Singapore Journal of Legal Studies
[1993] 431 – 451

FINANCIAL RELIEF IN SINGAPORE AFTER A FOREIGN DIVORCE

The Singapore High Court can grant financial relief only when it is granting a decree of divorce, separation or nullity of marriage. It has no jurisdiction to grant such relief when a marriage has already been dissolved by a foreign court. This article examines the difficulties faced by ex-spouses who wish to seek financial relief in Singapore after a foreign divorce.

I. INTRODUCTION

THE Singapore High Court has rather extensive powers to grant financial relief under the circumstances set out in sections 106 and 107 of the Women's Charter (hereafter referred to as "the Charter").[1] Section 106 provides:

> The court shall have power, when granting a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any assets acquired by them during the marriage...or the sale of any assets and the division between the parties of the proceeds of sale.

Section 107 provides:

> The court may order a man to pay maintenance to his wife or former wife –
> (a) during the course of any matrimonial proceedings; or
> (b) when granting or subsequent to the grant of a decree of divorce, judicial separation or nullity of marriage.

The court's jurisdiction to grant financial relief is, thus, pegged onto its juridiction to grant matrimonial relief. Once the court in Singapore recognizes a foreign decree, it cannot make any financial relief orders because it has powers to do so only when it exercises its divorce, annulment

---

[1] Cap 353, 1985 Rev Ed.

or separation jurisdiction, and it cannot do so since in the eyes of the court, there is no longer a marriage.[2] It is possible, then, to oust the jurisdiction of the Singapore court to give relief by obtaining a foreign decree of dissolution which will be recognized in Singapore. This was also the common law position which applied in England before it was changed by the Matrimonial and Family Proceedings Act 1984,[3] which provides for applications to the English court for financial relief after a marriage has been dissolved overseas. The common law position persists in Singapore as legislation similar to the English Act has not, as yet been enacted.

II. RECOGNITION OF FOREIGN DIVORCES[4]

If the court's jurisdiction to grant financial relief can be ousted by obtaining a foreign decree recognized by the court, it is pertinent to examine briefly the circumstances in which a foreign decrees would be recognized in Singapore.

At common law, the English court in *Le Mesurier* v *Le Mesurier*[5] recognized foreign divorce decrees which were granted by the court of the parties' domicile at the time of the institution of proceedings. In *Armitage* v *Attorney-General*[6] foreign divorce decrees which were recognized by the court of the parties' domicile were also accorded recognition by the English court. The English court also recognized foreign decrees granted by a court which would assume jurisdiction under the same grounds as an English court would.[7] In 1967, dissatisfied with the relatively narrow criteria used in the recognition process, the House of Lords in *Indyka* v *Indyka*[8] held that if there existed a real and substantial connection between the court granting the decree and either party to the marriage, then the foreign decree should be recognized in England. A combination of the holdings *in Armitage* v *Attorney-General*[9] and *Indyka* led to a further liberalization of the bases of recognition. The English court would *recognize* a foreign decree if it

---

[2] This problem has been raised by the Law Commission in England before the Matrimonial and Family Proceedings Act 1984 (c 42)was passed. See *Family Law Financial Relief After A Foreign Divorce* (Law Com No 117).

[3] c 42. We will examine whether this English Act is applicable in Singapore by virtue of s 85 of the Charter. See *infra,* parts II and III.

[4] As divorce decrees are more common than nullity decrees, this article focuses only on foreign divorces.

[5] [1895] AC 517.

[6] [1906] P 135.

[7] *Travers* v *Holly* [1953] P 246.

[8] [1967] 2 All ER 689.

[9] *Supra,* note 6.

was recognized by a court with which either of the parties had a real and substantial connection.[10]

In the local case of *Sivarajan* v *Sivarajan,*[11] Winslow J held that the Singapore court would recognize a decree granted by the court of one of the party's domicile. However, it is not clear from the case whether the other common law bases of recognizing foreign divorces adopted in England are applicable in Singapore. The learned judge remarked that:

> no cases have arisen to this day in Singapore where relaxations ... to the domicile test have been followed.... Even if it can be said that, notwithstanding the statutory requirement of domicile as the test for jurisdiction in divorce, regard should be had to the principles enunciated in *Indyka's* case relating to real and substantial connexion between the parties and the foreign jurisdiction, ... it is quite clear from the facts found by the magistrate in this appeal that the Appellant did not, when he obtained this divorce on 2nd January 1970, possess such real and substantial connexion. He happened to be there on a short visit when he was advised by relatives that he could obtain a divorce there.[12]

This decision has endorsed the domicile criterion and may be interpreted to have rejected all other bases of recognition. However, it has been argued[13] that Winslow J did not totally reject *Indyka* since he held that the foreign divorce would not have been recognized even if *Indyka* were to apply as the appellant did not possess real and substantial connection with the foreign jurisdiction.

In England, the Recognition of Divorces And Legal Separations Act 1971[14] first superseded the common law rules on the recognition of foreign divorce decrees. The more recent Family Law Act 1986[15] has further modified the statutory position in England. Section 46 of the latter Act provides that foreign divorces shall be recognized if either party was habitually resident or domiciled in, or a national of, that country. Section 46(5) provides that a party is treated as domiciled in a country if he was domiciled there either according to the law of that country or according to the law of England. Many learned views have been propounded on whether these English statutes are applicable in Singapore by virtue of section 85 of the Charter. Section 85 provides that:

---

[10] See *Mather* v *Mahoney* [1968] 3 All ER 223.
[11] [1972] 2 MLJ 231.
[12] *Supra,* note 11, at 232.
[13] Kenneth Wee, "Recognition of Foreign Divorce Decrees: Creativity And Orthodoxy" (1974) 16 Mal LR 142.
[14] c 53.
[15] c 55.

