
CANADA / JUDGMENT

Singh v. Devi

2021 BCSC 444

COURT

Supreme Court of British Columbia

DECIDED

10 February 2021

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2020 BCSC 444 Singh v. Devi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Singh v. Devi,

2021 BCSC 444

Date: 20210210

Docket: E152747

Registry: Vancouver

Between:

Rohit Prakash Singh also known as

Rohit P. Singh also known as Rohit Singh

Claimant

And

Jasmin Sangeeta Devi also known as

Jasmin S. Devi also known as Jasmin Devi

Respondent

Before: Registrar Nielsen

Oral Reasons for Decision

In Chambers

Counsel for Claimant:

D. H. Goodwin

Counsel for Respondent:

F. Lowther

Place and Date of Hearing:

Vancouver, B.C.

August 11 & 12, 2020;

September 21 & 22, 2020; and, February 10, 2021

Place and Date of Decision:

Vancouver, B.C.

February 10, 2021

Introduction

- [1] This is an assessment of special costs, which follows the Order of Mr. Justice Myers made November 22, 2018, which states:
1. The Respondent, Jasmin Sangeeta Devi shall pay to the Claimant, Rohit Prakash Singh costs of the family law case herein, on the basis of ordinary difficulty, after assessment thereof by the Registrar in the event the parties are unable to reach agreement on the amount of the said costs: provided that the within paragraph 1 this Order shall not apply to the post-trial steps taken by the Claimant related to the sale of the family residence herein, being the subject of paragraph 2 of this Order.
 2. The Respondent, Jasmin Sangeeta Devi shall pay to the Claimant, Rohit Prakash Singh special costs of the post-trial steps taken by the said claimant related to the sale of the family residence, after assessment by the Registrar of this honourable court in the event the parties are unable to reach agreement on the amount of the said costs.
- [2] In addition to the affidavits filed on behalf of the parties, viva voce evidence was provided by both Ms. Kim and Mr. Goodwin, both of whom are lawyers who had conduct of the claimant's file during the course of the family law proceeding.
- [3] Ms. Kim provided evidence in support of her draft bill for time August 19, 2017 through May 22, 2018, which shows 60.22 hours, billed at 300 per hour, for the sum of 18,066. Together with GST and PST, her accounts total 20,233.92. She claims a further 689 in disbursements, for a total of 20,923.50. She concedes that a deduction of 1,982 is warranted, representing 5.9 hours, as it was not related to the sale of the family home. The total claim by Ms. Kim is, therefore, 18,941.10. Ms. Kim withdrew from the file due to health reasons and Mr. Goodwin took over.

- [4] Mr. Goodwin billed 65.6 hours at 375 per hour, for a total of 24,600, plus PST and GST, for a total of 27,552 related to the family home. A further 2,235.26 is claimed in disbursements, for a total of 29,757.26. It is conceded that some duplication of effort occurred and it is conceded that 2,744, inclusive of tax, ought to be deducted as a result. It is also conceded that billings which encompass the issue of costs were included in those related to the sale of the home. The claimant concedes 1470, inclusive of tax, needs to be deducted representing this cost. The total amount claimed by Mr. Goodwin is, therefore, 25,377.26, including taxes and disbursements.
- [5] The total amount claimed in special costs related to the sale of the home is, therefore, 44,318.36.

