosure of his financial affairs and the court had to proceed on the basis of an "imputed income". Based on the evidence, Sherr J concluded that the husband's income was $60,000, almost all of which was received by him "under the table". As he was receiving this income essentially in cash, and paid no taxes on that income, Sherr J "grossed up" the husband's income to $86,000. On that basis, a final order was granted, where the husband was made to pay child support in the amount of $1,094 per month from 1 June 2003 to 30 April 2006, and $1,232 per month thereafter. The husband's arrears of support were fixed at $29,022 as at 31 May 2006. The husband was also ordered to make a one-time lump sum spousal support payment in the amount of $25,860.

89 The husband refused to comply with the orders and instead commenced a change motion, seeking to vary his support obligation. His various efforts to challenge the earlier orders failed. Costs orders were made against him, but the orders remained unpaid. A default hearing was eventually held in relation to the husband's failure to comply with the multiple court orders. In the course of the hearing, the husband claimed to be only working part-time and had medical problems which were impacting his ability to earn an income. He filed a sworn financial statement asserting that his total income was $926.38 per month. The husband also filed a number of letters from his doctor stating that he suffered from haematuria, headaches, chronic anxiety and insomnia. After multiple adjournments, Sherr J eventually fixed the arrears at $72,844.08 as at 14 March 2011. The learned judge concluded that he would have been inclined to jail the husband on the spot. However, given

that the applicant was not seeking immediate incarceration, Sherr J instead ordered the husband to pay $2,500 per month, comprising $1,232 per month for ongoing support, and the balance towards the arrears. In default of each $2,500 monthly payment, Sherr J ordered that the husband serve 20 days in jail, or until the default is remedied, with the total time in jail not to exceed 180 days.

90 The husband continued to default on the monthly repayments and a warrant of committal was eventually brought against the husband. Under the Family Responsibility and Support Arrears Enforcement Act 1996 (Cap 31) (Ontario), a person in default of a support order may be imprisoned up to a maximum term of 180 days. At the committal hearing, the husband's defence for non-payment was broadly that the court "has continually gotten it wrong". He maintained that he never had the kind of income the court had imputed him in the past and that he could not afford to pay the ordered support. In committing the husband to prison for a period of 180 days or until the outstanding default was cured, the court made the following observations on the approach to be adopted in such cases (at [44]–[46]):

> 44 Justice James then stated that the debtor must set out in his affidavit filed in response his reasons for failure to pay, and continued [my emphasis]:
>
> > The debtor's reasons for failure to pay must be limited to matters or events arising after the date of the default order or the date of the hearing of any subsequent motion for committal, whichever date is the most recent. The court may be persuaded to admit reasonably unforeseeable consequences of events or matters predating the default order or the subsequent motion for committal. What ought not to be allowed is an attempt to submit reasons for non-payment that were already submitted or that, with due diligence, could have been submitted before the judge who made the order of committal or who heard any subsequent motion for committal. The motion for committal is never a default hearing *de novo*.

> 45 This position was essentially approved of, subsequent to the enactment of the Rules, by Justice A.T. McKay in *Bradshaw v. Davidson*, [2010] O.J. No. 435 (Ont. C.J.). At paragraph 10 of his decision, Justice McKay stated [my emphasis]:
>
> > In this committal hearing, the court has a limited scope of issues to review. ... There is a history of arrears going back to 1992 .... Essentially [the debtor] appeared at the committal hearing and argued issues about entitlement to the support in question. He has not established that there is a material change in circumstances since he consented to the default order.
>
> 46 What these cases reveal is that evidence from the payor that pre-dates the default hearing, unless it was "reasonably unforeseeable", is not admissible at a motion for a warrant of committal. Only evidence arising after the default hearing, which establishes a material change in circumstances going to the debtor's ability to pay, will be considered by the court.
>
> [emphasis in original]

91 In our view, this approach has much to commend it, as it prevents alleged contemnors from continuously seeking to reopen and relitigate findings that have already been made at an earlier substantive hearing. In the present case, this was precisely the husband's recurrent argument. The husband has not adduced *any* evidence to suggest that there has been any material change in circumstances *after* the conclusion of the substantive appeal as the reason for his non-compliance. In light of our findings at the substantive appeal, the husband's assertions that he had no means to comply with our orders ring hollow and we rejected them outright.