> Subject to the provisions of this Part, the court shall in all suits and proceedings ... act and give relief on principles which in the opinion of the court are, as nearly as possible, conformable to the principles on which the High Court of Justice in England acts and gives relief in matrimonial proceedings.

Thus where there are divorce proceedings arising under the provisions of the Charter, section 85 will be relevant in resolving questions of whether the marriage in question has already been dissolved by a foreign court.

Do "principles" referred to in section 85 restrict the court's jurisdiction to have reference only to common law principles or are statutory provisions capable of giving rise to "principles"? The view taken by GW Bartholomew and RH Hickling is that section 85 imports English statutes subject to modifications required to suit local conditions.[16] Bartholomew considers section 85 as having the same effect as section 5 of the Civil Law Act.[17] Hickling is of the view that the section seeks to marry English practice with Singapore statute law. Tan Yock Lin[18] takes the position that the section imports English statutes but is subject to a cut-off date for statutes. He suggests that only pre-1961 statutes are applicable since the section was introduced in 1961.

On the other hand, Leong Wai Kum and CMV Clarkson argue that "principles" referred to in section 85 do not encompass statutory principles.[19] Leong Wai Kum considers this the more sensible view as there are now a number of statutes on matrimonial reliefs in England by which we may not necessarily wish to be bound. Clarkson argues that if statutory principles were included in section 85, an example of an anomalous situation that would arise is that the court would apply the Family Law Act 1986 when the issue of recognition of a foreign decree arises in matrimonial proceedings but would apply common law principles when the same issue arises in other contexts.

Kenneth Wee appears to adopt a middle view. He first considers the possibility that English statutes may be imported into Singapore on the basis of section 85 but argues that such an interpretation leads to the ludicrous result that certain English statutes may be applicable in Singapore in matrimonial proceedings but inapplicable in all other proceedings. He is of the view that the section should be interpreted "to import only those

---

[16] GW Bartholomew, *Tables of the Written Laws of Singapore 1819-1971* xxxviii-xliv; RH Hickling, "Recognition of a Foreign Divorce: *Quazi* v *Quazi*" (1980) 22 Mal LR 165.

[17] Cap 43, 1988 Rev Ed.

[18] Tan Yock Lin, *Conflicts Issues in Family and Succession Law* (1993), at 393.

[19] Leong Wai Kum, *Family Law In Singapore* (1990), at 20-21; CMV Clarkson, "Recognition of Foreign Nullity Decrees in Singapore" (1987) 8 Sing LR 166.

English principles which are equally applicable in questions other than those arising under Part IX of the Charter."[20]

It must be pointed out that importing certain rules and principles of English statutes to only specific areas of the law is not unheard of. There is a provision in the Evidence Act[21] which achieves a similar effect of importing certain English principles into a particular area of the law. Section 102 of the Evidence Act provides that:

> Nothing in sections 93 and 101 shall affect the construction of wills, but they shall be construed according to the rules of construction which would be applicable thereto if they were being construed in a court of justice in England.

English statutory provisions, as far as they relate to the construction of wills, would be applicable in Singapore. For example, section 1 of the Family Law Reform Act 1987[22] providing that references to a child or children of any person be construed as including a reference to an illegitimate child would apply in Singapore where such references are made in wills.[23] But the same provisions would not be applicable in issues other than those relating to the construction of wills.

It must further be noted that section 85 is subject to the qualification that the court acts on principles *as nearly as possible conformable* to English principles.[24] Thus it is possible for a Singapore court to act on principles of law contained in an English statute without importing the whole statute. Just as section 102 of the Evidence Act imports only those provisions of the Family Law Reform Act relevant to the construction of wills and not the whole English Act, so too section 85 may import some provisions of an English statute that reflect the spirit and principles of English law governing matrimonial matters. Where section 85 applies, English statutory provisions which do not conflict with any provisions in the Women's Charter may be applicable after suitable modifications are made to them.

It is submitted that section 85 is wide enough to encompass principles from both common law and statute law. Tan Yock Lin[25] points out that a similar provision in England has been understood to contemplate statute law and this point has not been addressed in Clarkson's article. In the case

---

[20] *Supra,* note 13. Kenneth Wee makes reference to s 79 of the Act which is the predecessor of the present s 85.

[21] Cap 97, 1985 Rev Ed.

[22] c 42.

[23] *Supra,* note 19, at 271.

[24] See Hickling, *supra,* note 16.

[25] *Supra,* note 18, at 391.

of Harthan v *Harthan,*[26] the court applied principles derived from the Statute of Citations when it was directed by section 22 of the Matrimonial Causes Act 1857[27] to act and give relief on principles and rules which in the opinion of the court shall be as nearly conformable to the principles and rules on which the ecclesiastical courts had theretofore acted and given relief. The approach taken in *Harthan's* case makes good sense. Applying the same common sense approach to interpreting section 85, the Singapore court must take into consideration the common law and statute law applicable in England since section 85 directs it to act and give relief on principles as nearly conformable as possible to principles on which an English court acts and gives relief. On this point, Chao Hick Tin JC remarked in *Tan Kay Poh* v *Tan Surinda & Anor:*[28] "Note the present tense of the words 'acts' and 'gives' in that section. It only imports the prevailing principles or rules applicable in England." Viewed in this light, there can be no justification for disregarding English statute law and considering only English common law. The English court would not make any distinction between common law and statute law when considering their *applicability* to the case at hand. In fact where there is statute law governing an issue, previous common law relating to that issue would have been superseded by the statutory rules. Why should the court continue to apply obsolete English common law principles? After considering the common law and statute law in England, the court may make suitable modifications to them since this is permissible by virtue of the qualification in section 85. Such an interpretation affords the court flexibilty in adopting English law where it is conducive to local circumstances. If the Family Law Act 1986 is applicable in Singapore, many foreign divorces will be accorded recognition because of the rather extensive grounds of recognition under the statute.[29]

However, in the recent case of *Ng Sui Wah Novina* v *Chandra Michael Setiawan,*[30] the court applied the common law rules of recognition and did not consider whether section 85 may render the English Family Law Act applicable. Therefore, despite the various arguments that may be made about the scope of section 85, the present position appears to be that the Singapore court will adopt a rather restricted view of the section. The English statutory

---

[26] [1949] P 115.