Background

- [6] The background to the proceeding is summarized by the court in *Singh v. Devi*, 2017 BCSC 2322, at paras. 1-9 where the court states:
- [1] This is a family law proceeding.
- [2] Unfortunately, the trial length was grossly underestimated, resulting in a split trial with a substantial gap between the two phases. This and the adversity between the parties and their counsel and their inability to agree on things such as a document book greatly lengthened the trial.
- [3] The claimant, Mr. Singh, is 45 years old and the respondent, Ms. Devi, is 37. They were both born in Fiji. They have a 14-year-old daughter, Divya. Mr. Singh works as a mechanic at Budget Rent-a-Car of B.C. Ltd. Ms. Devi works as a server in the Air Canada lounge at Vancouver International Airport. She finished the equivalent of grade 11 in Fiji.
- [4] Ms. Devi moved to Canada in 1998 with her mother. Her brother had previously moved here.
- [5] The parties were married in Fiji in 1999, where Mr. Singh was still living. The marriage was arranged and they did not meet until shortly before the ceremony. Mr. Singh moved to Canada in 2001.
- [6] The parties own a home on East 63rd Street in Vancouver, which they purchased in 2006. The appraised value as at August 10, 2017, is \$1,320,000.
- [7] It is agreed that the parties separated on May 22, 2015. Until the start of the trial the separation date was contentious. Mr. Singh continued to live in the family home until he left in September, 2015.
- [8] The major issues are the home (whether it should be sold and whether it should be re-apportioned) and parenting time for Divya. It is agreed that Divya's principal residence should be with Ms. Devi.

- [9] Both parties were intent on proving who had an extra-marital affair first. This continued throughout the trial in spite of my exhortations that it was not relevant. Because I still consider it to be irrelevant, whether to considerations of credibility or parenting ability, I will not set out the facts or deal with the issue. Suffice it to say that Mr. Singh is in a relationship and he lives with his girlfriend.
- [7] As the learned trial judge indicated in para. 8, a major issue was the home and whether it should be sold.
- [8] In a subsequent costs decision in *Singh v. Devi*, 2018 BCSC 2053, the court noted the history of the sale of the home and related difficulties at para. 19 where the court states:
- [19] The sale of the family home is a different matter. The history and background are:
- a) In March 2016, Mr. Singh made a pre-trial application to have the home sold. Ms. Devi contested the application and it was denied by Adair J.
 - b) At the trial Ms. Devi argued that the home be re-apportioned 75/25 in her favour. She also asked for the sale to be delayed for five years, until Divya turned 19. Alternatively, she asked for the opportunity to buy out Mr. Singh's interest. However, at the trial she had no concrete proposal for financing the purchase.
 - c) In early December 2017, I informed counsel my decision was that the house should be sold and that my reasons for judgment would be issued shortly thereafter. In the interim I requested they cooperate in listing the house for sale. My reasons were issued on December 15, 2017.
 - d) On April 19, 2017, because of Ms. Devi's lack of cooperation, I ordered that Mr. Singh be given the sole conduct of sale, and that any sale required court approval.
 - e) On June 4, 2018, Mr. Singh brought an application to have a sale approved. Two bidders attended court. In spite of me having made clear to the parties that the sale of the home ought to be dealt with in regular chambers, Ms. Devi persuaded Burke J. that the matter should be heard by me, in large part because she wanted to have her own offer considered by me, and not another judge.
 - f) On June 14, 2018 I heard the application to sell the home. Bids were opened in court. Ms. Devi together with her brother bettered the higher bid and I approved a sale to her. The closing was to take place on July 30, 2018 and extended to August 1.
 - g) That sale did not go through because Ms. Devi and her brother did not have the funds. This was due to a somewhat technical mistake in Ms. Devi's brother dealing with the title on his home so that he could obtain a mortgage to fund the purchase of the parties' home.
 - h) The matter came back before me on September 21. Once again, there were sealed bids, which Ms. Devi bettered and I once again approved the sale to her.

- [9] The respondent's lack of cooperation in the sale of the home, and the fact that this drove up costs, is discussed at paras. 20-23, where the court states:
- [20] Ms. Devi's lack of cooperation in the initial listing and her subsequent conduct greatly increased the costs of Mr. Singh and significantly delayed the sale of the home. Mr. Singh was not receiving occupational rent. While the failed closing in August was not deliberate, it was, nevertheless, Ms. Devi's and her brother's responsibility to have the required funds in place.
- [21] There was no concrete proposal for Ms. Devi to buy the home until the first approval application, or shortly before it. Ms. Devi provided no cooperation in dealing with the sale of the home; rather, she has made it extremely contentious, resulting in multiple court appearances. That type of conduct should be discouraged, particularly by a spouse in possession of the matrimonial home.
- [22] Taking all of this into account, in my view Ms. Devi ought to pay the special costs of Mr. Singh for steps taken by him after the trial with respect to the sale of the home. I am not prepared to order an apportionment of the trial costs related to this issue, which would be difficult to segregate from the balance of the trial matters.
- [23] To be clear, Mr. Singh is to have the ordinary costs of the trial and any post-trial steps other than those relating to the sale of the home.