92 We should make it clear that not every default in the payment of a monetary sum pursuant to a judgment or order should give rise to committal proceedings. In *P J Holdings Inc v Ariel Singapore Pte Ltd* [2009] 3 SLR(R) 582 ("*P J Holdings*"), Choo Han Teck J made the following observations on

the availability of committal proceedings *vis-à-vis* impecunious judgment debtors (at [7]):

> What happens then to an impecunious judgment debtor, as the defendant in the present case depicts itself as? In my view, under such circumstances, committal proceedings should still not issue. My reasons are as follows. Order 45 r 5(1)(*a*) applies only when "a person required by a judgment or order to do an act within a time specified in the judgment or order *refuses or neglects* to do it" [emphasis added]. The key words here are "refuse" and "neglect". In *Re Quintin Dick* [1926] Ch 992, Romer J held that the term "refuse or neglect" was not equivalent to "fail or omit", and that the former implied a conscious act of volition whereas the latter did not. In *Ng Tai Tuan v Chng Gim Huat Pte Ltd* [1990] 2 SLR(R) 231, Chao Hick Tin JC (as he then was) expressed the view that the word "neglect" necessarily implies some element of fault. He cited the case of In *re London and Paris Banking Corporation* (1874) LR 19 Eq 444 where Sir G Jessel MR said, at 446:
>
> > … the word 'neglected' is not necessarily equivalent to the word 'omitted'. Negligence is a term which is well known in law. Negligence in paying a debt on demand, as I understand, is omitting to pay without reasonable excuse. Mere omission by itself does not amount to negligence. …
>
> The word "refuse" has also been similarly defined. In *DP Vijandran v Majlis Peguam* [1995] 2 MLJ 391, the court noted that "[t]he ordinary meaning of the word refuse is to decline to give", and that "failure is not synonymous with refusal". Similar sentiments were also expressed by the tribunal in *Lowson v Percy Main & District Social Club & Institute Ltd* [1979] ICR 568. I agree with the foregoing cases. In the premises, this means that an impecunious debtor would be outside of the scope of O 45 r 5 as such a person cannot be said to have "refused or neglected" to obey an order directing them to make payment. The combined effect of the fact that an impecunious debtor is outside the scope of committal proceedings and the principle that such proceedings are remedies of the last resort would mean that in the vast majority of cases, committal proceedings would not apply to an order or judgment for the payment of monies. In most instances, a person would ordinarily be regarded as impecunious if he is unable to satisfy the judgment debt upon the conclusion of the various execution proceedings. The logical ending point in such cases should be a winding-up order or a bankruptcy order, as the case may be. In the present case, the burden was on the plaintiff to prove beyond

> a reasonable doubt that Ariel Singapore had neglected to make payment. Having examined the documentary evidence, it was clear that Ariel Singapore, which is now in liquidation, was in no position to make payment during the material period.

In our view, in addressing the argument whether committal proceedings can be brought against "impecunious judgment debtors", it is crucial to bear in mind, *inter alia*, the distinction between a case where no finding has been made on the defendant's financial means and a case where a specific finding on the defendant's financial means has been determined in the course of the substantive hearing. In the former scenario, such as where a defendant has been adjudged to pay damages for breaching a contract or committing a tort, the question of whether the defendant is *able* to satisfy the judgment debt is often left unresolved as it may not be immediately relevant to the issues at the substantive hearing. This stands in contrast to an order to divide matrimonial assets pursuant to s 112 of the Women's Charter, where the court has to first ascertain the assets held by each party before deciding which of these assets fall within the pool of matrimonial assets for the purposes of division. In the present case, we had, in the course of hearing the substantive appeal, already assessed the value of the husband's known assets at S$14,385,364.63. Thereafter, we applied an uplift of 40% to that value to arrive at a gross value of S$20,139,510.48 on account of his failure to provide full and frank disclosure of his assets. The husband was then ordered to pay the sum of S$7,048,828.67, being the wife's share of the matrimonial assets, and the balance lump sum maintenance of S$1,136,800. In other words, the sum total of the husband's liability to the wife, amounting to S$8,185,628.67, was *less* than the value of the husband's known assets, which we adjudged at S$14,385,364.63. Given that the husband has not put forward any evidence to suggest that there has been any material change of circumstances *after* the substantive hearing, in light of our findings summarised above, there is no

question that the husband *has* the means to comply with the judgment. Therefore, the logical and irresistible inference is that the husband has refused to comply with the 11 March Order. The same cannot be said for a case where the court has *not* made any finding on the means of the defendant. The concerns raised by Choo J in *P J Holdings* on whether committal proceedings can be brought against an impecunious debtor will then come to the fore. In our view, it would be objectionable to commit a judgment debtor to prison in spite of the debtor's *proven* inability to comply with the judgment or order.

