

DALAM MAHKAMAH TINGGI MALAYA DI TAIPING

DALAM NEGERI PERAK DARUL RIDZUAN

SAMAN PEMULA NO: AB-24NCVC-21-02/2023

Dalam perkara mengenai Penghakiman bertarikh 9.8.2018 bagi Guaman Sivil No. AB22NCVC-14-06/2017 di Mahkamah Tinggi Malaya di Taiping, Negeri Perak Darul Ridzuan, Malaysia.

Dan

Dalam perkara mengenai Hartanah sebuah rumah (Aset Perkahwinan) yang dipegang di bawah hakmilik individu GM 10265, Lot No. 81958, Seksyen 30, Tempat Telok Gadong Besar di Bandar Klang, Daerah Klang, Negeri Selangor Darul Eshan yang mempunyai alamat di No. 62, Lebuhraya Peria, Taman Radzi, 41200 Klang, Selangor Darul Ehsan.

Dan

Dalam perkara mengenai Senarai Aset-Aset Harta Pusaka Dr. Ganeshwaran a/l K.T. Balakrishnan (No. Kad Pengenalan: 640223-07-5399), Si Mati di bawah Geran Probet bertarikh 12.10.2016 yang dikeluarkan oleh Mahkamah Tinggi Malaya di Shah Alam bagi Saman Pemula No: BA-32NCvC-536- 09/2016.

Dan

Dalam perkara mengenai Seksyen 53 Akta Relif Spesifik 1950.

Dan



Dalam perkara mengenai Aturan 7
dan Aturan 92 Kaedah 4
Kaedah Kaedah Mahkamah 2012.

ANTARA

PREMALATHA A/P RAMA GOVINDA
(No. K/P: 770409-06-5848)

...PLAINTIF

DAN

PREMAVATHY A/P BALAKRISHNAN
(NO. K/P: 570813-08-6302)

...DEFENDAN

GROUND OF JUDGMENT

INTRODUCTION

[1] This Court decided on 22.8.2023 to allow the Originating Summons ("the OS") in this case filed by the Plaintiff with costs. The Defendant filed a Notice of Appeal against the Court's decision on 19.9.2023. This Grounds of Judgment contains the reasons for allowing the OS.

[2] The prayers in the OS sought for the following orders from the Court:

"1. Bahawa Defendan dikehendaki untuk mengambil tindakan dan/atau melaksanakan yang berikut, dalam tempoh empat belas (14) hari dari tarikh Perintah ini, bagi tujuan melaksanakan dan/atau mematuhi Penghakiman Mahkamah Tinggi Taiping bertarikh 9.8.2018 bagi Guaman Sivil No: AB-22NCVC-14-06/2017:-

(a) Memfailkan suatu permohonan untuk meminda Senarai Aset-Aset Harta Pusaka Dr. Ganeshwaran a/l K.T. Balakrishnan (No. Kad Pengenalan: 640223-07-5399), Si Mati di bawah Geran Probet bertarikh 12.10.2016 seperti yang dicadangkan di Lampiran A yang dilampirkan bersama dengan Saman Pemula ini;



- (c) Melaksanakan turunmilik dan mendaftarkan Defendan sebagai wakil/wasi kepada Harta Pusaka Dr. Ganeshwaran a/l K.T. Balakrishnan (No. Kad Pengenalan: 640223-07-5399), Si Mati atas Hartanah sebuah rumah yang dipegang di bawah hakmilik individu GM 10265, Lot No. 81958, Seksyen 30, Tempat Telok Gadong Besar di Bandar Klang, Daerah Klang, Negeri Selangor Darul Eshan yang mempunyai alamat di No. 62, Lebuh Peria, Taman Radzi, 41200 Klang, Selangor Darul Ehsan (selepas ini dirujuk sebagai "Aset Perkahwinan tersebut"), dan seterusnya, melaksanakan pindahmilik setengah (1/2) bahagian Aset Perkahwinan tersebut daripada Defendan selaku Wasi ke atas nama Plaintiff selaku Benefisiari kepada setengah (1/2) bahagian Aset Perkahwinan tersebut di bawah suatu amanah; dan
 - (c) Memberikan satu set kunci yang lengkap bagi Aset Perkahwinan tersebut kepada Plaintiff supaya Plaintiff dapat mengakses Aset Perkahwinan tersebut.
2. Bahawa sekiranya Defendan gagal untuk melaksanakan perkara 1(a) di atas dalam masa yang ditetapkan, Plaintiff mempunyai hak untuk memfailkan suatu permohonan bagi meminda Senarai Aset-Aset Harta Pusaka Si Mati di bawah Geran Probet bertarikh 12.10.2016 seperti yang dicadangkan di Lampiran A,
3. Bahawa Defendan dikehendaki membekalkan salinan Suratan Hakmilik ("Title Deed") bagi Aset Perkahwinan tersebut kepada Plaintiff, dalam tempoh empat belas (14) setelah Suratan Hakmilik yang mencerminkan pemindahan setengah (1/2) bahagian Aset Perkahwinan tersebut ke atas nama Plaintiff dikeluarkan, bagi tujuan rekod dan simpanan Plaintiff;
4. Bahawa Defendan dikehendaki untuk membayar jumlah sebanyak RM31,200.00 kepada Plaintiff daripada Estet Si Mati, yang merupakan jumlah kos dan fi alokatur yang telah diperintahkan oleh Mahkamah Tinggi Taiping (melalui Penghakiman bertarikh 9.8.2018 di Guaman Sivil No: AB-22NCVC-14-06/2017) dan Mahkamah Persekutuan Malaysia (melalui Perintah bertarikh 11.2.2020 di Permohonan Sivil No: 08(f)-339-08/2019(A));
5. Bahawa Notis Pengendorsan sebagaimana dalam Borang 83 Kaedah-Kaedah Mahkamah 2012 dimasukkan ke dalam perintah ini;
6. Bahawa segala kos yang terlibat bagi melaksanakan perintah ini dan kos permohonan ini ditanggung oleh Defendan;



