Case No: B4/2009/0801

Neutral Citation Number: [2009] EWCA Civ 1205

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE CENTRAL LONDON COUNTY COURT

(HIS HONOUR JUDGE COLLENDER)

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: Wednesday 21st October 2009

Before:

LORD JUSTICE MUMMERY

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Between:

MOHAMMED BURHAN UDDIN — **Appellant**

- and -

CHOUDHURY & ORS — **Respondent**

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THE APPELLANT APPEARED IN PERSON.

AP Law appeared on behalf of the **Respondent**.

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Judgment

(As Approved by the Court)

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1. This is a renewed application for permission to appeal and for an extension of time for bringing an appeal. The application is made by Mr Burhan Uddin in person and the decision which he wishes to appeal was one reached by HHJ Collender QC on 20 March 2009 in the Central London County Court. The judge dismissed the claims for recovery of gifts which had been made in relation to the marriage of Mr Uddin's son, Mohammed, to Miss Nazim Choudhury. The judge not only dismissed that claim, he also gave judgment on a counterclaim made by Miss Choudhury (who I will refer to as "the bride") for payments of dowry, which she said had been agreed prior to the marriage, but had not been paid. The judge refused to grant Mr Uddin permission to appeal, as did Sir Richard Buxton, who was given the papers in this case in July, to give his ruling on whether permission should be granted. He refused permission, saying that the appeal had no reasonable prospect of success. He stated his reasons for that conclusion. As is his right, Mr Uddin now asks for the application to be reconsidered in court after oral argument. He has helpfully prepared some written arguments, which were submitted earlier this year on 7 May 2009. This morning he has, with some assistance, referred me to various documents in the papers and made his comments on why he says he has reasonable grounds for appealing from the decision of HHJ Collender.

2. To understand the points he is making I have to outline the history of this dispute. As the judge said, it is a very sad dispute between two families, and it is a great pity that the attempts that were made to settle the differences were not successful. It went to court. There is obviously a lot of ill feeling about what has happened. All the people involved in the dispute are from families originating in Bangladesh and they are all **Muslim.** This unfortunate dispute arises out of an arranged marriage which failed. The marriage was arranged between the two families, but Mohammed Uddin (whom I will call "the groom") was to be married to the bride. An Islamic ceremony took place in Battersea Town Hall on 17 August 2003, and that is what is referred to as *nikah.* It was originally intended that it should be followed by a civil ceremony, but that never took place. Unfortunately, for reasons which are disputed, the marriage never worked, and the outcome was that, at the beginning of December 2004, the Islamic Sharia council issued a decree of Islamic **divorce** on the application of the bride, so the marriage was dissolved.

3. One of the features of the dispute was the reason why the marriage had failed, whether it was not consummated because of the refusal of the bride or the unwillingness of the groom. Anyway, the case that came to court after the dissolution was all about money and property. Mr Uddin, after attempts had been made to settle this dispute, took out proceedings in the county court on 22 August 2005. He claimed originally about £25,500 for the value of items, which he said had been taken by the bride and her family from his house on 5 October 2003. The items mainly consisted of jewellery. The claim he made was met by a counterclaim from the bride and members of her family, saying that, as evidenced by the marriage certificate document, there had been an agreement that she should be paid £15,000 by way of a dowry or *mehar,* and that this had not been paid and it was still outstanding. There was a dispute as to whether there was any binding obligation on the part of Mr Uddin to make this payment or at all, or, if it was payable, whether certain deductions should be made from it. The case came before the judge, who had the benefit of expert evidence

on Sharia law from Mr Saddiqui. That evidence was relevant because it appeared that, in their dealings with one another, the parties had applied Sharia law. Mr Saddiqui was appointed as a single joint expert on this topic to give the court assistance. The judge heard a lot of evidence in the case, and, on the question of whose evidence he would accept when there were contradictions, he made a general comment that he found the evidence given by the bride and members of her family was stronger evidence than was given by Mr Uddin.