[27] 20 & 21 Vict, c 85

[28] [1989] 1 MLJ 276 at 277

[29] See s 46 of the Family Law Act 1986 (c 55). Under the Act, more parties will be treated as domiciled in the country in which the divorce is obtained (than when the common law definition of domicile is used) because of the broad statutory definition of domicile. Further, connecting factors such as habitual residence and nationality, which used to be only circumstances showing real and substantial connection to a country, are now independent bases of recognition.

[30] [1992] 2 SLR 839.

position on recognition of foreign divorces will probably be ignored. But even *if Novina Ng* typifies the attitude of the Singapore court in interpreting section 85, it is still conceivable that many foreign divorces would be accorded recognition in Singapore. The court may continue to apply all the common law bases of recognition used in England prior to the enactment of the Recognition of Divorces And Legal Separations Act 1971. Even if a more conservative approach is taken with respect to the recognition criteria, many foreign divorces will still be recognized today on the basis that one of the parties was domiciled in the foreign country. The ease with which one can travel nowadays and the abundant opportunities of working and studying abroad can lead to two consequences. First, the acquisition of a foreign domicile becomes easier; and second, it becomes common for foreign domiciliaries to settle in Singapore with assets within the jurisdiction. In the latter case, a former wife of a foreign domiciliary may prefer to obtain relief in the Singapore court but may find that the court has no jurisdiction to grant financial relief if a divorce has already been granted by the court of her former husband's domicile.

III. Effect of a Foreign Divorce on the Power to Order Financial Relief

1. *Maintenance orders under section 107*

The case of *Ng Sui Wah Novina* v *Chandra Michael Setiawan*[31] illustrates the effects of a foreign divorce on the powers of the court to grant financial relief.

In *Novina Ng,* the plaintiff, a citizen of Hong Kong, and the defendant, an Indonesian citizen, met when both were students in the American school in Singapore. They were married in Jakarta in 1978. The parties lived together in Jakarta until 1984 when the plaintiff left for Hong Kong with their child who was born in 1982. The defendant commenced divorce proceedings in Indonesia in 1986. The plaintiff left for Canada sometime in 1986 and was absent when the Indonesian court granted a decree of divorce in 1987. In the decree, custody of the child was given to the plaintiff and the defendant agreed to pay US$800 monthly for the maintenance and education of the child. The defendant moved to Singapore after the Indonesian divorce and married his new wife at the Singapore Marriage Registry in 1990. In December 1991, the plaintiff applied to the Singapore High Court for maintenance for herself and the child.

Lai Siu Chiu JC held that the court had no jurisdiction to grant the orders prayed for because the Indonesian court had adjudicated on the matter and

[31] *Ibid.*

was the more appropriate forum for the plaintiff's application. The Indonesian divorce was recognized in Singapore since the defendant was domiciled in Indonesia at the time of the divorce proceedings. Therefore the parties were no longer married and the plaintiff s application for maintenance for herself could only be made under section 107 and not section 61 of the Charter. As the court's powers under section 107 were ancillary, they could not be invoked in cases such as the present where the court did not previously dissolve the marriage. Lai JC thought that the plaintiff had only herself to blame for the state of affairs because although she had notice of the defendant's intended divorce proceedings, she had failed to take any action or make any claims in the Indonesian proceedings. With respect to the claim for maintenance of the child, the learned judge was of the view that the plaintiff should apply to the Indonesian court for enforcement of the maintenance order which it had made.

In holding that the High Court did not have jurisdiction to hear an application under section 107, Lai JC has made it clear that this position in Singapore is different from that which pertains in England today. In England, the Matrimonial and Family Proceedings Act 1984 enables the English courts to grant financial relief to parties whose marriage has been dissolved by a foreign court.

It was noted earlier that neither counsel referred the court to section 85. Would the court have decided differently if it had considered how section 85 may render the Matrimonial and Family Proceedings Act 1984 relevant? If the court was prepared to consider English statutes applicable by the operation of section 85, it may be argued that the court in *Novina Ng* could have acted on the same principles which the English court would have acted on, that is, to consider itself competent to grant relief to a former wife whose marriage has already been dissolved by a foreign court.

Section 85, as we have seen earlier, applies to cases involving the recognition of foreign divorces arising in the course of divorce proceedings begun under Part IX of the Charter. However, where applications are made under sections 106 and 107, there is, quite apart from the question of how properly to read section 85, a further difficulty. Attempts to bring proceedings under section 106 or 107 of the Charter when the marriage in question has already been dissolved by a foreign court may not attract the operation of section 85 in the first place. Where the parties' marriage has already been terminated by a foreign decree, applications for financial relief cannot be "suits" or "proceedings" under the Charter.[32] This is because suits and proceedings under sections 106 and 107 refer only to those cases where the Singapore court is granting or has granted a decree of divorce, separation or nullity.

---

[32] *Supra,* note 18, at 416.