7. Lain-lain relif yang dianggap patut dan sesuai oleh Mahkamah Yang Mulia ini.”.

[3] The brief reasons listed by the Plaintiff in the OS were:

“1. Seperti yang dihakimi di bawah Penghakiman Mahkamah Tinggi Taiping bertarikh 9.8.2018 (yang disahkan oleh Mahkamah Rayuan dan Mahkamah Persekutuan), Plaintiff sebagai seorang isteri/balu mempunyai hak dan kepentingan ke atas Aset Perkahwinan tersebut, yang mana Si Mati adalah memegang setengah (1/2) bahagian hartanah Aset Perkahwinan tersebut atas dasar Amanah bagi Plaintiff.

2. Defendan selaku Wasi dan pemegang amanah di bawah Wasiat Si Mati bertarikh 14.2.2016 bagi Harta Pusaka dan Estet Si Mati masih enggan dan/atau gagal dan/atau abai untuk mengambil tindakan yang selanjutnya dan yang diperlukan, untuk mengiktiraf hak dan kepentingan Plaintiff sebagai seorang pemilik yang memiliki setengah (1/2) bahagian hartanah Aset Perkahwinan tersebut, dan juga membayar kos dan fi alokatur yang diperintahkan kepada Plaintiff selaku pihak yang menang dalam litigasi, walaupun Defendan telah berulang kali dituntut oleh Plaintiff dan/atau peguamcara Plaintiff untuk berbuat demikian.

3. Terdapat prejudis yang dialami oleh Plaintiff yang diakibatkan oleh Defendan atas representasi palsu Defendan, di mana Defendan telah memberi harapan kepada Plaintiff bahawa Defendan sememangnya mengiktiraf hak dan kepentingan Plaintiff selaku pemilik yang memiliki setengah (1/2) bahagian hartanah Aset Perkahwinan tersebut dan juga mempunyai niat untuk menyelesaikan perkara ini secara aman damai dengan Plaintiff.

4. Walau bagaimanapun, perbincangan bagi pelaksanaan perkara ini yang dijalankan di antara pihak-pihak melalui peguamcara-peguamcara masing-masing tidak membuahkan apa-apa hasil yang positif (“did not yield any positive results”) dan sehingga kini, Defendan juga gagal dan/atau abai dan/atau enggan untuk mengambil tindakan yang selanjutnya dan yang diperlukan, menurut terma-terma Penghakiman Mahkamah Tinggi Taiping bertarikh 9.8.2018 tersebut.”

[4] The OS was filed on 8.2.2023 together with the Plaintiff’s Affidavit in Support (Encl. 2) . The Defendant’s Affidavit in Reply (Encl. 12) was only filed on 26.4.2023 after leave was granted by the Court on 11.4.2023



pursuant to the Defendant's application in Encl. 6 to obtain an extension of time to reply to Encl. 2.

[5] The Cause Papers for Encl. 1 were as follows:

- i. Saman Pemula dated 8.2.2023 (Encl. 1);
- ii. Affidavit Sokongan Plaintiff affirmed by Premalatha A/P Rama Govinda on 8.2.2023 (Encl. 2);
- iii. Affidavit Jawapan Defendan affirmed by Premavathy A/P Balakrishnan on 26.4.2023 (Encl. 12);
- iv. Affidavit Balasan Plaintiff affirmed by Premalatha A/P Rama Govinda on 10.5.2023 (Encl. 13); and
- v. Affidavit Jawapan Kedua Defendan affirmed by Premavathy A/P Balakrishnan on 24.5.2023 (Encl. 14).

