

HONG KONG / JUDGMENT

WSW v. CSLPC

[2026] HKCA 430

COURT

Court of Appeal

DECIDED

16 March 2026

CASE / FILE NUMBER

CAMP29/2025

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CAMP 29/2025

[2026] HKCA 430

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF APPEAL

MISCELLANEOUS PROCEEDINGS NO 29 OF 2025

(ON INTENDED APPEAL FROM FCMC NO 7214 OF 2019)

BETWEEN

WSW

Petitioner

and

CSLPC

Respondent

(Intended Applicant)

Before: Hon Barma JA and Ng J in Court

Dates of Written Submissions: 14, 22 April and 21 May 2025

Date of Decision: 16 March 2026

DECISION

Hon Ng J (giving the Decision of the Court):

Introduction

In this decision, we will address the petitioner as “Wife” and the respondent as “Husband”.

By an ancillary relief Order dated 12 August 2022, DDJ Jacqueline Lee (“the Judge”) ordered (“AR Order”) inter alia the Wife to pay to the Husband a lump sum of HK\$13,824,155.29 in three tranches: the first tranche of HK\$4,608,051.77 to be paid within 3 months upon the grant of Decree Absolute, and 2 further tranches of HK\$4,608,051.76 each (“the 1st Tranche”, “the 2nd Tranche” and “the 3rd Tranche” respectively) to be paid within 6 and 9 months upon the grant of Decree Absolute.

On 22 February 2024, the Husband applied for leave to apply for an Order of committal against the Wife on contempt of court in respect of the AR Order “for the failing to pay 2nd and 3rd tranches of the lump sum by the due dates”.

By an order dated 6 September 2024, the Judge refused to grant the Husband leave to bring committal proceedings against the Wife (“Refusal Order”) on the ground that a prima facie case of contempt has not been established. 3 grounds were given in the Refusal Order: the most relevant of which was that there was no evidence the copy of AR Judgment had been served on the Wife endorsed with a penal notice.

The AR Judgment is a 57-page document explaining why the Judge made the AR Order and set out the terms of the AR Order actually made. We take it that what the Judge meant was there was no evidence the AR Order, drawn up by the Husband’s then solicitors, was served on the Wife and endorsed with a penal notice. As a matter of evidence, the copy of the AR Order exhibited to the Husband’s affirmation dated 12 February 2025 in the application bundle was not endorsed with a penal notice.

By summons dated 6 November 2024, the Husband applied for leave to appeal out of time against the Refusal Order. The application was dismissed by the Judge on 14 January 2025 for lack of jurisdiction (“Leave Decision”), the reason being under O 52 r 2 (5) of the Rules of the District Court, Cap 336H (“RDC”), an applicant may appeal to the Court of Appeal if leave to bring committal proceedings is refused.

The present application before us is made by summons dated 12 February 2025 (“CA Summons”), whereby the Husband renewed his application for leave to appeal against the Refusal Order. 2 grounds were set out in the Draft Notice of Appeal attached to the CA Summons.

“Ground 1 - Subject of the Committal Application was never addressed

1.

In relation to the committal application, the subject matter was the series of defaults in all three payments in the original judgment by the Petitioner.

2.

Such non payments were explained in detail under ¶3-6 of my 11th Affirmation dated 22 February 2024 under FCMC7214/2019 in support for my original committal application...

Ground 2 - The reasons given by the Judge has no relation to the Subject of the Committal Application

3.

In relation to the reasons for the dismissal, the Judge cited the followings:

(1)

At the trial, neither party make a claim for set off or reimbursement of any fees paid or to be payable.

(2)

The respondent alleged that the petitioner had failed to pay the children's school related expenses. Since the alleged incidents took place after the delivery of judgment, hence they were not related to the judgment delivered on 12 August 2022.

(3)

There is no evidence to suggest that the copy of judgment served on the petitioner was endorsed with a penal notice.

4.

These items, i.e. further defaults by the Petitioners on Children's expenses, were the answers to question from the Court on the need of a committal application in a letter dated 29 February 2024.

5.

However, such items were wrongly adopted as the committal instead."

Pursuant to the Registrar's direction on 10 March 2025, the present application is treated as the Husband's application for extension of time to appeal against the Refusal Order.

Under O 59 r 14A of RHC, this Court may determine an interlocutory application without an oral hearing. Having considered the documents provided by the parties, we are of the view that it is appropriate to determine the present application on paper without a hearing.

Essential Background

Briefly, the essential background is as follows.