Is it possible to argue that section 85 may operate in applications made under sections 106 and 107 even where no matrimonial relief is granted by the court? A party who wishes to get financial relief may apply to the court by means of an originating summons,[33] praying for the orders available in sections 106 and 107 of the Charter. If the court finds that it has no jurisdiction to grant the application, then the party would fail in her attempt to obtain relief. Can such failed proceedings nevertheless be considered "suits" or "proceedings" under the Charter? It is submitted that the language of section 85 necessarily excludes such applications. Section 85 directs the court to apply English principles "in all suits and proceedings hereunder" and this direction is made "subject to the provisions of this Part" of the Charter. This could mean that section 85 operates only where the proceedings arise under Part IX of the Charter or where the proceedings arise under any of the provisions set out after section 85 of the Charter. Further, the Matrimonial Proceedings Rules[34] provide that applications for ancillary relief should be made "in the petition or answer" or with leave of court, by originating summons, suggesting that the rules contemplate situations where there is a local application for matrimonial relief. Although failed proceedings may generally be considered "proceedings", they cannot be considered proceedings made under Part IX or any other part of the Charter. Proceedings made pursuant to sections 106 and 107 can only be made when the court grants a decree for it is only then that the court has jurisdiction to hear the application.

2. *Enforcement offoreign maintenance orders*

The effect of Lai JC's decision in *Novina Ng* is that a Singapore court has no jurisdiction to grant financial relief to someone like the plaintiff there. A wife whose husband obtains a foreign divorce cannot turn to the Singapore court for financial relief even when both she and her former husband live in Singapore. She may even be a Singapore domiciliary, or a resident of Singapore, but her strong connection to Singapore will not alter her inability to obtain such relief from the Singapore court. In the instant case the learned judge was unsympathetic as she was of the view that the wife had only herself to blame for her inability to obtain maintenance in Singapore because she could have sought maintenance in the Indonesian court which she failed to do. Was this a real option; does it provide a complete solution to the problem discussed? The value of this option of obtaining an Indonesian order will be examined here.

---

[33] See Women's Charter (Cap 353, 1985 Rev Ed), R 4 Women's Charter (Matrimonial Proceedings) Rules, GN S 232/81 (Subsidiary Legislation, 1990 Ed), rule 37.

[34] *Supra,* note 33.

Suppose in *Novina Ng,* the wife had been successful in obtaining a maintenance order in the Indonesian court. She might wish to enforce it against her former husband who was living in Singapore. In Singapore, the Maintenance Orders (Facilities for Enforcement) Act[35] and the Maintenance Orders (Reciprocal Enforcement) Act[36] (hereafter referred to as the "FFE Act" and the "RE Act" respectively) provide for the statutory enforcement of maintenance orders. Foreign maintenance orders registered under these statutes become enforceable in like manner as if they had been made under the Women's Charter.[37] The RE Act with the exception of section 19 came into effect on 3 May 1976. Section 19 on its face repeals the FFE Act and seems to have been drafted in preparation for the eventual repeal of the FFE Act. To date, section 19 has not been brought into operation and as such, both Acts are currently in force.

The FFE Act is very similar to the English Maintenance Orders (Facilities for Enforcement) Act 1920.[38] It was enacted in 1921 as the "Maintenance Orders (Facilities for Enforcement) Ordinance, 1921." It was omitted from publication in the compilation of the Laws of the Straits Settlements in 1936. In its place was the "Reciprocal Enforcement of Maintenance Orders Ordinance"[39] which had provisions identical to those of the FFE Ordinance. The Reciprocal Enforcement of Maintenance Orders Ordinance was retained in the 1970 revised edition of the Singapore Statutes.[40] In 1976, the RE Act was enacted with the exception of section 19, which referred to the repeal of the Reciprocal Enforcement of Maintenance Orders Act. In 1985, the FFE Act resurfaced as Chapter 168 of the 1985 revised edition and the Reciprocal Enforcement of Maintenance Orders Act was omitted from that edition. Section 19 of the 1985 revised edition of the RE Act referred to the repeal of the FFE Act instead of the Reciprocal Enforcement of Maintenance Orders Act.

What analyses can be made of this peculiar history of the statutes? The most likely explanation for the exclusion of the FFE Act in 1936 is that the Act was *renamed* the Reciprocal Enforcement of Maintenance Orders Act. Can it be argued that the renaming of the FFE Act in 1936 had the effect of repealing it? Was a new Act, entitled the Reciprocal Enforcement of Maintenance Orders Act enacted in its place?

This argument is untenable in the light of the Revised Edition of the Laws Act.[41] There was only one Act in operation since 1921. The FFE

---

[35] Cap 168, 1985 Rev Ed.
[36] Cap 169, 1985 Rev Ed.
[37] See s 8 of the FFE Act and s 8 of the RE Act.
[38] 10 & 11 Geo 5, c 33.
[39] Cap 47, Laws of the Straits Settlements, 1936.
[40] Cap 26, 1970 Rev Ed.
[41] Cap 275, 1985 Rev Ed.

Act was renamed the Reciprocal Enforcement of Maintenance Orders Ordinance in 1936 and again renamed the FFE Act in 1985. Short of legislation, the mere publication of an Act under a different name does not repeal the Act nor can a new Act be enacted in its place. Section 5(2) of the Revised Edition of the Laws Act provides that Acts or sections of Acts omitted from the revised edition of Acts shall remain in force until they have been expressly repealed or have expired or become spent or had effect. Section 4(c) of the same Act confers on the Commissioners appointed under section 3 the power to alter the long or short title of any Act in the preparation of the revised edition of Acts.[42] When the Reciprocal Enforcement of Maintenance Orders Ordinance was renamed the FFE Act in the 1985 Revised Edition, section 19 of the RE Act was similarly amended to repeal the FFE Act instead of the Reciprocal Enforcement of Maintenance Orders Ordinance.[43] Similar powers to make alterations to certain provisions are also given to the Commissioners with respect to the revision of subsidiary legislation.