FACTUAL MATRIX

[6] The Plaintiff was the lawful wife of Dr. Ganeshwaran A/L K T Balakrishnan ("the Deceased"). The couple had a matrimonial home which was a double storey terrace house at No. No.62, Lebuhr Peria, Taman Radzi, 41200 Klang, Selangor Darul Ehsan ("the Property"). The Deceased passed away on 14.3.2016. During his lifetime, the Deceased had drawn up a Will and named his mother as the Executor of his estate. However, if his mother was unwilling or unable to act, then his sister, the Defendant, would be appointed as Executor. In the Will dated 14.2.2026 he had bequeathed his possessions amongst his family members whereas the Property was to be given entirely to the Defendant. He did not leave anything for his wife. A Grant of Probate was obtained by the Defendant at the Shah Alam High Court on 12.10.2016.



[7] The Plaintiff challenged the Will and claimed the Property and other ancillary orders vide Suit No. AB-22NCVC-14-06/2017 at the Taiping High Court. On 9.8.2018, after four days of trial, the High Court gave judgment in favour of the Plaintiff (“the Judgment”) and made the following orders:

- “1. “Wasiat bertarikh 14.2.2016 yang dibuat oleh Si Mati, Dr. Ganeshwaran a/l K.T. Balakrishnan adalah sah dan berkuatkuasa.
2. Hartanah sebuah rumah yang beralamat di No. 62, Lebuhr Peria, Taman Radzi, 41200 Klang, Selangor Darul Ehsan yang dipertikaikan bukanlah harta Si Mati, Dr. Ganeshwaran a/l K.T. Balakrishnan sepenuhnya dan harta itu dipegang sebahagian untuk amanah bagi pihak Plaintiff dan bahagian itu tidak boleh dijadikan subjek wasiat Si Mati.
3. Si Mati, Dr. Ganeshwaran a/l K.T. Balakrishnan memegang Setengah bahagian (1/2) bahagian hartanah yang beralamat di No. 62, Lebuhr Peria, Taman Radzi, 41200 Klang, Selangor Darul Ehsan itu sebagai amanah untuk Plaintiff.

SEDEMIKIAN DAN ADALAH SELANJUTNYA DIHAKIMI BAHAWA:-

4. Plaintiff sebagai isteri kepada Si Mati, Dr. Ganeshwaran a/l K.T. Balakrishnan mempunyai hak dan kepentingan ke atas Aset Perkahwinan yang beralamat di No. 62, Lebuhr Peria, Taman Radzi, 41200 Klang, Selangor Darul Ehsan.
5. Si Mati, Dr. Ganeshwaran a/l K.T. Balakrishnan dan/atau Estet Si Mati/Defendan dan mana-mana wakil, agen atau ahli keluarga Defendan memegang Setengah bahagian (1/2) Aset Perkahwinan yang beralamat di No. 62, Lebuhr Peria, Taman Radzi, 41200 Klang, Selangor Darul Ehsan atas dasar amanah untuk Plaintiff sebagai pihak yang mempunyai hak benefisial berdasarkan sumbangan yang dibuat secara peribadi dan melalui sumbangan ibu bapa Plaintiff ke atas Aset Perkahwinan tersebut dan/atau sebagai pihak yang mempunyai hak dan kepentingan sebagai seorang isteri yang sah ke atas Aset Perkahwinan tersebut.
6. Kos sebanyak RM15,000.00 tertakluk kepada 4% Alokatur dibayar kepada Plaintiff daripada Estet Si Mati.”

[See Exhibit “PRG-3” of Encl. 2 at pages 40-42]



[8] The Defendant appealed to the Court of Appeal against the Judgment. On 23.7.2019, the Court of Appeal dismissed with costs the appeal of the Defendant. Dissatisfied with the decision of the Court of Appeal, the Defendant applied for leave to appeal to the Federal Court. However, on 11.2.2020 the Federal Court dismissed the leave application and further ordered the cost of RM15,000.00 to be paid by the Defendant to the Plaintiff.

HEARING OF THE ORIGINATING SUMMONS

[9] Therefore, as Defendant's leave to appeal to the Federal Court has been dismissed, the Judgment is thus valid, binding, and enforceable. The Plaintiff contended that based on the Judgment and Orders of the High Court, Court of Appeal, and the Federal Court, the Plaintiff was entitled to the following from the Defendant:

- (a) ½ ownership of the matrimonial property that is located in No. 62, Lebuhr Peria, Taman Radzi, 41200 Klang, Selangor Darul Ehsan;
- (b) Costs (including allocator fees) of RM 15,600.00 which is the cost ordered by the High Court of Taiping; and
- (c) Costs (including allocator fees) of RM 15,600.00 which is the costs ordered by the Federal Court.

