



IN THE SUPREME COURT OF BERMUDA

DIVORCE JURISDICTION

2007 : No. 145

B E T W E E N :

SAYEDA BEGUM ARSHAD

Petitioner

and

SYED ARSHAD

Respondent

J U D G M E N T

Ms. Georgia Marshall, Marshall Diel & Myers- Attorneys for the Petitioner

Dr. Syed Arshad- Respondent in Person

1. In this application the Petitioner seeks periodical payment for herself and the child of the family Rehan Mohammed Syed who was born on 25 June 1985.
2. Although a decree nisi was granted on 28 September 2007 I shall conveniently refer to the parties as the husband and the wife.

3. The husband and wife were married on 25 May 1980 in Bangalooa, India. They are citizens of India.
4. There are two children of the marriage Syed Danish Mohammed born on the 23 September 1982 and Rehan Mohammed Syed born on 28 June 1985. Rehan is over 21 years but continues in full time education. In evidence the husband renewed his commitment to pay Rehan's educational expenses. Syed Jr is a full time MBA student at Touro College, New York.
5. The husband is an ophthalmologist employed by the Bermuda Eye Institute. The family moved to Bermuda in March 2004 so that the husband could take up this employment. He currently earns \$15,334 net per month or \$221,850.24 per annum.
6. I am satisfied that the wife who is a housewife relied on the husband for all her financial needs. The husband supported the family out of his earning – his only source of income.
7. It is undisputed that over the years the husband gave the wife his earnings and she managed the family's financial affairs.
8. The marriage has had its difficulties but on the evidence the wife was shocked when in February 2007 while she was in India, she received e-mail correspondence from the husband– which she read while en route to Bermuda– stating that the husband wished a divorce. After the husband's decision to end the marriage, Rehan who was starting the second year of his tertiary education at the University of Hartford withdrew from the University because of insufficient funds to meet the \$26,000 per annum cost.

9. The wife's brother travelled from India and held an emergency meeting to try and have the parties mediate their differences but the husband was adamant that there was no room for reconciliation. The issue that remained was the level of financial support for the Petitioner and the child Rehan. The husband wants the wife to immediately return to India as it would be easier to support her if she resided in India while the wife wants to remain temporarily in Bermuda or the United States to offer moral and physical support to her sons, particularly to Rehan who has yet to complete the first part of his tertiary education. She said that it is a social stigma to return to India and live as a divorced woman. She has been married and served the husband for 27 years and cared for the children.
10. In accordance with the parties traditions this was an arranged marriage. The husband said: "both of us suffered during the marriage". To bear out the strength of their traditional values Sayed, the oldest son was engaged to a qualified doctor. The husband sent Sayed e-mail to inform him that he wanted to divorce the wife. The evidence shows that within 30 days the fiancée's father called off the marriage because he did not want his daughter married to that family.

ASSETS

11. On the evidence before the Court I am satisfied and find as a fact that the husband was and continues to be the sole breadwinner.
12. Since coming to Bermuda in 2004 the parties have enjoyed a reasonable comfortable standard of living. However, with the payment of hefty school fees for their sons and other expenses their funds have been depleted and there is no savings.

13. Paragraph 23 of the wife's affidavit, dated 5 September 2007, shows that parties jointly owned property in India, which the husband transferred into the name of the wife once he decided the marriage, had irretrievably broken down. The wife was unable to afford the mortgage payments of \$1500 monthly. To avoid foreclosure the wife listed the property for private sale and it was sold for \$220,000. After paying the outstanding mortgage and other costs she received net proceeds of US \$89,000, which she used toward the purchase of another property, valued at US \$160,000. This property is under construction and is due to be completed in April 2008. The wife says that she must pay an additional amount of US \$70,000 in order to secure this property, which will provide her with a home once she returns to India. It is in a building complex where other family members have units. Bearing in mind the evidence that it is a social stigma to return to India as a divorced woman, the wife ought not to be criticized for taking this course that will provide her with family support.