Today, the new RE Act has not repealed any of the older Acts. Perhaps the Legislature has considered it best that the FFE Act be left as it is for the time being. Section 19 of the RE Act indicates the intention of the Legislature to work towards the eventual repeal of the Act. The RE Act contains much more sophisticated machinery for enforcement than the FFE Act. Unlike the latter, it provides for enforcement of affiliation orders in addition to maintenance orders. To repeal the FFE Act would mean that countries to which the Act has been extended will no longer be covered by that regime of reciprocal enforcement. Provisions must be made to ensure that the newer RE Act is extended to those countries. This "transfer" of countries from the operation of one Act to another may be a very long process.

The FFE Act provides for the registration of maintenance orders made by courts in England and Northern Ireland. Pursuant to section 11 of this Act, the Act has been extended to other states[44] by notification in the Gazette.

---

[42] In 1936, the Revised Edition of the Laws Ordinance 1925 was in force. S 3(2) of the 1925 Ordinance empowered the Commissioner to alter the short title of statutes.

[43] See s 4(p) of the Revised Edition of the Laws Act, Cap 275, 1985 Rev Ed.

[44] Sri Lanka, Saint Vincent, Malaysia, Brunei Daressalam, States of New Jersey, States of Guernsey, Baliwick of Guernsey, Cook Islands and Western Samoa, the Commonwealth of Australia territories of Australian Capital Territory, Northern Territory of Australia, New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania, Hongkong, Malawi, New Zealand, Zambia, all the States of the Republic of India except the States of Jammu and Kashmir, the Canadian territories of Alberta, Saskatchewan, North West Territories, Yukon Territory, New Brunswick, British Columbia, Newfoundland and Nova Scotia.

The new RE Act has also designated a few countries[45] as reciprocating countries to which the Act applies. It is interesting to note that some countries, such as England, New Zealand and Hongkong come under the operation of both Acts. This appears to be an indication of the Legislature's intention to ensure that countries gazetted under the FFE Act eventually come under the operation of the RE Act when the former Act is repealed. Presently, none of the ASEAN countries has been designated as a reciprocating country to which the RE Act applies. The FFE Act applies to two ASEAN countries, namely Malaysia and Brunei Darussalam. There is no specific legislative machinery to enforce maintenance orders from the other ASEAN countries of Indonesia, Thailand and Philippines.

Thus if the wife in *Novina Ng* had obtained an Indonesian order, she would have been left to seek enforcement of the Indonesian order under the common law, or the Reciprocal Enforcement of Commonwealth Judgments Act[46] or the Reciprocal Enforcement of Foreign Judgments Act.[47]

Enforcement of maintenance orders at common law is not free from difficulty. The wife must bring a fresh action to obtain judgment on the debt. The Singapore court must have jurisdiction over the matter. If the foreign court had jurisdiction to adjudicate on the matter, its judgment in personam may be enforced if it is for a debt or a definite sum of money, and is final and conclusive.[48] It has been stated in *Nouvion* v *Freeman*[49] that a judgment is final and conclusive if the court making the judgment "conclusively, finally, and forever established the existence of the debt of which it is sought to be made conclusive evidence in this country, so as to make it res judicata between the parties." Many foreign courts have powers to vary the sums of maintenance orders, as do the Singapore courts.[50] Where the same court may vary the maintenance orders, such orders cannot be said to be final and conclusive. In *Harrop* v *Harrop,*[51] the court held that a judgment from the State of Perak was not final and conclusive. The order in question was liable to be abrogated or varied by the court upon an application by either party, upon proof of change of circumstances. Similarly, a court may have powers to interfere with arrears of maintenance. In *Bailey* v *Bailey*[52] the court refused to grant an order to sign final judgment for

---

[45] New Zealand, United Kingdom, Hongkong, the Territory of Christmas Island and the Province of Manitoba.

[46] Cap 264, 1985 Rev Ed.

[47] Cap 265, 1985 Rev Ed.

[48] Dicey and Morris, *Conflict of Laws* (11th ed, 1987), Rule 36; Cheshire and North, *Private International Law* (11th ed, 1987), at 358-361.

[49] (1889) 15 App Cas 1, at 9.

[50] Ss 64 and 112 of the Women's Charter, *supra,* note 1.

[51] [1920] 3 KB 387.

[52] (1884) 13 QBD 855, see also *Robins* v *Robins* [1907] 2 KB 13.

arrears of alimony as the Divorce court could make variations with respect to past payments already due.[53] This particular aspect of maintenance orders makes enforcement at common law difficult.

Registration and enforcement of a judgment under the Reciprocal Enforcement of Commonwealth Judgments Act is not much easier. Judgments from the United Kingdom, Ireland, Hong Kong, Australia, New Zealand, Sri Lanka, Malaysia, Windward Islands, Pakistan, Sarawak, North Borneo, Brunei Darussalam, Papua New Guinea and India (except for the states of Jummu and Kashmir) may be enforced through registration under this Act. Although judgments registrable under the Act need not be enforced by a fresh acton but may be enforced through registration, the same difficulties plague the party in favour of whom a maintenance order has been made. The court would register the foreign judgment only where it thinks it just and convenient that the judgment should be enforced in Singapore. No judgment would be registered where an appeal is pending or where the judgment debtor intends to appeal.[54] It is therefore unlikely that a court would consider it just and convenient to enforce a maintenance order which may be varied by the very same court which granted it. Similarly, the Reciprocal Enforcement of Foreign Judgments Act provides that judgments must be final and conclusive before they can be registered.[55] To date, this Act has not been extended to any country. The wife in *Novina Ng* could not take advantage of either of these Acts since they had not been extended to Indonesia. With such obstacles to the enforcement of maintenance orders, there is little wonder that special legislation has been enacted to ensure that foreign maintenance orders can be enforced in Singapore without difficulty.

