

IN THE CENTRAL FAMILY COURT

No. BV17D13327

First Avenue House
42-49 High Holborn
London, WC1V 6NP

Friday, 16 April 2021

Before:

HER HONOUR JUDGE GIBBONS

B E T W E E N :

EKANJALI KAUR DHILLON Applicant

- and -

KAVANDEEP SINGH SAMPURAN Respondent

MR P. PERRINS (instructed by Waterfords Solicitors) appeared on behalf of the Applicant.

MR HARPER (instructed by Hughes Fowler Carruthers) appeared on behalf of the Respondent.

J U D G M E N T

(via Cloud Video Platform (CVP) Hearing)

Her Honour Judge Gibbons:

- 1 When I adjourned this matter on 14 January 2021 at very short notice because the husband, who is the Judgment Debtor, was unable to attend the hearing, I made clear at paragraph 5 of the order that if he did not attend this adjourned sentencing hearing, I would proceed in his absence. Mr Harper has very helpfully come on the record at very short notice this morning. He explains his instructions that the husband has had to travel to Dubai to deal with litigation there, but this is a bald assertion with no evidence to substantiate the husband's account. Having directed, on 14 January, that I would proceed in the husband's absence, that is what I propose to do.
- 2 I am sitting in open court in Court 19 at the Central Family Court. The Judgment Creditor is Dr Ekanjali Dhillon. I shall refer to her as the wife. The Judgment Debtor is Mr Kavendeeep Sampuran and I shall refer to him as the husband. The husband has recently re-instructed Mr Harper who has very kindly agreed to act on his behalf today at short notice. Mr Harper has provided the court with a helpful note and a copy of a bank statement received from his client, which would tend to suggest that arrangements were made yesterday, on 15 April, for the transfer of the necessary funds to Mr Harper's firm's account.
- 3 The wife is again represented by Mr Perrins of counsel. I have read the notes filed on behalf of both parties and I wish to observe that Mr Harper has done and said everything he possibly could on the husband's behalf. He urges me not to proceed with sentencing today, but if I do, he urges me to err at the lower end of any potential penalty and to allow a longer period of suspension.
- 4 On 7 June 2019, District Judge Duddridge approved a final consent order within financial remedy proceedings. That order was based on the husband's own proposals and provided that he would pay to the wife a lump sum of £230,500. It was to be payable in two instalments, £15,500 by 24 April 2019 and £215,000 by 1 August 2019. The first instalment was paid; the second instalment has not, and it remains outstanding almost two years later.
- 5 There were procedural difficulties with earlier judgment summonses issued by the wife, but on 26 October 2020 she lodged a properly constituted judgment summons. It is that summons with which I am dealing today.
- 6 On 4 December 2020, at a hearing at which the husband was very ably represented by Mr Morgan Sirikanda of counsel, I found that the husband has or has had since 1 August 2019 the means to pay the second instalment of £215,000 and that he had refused or neglected or refuses or neglects to pay that sum. I delivered a short *ex tempore* judgment of which I have reminded myself this morning and which appears in the court bundle.
- 7 On 4 December 2020 the husband was given permission to file a statement setting out any mitigation he might wish to make in relation to his breach of the order of 7 June 2019. He was to do so by 7 January 2021. He has not filed a statement, nor has he made payment. On 4 December 2020, I also made a costs order against the husband in the sum of £13,615 payable by 18 December 2020 and that has also not been paid.
- 8 The interest on the second instalment of the lump sum now stands at £29,404.93. There also remain outstanding various costs orders which Mr Perrins properly concedes are not included

within this exercise because they are being enforced separately. A further payment due to be paid by the husband, in the sum of £30,000 in lieu of jewellery, was not and has never been included in the judgment summons.