4. He referred in paragraph 44 of his judgment to the conflict of evidence about various matters and, as regards Mr Uddin's evidence, he was critical of it for casting aspersions on the validity of the marriage and various questions on the validity of the marriage certificate. When he looked at the bride's evidence and that of other members of her family he said:

"I found their evidence was generally well reasoned, fair, and accurate. The overall impression that I had was that they were telling me to the truth about what had happened but were somewhat overwhelmed by the litigation storm that has engulfed them."

5. That is an important part of the judge's judgment because it was the function of the trial judge who heard the evidence to decide whose evidence he accepted when there was a dispute. That is not something that can usually be appealed to this court. This court does not see the witnesses and hear their evidence. It can only deal with points that are made, mainly legal points, about the way in which the judge reached his decision and the reasons he gave for it. Finding that one lot of witnesses are more credible than another lot of witnesses is something that only the trial judge can make a decision on. Having heard that evidence, then having heard the evidence of Mr Saddiqui, which he summarised in his judgment, he came to a number of conclusions which Mr Uddin does not accept. The judge said that the gifts that were made were absolute and Mr Uddin could not get them back. They were not returnable if the marriage failed. They were not made conditional on the marriage. They were not part of the dowry or *mehar*. They were simply outright gifts. That is disputed by Mr Uddin.

6. The second dispute was about the taking of items by the bride and her family from the groom's family home in the visit in 5 October 2003. On that, the judge simply accepted their evidence that they had not taken what Mr Uddin says they had taken. He was quite clear in his ruling about that. It is very difficult to see on what basis that can be challenged on an appeal. What he said in paragraph 47 was this:

"I turn now to the claim as to the other items which allegedly did not belong to the First Defendant but were taken by her from the Claimants when she left the Claimants' home. In my judgment all the evidence to this is against that of the Claimants. It is little short of incredible to suggest that on 5th October 2003 the First Defendant and her family under the nose of the Claimants and in particular that of the Second Claimant [that is Mr Uddin] - removed £20,000 worth of goods that were not hers and took them home to Luton."

7. The judge added there was no evidence as to existence or value or nature of the items beyond bold assertions to the effect by the first and second claimant. So he rejected that claim about the alleged taking of property. Next he decided that, as evidenced by the marriage certificate, there was a properly agreed dowry or *mehar*, and he found, on the basis of the evidence given by Mr Saddiqui, that that was a valid contract which, on the evidence he had heard, was enforceable by the court. There was no legal reason in the decided cases or in policy for refusing to enforce an agreement that the parties had made for the payment of the dowry. So he said that the counterclaim for the payment of that should succeed and there were no grounds for making deductions.

8. He also said at the end of his judgment, in relation to the disagreement about the reasons for the failure of the marriage, that (and I read a quote from paragraph 52):

"[The marriage] was not consummated [...] at the behest of the First Claimant [that is the groom] not as a result of any unwillingness or refusal [on the part of the bride], and therefore in Shari law [the bride] was entitled to the *mehar*..."

9. The counterclaim succeeded for that reason also. It was an enforceable agreement and there was no reason relating to the failure of the marriage as to why the money agreed to be paid should cease to be payable. Dealing first with the points arising today as far as an extension of time is concerned, I would grant one for bringing an appeal if I thought the appeal had a real prospect of success. Mr Uddin has been acting in person and I think has satisfactorily explained the problems about getting the papers for the appeal in in the time allowed, so I would extend the time, but I have to be satisfied that there is an appeal which is really worth taking to a full court.

10. Now, on the papers and in his submissions this morning, Mr Uddin has helpfully made a number of points as to why this appeal ought to succeed. He says quite rightly that he has not had the benefit of legal representation. He appeared in person in the court below and, in relation to this application, he did submit a request to me last week to adjourn this case to give him more time to arrange for legal representation. He has mentioned that point again this morning that he needs more time. I am afraid, as I indicated in response to the initial request, this simply is not good enough. He has had months and months in which to arrange for some representation. I take into account what he has told me about being ill in hospital for a period in September, but, even so, it does not take that long to arrange legal representation. This case was decided back in March. There are no good grounds now in October for granting more time for that reason.