In order to achieve justice in a case where a wife, well connected to Singapore, is forced to obtain maintenance in a foreign court, there must at least be suitable machinery whereby she can enforce the order in Singapore. The RE Act must be extended to more countries. Countries which have substantial trade and business links with Singapore should be made reciprocating countries, as the people from these countries are the most likely to have connections with Singapore. A wife who is not physically present in the foreign jurisdiction in which the divorce proceedings are instituted must already suffer the inconvenience and expense of applying for maintenance in a foreign country. Must she suffer more problems in enforcing the order? Far better off is the wife who is able to obtain relief in Singapore without being forced to obtain maintenance in a foreign court.

---

[53] However, if the court cannot vary sums in arrears, judgments for such sums may be enforced. See *Beatty* v *Beatty* [1924] 1 KB 807.

[54] *Supra,* note 46, s 3(2)(e).

[55] *Supra,* note 47, s 3(2)(a).

But if *Novina Ng* represents the law in Singapore, then she has to be content with just an efficient machinery for enforcement of the foreign orders. Presently, she does not even have such machinery if the orders are made by courts in countries falling outside the operation of the statutes.

3. *Orders of property division under section 106*

Section 106 of the Charter enables the court to order division of matrimonial assets. *Novina Ng* did not involve this type of ancillary order for financial relief. For completeness, we will examine the problems which a plaintiff in *Novina Ng's* position would have encountered had she attempted an application under section 106.

The problems in obtaining relief under section 106 of the Charter are best illustrated by a hypothetical example. Suppose a Singapore domiciliary, *W,* marries *H,* a businessman domiciled in Indonesia. They set up their matrimonial home in Singapore. Two children are born to the couple and *W* stops working in order to care for them. The Indonesian husband has business links in both Indonesia and Singapore. He retains his Indonesian domicile and at the same time, makes Singapore his "second home". Their marriage is subsequently terminated by the Indonesian court and custody of the children is given to *W. W* applies to the Singapore court for an order of division of the matrimonial assets under section 106. The Singapore court recognizes the Indonesian divorce on the basis that *H* is domiciled in Indonesia at the time of the divorce proceedings. The court has no powers to grant *W* relief under section 106 of the Charter because the marriage has already been dissolved and the court can no longer grant any decree of divorce, judicial separation or nullity. It may be argued that *W* should obtain an order of division of property in the Indonesian court. However, unlike the grant of a maintenance order where no immoveables are involved, a foreign court will usually decline to deal with immoveable property situated outside its juridiction. If the foreign court declines to make any orders with regard to property abroad, then in such a case, no court would deal with the property.

In the English case of *Torok* v *Torok,*[56] decided before the enactment of the Matrimonial And Family Proceedings Act 1984, the husband started divorce proceedings in Hungary while the wife and children were living in England. Evidence was given that there was no jurisdiction in the Hungarian court to deal with immoveable property outside Hungary. Ormrod J observed that if the marriage was "dissolved by the Hungarian court, there will be no court which has jurisdiction to deal with the house where the wife and the children are living" and expedited the divorce proceedings so that the

[56] [1973] 3 All ER 101.

wife could invoke the powers of the English court for maintenance orders and orders dealing with the property.

In any case, even if a foreign court is willing to make an order dealing with property situated in Singapore, the Singapore court may not recognize such an order. This is because there is a general rule in private international law that only the court of the *situs* is competent to deal with the property.[57] This rule is based on the considerations of practicality, convenience and expediency.[58] After all, it is the *situs* which has the most interest in the way in which the property is to be used and ultimately the property can only be dealt with in the manner permitted by the *lex situs.*

If the Singapore court applies this rule where post-marital property is concerned, then judgments from foreign courts dealing with property situated in Singapore will not be given recognition. It follows that even where there is a foreign judgment relating to the property, it may not be enforced in Singapore. The wife *W* in the hypothetical case is left with the option of making an application for an order under section 56 of the Charter.

Section 56 provides that either party to a marriage may apply for an order with respect to the title or possession of property in dispute. Section 56(4) permits the parties to make the application notwithstanding that their marriage has been dissolved, so long as the application is made within three years from the date of dissolution of the marriage. The relief available to the wife *W* under section 56 is different from the type of relief she can obtain under section 106 of the Charter. It is clear from the recent case of *Tan Thiam Loke* v *Woon Swee Kheng Christina*[59] that disputes over property between cohabiting couples, married or unmarried, are governed by property rules founded in the English cases of *Gissing* v *Gissing*[60] and *Grant* v *Edwards.*[61] The court may consider whether there are any constructive or resulting trusts arising from the circumstances of the case and will divide up the property according to the shares beneficially owned by each party. Section 56 does not give the court any new powers; it merely provides the procedure by which parties may invoke the powers which the court already possesses. The matrimonial property is usually in the parties' joint names or the husband's sole name. Where the husband is the sole legal owner, the wife may have a resulting trust in the property if she has contributed directly towards the purchase of the property. Alternatively, the court may find that the wife possesses some beneficial ownership by

---

[57] See *Re Trepca Mines Ltd* [1960] 1 WLR 1273; Dicey and Morris, *supra,* note 48, Rule 41; Cheshire and North, *supra,* note 48, at 356.

[58] *Halsbury's Laws of England* (4th ed, 1974), at para 651.

[59] [1992] 1 SLR 252.

[60] [1971] AC 886.