93 In this regard, it is perhaps pertinent to refer to the decision of *Khoo Wai Keong Ronnie v Hanam Andrew J* [2003] SGMC 41 ("*Khoo Wai Keong*") as an example where committal proceedings would not be appropriate for default in the payment of a monetary judgment. In that case, the debtor was a 24-year-old full time national serviceman who had been ordered to pay costs to the creditor after an unsuccessful claim for damages arising out of a motor vehicle accident. In an application by the creditor for the costs order to be satisfied by way of instalments, the debtor filed an affidavit containing supporting documents detailing his personal circumstances, summarised by the court (at [9]):

> a) He is a full time national serviceman earning $417.50 per month with no other source of income. His salary is paid directly into his OCBC bank account. The August 2003 and September 2003 bank statements show him having no savings. Pending national service, it is also impossible for him to earn other employment income.
>
> b) He is single and lives with his 2 aged parents. He is currently servicing a hire-purchase loan for his motorcycle at $238.55 per month. Apart from the finance company and [the creditor], he has no other creditors. At the hearing, he mentioned his national service duty would end in June 2004.
>
> c) He initially proposed to pay [the creditor] $50.00 per month but in the course of the hearing, he increased the

> offer to $100.00 per month. This leaves him with less than $100.00 per month to meet his monthly expenditure.

The costs order against the debtor amounted to S$3,850. The debtor failed to pay the creditor in accordance with the instalment order and the creditor then sought leave to commence committal proceedings against the debtor.

94 Apart from the finding that the instalment order was ineffective for the purpose of committal proceedings, the court also rejected the creditor's application on the grounds: (a) that if reasonable enforcement alternatives exist, those options should be used before instituting committal proceedings; and (b) that a debtor will not be committed to prison for disobedience without clear proof that he was able to pay.

95 In our view, *Khoo Wai Keong* is an example of when committal proceedings would not be an appropriate enforcement mechanism in light of clear evidence that the debtor was having genuine difficulties complying with the instalment order granted by the court. As we have explained above, this issue does not arise in the present case as we have already determined that the husband has the means to comply with our order.

96 Returning to the first ground relied upon by the court in *Khoo Wai Keong*, we should make it clear that there is a distinction between committal proceedings being a remedy of last resort and the requirement of having to exhaust all other alternative remedies before committal proceedings can be resorted to. The doctrine of exhaustion of remedies exists in areas of law such as conflicts of law and administrative law. It should not, however, be extended to the law of committal, especially where there is clear evidence that such alternative enforcement mechanisms may not be successful. We also acknowledge a number of English decisions that are often cited for the

proposition that committal for contempt are orders of "last resort" when dealing with matrimonial matters (see *eg*, *Ansah v Ansah* [1977] Fam 138 at 144 *per* Ormrod LJ). We make two observations in this regard. First, the recognition that committal orders should generally be orders of last resort does not mean that the applicant must necessarily bear the burden of establishing that all alternative enforcement mechanisms have been exhausted. In any event, on the facts of the present case, the wife had commenced enforcement proceedings in relation to the orders of maintenance against the husband (see [52] above) but these were met with very limited success. The husband had even engaged in attempts to frustrate the wife's enforcement proceedings by applying for a variation of maintenance order, in spite of this court's affirmation of the Judge's finding in this regard. Therefore, we are satisfied that the wife did in fact pursue other enforcement proceedings before commencing the present committal proceedings. Secondly, the observations in the English authorities on the court's reluctance to resort to committal proceedings in cases involving matrimonial matters were generally driven by the need to maintain and foster the relationship between the contemnor and his family (see *eg*, *Harris v Harris* [2001] 1 Fam 502 at [27]). This is often an overriding concern in cases where the relationship between the parents and the children may be compromised by any attempt to rely on committal proceedings. In our judgment, these considerations are of lesser relevance in the present case as the order in question involves the payment of a monetary sum in respect of the division of matrimonial assets and maintenance, as opposed to an order for custody, care or control of children. It will be recalled that the son is already 24 years of age as at the time of the hearing. In our view, the critical inquiry is not whether the committal proceedings are brought as a remedy of last resort or whether the other available remedies have been

exhausted. Instead, the relevant inquiry focusses on the contumelious nature of the respondent's non-compliance.

97 In the course of the hearing, Mr Bajwa did not challenge the undeniable fact that the husband had failed to comply with the 11 March Order. In the circumstances, we were satisfied, beyond reasonable doubt that the husband had blatantly and inexcusably refused to comply with the 11 March Order. We therefore had no hesitation in finding him liable for contempt of court.

