

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 23

Divorce Transferred No 4800 of 2017
(Summons No 385 of 2022)

Between

VOM

... Plaintiff

And

VON

... Defendant

FOUNDATIONS OF DECISION

[Family Law — Procedure — Setting aside]

[Family Law — Matrimonial proceedings — Jurisdiction]

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VOM
v
VON

[2023] SGHCF 23

General Division of the High Court (Family Division) — Divorce Transferred
No 4800 of 2017 (Summons No 385 of 2022)

Choo Han Teck J

20 April 2023

21 April 2023

Choo Han Teck J:

1 The plaintiff (“Wife”) and the defendant (“Husband”) solemnised and registered their marriage in India on 1 December 2007. Both of them are permanent residents of Singapore. On 11 June 2018, they obtained an interim judgment of divorce from the Singapore High Court, which was made final on 15 April 2021. The ancillary matters were determined by Tan Puay Boon JC, who made the orders in FC/ORC 107/2021 on 4 March 2021 (the “AM Order”). In the application before me (HCF/SUM 385/2022), the Husband sought to set aside the AM Order. I dismissed the application, and now set out the grounds of my decision.

2 Counsel for the Husband, Mr Patrick Fernandez, advanced two arguments in support of his claim. First, he submitted that the AM Order was procured by fraud. The Husband’s claim is that the Wife had allegedly tendered

fictitious documents concerning 20 bank accounts, which the Husband now says did not exist. Secondly, Mr Fernandez argued that Singapore was not the appropriate forum to determine the divorce and division of assets.

3 In support of his argument regarding the natural forum, Mr Fernandez referred to s 121F of the Women’s Charter 1961 (2020 Rev Ed) (the “Charter”), which provides:

121F.—(1) Before making an order for financial relief, the court is to consider whether in all the circumstances of the case, it would be appropriate for such an order to be made by a court in Singapore, and if the court is not satisfied that it would be appropriate, the court must dismiss the application.

Accordingly, Mr Fernandez invited me to consider the factors set out in subsection (2) of s 121F of the Charter and submitted that these factors point toward India as the more appropriate forum.

4 That, with respect, was a misreading of s 121F of the Charter. First, as counsel for the Wife, Ms Nur Amalina, correctly submitted, Chapter 4A of the Charter (which contains s 121F of the Charter) only applies to applications for financial relief by parties to a foreign divorce proceeding, and not divorce proceedings adjudicated by the Singapore courts, as in the present case: see s 121B of the Charter. Secondly, and more fundamentally, an argument of *forum non conveniens* ought to be made at the start of proceedings, and not after the entire matter has been concluded and judgment has been delivered. Even if India was indeed the more appropriate forum, the Husband had indisputably submitted to the jurisdiction of the High Court of Singapore by his conduct since proceedings began in 2017. I therefore do not accept Mr Fernandez’s argument.

5 I return to counsel’s argument that the AM Order was procured by fraud. I am unable to accept this argument. The subject of the alleged fraud, the

disputed 20 Indian bank accounts, was before Tan JC, and was addressed extensively from paragraphs 50 to 59 of his grounds of decision. What the Husband is now claiming is that Tan JC erred in his factual finding. The proper procedure for this is an appeal and not an application to set aside the AM Order.

6 Mr Fernandez acknowledged this procedural error at the hearing before me but explained that he had advised the Husband that it would be difficult to seek leave to appeal out of time as there had been a lapse of such a considerable time since the AM Order was made. Ironically, the path which the Husband then took in reliance on Mr Fernandez advice turned out to be no easier not least because the application itself was procedurally incorrect, but also that the allegation that a judgment was procured by fraud is a high one to make, much less to prove.

7 Apart from the procedural flaws of the application, which itself justifies its dismissal, I agree with Ms Amalina that the alleged fresh evidence of fraud, which the Husband relied on in support of this application, were in the exact documents which Tan JC referred to when making the AM Order. Accordingly, there is nothing new to support the Husband's application to set aside the AM Order on the ground of fraud.

8 For the foregoing reasons, I dismissed the application and ordered costs at \$2,000 inclusive of disbursements.

- Sgd -
Choo Han Teck
Judge of the High Court

Nur Amalina Binte Kamal (Ika Law LLC) for the plaintiff/wife;
Patrick Fernandez (Fernandez LLC) for the defendant/husband.