

Acv Vs. Acu

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Court : Singapore Supreme Court

Decided On : Mar-28-2014

Judge : The Honorable Mr. Justice Choo Han Teck

Appeal No. : Divorce Suit No. 4007 of 2009 (Registrar's Appeal from the State Court No. 30024 of 2013)

Appellant : Acv

Respondent : Acu

Advocate for Pet/Ap. : The appellant/husband in-person; Winston Quek Seng Soon (Winston Quek and Company) for the respondent/wife.

Judgement :

Choo Han Teck J:

1. This was an appeal by the appellant/husband to vary a maintenance order made by a district judge. In this appeal, the appellant sought to reduce the maintenance he was ordered to pay - a total monthly sum of \$1,800 to his wife and child. The appellant prayed that the amount be varied to \$500 a month.

2. Parties obtained an interim divorce judgment on 21 October 2009. On 22 December 2009, an order of court by consent was recorded in which the appellant agreed to pay a monthly maintenance of \$800 to the respondent/wife and \$1,000 to the child of the marriage. On 23 July 2013, he applied to vary the maintenance

order, seeking a reduction from \$1,800 to \$500. The application was heard by District Judge Cheryl Koh Mei Chen (the "DJ"), who dismissed the appellant's application, with costs fixed at \$800 to the respondent. The appellant appealed to this court against the DJ's decisions on the merits and costs. I have dismissed the appeal because the appellant has not adduced sufficient evidence to convince me that there is merit to vary the maintenance order.

3. In the court below, on 2 October 2013, the appellant appeared before the DJ claiming to be indebted in the sum of \$80,000 and suffering a loss of business. At that point, he was running his own spray painting company. Counsel for the respondent, Mr Winston Quek ("Mr Quek"), pointed out that this debt was not substantiated, and questioned the nature of the numerous cash withdrawals by the appellant, that were evident from his affidavit. The appellant claimed that those cash withdrawals were payments for his employees' salary and rental costs. As there was insufficient evidence in his affidavit, the DJ adjourned the matter for the appellant to file a further affidavit to exhibit evidence of his alleged "loss of business", as well as the use to which the cash withdrawals were put. On 23 October 2013, when the appellant returned to court, he tendered a further affidavit. However, only business sales from June to August 2013 were shown. The documents were disorganised papers of invoices and sales ledgers. No tax or Central Provident Fund ("CPF") statements were submitted. The DJ therefore dismissed the application, holding that the appellant had not adduced sufficient evidence to convince the court that the maintenance sum should be reduced.

4. This appeal was fixed for 10 March 2014 before me. On that date, the appellant appeared and prayed to vary the maintenance order on the grounds that he had sold his business and had become an employee for the very same spray painting company which he used to own. As no evidence substantiating this - or his alleged decline in income - was on record, I adjourned the matter to 24 March 2014, giving time to the appellant to file and serve a further affidavit containing evidence of the new circumstances.

5. On 24 March 2014, parties appeared before me again, this time with the benefit of the appellant's affidavit filed on 17 March 2014. In his affidavit, the appellant

claimed to have sold his company to an individual named Mr Lim on 3 March 2014. He claimed he was earning about \$2,600 (after CPF contribution) per month. He also incurred \$800 in rental expenses, \$500 in personal expenses and \$600 on a business loan each month.

6. The nub of the respondent's reply was that the appellant's alleged sale of his business was a sham. Mr Quek submitted that there were four good grounds why that was so. First, the documentation to prove the sale was highly questionable. This was contained in Exhibit KKS-1, the "[a]greement between [the appellant's spray painting business] and Mr Lim on Option to buy Assets of [the appellant's spray painting business]". In the agreement, the alleged consideration for the sale was phrased as an "interest free loan" of \$10,000, payable from Mr Lim to the appellant. Second, based on a search conducted on the appellant's spray painting business through the Accounting and Corporate Regulatory Authority Singapore on 19 March 2014, the appellant was still listed as the registered owner. Third, the chronology of events attracted suspicion. The appellant was scheduled to appear before me on 10 March 2014, and - only a week earlier - entered into the agreement with Mr Lim on 3 March 2014 to allegedly sell his company. Fourth, there was no reason for the appellant to have sold his company. The respondent pointed to the appellant's income in 2013, \$58,000 based on his tax returns, as a sign that his company was not profitable. In fact, as the respondent pointed out, business was on the upward trend, as his income was \$48,000 in 2010. It therefore did not make sense for the appellant to have sold his company and suffer a significant pay cut. Fifth, he claims to be now employed by Mr Lim, and back working in his former workshop. In response to this point, the appellant argued he sold his company because he did not have the funds to expand the business.

7. The nub of the respondent's submissions was that the appellant's alleged sale of his was merely a ploy to convince the court that the maintenance order should be varied. I need not make a finding as to whether the appellant's company had, in fact, been sold, although it seems to be a dubious transaction. It suffices for me to say that the appellant has not adduced sufficient evidence before me to convince me that there are any sufficient reasons to vary the maintenance order (see *AYM v*

AYL [2013] 1 SLR 924 at [11]). In my view, the order was a fair one and I am not persuaded that the appellant is unable to earn sufficiently to make the \$1,800 monthly maintenance payments. He is 61 years old (born 3 September 1953) and has skills and experience in the motor vehicles spray-painting business. He claimed that he is now a salaried person who cannot cope with his \$2,600 monthly salary. First, I am not persuaded that his monthly income is only \$2,600 as he had not produced convincing proof. Second, I do not accept that his expenses are as high as he claimed.

8. I thus dismiss the appeal. Costs to the respondent, fixed at \$400.

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