Sentencing

98 On the issue of sentencing, we were satisfied that the nature of the husband's contempt was such that a sentence of incarceration for a substantial period was warranted. It was, however, brought to our attention that the husband had adduced a number of medical reports suggesting that he was not medically suitable for incarceration. Counsel for the wife, Ms Bernice Loo ("Ms Loo"), submitted that the medical evidence did not support the husband's case as regards his unfitness for imprisonment. We noted that the medical reports adduced by the husband were rather dated. Under those circumstances, we considered it prudent to have the husband present himself to the prison's medical service for an assessment and confirmation that it would be able to cope with the husband's medical condition. In the circumstances, we directed the SPS to arrange for the husband's medical assessment and for the hearing to be reconvened for sentencing following receipt of the report.

99 Ms Loo submitted that the husband was a potential flight risk, especially when the court had already found against him on the issue of

liability. It was also pointed out that the husband had travelled frequently to Australia and Indonesia. Although no authority was cited to us in support of the proposition that we had the power to make an order for the husband's passport to be surrendered, we found it useful to refer to the English Court of Appeal decision of *JSC BTA Bank v Ablyazov (No 8)* [2013] 1 WLR 1331, where Rix LJ had made the following observations (at [171]):

> In *JSC BTA Bank v Shalabayev* [2011] EWHC 2903 (Ch) … Henderson J adopted the perhaps novel expedient of ordering a fugitive contemnor's own solicitors to provide contact details "to ensure that Mr Shalabayev be apprehended". *Orders for the surrender of passports (even if once novel, see Bayer AG v Winter [1986] 1 WLR 497), and even in the absence of any contempt, are not unfamiliar.* In the criminal sphere, as Maurice Kay LJ remarked during argument, the court orders a convicted person who is subject to an Attorney General's reference, which might lead to his sentence being increased, to attend the court. Moreover, the jurisprudence cited above is replete with confirmation of the power possessed by the court to make such orders as are necessary to make its own orders effective. At any stage of the developing jurisprudence, it might have been said (and often was) that novelty was a bar to some particular order. The Mareva injunction was attacked on that basis. Then it was said that it could not be made in respect of assets overseas. Then it was said that it could not be made effective by the inclusion of disclosure orders in support of it. In the present case, the question is whether the power to commit for contempt of court includes a power to order the contemnor to surrender to the tipstaff and to make that a condition of something else. I can see no reason why not. … [emphasis added]

In that case, the majority of the English Court of Appeal decided that the court had the jurisdiction to do what was just and convenient, and necessary, to protect its own orders and to give effect to the interest of justice.

100 In our view, given the evidence that the husband had travelled to Australia and Indonesia recently, and our finding that he was, in fact, a man of rather substantial means, we accepted Ms Loo's submission that the husband was indeed a flight risk. In the circumstances, we ordered the husband to

immediately surrender whichever passport(s) he has to the court, and directed that he was not to leave Singapore without the prior leave of the court.

101 Both parties appeared before us on 10 September 2015 for submissions on the appropriate sentence. Mr Bajwa relied substantially on the earlier decision of this court in *Shadrake Alan v Attorney-General* [2011] 3 SLR 778 ("*Shadrake Alan*"). He referred specifically to [153] of the judgment, wherein although it was observed that the appellant's conduct "merits a *substantial* custodial sentence" [emphasis added], the appellant was only sentenced to six weeks' imprisonment and a $20,000 fine. Mr Bajwa further argued that that the nature of the contempt in *Shadrake Alan*, which involved scandalising the judiciary, deserved a *more severe* punishment than contempt by disobedience, as in the present case. Mr Bajwa also referred to a number of other cases involving the scandalising of the judiciary, such as *Attorney-General v Tan Liang Joo John and others* [2009] 2 SLR(R) 1132, where the first respondent was sentenced to 15 days in prison, and the second and third respondents were sentenced to seven days in prison each, for publicly wearing a white T-shirt imprinted with a palm-sized picture of a kangaroo dressed in a judge's gown within and in the vicinity of the Supreme Court. Another case cited by Mr Bajwa was *Attorney-General v Chee Soon Juan* [2006] 2 SLR(R) 650, where the respondent was sentenced to one day in prison for: (a) acting in contempt in the face of court by reading the bankruptcy statement to the assistant registrar; and (b) scandalising the judiciary in the bankruptcy statement.

102 In our view, the authorities cited by Mr Bajwa were of limited assistance as they all pertain to contempt by interference, such as contempt in the face of the court and scandalising the judiciary, as opposed to contempt by disobedience, which generally involves either the failure to comply with court

orders or the breach of undertakings given to the court. However, the sentencing principles for contempt by interference and contempt by disobedience do differ to some extent as the underlying rationale for each type of contempt is quite different.