[61] [1986] 1 Ch 638.

way of a constructive trust if there exists a common intention in the parties to share beneficial ownership and if there is also some contribution by the wife towards the purchase of the property.[62] If these are not present, then the wife who has contributed much to the home and family is left with no share in the matrimonial home. The court cannot order the husband to transfer part of his share of the property to the wife under section 56.

In contrast, section 106 empowers the court to order division of matrimonial property under a totally different regime. When section 106 is invoked, the courts are no longer constrained by the rigid rules of property law. It has a wide discretion to reorganize the financial positions of the parties. A wife in *W*'s position, who has not been working for some years, and who has care and custody of young children would be far better off obtaining relief under section 106 of the Charter. The case of *Shirley Koo* v *Kenneth Mok*[63] is an excellent illustration of how the court seeks to do justice in such circumstances. Thean J "approached the problem in a broad manner, taking into account the factors prescribed in sub-ss (2)... of s 106 of the Women's Charter."[64] He ordered the petitioner wife to forgo her claims on the other assets and ordered the respondent husband to transfer to her all his interest in the property in which she and the children were living in before they left the respondent. This was a fair division because it would "give to the petitioner and the children a permanent roof over their head and afford them some security."[65]

If there is no jurisdiction in the courts to make property adjustment under section 106 after a foreign divorce, then as rightly pointed out by Ormrod J, there is a "dangerous gap in our existing legislation".[66] When a marriage breaks down, the matrimonial property of the parties is intended to be dealt with in the manner prescribed by section 106 of the Charter. If the court of the *situs* cannot deal with the property in the manner intended, the law must be changed.

IV. A Need for Reform?

1. *Common law devices*

There are a few escape devices used to prevent the juridiction of the court from being ousted by a foreign decree.

---

[62] See *Gissing* v *Gissing, supra,* note 59; *Pettit* v *Pettit* [1970] AC 777; *Grant* v *Edwards, supra,* note 60; *Lloyd's Bank Plc* v *Rosset & Anor* [1991] 1 AC 107; *Tan Thiam Lake* v *Woon Swee Keng Christina, supra,* note 59.

[63] [1989] 2 MLJ 264

[64] *Ibid,* at 269.

[65] *Ibid.*

[66] *Torok* v *Torok* [1973] 3 All ER 101, at 102.

One way of preserving the court's jurisdiction to grant maintenance is to obtain a maintenance order under section 61 of the Charter before the foreign divorce decree is made absolute. This course of action has been suggested by Karsten.[67] Before a divorce is made absolute, a wife may apply for maintenance as a "married woman" under section 61. Once a maintenance order is granted, it does not automatically lapse upon a divorce. It may continue to subsist at the discretion of the court. The husband has the option of applying to have the order rescinded under section 64 of the Charter when a decree absolute is obtained. But the court may decide not to rescind the order. The court can keep the order alive as long as it does not rescind it. The main weakness of this device lies in the necessity for swift action on the part of the wife. It is dependent on the making of an application before the foreign divorce decree is made absolute. Further, although it may assist a wife in obtaining maintenance, this device does not assist her in obtaining orders relating to the matrimonial property. It fails to make a difference where a wife seeks mainly the security of the matrimonial home.

Another device that may be employed is what Ormrod J termed as "a procedural technique"[68] of expediting the decree absolute in order to give the court jurisdiction over the matters of maintenance and property adjustment. In *Torok* v *Torok,*[69] the parties, Hungarian by origin, married in Scotland and lived mainly in England after the marriage. Some years later, the husband went to Canada, leaving his wife and children in England. The wife received a summons from the Hungarian court dated 28 November 1972 notifying her that divorce proceedings would take place on 18 December 1972. The proceedings were adjourned to 20 January 1973 and on that date, a partial decree was granted, dissolving the marriage subject to a delay of 15 days from the time of service of the judgment on the wife's lawyers. In the course of the 15 days, an appeal was lodged but was not heard at the time Ormrod J heard the case. The marriage was therefore still subsisting at the time of the hearing. The learned Judge observed that if a Hungarian decree was made before the English decree was made, the court would be bound to recognize the Hungarian decree which would have the effect of precluding the court from dealing with property in England. This produced the ridiculous result that the English court had no jurisdiction to deal with property belonging to parties who "have been living in England since 1956, married in England, with children who have been brought up in England ... whose only matriminial home – was in (England)."[70] Ormrod J expedited the divorce decree absolute in order to preserve the English court's juris-

---

[67] Karsten, "Maintenance and Foreign Divorce" [1970] 33 MLR 205.
[68] *Supra,* note 66, at 105.
[69] *Supra,* note 66.
[70] *Supra,* note 66, at 104.

diction over the matters. Again, as with the first device, this procedural technique works only when the party on whom the notification of foreign divorce proceedings is served acts with great speed. Had the wife in *Torok*'s case delayed for just a few days, the Hungarian court might have given a decree before the English court even had the opportunity to do so, for the notice given to her was extremely short. In such a case, the Engish court would have been obliged to recognize the Hungarian decree.