Analysis

[10] Pursuant to Supreme Court Family Rule 16-1(2):

On an assessment of special costs, a registrar must

- (a) allow those fees that were proper or reasonably necessary to conduct the family law case, and
- (b) consider all of the circumstances, including the following:
 - (i) the complexity of the family law case and the difficulty or the novelty of the issues involved;
 - (ii) the skill, specialized knowledge and responsibility required of the lawyer;
 - (iii) the amount involved in the family law case;
 - (iv) the time reasonably spent in conducting the family law case;
 - (v) the conduct of any party that tended to shorten, or to unnecessarily lengthen, the duration of the family law case;
 - (vi) the importance of the family law case to the party whose bill is being assessed, and the result obtained;
 - (vii) the benefit to the party whose bill is being assessed of the services rendered by the lawyer;

(viii) [Supreme Court Civil] Rule 1-3.

i) The complexity of the family law case and the difficulty or the novelty of the issues involved:

[11] The sale of the house was not a complex exercise. However, as noted by the learned trial judge, the conduct of the respondent caused the process to take far more time and effort that would have ordinarily been required.

ii) The skill, specialized knowledge and responsibility required of the lawyer:

[12] Again, this was not a matter requiring particular skill or specialized knowledge. What the matter required was considerable patience and determination to see the matter through to the eventual sale of the property.

iii) The amount involved in the family law case:

[13] The amount involved for the purpose of this assessment, can be measured in the value of the home, which was approximately \$1,320,000.

iv) The time reasonably spent in conducting the family law case:

[14] Both counsel went over their bills in detail. They were subjected to thorough cross examination. With respect to the time spent by Ms. Kim, she was, in my view, generous with the time billed to her client. She reduced her billings where she saw little value to the client, or simply did not bill for certain steps at all, and she has conceded that some of the time billed ought to be deducted where appropriate. Similarly, Mr. Goodwin has conceded that there was some duplication when he initially inherited the file and that certain costs related to the issue of costs, rather than the sale of the home, ought to be deducted.

v) The conduct of any party that tended to shorten, or to unnecessarily lengthen, the duration of the family law case:

[15] There is no question that the conduct of the respondent lengthened the proceeding. This is specifically commented upon by the learned trial judge and was the basis of an assessment of special costs against her in relation to the sale of the home.

vi) The importance of the family law case to the party whose bill is being assessed, and the result obtained:

[16] The sale of the family home was crucial to the claimant, as it was the most sizeable family asset.

vii) The benefit to the party whose bill is being assessed of the services rendered by the lawyer:

[17] The efforts of the lawyers eventually resulted in the home being bought by the respondent and the claimant being paid out. This was necessary in order for the claimant to realize his share of the income from the sale of the home.

viii) Rule 1-3:

[18] In my view, the lawyers were reasonable in the level of their billings related to the task at hand.

Disposition

[19] Taking all the factors into account, the bills of both counsel are allowed in the amounts sought, totalling \$44,318.36.

[20] That takes us to the cost of the assessment. In *567 Hornby Apartments v. Le Soleil Restaurants Inc.*, 2020 BCCA 69, the B.C. Court of Appeal concluded there was no general rule that the assessment of special costs carries with it the special costs of the assessment. The level of costs on the assessment is determined by the judge's order. Counsel for the claimant submits that a reading of paras. 140 and 141 of *567 Hornby*, supra, leads to the conclusion that the respondent is liable for special costs of the assessment, as the BCCA put the onus on the paying party to seek an exemption of special costs of the assessment. At paras. 140 and 141, the B.C. Court of Appeal states:

[140] I make this finding notwithstanding the Appellants' able submission that there is a potential for abuse and unfairness if an order for special costs is made in advance of the hearing. In response I would note that notwithstanding the default position, the trial judge can always order otherwise. The question of costs is, as noted in *Cogenix*, a matter of discretion. If a trial judge makes an order of special costs of the proceedings or part of a proceeding, it is open to the party who will have to pay those costs to apply to the trial judge to exempt the cost assessment in whole or in part from the order. I would note that such an application should be brought prior to the entry of the trial judge's costs order because once that order is entered, the trial judge will be functus in regards to this issue. Further, it must be remembered that an order of special costs is by its nature punitive. The order has usually been made because of misconduct in the litigation. If the order is in anyway unfair, the party has only itself to blame. Finally, as I will set out further below, any amount claimed on the cost assessment is subject to review and exaggerated claims are subject to reduction.

[141] In the result, I find that when a trial judge orders special costs of a proceeding, the award of special costs includes the cost of any special costs application and any subsequent proceedings to assess costs unless the court [otherwise orders].

[21] The difficulty with the claimant's submission is that the learned trial judge did not order the cost of the proceeding be assessed on a special costs basis. On the contrary, the special costs order was related to steps taken to sell the family home, whereas the costs of the family law proceeding were ordered to be assessed as ordinary costs. In my view, this is reinforced by the court's comments at para. 23, where the court states:

To be clear, Mr. Singh is to have ordinary costs of the trial and any post-trial steps other than those relating to the sale of the home.

[22] The assessment of costs does not advance the sale of the family home, and therefore, I find the assessment of costs is to be assessed as ordinary costs. However, in this regard, the claimant is faced with the B.C. Court of Appeal's decision in *Waters v. Michie*, 2019 BCCA 218, where the court answers the question:

Does "[p]reparation for and attendance at each contested application" apply to an appointment to assess costs before the Registrar?

[23] The court states, at paras. 11-14:

[11] In the SCFR, "application" is a defined term meaning "an application made before trial to obtain a court order or an application, whenever made, to change a final order".

[12] Ms. Waters argues that the term "application" in item 4 of the Schedule should be broadly interpreted to include an appointment for the assessment of costs. She points out that strictly applying the definition of "application" would mean that other types of family law proceedings may be without assessable costs. She relies on s. 8 of the Interpretation Act, R.S.B.C. 1996, c. 238, which provides that every enactment must be construed as being remedial and given a fair, large and liberal construction that best ensures the attainment of its objects, to support an interpretation of "application" that includes a costs assessment hearing.

[13] Prior to the adoption of the SCFR, costs in civil and family matters were assessed on the same tariff. There are now however significant differences in the SCFR and SCCR cost tariffs. The SCFR tariff has been much simplified. It consists of but nine items. Each item allows a fixed dollar amount. In contrast, the SCCR tariff consists of some 48 items. Each item is worth a certain number of units. For many of the items there is a range of units that can be awarded and determining the proper number of units for a particular item can often be a matter of dispute. The SCCR includes specific separate items for applications and attendance at and preparation of costs assessments. The SCFR does not.

[14] On a plain reading, "application" does not extend to a costs assessment hearing. I see no reason to extend the meaning of application to cover a costs assessment. The drafters of the SCFR clearly decided to simplify the cost tariff and made a deliberate choice not to include in the tariff any items for costs assessments. That was a decision they were entitled to make. (Underlining added)

[24] A plain reading of the word "application", according to the B.C. Court of Appeal, does not extend to a costs assessment hearing. Further, the B.C. Court of Appeal found that the SC Family Rules does not provide a tariff item for the assessment of costs. I am alive to the injustice this works in the current situation. The claimant was awarded the costs of the sale of the family home, but the process of assessing those costs has taken four days, for which the claimant cannot recover any costs at all, whether they be special, as per 567 Hornby, supra, or ordinary, as per Waters, supra. However, despite this injustice, my hands are tied. There will be no costs of the assessment, either special or ordinary.

[25] The claimant seeks disbursements in the amount of \$3,660, tax included. The disbursements sought are proper and reasonable in accordance with Supreme Court Family Rule 16-1(4), and they are awarded in full.

"Registrar Nielsen"

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