103 We are of the view that a distinction should also be drawn between breaches which are one-off in nature and breaches which are either continuing or repeated in nature. Even among cases involving contempt by disobedience, the sentencing principles applicable to a one-off breach and a continuing breach are likely to be different. In this regard, we find the following observations by Lord Donaldson of Lymington MR in *Lightfoot v Lightfoot* [1989] 1 FLR 414 (at 416–417) to be instructive:

> … Sentences for contempt really fall into two different categories. There is the purely punitive sentence where the contemnor is being punished for a breach of an order which has occurred but which was a once and for all breach. A common example, of course, is a non-molestation order where the respondent does molest the petitioner and that is an offence for which he has to be punished. In fixing the sentence there can well be an element of deterrence to deter him from doing it again and to deter others from doing it. That is one category.
>
> There is a second category which I might describe as a coercive sentence where the contemnor has been ordered to do something and is refusing to do it. Of course, a sentence in that case also has a punitive element since he has to be punished for having failed to do so up to the moment of the court hearing. But nevertheless it also has a coercive element.
>
> Now, it is at that point that it is necessary to realise that in earlier times the court would in such circumstances have imposed an indefinite sentence. That is to say a man would be committed to prison until such time as he purged his contempt by complying with the order. …

It is acknowledged that the above observations were made in the context of cases involving contempt by disobedience. Nevertheless, we are of the view that the same considerations will apply in the case of a "once and for all

breach" as regards contempt by interference. For instance, publishing material which scandalises the judiciary or acting in a manner which amounts to contempt in the face of the court will likely fall within the category of one-off breaches. In this category of cases, the overriding sentencing principle is one of punishment, in that the breach has already been committed. There is no coercive value in the sentence to be imposed as the contemnor is usually not in a position to remedy the breach, apart from the expression of contrition by way of retraction of the scandalising material or a public apology. This stands in contrast to a situation where a contemnor is ordered to do an act but continuously refuses to comply, as in the present case. In these circumstances, the objective of compelling the contemnor to effect compliance with the order is likely to be a given a significant degree of weight. That is not to say that there is no punitive element in the sentences imposed on such contemnors. In fact, in most instances of a "continuing" breach, the sentence imposed will include both *punitive* and *coercive* elements. However, the same cannot be said as regards one-off breaches, where the coercive element is *not* likely to feature at all. In our view, it is important to keep this distinction in mind when examining case precedents on contempt, regardless of whether they involve contempt by interference or contempt by disobedience.

104 Prior to addressing the relevant facts in the present case, it is useful to first examine the factors that are typically relevant to sentencing in cases of contempt by disobedience. It appears that there are comparatively fewer cases dealing specifically with sentencing for contempt by disobedience, as opposed to contempt by interference. In David Eady & A T H Smith, *Arlidge, Eady & Smith on Contempt* (Sweet & Maxwell, 4th Ed, 2011), the learned authors (at para 14-11) referred to the English High Court decision of *Crystalmews Ltd v*

Metterick and others [2006] EWHC 3087 (Ch), where Lawrence Collins J had identified a number of relevant factors to be taken into account:

> [13] The matters which I may take into account include these. First, whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy. Second, the extent to which the contemnor has acted under pressure. Third, whether the breach of the order was deliberate or unintentional. Fourth, the degree of culpability. Fifth, whether the contemnor has been placed in breach of the order by reason of the conduct of others. Sixth, whether the contemnor appreciates the seriousness of the deliberate breach. Seventh, whether the contemnor has co-operated.

Although these factors were not intended to nor should they be treated as sentencing guidelines, we are of the view that they do provide a useful framework for courts to analyse the relevant facts in order to arrive at an appropriate sentence.

105 Moving on, in surveying foreign cases dealing with contempt by disobedience in the context of matrimonial proceedings, there appears to be a number of factors that often feature in the sentencing process. It is important to bear in mind that the sentences imposed in foreign cases might well be based on different frameworks in the law of contempt. For instance, certain jurisdictions have implemented an *upper* limit on the duration of imprisonment that may be imposed on persons found guilty of contempt of court, such as under s 14 of the Contempt of Court Act 1981 (c 49) (UK) which provides that any committal of a person for contempt of court shall be for a fixed term, and "that term shall not on any occasion exceed two years in the case of committal by a superior court, or one month in the case of committal by an inferior court". It is therefore important to keep these differences in mind when considering cases on contempt of court from foreign jurisdictions. Having said that, we believe it is useful to refer to foreign cases not so much for benchmark sentences, but rather to discern the common

factors that courts usually take into consideration in deciding the appropriate sentence to impose in each individual case.