14. One of the issues is the cost of the wife's health insurance. The wife may receive permission to stay in Bermuda if she is able to demonstrate to the Chief Immigration Officer that the husband will provide medical insurance coverage plus a monthly sum for her maintenance.

15. Counsel for the wife argued that the bulk of the family's asset is represented by the husband's earning power. Presently he receives \$7,668.91 semi-monthly. After decree absolute he would be unable to keep the wife on his medical insurance consequently his semi-monthly earning will increase by \$150 which represents the wife's portion of health care costs.

16. Mrs. Marshall maintains that looking at the list of expenses there is argument to support increasing the current amount which he pays to the wife as maintenance for Rehan and herself to \$7,800 monthly.

17. Further Mrs. Marshall submits that the husband has such superior earning power he is not at risk of being homeless. The husband should retain his pension while the wife be allowed to retain the security of the Bangalore Property.
18. Mrs. Marshall argues that if on the evidence the Court finds that the husband cannot raise the full \$70,000 to complete the payment for the condominium, he could borrow 30-35,000 dollars and over 3 years he could repay that sum. The wife would have to turn to her family to assist her with any shortfall.
19. The husband who is unable to continue to afford legal representation, and is now representing himself submits that his credit card now stands at \$17,000 and this has to be settled. Additionally he owes \$11,000 in legal fees. He would like to stay in Bermuda but it does not appear realistic. Nevertheless, he is morally responsible to help his son, Rehan until he “attains his basic education” in effect a first degree. He says that he is asking the wife to make an effort to find a job as she has helped him previously to run his private clinic. He sees a grave financial situation on the horizon with a bleak prospect of continued employment in Bermuda.
20. During the marriage the parties had a joint cheque account. When the marriage ended this account had an overdraft of \$14,000, which the husband cleared in December 2007. He no longer has a cheque account.
21. On the evidence before the Court it is undisputed that the husband has carried the total financial burden. Regrettably, the financial future of the husband is not as stable as it there is uncertainty as to his level of remuneration beyond September 2008. Be that as it may, at the end of divorces the parties have to go through a period of adjustment – financially and otherwise.

22. In addition to the Bangalore property, the only other asset is the husband's pension valued at \$75,000.

Conclusion

23. An order for financial provision is based on the needs of the parties.

24. Section 29 of the Matrimonial Causes Act enjoins the Court to exercise its powers to place the parties "in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities to the other".

25. The husband is the sole earner and any order must be based on his ability to pay. The parties have no savings. Except for the Bangalore property the only other asset is the husband's pension valued at \$75,000.

26. Both parties need accommodation. It is commonly known that housing is very expensive here in Bermuda. The wife's accommodation rent is \$2,750 monthly while the husband is paying \$2,500 monthly. Given Bermuda's housing costs and their standard of living prior to the breakdown of the marriage, these amounts are viewed by the Court as reasonable.

27. Rehan needs ongoing financial assistance with his tertiary education. It appears that he will remain in Bermuda for the next school year from Sept. 2008 to June 2009.

28. The wife requests that the husband pay the \$70,000 in order for her to secure the Bangalore property is not financially feasible. In fact, it is nigh impossible based on the level of maintenance that is required for them to remain in Bermuda.

29. Given the unique circumstances of this case, it is reasonable for the wife to secure the current property in Bangalore. Therefore, I order the husband to pay \$30,000 to the wife within 4 weeks of the date of this Order.

30. I believe the husband should be able to borrow this sum and with thrift should be able to meet the monthly payment. Additionally, I order that the husband pay \$6,700 per month as maintenance for Rehan and the wife. This sum takes account the expense of Rehan's education and medical health insurance cost. This payment takes effect commencing 1 May 2008.

31. In the event the husband's employment changes as is suggested in the March 2008 letter from the husband's employer the parties have liberty to apply so that the Court can review the changed circumstances in respect of the monthly maintenance payments if the parties are unable to resolve this issue. For an avoidance of doubt there is no liberty to apply in respect of the lump sum order of \$30,000, which is final.

32. There shall be no orders as to costs.

Dated 1st day of April 2008.

The Hon. Mrs. Norma Wade-Miller
Puisne Judge