11. His second point was that the expert opinion given by Mr Saddiqui to the court has been ignored or misunderstood by the judge. He referred me to pages in Mr Saddiqui's opinion: pages 189, 192 and 194, in which he says the views expressed by Mr Saddiqui were not correctly understood and applied by the judge. I am unable to accept that. The judge summarised in his judgment the essence of the expert's opinion. He was a single joint expert whose views were binding on both parties, and it seems clear to me that the judge correctly summarised and applied what was said by Mr Saddiqui in relation to matters of the Sharia law of marriage and dowry. Thirdly, Mr Uddin says that the marriage was invalid and that this affected the right to retain the gifts which had been made and the right to claim a dowry. On this point it seems to me that, on the basis of the evidence given by Mr Saddiqui and the findings of fact by the judge, it was a valid marriage under Sharia law and that it was then validly dissolved by decree of the Islamic Sharia council. This was not a matter of English law. There was no ceremony which was recognised by English law, but it was a valid ceremony so far as the parties were agreed and it was valid for the purposes of giving legal effect to the agreement which had been made about gifts and dowry.

12. Next, there was a dispute about the judge's findings on the taking of property from Mr Uddin's house by the bride and her family on 5 October 2003. In my view, there is no real prospect of success in challenging that finding. The judge made that on the basis of the evidence which he heard. Mr Uddin says that the items were taken. This was denied by the bride and her family. As I read out from the passage from the judgment, the judge gave reasons why he found that the evidence given by the bride and her witnesses was to be preferred. Mr Uddin also made a number of other points in his written submissions, saying that it was the custom that the gifts which had been made in relation to the forthcoming marriage ought to be deducted from the dowry or *mehar*. He said that the bride was not entitled to claim the *mehar* or dowry in circumstances where she had, of her own free will, walked out of the marriage. He says that in those circumstances the dowry should not be payable.

13. I do not think there is a real prospect of those points succeeding on appeal in view of the findings of fact that the judge made about the absolute nature of the gifts. They were not conditional on the marriage. A gift is a gift and you cannot get it back simply because you have changed your mind or because circumstances have changed. Looking to the evidence of Mr Saddiqui as summarised by the judge in his judgment, it is not correct to say, as Mr Uddin does, that those gifts should be deducted from the dowry or that there is no legal right to enforce the dowry in the circumstances in which this marriage was dissolved. As a matter of

contract, arising out of the agreement which the parties had made, I think that the judge was entitled in law to say that this was an enforceable agreement, and therefore he was right to grant judgment on the counter-claim. I can well understand the great dissatisfaction that Mr Uddin feels about this whole matter. He explained to me, obviously with feeling, that this is a situation in which he thought that the bride had consented to this arranged marriage. He thought in those circumstances that he should invest a lot of money in the marriage of his son to the bride. It now turns out, he thinks, that the bride did not really intend to remain married to his son, but had someone else in mind, and that it was relevant to look at these reasons for the failure of the marriage in the context of the money that he had invested in it.

14. He has made gifts. He has agreed to pay a substantial sum of money for a marriage that seemed to dissolve almost as soon as it had been undertaken. I can fully understand the feelings of a father in those circumstances. Mr Uddin is obviously very dissatisfied with the outcome of this case. I have to say, however, having considered the judgment very carefully and these arguments which are critical of it, that I really do not think that this appeal has got a real chance of succeeding. The main reasons for the judge's judgment are twofold. First, his view about the truthfulness of the witnesses -- and he made it clear that he regarded the bride and her family as giving truthful evidence; and the second is about the effect of the expert evidence from Mr Saddiqui on Sharia law and that, as a matter of Sharia law in the circumstances of this marriage and its dissolution, the gifts were absolute, not returnable, not deductible from the dowry, and the dowry was payable notwithstanding the failure of the marriage. I know Mr Uddin will be upset to hear all of this, but I have, for those reasons, come to the conclusion that I should refuse his application for permission to appeal.

Order: Application refused