106 The first factor, which is commonplace in matrimonial proceedings (probably due to the multiplicity of orders made by the court in a single case), is a degree of continuity in the contemptuous conduct. Although the eventual sentence may only be passed in relation to a *specific* act (or acts), the courts do take into account the past conduct of the contemnor in determining the appropriate sentence to be imposed. This can be seen from the English decision of *Young v Young* [2013] 1 FLR 269 where the facts bear some similarity to the instant case. There, the husband had stated repeatedly that he was penniless and bankrupt. The wife, on the other hand, argued that the husband was a very wealthy man worth up to £400 million. She claimed that he had concealed his financial resources in a bid to avoid his legitimate obligations towards her and their children. Prior to this, the husband had already received a suspended sentence for contempt following his failure to comply with court orders. Thereafter, the husband was ordered to provide, amongst others, further documentary evidence to verify the financial losses he claimed to have incurred and of all payments alleged to have been made for his benefit by third parties. The husband failed to comply with the order by the stipulated date. The wife applied for the husband to be committed to prison for contempt of court. In sentencing the husband to six months' imprisonment, Moor J observed that while both acts of contempt were serious in themselves, he also took into account the fact that there had been a flagrant and deliberate contempt by the husband *over a very long period of time*.

107 Another germane factor which is often taken into consideration by the court in determining the appropriate sentence is the impact of the contemptuous conduct on the other party. From a practical perspective, the

court will usually place some weight on the issue of whether the contemptuous conduct is irreversible in nature. In cases where a significant portion of the assets has been disposed of with no prospect of recovery, the courts have generally adopted a relatively harsh stance in the exercise of its sentencing powers, as can be gleaned from *Lightfoot v Lightfoot*. In that case, the husband had been working as a miner and was expecting relatively large sums of money from a redundancy payment and a personal injury claim. In the course of the matrimonial proceedings, a court order was granted to restrain the husband from disposing of the sums of money that he was expecting to receive. The husband was also ordered to pay those sums of money into a joint bank account to be held by the solicitors for both parties pending the final disposal of the ancillary relief hearing. In breach of this order, the husband withdrew a large portion of the money he received and purportedly gambled it all away. The judge at first instance sentenced the husband to 18 months' imprisonment and this was upheld on appeal. As in the case of *Hudson v Hudson* [1995] 2 FLR 72, the husband's breach had a significant impact on the wife as it effectively denied her any prospect of recovering the monies she would otherwise have been entitled to.

108 We also found it useful to refer to the Australian decision of *Weirs v Weirs* [2012] FMCAfam 247, where the impact of the husband's contemptuous conduct was also given significant weight in the determination of the appropriate sentence. The husband had, in the course of proceedings between the parties, given an undertaking not to deal with any asset in any superannuation fund pending the determination of the matter. Thereafter, an injunction was granted to restrain the husband from accessing, transferring, withdrawing or in any way dealing with any superannuation in any superannuation funds. It soon transpired that the husband had withdrawn an

amount of $116,237.44 from a superannuation fund account in breach of the injunction. Once again, the court took into account the impact of the husband's breach on the wife, as reflected in the following observations by Harman FM (at [70]):

> The husband's dealing with the funds has had the effect that *Ms Weirs has been deprived entirely of what would ordinarily be referred to as "the fruits of her litigation"*. She has also incurred, although there is no evidence before the Court to quantify them, costs with respect of prosecuting the substantive proceedings and at least to the extent that appearances have occurred or written submissions have been prepared on behalf of Ms Weirs, costs with respect to this application. [emphasis added]

After a careful consideration of the mitigating factors in that case, the learned judge sentenced the husband to nine months' imprisonment. Notably, the judge refused to grant a suspended sentence on the basis that there was *nothing* that the husband could do to repatriate the funds or compensate the wife to the extent of her loss.

109 A third factor which often features in the sentencing process is the nature of the non-compliance, in particular, whether it was *intentional* or *fraudulent* on the part of the contemnor. As we have highlighted at [86] above, while the motive or intention of the alleged contemnor is generally irrelevant to the question of *liability* for contempt, it is nonetheless a relevant factor for the purposes of *sentencing*. In fact, Lord Oliver had gone as far as to observe in *Attorney-General v Times Newspapers Ltd and another* [1992] 1 AC 191 at 217 that the "intention with which the act was done will, of course, be of the *highest relevance* in the determination of the penalty (if any) to be imposed by the court" [emphasis added].