The court's juridiction may also be preserved by challenging the foreign decree on the ground of breach of natural justice. In *Joyce Joyce and O'Hare*[71] the parties were married in England and cohabited in England until the husband left the wife and children after eighteen years of marriage. The husband subsequently obtained a divorce decree in Canada. The wife petitioned the English court, asking for dissolution of the marriage and ancillary relief in the court. The court refused recognition of the Canadian decree, holding that the wife had not been given a reasonable opportunity to take part in the Canadian proceedings. She could not afford the cost of travelling to Canada to get financial aid to be represented and her solicitors' attempts to have her case put before the Canadian court had not been effective. Recognition of the decree would leave her and the children without a remedy with respect to their home for the Canadian court would not adjudicate on foreign property. Further, the court held that in the circumstances, recognition of the decree would be contrary to public policy. However, it must be cautioned that the court will be slow to refuse recognition of a foreign decree.[72] A party must clearly be deprived of the opportunity to be heard. Short of such clear evidence, the decree given by a court of competent jurisdiction will be recognized. To act otherwise would be to undermine the jurisdictional competence of foreign courts. Refusals to recognize foreign decrees granted by courts which the common law conflict of laws rules accept as competent may lead to "limping marriages" whereby the parties are considered divorced in one country but still married in another. This is especially significant to those who, on the faith of having obtained a valid divorce, marries a second spouse. Further, challenging a foreign decree in order to preserve the court's jurisdiction leaves much to be desired. In *Quazi* v *Quazi,*[73] the litigation involved many lawyers and experts in foreign law, and took up many days in court. Large sums of many went into the litigation, most of which came from legal aid funds. The House of Lords called for reform of the law so that the "incentive to challenge the foreign divorce would have gone: and the court could deal with the property and financial problems of the parties upon their merits."[74]

---

[71] [1979] Faro 93.

[72] See *Newmarch* v *Newmarch* [1978] Fam 79; *Hack* v *Hack* (1976) 6 Family Law 177.

[73] [1980] AC 744.

[74] *Ibid,* note 73, at 819, *per* Lord Scarman.

The inadequacies of the common law techniques to prevent the ousting of the court's jurisdiction serve to caution us that the present position in Singapore is far from satisfactory.

2. *Reform*

The crucial change in the law must be that the Singapore court be given the powers to hear applications for financial provision and property adjustment even after a foreign divorce. In selecting the structure in which the reform is to take, the risks of "forum-shopping" must be carefully balanced against the advantages of giving the court the jurisdiction and powers to grant remedies. If the powers to award extensive remedies are given to the Singapore courts, parties which have little or no connection with Singapore may wish to seek remedies here only because it may be comparatively more financially advantageous to them to seek them here. The law should therefore provide that the parties must have sufficient connection with Singapore in order to obtain financial reliefs.

The Law Commission's report on "Financial Relief After Foreign Divorce"[75] provides a useful study of the problems of reform and its recommendations leading to the legislative change in the law may form the framework within which the search for reform may begin. Part III of the Matrimonial and Family Proceedings Act 1984 provides for "Financial Relief In England And Wales After Overseas Divorce Etc." Section 12 of this Act gives parties whose marriage has been terminated by an overseas decree the independent right to apply, with the leave of court, for financial relief. Section 15(1) of the Act provides:

> the court shall have jurisdiction to entertain an application for an order for financial relief if any of the following jurisdictional requirements are satisfied, that is to say –
>
> (a) either of the parties to the marriage was domiciled in England and Wales on the date of the application for leave under section 13 above or was so domiciled on the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or
>
> (b) either of the parties to the marriage was habitually resident in England and Wales throughout the period of one year ending with the date of the application for leave or was

[75] *Supra,* note 2.

so resident throughout the period of one year ending with the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or

(c) either or both of the parties to the marriage had at the date of the application for leave a beneficial interest in possession in a dwelling house situated in England or Wales which was at some time during the marriage a matrimonial home of the parties to the marriage.

The English statute has therefore laid down special jurisdictional criteria for applications for financial relief after a foreign divorce.

An alternative mode of reform, which is recommended, is found within the existing structure of the Charter's provisions on matrimonial and financial reliefs. Jurisdictional rules necessary for ensuring sufficient connection between the parties and Singapore may be based on the current jurisdictional criteria imposed by section 86 of the Charter (the satisfaction of which will confer divorce jurisdiction on the court). A new subsection may be added to secton 86, providing that:

> Where a marriage has already been terminated, the court shall have jurisdiction to grant reliefs in applications made under sections 106 and 107 if the parties satisfy the conditions set out in subsection 1 either at the time of the divorce proceedings or at the time of the application for financial relief.

New subsections may then be enacted to supplement sections 106 and 107 in the form similar to the existing section 56(4) which provides:

> An application may be made under this section by either of the parties to a marriage notwithstanding that their marriage has been dissolved or annulled so long as the application is made within the period of 3 years beginning with the date on which the marriage was dissolved or annulled; and references in this section to a husband or a wife shall be construed accordingly.

The effect of these additions to the existing structure of provisions for relief is that the courts shall continue to have powers to grant relief as long as the application is made within three years from the time of termination of the marriage. A three-year limitation period would give parties the assurance that the remedies available to his or her ex-spouse will not last indefinitely. The advantage of this mode of reform is that the existing struc-

ture of financial relief will be preserved. The jurisdictional requirements for invoking the jurisdiction of the court to grant financial relief would be uniform in both local and overseas divorces.

V. CONCLUSION

It may be argued that if the legislative machinery to facilitate enforcement of foreign maintenance orders is extended to more countries, some of the problems described may be alleviated. But the increased geographical mobility of parties attracts the consequence that maintenance orders may be obtained from a very large number of countries. It would be inevitable that orders from some countries may not be enforceable through the FFE and RE Acts. Action taken to improve the enforcement machinery may solve only a fraction of the problems raised. The unsatisfactory position with respect to section 106 would remain. Reform must be the only course to pursue.

DEBBIE ONG SIEW LING*

* LLB (NUS); LLM (Cantab); Advocate & Solicitor (Singapore); Lecturer, Faculty of Law, National University of Singapore.
The writer is grateful for the helpful comments of Associate Professor Leong Wai Kum and Tan Yock Lin on earlier drafts of this article. The responsibility for any errors remains entirely with the writer.