- 9 On 4 December 2020, I listed this hearing to take place on 14 January 2021. I had adjourned the sentencing aspect of the judgment summons at the husband's request, so that he could attend the hearing in person and also because I had been invited to give him time to reflect on the judgment. I had hoped that the husband would indeed reflect on the judgment and that he would make payment in advance of any sentencing hearing.
- 10 Very shortly before the hearing on 14 January 2021, the husband made a last-minute adjournment application, stating that his flights from Dehli had been cancelled. It is fair to say that he did produce some evidence which might corroborate this. In light of that evidence, the wife decided not to oppose the application, but it was agreed that the husband would pay the wife's wasted costs of that hearing. I adjourned the matter until today.
- 11 Mr Perrins' submission that the husband has now had nineteen weeks, a little shy of five months, since the order of 4 December, and considerably longer since the judgment summons was issued on 26 October 2020 to pay, is well made.
- 12 There has been limited communication on behalf of the husband. His solicitors confirmed to the wife's solicitors by email dated 12 April that the funds would be received that day. They were not. Another email was sent on 14 April 2021, stating that all funds payable were being transferred to the husband's solicitors' account that day. They have not arrived. I have seen the copy bank statement in respect of the account from which it was said the funds had been transferred. It is heavily redacted. The account number is redacted, and another redaction appears at the top of the statement. The balance sitting in the account is also redacted. But what is clear from this bank statement, as Mr Perrins points out, is that on 9 April 2021 there must have been at least £400,000 sitting in the account because there are two payments on 15 April, the faster payment transfers to Hughes Fowler Carruthers' account, made in two tranches of £250,000 and £150,000.
- 13 I am afraid I cannot be persuaded further to defer sentence because the funds have not yet reached the solicitors' account in circumstances where I would have expected them to have done so. I have regard to the husband's past conduct in his failure to honour not only this order but other orders, including orders for costs. The purpose of the lump sum accepted by the wife within the financial remedy proceedings was for her to purchase a home. She has not been able to do so because she has not received the funds. Moreover, she has also incurred significant legal costs which she must pay which the husband has been ordered to pay but has not. Essentially, therefore, the wife is arguably in a worse position financially than she was when the final consent order was agreed and approved by the court.
- 14 On any judgment summons, the sentence the court can impose is limited to a period of six weeks. The various authorities set out the range of possible outcomes. In the case of *Bhura*, the order made was for six weeks suspended for three months in respect of a sum of £2 million. In the case of *Prest*, it was four weeks suspended for three months in relation to a sum of £320,000. In the case of *Migliaccio*, it was two weeks suspended for twenty-eight days in respect of a sum of £13,813.
- 15 On one level, the quantum of the debt might not be said to be hugely relevant because £215,000 plus interest and costs is just as important to the wife in this case as £2 million might be to another litigant. There are aggravating features, in my judgment, in relation to the

husband's default. The delaying tactics that he has engaged in over the past two years or so with repeated emails to the wife's legal team saying, "The money's on its way", "I have transferred the money" or "I'm just borrowing it from somebody, it'll be arriving shortly" and then recently his emails on 12 and 14 April have merely served to delay the whole process of enforcement and have prejudiced the wife.

- 16 What is a particularly aggravating feature, in my judgment, is the fact that the final consent order provided for the husband's release from an earlier undertaking not to dispose of or otherwise deal with an ISA which had a value of £195,000. The only reason for his release from the undertaking, as I found in December 2020, must have been because the proceeds of the ISA were to be applied in part-satisfaction of the lump sum order. Although it is not actually known what happened to the proceeds of the ISA, the likelihood is that the husband encashed it and kept the money for himself. He thus managed to subvert what had been intended to be a protective undertaking to preserve the asset for the wife's benefit and, in my judgment, that aggravates the matter.
- 17 I hope very much that the £150,000 and the £250,000 that can be seen on the bank statement will reach the solicitors' client account as the husband has given his assurance, but, given the history of this case and the fact that I find myself unable to rely on the husband's veracity, this is not a risk I am prepared to take. No-one would wish to impose a custodial sentence whether suspended or otherwise where it can be avoided, but, in my judgment, it is entirely necessary and appropriate in this case to ensure the enforcement of the order of District Judge Duddridge.
- 18 The sentence I impose is one of four weeks' immediate imprisonment but suspended for a period of fourteen days to enable the husband to comply with the order.
- 19 I approve the order drafted and submitted by Mr Perrins. He will need to address me as to the rules in relation to dispensing with personal service of the order.
- 20 It is necessary to comment briefly on the quantum. The figure in Mr Perrins' draft order is £271,002.27. Of that, the main debt is £215,000 which is the second instalment of the lump sum. The interest on the sum due from 1 August to today's date is £29,404.93. There are then two costs orders which pre-date the judgment summons in a total sum of £4,500 and two costs orders on the judgment summons itself - in fact, three because I will make an order for the costs of today - summarily assessed in the sum of £5,988.
- 21 The interest arising is payable by virtue of the Family Procedure Rules 2010 Rule 33.16(2)(c). Sub-paragraph (a) is the amount due; (c) is any sums accruing under the original order and that must be intended to include interest. Paragraph (b) includes the costs of the judgment summons and, as I have said, there are three separate orders for the costs of the judgment summons including today's order. That leaves a small amount of £4,500 which relates to costs orders which are not referable to the judgment summons because they pre-date it; they may have been made at hearings where the husband was seeking additional time to pay.
- 22 Mr Perrins has helpfully taken me to *Migliaccio*, where, at para.41, Mostyn J says:
- "It is perfectly clear to me that sums which are not enforceable under s.5 of the Debtors Act can nonetheless be made terms of suspension. This much is clear from the pro forma order for a suspended committal order under the Debtors Act which provides for any order for costs which is made on the judgment summons also to be included in the term of the suspension."

But he goes on to say:

“If that is right, then it seems to me equally proper that a prior order for costs, the order for costs that was incurred for making the substantive order which is being enforced, can equally be made a term of the suspension.”

On that basis I am satisfied that the figure set out in Mr Perrins’ draft order is the correct figure.

- 23 I also note that it has been agreed that the total amount payable, albeit not all subject to this judgment summons is set out at para.4 of Mr Perrins’ draft order in the sum of £304,780.18 and I very much hope that this is the payment that is made. In relation to the order I have made I very much hope that it does not prove necessary for the order to be activated.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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**** This transcript is approved by the Judge ****