110 Finally, it is acknowledged that courts do take into account any genuine attempts on the part of the alleged contemnor to comply with the judgment or order. Typically, a lower (or suspended) sentence will be imposed in cases where the alleged contemnor had demonstrated substantive attempts to effect compliance. The corollary to that would be the imposition of a higher sentence in cases where the alleged contemnor acts in contumelious disregard of the judgment or order and makes *no* attempt whatsoever to effect compliance, or worse still, takes *positive steps* to frustrate the effect of the order of court. Part payment by the contemnor was accepted by the court as a mitigating factor in *Child Support Registrar v Balzano (No 2)* [2011] FMCAfam 578, where the husband was ordered to pay the sum of $59,151.56 and $2,258.56 pursuant to an earlier court order. Thereafter, the husband was found to have contravened that order and was placed on a bond in the sum of $2,000 without security conditioned upon the husband paying the amounts ordered within the period of the bond. As the husband did not do so, he was also in breach of the bond. The Child Support Registrar sought a sentence of imprisonment for a period of six months or until the remaining sum of $51,410.12 was paid. This was rejected by Scarlett FM, who took the view that the fact that "one sanction has already been imposed is not of itself sufficient for the Court to be satisfied that it would not be appropriate to deal with the current contravention by other means except imprisonment" (at [9]). The learned judge observed that the part payment of $10,000 by the husband was a mitigating factor and imposed a fine of $1,000 instead. In assessing the weight to be placed on the part payment, the inquiry is to examine whether genuine efforts were made by the contemnor to satisfy the judgment. For this reason, the amount paid relative to the judgment debt is an important consideration to bear in mind.

111 Having set out a number of factors that often feature in the sentencing process, we now go on to consider the application of the relevant considerations to the facts in the present case. At the outset, it should be observed that the husband has had a history of acting in flagrant disregard of judgments or orders made by various courts at all levels. Almost all the egregious factors which were employed by the courts to impose a stiff sentence on the contemnors in the above cases can be found on the facts of this case. For ease of reference, a litany of the various breaches committed by the husband are summarised below. First, the husband had acted in breach of the injunction obtained by the wife when he further mortgaged the Stevens Court property. Secondly, before the High Court, the husband was ordered to discharge all mortgages and encumbrances at his cost in respect of the Stevens Court property within four months from the date of the order and to transfer the Stevens Court property to the wife free from all encumbrances. No stay of execution was obtained by the husband. He failed to comply with the order of court and, in fact, ceased making repayments on the mortgage account thereby causing the Stevens Court property to be repossessed by the mortgagee. As a result of his deliberate disregard of the court's order, the wife was evicted from the Stevens Court property. Thirdly, the husband was ordered to pay the wife S$8,000 per month from the date of the High Court's order and that those monthly sums so paid in the interim were to be deducted from the lump sum instalments due to the wife. It is not disputed that the husband only made sporadic payments to the wife and substantially did not comply with the order. Fourthly, the wife had to commence MSS 1607/2014 to compel the husband to pay the maintenance arrears. Although the husband initially complied with the enforcement order pursuant to MSS 1607/2014, he stopped making further payment after the delivery of our judgment in the substantive appeal. This was in spite of the fact that we had affirmed the Judge's order on the issue of

maintenance. The husband instead took out an application for variation of the maintenance payments. Finally, it is also not disputed that the husband had failed to comply with the 11 March Order after the wife had successfully applied for the insertion of the penal notice and the specification of a timeframe for compliance. This forms the subject matter of the charge against the husband in the present committal proceedings.

112 We further note that the husband has, in the course of the entire committal proceedings, steadfastly maintained the position that he had no means to comply with the orders of the court. He claimed that the monies obtained from the mortgages and the transfer of shares to his family members had been used to pay off his business loans, but *no* documentary evidence was adduced in support of his bald assertion. As we have observed above, the husband's argument in this regard is no more than an attempt to relitigate the findings that were made against him in the substantive appeal. As we had reiterated at each and every stage of the committal proceedings, we were not prepared to accept the husband's claim that he was an impecunious debtor. We were, in fact, of the contrary view that the husband was a man of substantial means. In the circumstances, given that the husband has provided no other reason for his non-compliance with the various judgments and orders of the court, we were of the view that the non-compliance on the part of the husband was both *deliberate* and *fraudulent*.