As stated earlier, by the AR Order, the Judge ordered the Wife to pay to the Husband a lump sum of HK\$13,824,155.29 in 3 tranches ie within 3, 6 and 9 months upon the grant of Decree Absolute. On the other hand, by the same Order, the Husband was to pay the Wife a lump sum of HK\$2,039,976 representing part of his contribution to the 2 children's expenses up to their age of 18 within 3 months from the date of the AR Order.

The Decree Absolute was pronounced on 16 December 2022. The 1st, 2nd and 3rd Tranches were thus due on 16 March, 16 June and 16 September 2023 respectively.

By a consent order dated 18 January 2023, the sum of HK\$2,039,976 to be paid by the Husband was set off against the first tranche of HK\$4,608,051.77 to be paid by the Wife. As a result, the Wife was required to pay the Husband a net sum of HK\$2,568,075.77 ("the revised 1st Tranche").

On 20 March 2023, the Husband received the revised 1st Tranche in full from the Wife.

While the Wife had filed a summons on 12 June 2023 for a stay of execution of the 2nd and 3rd Tranches pending appeal, it was dismissed by the Judge on 28 September 2023.

After the dismissal of her application, the Wife started paying by instalments. Out of the 2nd and 3rd Tranches totalling HK\$9,216,103.52, the Husband had received from the Wife in October 2023 a total of HK\$9,123,955.65, leaving an outstanding balance of merely HK\$92,147.87. The Husband also claimed interest on the late payment of the 2nd and 3rd Tranches in the sum of HK\$149,208.18.

Upon the Husband's application by summons dated 14 December 2023 ("H's 2023 Summons"), the Court granted an Order on 18 January 2024 ("2024 Order") to stay the H's 2023 Summons upon the Wife's undertaking to pay the outstanding sum of HK\$241,777.87 to the Husband within 14 days. The Wife fully discharged her payment obligations under the 2024 Order on 31 January 2024 whereupon the Husband applied to withdraw the H's 2023 Summons, as confirmed in his affirmation dated 19 February 2024. In other words, by 31 January 2024, the Wife had paid off the entirety of the 2nd and 3rd Tranches together with interest.

Nevertheless, 3 days after the Husband had applied to withdraw the H's 2023 Summons, on 22 February 2024, the Husband sought leave to apply for an Order of committal against the Wife on contempt of court in respect of the AR Order "for the failing to pay 2nd and 3rd tranches of the lump sum by the due dates".

The Husband's supporting affirmation dated 22 February 2024 is fairly brief. For ease of comprehension, this court shall set out the relevant paragraphs as follows:

"Background of the Non-Payments"

3.

Based on the Judgment by this Court dated 12 August 2022 "the Judgment", Decree Absolute and a Consent Order, the Petitioner shall pay me HK\$2,568,075.77, HK\$4,608,051.77 and HK\$4,608,051.77 by 16 March, 16 June, and 16 September 2023 respectively ("Lump Sum").

4.

For first payment due on 16 March 2023, I only received such payment by 20 March 2023 which was overdue by 4 days...

5.

On 16 June 2023, the Petitioner unilaterally ceased the 2nd Lump Sum after filing an application on 12 June 2023 for a stay of execution on the respective payments. On 17 September 2023, the Petitioner also ceased the 3rd Lump Sum...

6.

The stay of execution application (filed on 12 June 2023) was dismissed on 28 September 2023. The outstanding of the two Lump Sums were settled by several payments from 5 October 2023 to 31 January 2024...

Existence of Means and Contempt

7.

It is believed that the Petitioner have had enough financial resources for the payments. Based paragraph 99 of the Judgment, the Petitioner possesses over HK\$50 million of assets, over 5 times of the total outstanding amount.

8.

Nonpayment of an order is itself a contempt of court as per *T v W* [2021] HKFC 169 and *Mubaraka v Mubarik* [2007] 1 FLR 722...

...

9.

Despite being legally represented at the substantive time, the Petitioner had demonstrated repeated refusals to obey orders from this Court. As of this day, this suit is still pending decisions from the Court of Appeal for leave to Appeal requested by both parties.

10.

As such, I respectfully pray for this Court to grant leave for this leave application for the interest of justices and fairness.”

In a nutshell, the Husband averred that the Wife’s late payments to him, when he believed that she had enough financial resources to do so, constituted a contempt of court.

The Husband’s application for leave to appeal out of time and the merits of his appeal

An applicant whose application for leave to seek an order for committal is refused by a judge may appeal to the Court of Appeal within 10 days after that order: RDC O 52 r 2(5).