[10] Nevertheless, the Defendant took the stand that the entire Judgment very simply held that a half share in the said Property was initially held on trust by Dr. Ganeshwaran ("untuk amanah bagi pihak Plaintiff") and subsequently any representative, agent or family member held the said half share in the said property on trust for the Plaintiff ("atas dasar amanah untuk Plaintiff"). *Nothing more and nothing less.* This was



exactly what the Defendant's counsel summed up at the hearing of the OS, despite including the RM31,200.00 costs owed by the Defendant to the Plaintiff in the parties' discussions to settle the matter within the time span of 5 years after the Judgment was obtained. Their respective solicitors' numerous communication letters on a STRICTLY WITHOUT PREJUDICE BASIS were exhibited by the Plaintiff in Exhibit "PRG-6" of Encl. 2. The Defendant also acknowledged that they were in discussions to break the deadlock "created" by the Judgment. The gist of the PROPOSED SETTLEMENT AGREEMENT was that, in order to resolve this matter with some finality, the Defendant would purchase outright, the Plaintiff's beneficial interest in the said Property for a sum of RM300,000.00 and this sum would be paid by the Defendant to the Plaintiff together with the outstanding Costs of RM31,200.00.

[11] It was the Plaintiff's contention in her written submissions that-

- "(a) the Defendant had repeatedly given false hope to Plaintiff by repeatedly assuring Plaintiff that Defendant intended to buy the ½ ownership of the said property from Plaintiff, even giving false assurance such as stating that "the money is already in the bank account of the Defendant" despite the fact that the Defendant fully knew that she never intended to do so;
- (b) throughout the whole negotiation process, Defendant had repeatedly caused undue delay by failing to comply with the deadlines imposed by Plaintiff by relying on the usual "due to unforeseen circumstances" or "accidental foresight" or "overlooked", where in reality, the Defendant had no intention whatsoever to comply with the said Judgment or to buy the Plaintiff's ½ ownership of the said property. An example of this would be where it took approximately two (2) years and four (4) months for the Federal Court Order to be faired and filed as the Defendant had repeatedly failed to do so and in fact, it was the Plaintiff herself who had taken the action to file the said Federal Court Order herself; and
- (c) throughout the whole attempted settlement stage, Plaintiff was the one who had constantly taken the initiative to attempt to reach an amicable



settlement with Defendant despite the fact that Defendant was the one who had to comply with the terms of the said Judgment.

[12] Due to the constant stalling, repeated delays, and empty promises of Defendant, Plaintiff finally decided to call off all settlement negotiations with Defendant at the end of the year 2022 as it had been approximately two (2) years and nine (9) months since the settlement talk began between both parties which clearly yielded no positive results whatsoever. This culminated in the filing of the OS to compel Defendant to comply with the terms of the Judgment, which included a mandatory injunction. To date, the Plaintiff still has not obtained what she is lawfully entitled to pursuant to the Judgment dated 9.8.2018.

[13] The Defendant contended that the Plaintiff in Enclosure 1 sought reliefs that were never granted under the Judgment and hence, Encl. 1 must be dismissed with Costs. It was further contended that the Plaintiff has mislead the Court by erroneously claiming that the Plaintiff was entitled to half-ownership of the Property. Counsel argued that the Plaintiff was entitled to merely a half-share of the Property which will be held on trust for her by the Defendant. Then he tried to justify the delay by citing the various Covid-19 lockdowns despite the Defendant's sincere attempts to settle this matter amicably. After all the on-going negotiations between the parties during the period between March 2020 until December 2022, it was the Plaintiff who had unilaterally and unreasonably withdrawn from inking a concluded settlement reached between the parties.

[14] It goes without saying that the Plaintiff denied they had ever reached a settlement as otherwise we would not be here.



EVALUATION AND FINDINGS OF THE COURT

[15] The Plaintiff submitted that based on case laws, a mandatory injunction ought to be granted in this case in the manner as outlined in the OS because if the mandatory injunction is not granted, the Plaintiff would continue to suffer injustice: **Sritama Industries (M) Sdn Bhd v. Ketua Pengarah Insolvensi Malaysia (regarding the estate of a bankrupt, Murugan a/l Singaram) [2019] MLJU 1897.**

[16] The Plaintiff submitted further that the so-called “defence” relied on by Defendant was clearly not a valid defence at all to the non-compliance of the Defendant and a total disregard and disrespect of the Judgment as well as the Orders of the High Court, the Court of Appeal and the Federal Court (which did not grant leave to appeal the decisions of the 2 superior courts): **ESPL (M) Sdn Bhd v. Harbert International Est Sdn Bhd [2003] MLJU 81.**