113 In the course of the hearing, two local decisions were referred to, in which the highest sentence imposed for deliberate disobedience of an order of the court is a sentence of six months' imprisonment. The first, *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2005] 3 SLR(R) 60 ("*OCM Opportunities*"), involved various breaches of a Mareva injunction that had been obtained by the

plaintiffs against the defendants. In the O 52 statement, the plaintiffs made the following allegations against the contemnors:

> (a) failure to inform the plaintiffs of all the majority defendants' assets, whether in or outside Singapore and whether owned legally or beneficially by them and whether in their own name or not and whether solely or jointly owned giving the value, location and details of all such assets by way of affidavit in compliance with the Mareva injunction;
>
> (b) failure to comply with Exception (1) of the Mareva injunction (see [3] above);
>
> (c) failure to comply with Exception (2) of the Mareva injunction (see [3] above);
>
> (d) failure to attend court for cross-examination pursuant to the order for cross-examination dated 25 May 2004;
>
> (e) failure to attend court for cross-examination pursuant to the peremptory order dated 30 August 2004;
>
> (f) continued breaches of the Mareva injunction as set out in sub-paras (a), (b) and (c) above pursuant to the permanent injunction obtained under the Judgment dated 1 September 2004.

After hearing the parties, Belinda Ang Saw Ean J concluded that all five heads of contempt set out above had been proved beyond reasonable doubt. The learned judge made the following instructive observations (at [37]):

> … The evidence compelled a conclusion that the contemnors had committed contempt of court by *deliberately disobeying the various orders*. There was *no explanation or no good explanation providing a justifiable excuse for non-compliance with the various orders*. The majority defendants' single-minded objective to avoid disclosing the true value of their assets could not be condoned. That was, in my judgment, *clear defiance of the authority of the court*. It was plain that the majority defendants and JS [*ie*, the president director of the parent company of the seventh defendant] were wrong to take that attitude and therefore in contempt of court. Their personal views, however sincere (to be charitable), could not in themselves justify disobedience. It was necessary in the circumstances of this case, given all that had transpired, to uphold and enforce lawful orders of the court. Imprisonment, as opposed to a fine, was appropriate as there was no other effective means to ensure compliance. … [emphasis added]

In the circumstances, the contemnors were each committed to imprisonment for six months.

114 The second authority that was cited to us was the decision of the High Court in *Maruti Shipping Pte Ltd v Tay Sien Djim and others* [2014] SGHC 227 ("*Maruti Shipping*"). In that case, the first defendant was found guilty of contempt of court for the following breaches: (a) preventing the execution of an Anton Piller order at two different premises; (b) withdrawing S$380,000 from his OCBC account in breach of the Mareva injunction; (c) failing to comply with the disclosure requirements in the Anton Piller order and the Mareva injunction; and (d) failing to deliver his passport to the plaintiff in breach of ancillary orders granted by the court. Edmund Leow JC imposed a term of imprisonment of six months in those circumstances.

115 Although *OCM Opportunities* and *Maruti Shipping* involved breaches of freezing and search orders, the sentences imposed by the court nonetheless demonstrate that substantial custodial sentences for contempt are not uncommon. On the facts of the present case, having considered the factors set out at [111] above, especially the fact that the husband had acted in contumelious disregard of the judgments and orders of the court on *multiple* occasions, we were of the view that the contempt by the husband in the present case *exceeded the gravity* of the contemptuous conduct of the parties in *OCM Opportunities* and *Maruti Shipping* and that the appropriate punishment in the present case was a term of imprisonment of eight months.

116 There appears to be a trend of suspending the sentences of imprisonment imposed on contemnors guilty of contempt by disobedience so as to enable them to take steps to effect compliance with the judgment or order of the court. In keeping with this judicial trend, we granted the husband a final

indulgence by suspending the sentence imposed for a period of four weeks from the date of the order. The purpose of this was to enable the husband to take steps to effect compliance with the order.

Conclusion

117 For the reasons set out above, we imposed a sentence of eight months' imprisonment on the husband. As we have emphasised above, where, as in the present case, a party has concealed assets and embarked on a course of conduct that is calculated to defeat the other party's entitlement to a share of the matrimonial assets in deliberate defiance of court order, this calls for a sentence that is sufficient to adequately express the court's opprobrium. The husband had been given numerous opportunities to purge his contempt and we had, at the last hearing, granted the husband a final indulgence by suspending the sentence for a period of four weeks to enable him to take steps to effect compliance with the order. It appears that, even then, the husband had failed and/or refused to comply with the order. He has since been taken into custody to commence serving his sentence. At the request of the parties, in lieu of taxation, we fix the costs for the committal proceedings at $10,000 inclusive of disbursements to be paid by the husband to the wife.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Steven Chong Judge

Bernice Loo Ming Nee and Sarah-Anne Khoo Seok Leng (Allen & Gledhill LLP) for the applicant;
Ragbir Singh s/o Ram Singh Bajwa (Bajwa & Co) for the respondent.
