

RE LIM SENG HUAT AND LEONG KAI WEI
High Court, Pulau Pinang
24 September 1998
Divorce Petition No 33-198-1996
Abdul Hamid Mohamad, J

*Family Law – Marriage – Dissolution of – Wife applied for order to provide new date to allow husband to comply with deed of marriage settlement – Whether application of husband to set aside order and amendment has merit
Abdul Hamid Mohamad J*

Alasan Penghakiman
[Encl. 19 and 28]
Enclosure 19

By a joint petition filed on 21st May 1996, the petitioners petitioned that their marriage be dissolved. Earlier, on 9th April 1996, they had entered into a deed of marriage settlement. One of the terms agreed by them was that the husband would provide a lump sum payment of RM20,000.00 to the wife after the sale of the flat which was registered in both their name or on or before 1st December 1996 which was the earliest. Order was given as per the terms of the deed. Two separate orders were drawn up, one for the dissolution of marriage, the other pertaining to the division of the matrimonial property. The husband and the wife were represented by the same counsel in their joint petition. Both were present in court and agreed to the orders made on 25th July, 1996. The original order states that the payment of RH20,000.00 was to be made “after the selling of the said flat on or before the 1st December 1996 whichever is the earliest.” Subsequently this order was amended to add the word “or” between the word “flat” and the word “on”. Clearly the omission of the word “or” was a mistake. The amendment was to correct it so that it would be in accordance with the terms agreed by parties in the deed. I allowed the amendment. That application was made by the same solicitor acting for both of them.

The husband had failed to pay the said amount on or before 1st December 1996 as agreed by the parties and ordered by the Court. The wife wants to commence contempt proceeding. But as the earlier order served on the husband did not contain the penal notice, an order containing the penal notice will have to be reserved. As the date for compliance (1st December 1996) had expired, the wife applied for the order to be amended to provide a new date for * 3 compliance. The husband objected.

The husband filed an affidavit complaining against his and his wife's former solicitor who represented them in their joint-petition for not giving him a copy of the deed of marriage settlement and for amending the order mentioned earlier. He complained against his ex-wife for not replying to his letter asking her consent to sell the flat. He said that the deed was drawn to compensate the wife for agreeing to the file a joint-petition for divorce.

His mother filed an affidavit claiming that she had lent him and his ex-wife RM30,000.00 to purchase the house and she wanted the amount to be paid to her from the proceeds of the sale.

All these allegations are irrelevant to the present application.

This application is simple: to amend the order to fix a new time frame for compliance with the order, which will have to be endorsed with a penal notice and re-served on the husband to enable the wife to commence committal proceedings if he fails or refuses to comply. What the husband, through his new Solicitor, is doing is merely to raise all kinds of irrelevant issues to delay the proceedings. That is all.

Furthermore, the husband together with the wife were both represented by a solicitor/counsel in their joint petition. They themselves were present in court when the order was made. It has always been and it is the practice of this court, without fail, to ask both sides, through the interpreter, at the hearing of a joint petition for divorce, whether they agree to the orders prayed for. This case was no exception. It is most unbecoming of the husband to make the allegations which he now makes.

I allowed the application with costs.

Enclosure 28

The husband also filed a Summon-in-Chambers to set aside the order of 25th July 1996 and to set aside the amendment to the said order. He filed a lengthy affidavit in support of his application. He complained that his present solicitor had "not received a duly stamped original copy" of the deed. He complained that his and his wife's solicitors did not exhibit the deed in their joint petition earlier. Some other complaints are either beyond comprehension or totally irrelevant. He said that the Orders were ambiguous because they should be "consent orders".

All these allegations do not constitute grounds for setting aside the orders made by the court. The order of 25th July 1996 were made in their presence and in the presence of their counsel and agreed by them. There is nothing irregular about it.

The amendment to the order was also applied by their joint solicitor/counsel and it was to correct a clear mistake to comply with the deed executed by them.

There is no merit whatsoever in this application. I dismissed it with costs.

Yeang Kok Kheang (Yeang & Company) for petitioner husband — Anastasia Tan (Chew, Tan & Lim) for petitioner wife