[17] In the case of **Golden Star & Ors v. Ling Peek Hoe & Ors [2021] MLJU 75** it was held that:

“[62] The Court of Appeal in *Thiruchelvasegaram A/L Manickavasegar v. Mahadevi A/P Nadchatiram* [1998] 4 CLJ 883, observed that **a party could not ignore or refuse to comply with a Court order on the ground of nullity.** In another case *Hup Soon Omnibus Co Sdn Bhd & Anor v. Lim Chee @ Lam Kum Chee* [2018] 1 CLJ 641 the Court of Appeal emphasised the importance of a court order that it must be obeyed as ordered unless set aside or varied and not just a mere technicality that can be ignored. **Before us, on the facts and evidence we find that there was a blatant and flagrant disobedience of the order of the Federal Court.**

[63] Despite having exhausted all the avenues to appeal their case, the Respondents were recalcitrant by insisting on litigating by filing the applications for review as well as for the stay. From the time the Federal Court Order was granted until the 1st Review application was filed one year 2 months had lapsed followed by the filing of the 2nd and 3rd Review applications. **It is apparent to us that the Respondents have unabashedly refused to**



comply with the High Court Order affirmed and reinstated by this Court. The non-compliance of a court order, and in this case an injunction, is a serious matter. Such behaviour to our mind, showcased total disregard and disrespect of the order granted by the Federal Court which tantamount to clear contempt of this Court's order."

[Emphasis added]

[18] It is clear from the evidence adduced in the present case that there was no settlement agreement signed between the parties. In **Syarikat Kemajuan Timbermine Sdn Bhd v. Kerajaan Negeri Kelantan Darul Naim [2015] 3 MLJ 609**, Azahar Mohamed FCJ held that for any potential agreement to be binding, the execution of the said agreement has to be done and completed. Here, the last event that took place was on 19.12.2022 where the solicitors of the Defendant had once again informed the Plaintiff that they will meet with the Defendant to "discuss on the amendments of the Settlement Agreement". After the Plaintiff had amended the said settlement agreement on 15.11.2022, the Defendant did not revert to the Plaintiff in time. In the case of **Gumusut-Kakap Semi Floating Production System (L) Ltd v. Sabah Shell Petroleum Co Ltd [2017] MLJU 877** the High Court held that without prejudice communications can be admitted in order to illustrate the inordinate delay that one party had caused to the other.

[19] This Court agreed with the Plaintiff's averments that "the only 'defence' that the Defendant was able to muster with regards to the non-compliance of the Defendant was that parties have almost reached a "settlement" to this matter and just before the settlement is reached, the Plaintiff had pulled out of all settlements and commenced this suit against the Defendant.". Nevertheless, based on the communications between the parties' solicitors, it appeared that the Defendant was the one who



had caused an inordinate and inexcusable delay to the attempted settlement between both parties: refer to **Sia Sung Ho v. Usaha Cendera Cerah Sdn Bhd [2007] 4 MLJ 452** where the Court discussed the terms “inordinate delay” and “inexcusable delay”.

[20] Upon perusal of the Cause Papers, the Court found that the Defendant had admitted to the terms of the Judgment where the Defendant had acknowledged that the Plaintiff was entitled to ½ ownership of the matrimonial property that is located in No. 62, Lebuhr Peria, Taman Radzi, 41200 Klang, Selangor Darul Ehsan. More than three years since the conclusion of the proceedings in the Federal Court, the Defendant has till to date failed to do anything whatsoever to reflect the Plaintiff's ½ ownership of the said property such as:

- (a) Giving access to the Plaintiff to the said property such as providing the keys of the said property to the Plaintiff;
- (b) Amending the title deed of the said property to reflect the ½ ownership of the Plaintiff to the said Property; and
- (c) Amending the list of assets of the late Dr. Ganeshwaran a/l K.T. Balakrishnan (No. Kad Pengenalan: 640223-07-5399) to reflect the ownership of the Plaintiff towards the said property.

[21] Therefore, this Court concluded that:

- (a) the Defendant has not complied with the terms of the said Judgment;
- (b) the Defendant has caused delays to the attempted settlement between both parties;
- (c) the Defendant has not paid the total costs of RM 31,200.00 to the Plaintiff; and



- (d) the inaction of Defendant has deprived Plaintiff of the fruits of her litigation.

[22] Despite the Defendant's claims of a sincere intention to settle the matter, the Court found that the Defendant's conduct was unreasonable when she claimed that the Plaintiff was not entitled to the reliefs in the OS which was based on the Judgment and Orders of the superior courts. This demonstrated the Defendant's disrespect of the validity and enforceability of the said Judgment as well as the inherent powers of the High Court in granting the reliefs prayed.