In the present case, the deadline for the Husband's appeal was 16 September 2024, being 10 days after the Refusal Order of 6 September 2024. He filed (incorrectly) a leave to appeal application before the Judge on 6 November 2024 which was already out of time by over 50 days. As stated earlier, the Judge dismissed his application on 14 January 2025 on the ground that she had no jurisdiction to deal with it.

The Husband then filed his leave to appeal application to the Court of Appeal on 12 February 2025, which was another 3 months out of time.

It is well-established that in considering whether to exercise its discretion to extend time to appeal, the court will take into account the following four factors: (1) length of the delay; (2) explanation for the delay; (3) merits of the substantive application; and (4) prejudice to the other party.

To cut the matter short, all we need to focus on is the merits of the Husband's appeal against the Refusal Order, in light of the reason given by the Judge and the evidence before this court that the AR Order, drawn up by the Husband's then solicitors, was not endorsed with a penal notice.

The requirement to endorse a copy of the court order with a penal notice is imposed by O 45 r 7(4) of the RDC.

According to RHC O 45 r 7(7), this Court may exercise its discretion to dispense with the requirement of service if it thinks just to do so. In *AXA China Region Insurance Company Limited & Anor v Li Yu Ping, Ellen* [2002] 3 HKC 339 at [36], Stock JA (as he then was) opined that:

“The requirement to endorse a copy of the order with a penal notice is a separate requirement, imposed by [RHC O 45] rule 7(4), and is not itself, by the terms of Ord. 45 r7(2), rendered subject to the provisions of paragraphs (6) and (7). It must, however, follow that if the power to dispense with service of an order is properly exercised, the requirement under paragraph (4) falls away.”

In Hong Kong Civil Procedure 2026 Vol 1 at para 45/7/6, it is said that:

“2. If the power to dispense with service of an order is properly exercised pursuant to RHC O.45 r.7(7), ie mandatory orders or prohibitory orders, the requirement under O.45 r.7(4) to endorse a penal notice on the order will fall away though no express power to dispense with a penal notice was prescribed for in the High Court Rules.”

In the present case, it is not clear on the evidence that the Husband required dispensation of personal service of the AR Order. There was no evidence of such a request by the Husband, and there was no complaint by the Wife about lack of personal service. If so, there is no justification for exercising the power to dispense with the requirement of service under RHC O 45 r 7(7), in which case there is no power to dispense with the requirement of the endorsement of a penal notice under O 45 r 7(4) of the RDC or RHC.

In any event, in AXA China Region Insurance Company Limited at [43], Stock JA said “the power to dispense with service is one that ‘should not be exercised too readily, lest what should be a dispensing power for use in exceptional cases may gradually undermine the express requirements of [Ord. 45 r 7(2) and (4)]”.

Further, in *G v S* (2001) 4 HKCFAR 419 at [21], Nazareth NPJ stated the very cogent and obviously sensible observation that committal orders are remedies of last resort and, in family cases, they should be the very last resort.

In our view, whenever there is an available and reasonable alternative to committal proceedings in aid of execution of an Order to do an act, in the present case to make a payment, that alternative should be taken instead of seeking an order for committal.

In the present case, that alternative had in fact been taken by the Husband in obtaining the 2024 Order. As stated earlier, the Wife had fully discharged her payment obligations under the AR Order and the 2024 Order on 31 January 2024, whereupon the Husband applied to withdraw his 2023 Summons.

Thus, the underlying issue of the Wife’s payment obligations had been fully resolved. We do not see any further need or justification for the Husband to resort to committal proceedings against the Wife for late payments under the AR Order except out of spite, which is to be strongly deplored and discouraged. Further, we do not see any further need to dwell on the 2 grounds of appeal raised by the Husband in his draft Notice of Appeal.

For the above reasons, we are of the firm view that the Husband’s application for an extension of time to appeal the Refusal Order and his intended appeal against it has absolutely no prospect of success. The Judge was right to make the Refusal Order.

Disposition and costs

In the premises, we dismiss the Husband’s CA Summons.

Both the Husband and the Wife are acting in person. Neither party has provided this Court with a statement of costs. In the circumstances, the appropriate costs order in our view is that there shall be no order as to costs.

(Aarif Barma)

Justice of Appeal

(Peter Ng)

Judge of the Court

of First Instance

The Petitioner, unrepresented, acting in person

The Respondent, unrepresented, acting in person

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