[23] This Court was referred to the case of **Cheah Theam Kheng v. City Centre Sdn Bhd (in liquidation) and other appeals [2012] 1 MLJ 761**, where Abdul Malik Ishak JCA had referred to **Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal [1993] 3 MLJ 123** and **Hadkinson v. Hadkinson [1952] 2 All ER 567** and held as follows:-

"[84] ... Obedience to the High Court order dated 26 July 2001 is a requirement of the law. Abdul Hamid Omar LP in *Wee Chao Keong v MBf Holdings Bhd & Anor and Another Appeal [1993] 3 MLJ 123; [1993] 3 CLJ 210, SC*, at p 212 aptly said:

Obedience to court order

It is established law that a person against whom an order of court has been issued is duty bound to obey that order until it is set aside. It is not open for him to decide for himself whether the order was wrongly issued and therefore does not require obedience. His duty is one of obedience until such time as the order may be set aside or varied. Any person who fails to obey an order of court runs the risk of being held in contempt with all its attendant consequences.

[85] Continuing at p 213, Abdul Hamid Omar LP succinctly said: Orders of court must be treated with respect and require strict obedience."

[24] This Court agreed with the Plaintiff that the reliefs sought in Encl. 1 reflected the terms of the Judgment, in particular to reflect the fact that ½



ownership of the said property belonged to the Plaintiff. The Court cannot agree with the Defendant's contention that the Plaintiff was only entitled to the ½ share held on trust by the Defendant, "nothing more and nothing less". Even though the Property was being held on trust by the Defendant for the Plaintiff, this does not detract from the fact that sooner or later, the Defendant would have to transfer the ½ share of the Deceased (which the Defendant was holding on trust) to the Plaintiff because it did not belong to the Defendant. The Plaintiff was entitled to the physical Property *per se*. The Plaintiff was also entitled to a total cost of RM 31,200.00 from the Defendant for the litigation fees from the previous court proceedings.

[25] Having considered the cause papers, submissions and authorities, the Court decided in favour of the Plaintiff as she has proved on a balance of probabilities that she was entitled to ask for the prayers in Encl. 1 due to the failure of the Defendant to carry out the orders in the judgment dated 9.8.2018. The Defendant submitted that all these actions were going to take some time to carry out. The Court agreed and pointed out that prayer No. 2 onwards were consequential actions, except Nos 4 and 6. The Court then varied the timelines in Encl. 1 by giving in Prayer Nos. 1, 3 and 4, thirty days (30) days to take the actions required to give effect to the orders. On 19.9.2023, the Defendant filed the Notice of Appeal to the Court of Appeal against the Court's decision.

[26] During a clarification session on 26.9.2023 (because they could not agree on the wordings in the draft Order), after hearing further submissions from both counsels, the Court stated:

"Perintah dipinda seperti berikut:

- i. Perenggan 1(a) dipinda dengan mengubah 30 hari ke 45 hari dari tarikh perintah (22.8.2023);



- ii. Perenggan 1(b) dipinda dengan menambah 90 hari selepas tamat tempoh 45 hari di perenggan 1(a);
- iii. Perenggan 1(c) dipinda dengan menambah 90 hari selepas tamat tempoh 45 hari di perenggan 1(a);
- iv. Perenggan 2 dipinda dengan mengubah 30 hari ke 45 hari dari tarikh perintah (22.8.2023).

[7] The amendments to the Court order dated 22.8.2023 were necessary to allow ample time for the Defendant to comply with the Judgment of 9.8.2018. It was made before the Order was perfected.

[28] It is noted that the Defendant in the Notice of Appeal to the Court of Appeal stated she was appealing against the decision of the Court “...yang membenarkan keseluruhan tuntutan RESPONDEN (Plaintif) dengan Kos dan di dalam mengarahkan perlaksanaan Penghakiman Mahkamah Tinggi Taiping bertarikh 9-8-2018 di dalam Guaman Sivil No.AB-22NCVC-14-06/2017 tersebut **telah memberikan perintah-perintah selanjutnya yang tidak diperturunkan di dalam Penghakiman Asal Guaman Sivil No.AB-22NCVC-14-06/2017 tersebut...**”. She is alleging that this Court does not have the powers to make such orders.

[29] This Court made the consequential orders which in effect were NOT to vary the original Judgment but the prayers sought in Encl. 1 were consequential actions necessary to enforce the Judgment. These consequential orders were granted upon the last relief prayed for in Encl. 1 which states “**Lain-lain relief yang dianggap patut dan sesuai oleh Mahkamah Yang Mulia ini.**”. This Court has referred to and cited extensively the following case to show that this prayer No. 7 cannot be disregarded lightly as it is an “omnibus prayer”.



[30] In the case of **Teo Ai Hock v. Tew Boon Chin & Ors [2023] MLRHU 1664** Leong Wai Hong JC has explained the term “Any other relief which this Honourable Court deems fit to grant” where His Lordship stated:

“Analysis Of The Court

[84] A prayer that is normally inserted in a Notice of application or a Statement of Claim is "Any other relief which this Honourable Court deems fit to grant". This is known as an omnibus prayer.

[85] In the two applications filed before me by the plaintiff [Enclosure 40] and defendants [Enclosure 52] respectively, parties have prayed for "Any other relief which this Honourable Court deems fit to grant".

[86] Can I therefore rely on this omnibus prayer to grant The Order to Convene an AGM which I have set out above?

The Scope And Ambit Of The Prayer "Any Other Relief Which This Honourable Court Deems Fit To Grant"

[87] I begin by making the observation that both the plaintiff and defendants have expressly and clearly in no uncertain terms asked me to give "Any other relief which this Honourable Court deems fit to grant".

[88] Can the appellant now say I cannot make The Order to Convene an AGM? Caselaw would suggest the contention of the plaintiff has no leg to stand on, to use an apt English idiom to describe his contention.

[89] Caselaw from the highest courts of the land suggests that the omnibus prayer 'Any other relief which this Honourable Court deems fit to grant' must not be treated as a mere ornament to pleadings devoid of any meaning. Such a prayer allows the court to award such relief as is appropriate in the circumstances of the case so long as the relief is not inconsistent with a relief which is expressly asked for. [See Lim Eng Kay v. Jaafar Mohamed Said [1982] 1 MLRA 71; [1982] 2 MLJ 156; [1982] CLJ (Rep) 190 at p 160 FC, Salleh Abas FJ, Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 1 MLRA 186; [1996] 1 MLJ 261; [1996] 2 CLJ 771 at 301E CA, Gopal Sri Ram JCA and Ritz Garden Hotel (Cameron Highlands) Sdn Bhd v. Balakrishnan Kaliannan [2013] 5 MLRA 349; [2013] 6 MLJ 149; [2013] 7 CLJ 413; [2013] 5 AMR 758 FC, Hassan Lah FCJ]

[90] In Lim Eng Kay v. Jaafar Mohamed Said [1982] 1 MLRA 71; [1982] 2 MLJ 156; [1982] CLJ (Rep) 190, Salleh Abas FJ said at p 160:



We cannot see how the respondent should be deprived of his right by a purely technical error on the part of his solicitors, who were not up-to-date with this aspect of legal technicalities. In any case prayer (e) in paragraph (7), 'Any other relief which this Honourable Court deem fit to grant' must not be treated as a mere ornament to pleadings devoid of any meaning. We think that this prayer and the prayer for "loss of earning" in para 5(a) should entitle the court to make such an assessment.

[91] In *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLRA 186; [1996] 1 MLJ 261; [1996] 2 CLJ 771 at 301 E CA, Gopal Sri Ram JCA said:

"In his statement of claim, the appellant has also prayed for 'further or other relief as this Honourable court thinks fit.' In *Lim Eng Kay v. Jaafar Mohamed Said* [1982] 1 MLRA 71; [1982] 2 MLJ 156; [1982] CLJ (Rep) 190 at p 160, a prayer in a statement of claim read 'Any other relief which this Honourable court deems fit to grant'. Salleh Abas FJ (as he then was) said that this prayer 'must not be treated as a mere ornament to pleadings devoid of any meaning'.

I am of the view that the same may be said of the like prayer in the present case. This court should, in my judgment, award the appellant such relief as is appropriate in the circumstances of the case.

In arriving at this conclusion, I have not overlooked the decision in *Mokhtar v. Arumugam* [1959] 1 MLRH 514; [1959] 1 MLJ 232 CA, where the following statement of principle from the judgment of Fry J in *Cargill v. Bower* (1878) 10 Ch D 502 at p 508 was applied:

You cannot, under a general prayer for further relief, obtain any relief inconsistent with that relief which is expressly asked for.

As it happens, there is, in the present case, no inconsistency between the relief which I propose to award to the appellant and the other relief he has expressly claimed.

[Emphasis added]

[92] *Lim Eng Kay v. Jaafar Mohamed Said and Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* CA were both subsequently cited with approval by the Federal Court in *Ritz Garden Hotel (Cameron Highlands) Sdn Bhd v. Balakrishnan Kaliannan* [2013] 5 MLRA 349; [2013] 6 MLJ 149; [2013] 7 CLJ 413; [2013] 5 AMR 758.



[93] This is what the Federal Court in Ritz Garden Hotel (Cameron Highlands) Sdn Bhd v. Balakrishnan Kaliannan said via Hassan Lah FCJ:

"[19] Lastly it was submitted (by the plaintiff) that the term 'proceeding' in s 11 of the Civil Law Act 1956 should not be narrowly interpreted. The term must be defined to include the whole gamut from pleadings to judgment. The judgment finally determined what the nature of the proceeding was regardless of what labels or categories the parties put up. The relief or remedy that a judge orders may be different from what the parties asked but that remedy is what defines the proceeding.

... [21] With respect I am unable to agree with the contention by the defendant that the proceeding tried in the High Court was not for the recovery of any debt or damages, as the remedies sought by the plaintiff were for rescission of the agreement, for the deposit of M250,000 to be forfeited, for rectification of the land register and for damages. It is to be noted that in prayer (G) of his statement of claim the plaintiff prayed for 'Lain-lain dan/atau apa-apa relif dan/atau perintah berlainan atau berlanjutan yang Mahkamah Yang Mulia ini fikirkan suai dan manfaat (Any other or further relief or order which this Honourable court deems fit): This omnibus prayer must not be treated as a mere ornament to pleadings devoid of any meaning (see *Lim Eng Kay v. Jaafar Mohamed Said* [1982] 1 MLRA 71; [1982] 2 MLJ 156; [1982] CLJ (Rep) 190. In *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLRA 186; [1996] 1 MLJ 261; [1996] 2 CLJ 771 *Gopal Sri Ram JCA* at p 301 said:

"In his statement of claim, the appellant has also prayed for 'further or other relief as this Honourable court thinks fit.' In *Lim Eng Kay v. Jaafar Mohamed Said* [1982] 1 MLRA 71; [1982] 2 MLJ 156; [1982] CLJ (Rep) 190 at p 160, a prayer in a statement of claim read 'Any other relief which this Honourable court deems fit to grant'. *Salleh Abas FJ* (as he then was) said that this prayer 'must not be treated as a mere ornament to pleadings devoid of any meaning'.

I am of the view that the same may be said of the like prayer in the present case. This court should, in my judgment, award the appellant such relief as is appropriate in the circumstances of the case.

[Emphasis added]

...



[97] Similarly, in Yap Kian @ Yap Sin Tian v. Poh Chin Chuan & Ors [2015] MLRHU 1380; [2016] 7 MLJ 805 HC, the defendants there have filed encl 45 seeking various declaratory and injunctive relief against the plaintiff there.

[98] The High Court judge Vazeer Alam Mydin Meera J after dismissing encl 45 invoked the court's inherent powers and proceeded to give consequential directions for fresh elections to be held.

[99] His lordship said:

[10] Having done that, I must however add that the dismissal of encl 45 does not preclude the court from giving consequential directions to give effect to the terms of the Orders dated 20 January 2015 and 20 March 2015. The court may, pursuant to its inherent powers, make consequential orders or directions to give effect to its decisions or orders,...

[11] Having looked at the evidence presented in the affidavits it did appear to me that the Plaintiff had not complied with the spirit and letter of the terms of the Consent Order dated 20 January 2015 and the Order dated 20 March 2015. In fairness to the Plaintiff, it may have arisen from a misinformed reading of both the aforesaid Orders and the interpretation as to who constitute the CC. To remedy this, I clarified the Orders and issued further directions to the parties, for reasons that will become apparent shortly, so that there would be proper adherence to the Orders....".

[30] Order 92 r. 4 of the Rules of Court 2012, which is in the intitulment of the OS, provides for the inherent powers of the Court as follows:

Inherent powers of the Court (O. 92, r. 4)

4. For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[31] The blatant disregard and disrespect of the Defendant of the Judgment and the Orders of the High Court, Court of Appeal and Federal Court in this case is a clear situation where this Court will and has invoked the inherent powers under Order 92 r. 4 in granting the prayers in Encl. 1 to prevent an injustice to the Plaintiff who has been denied the fruits of the



litigation and to give effect to the Judgment dated 9.8.2018. Can the Defendant then question the Court's discretion in invoking its inherent powers and claim that this Court has exceeded the orders of the High Court in that Judgment? Borrowing a phrase from the case of **Teo Ai Hock** (*supra*), "the Defendant does not have a leg to stand on".

CONCLUSION

[32] Premised on the above considerations, the Court found that the Plaintiff has proved her case on a balance of probabilities against the Defendant. Therefore, the Court allowed the application in the OS, with amendments, and costs.

Order accordingly.

Dated 11 November 2023

Sgd.

NOOR RUWENA BINTI MD. NURDIN
Judicial Commissioner
High Court of Malaya, Taiping

Representations

For the Plaintiff:

Mr. Chan Wei Yang

Messrs. Josephine, L K Chow & Co., Petaling Jaya

For the Defendant:

Mr. Vengetraman S/O Manickam

Jeyaratnam & Co., Ipoh

