

**NOTE: PURSUANT TO S 35A OF THE PROPERTY (RELATIONSHIPS) ACT 1976, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE [HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).**

**IN THE FAMILY COURT  
AT AUCKLAND**

**FAM-2014-004-000502  
[2016] NZFC 4974**

IN THE MATTER OF	PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	AMIT PAL SINGH Applicant
AND	JASBIR KAUR Respondent

Hearing: 14 June 2016

Appearances: Ms H Sumich for the Applicant  
Ms N Taefi for the Respondent

Judgment: 15 June 2016

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**RESERVED JUDGMENT OF JUDGE S J MAUDE**  
**[Application for exercise of ancillary powers pursuant to s 33 of Property (Relationships) Act 1976]**

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[1] These proceedings are between Armit Singh and Jasbir Kaur.

[2] On 16 September 2015 following a two day hearing as to relationship property division I made the following decisions relevant for today's purposes:

- (a) Pursuant to s 18C of the Property (Relationships) Act I found that Ms Kaur owed to Mr Singh the sum of \$52,869.76 by way of compensation for dissipation of relationship funds.
- (b) Pursuant to s 18B of the Act I found that Mr Singh owed to Ms Kaur the sum of \$10,320.90 in respect of post-separation contributions made her.

[3] Ms Kaur, in the proceeding before me now, sought pursuant to s 33 of the Act, the exercise of the Court's ancillary powers so as to order payment of the monies owing by her to Mr Singh as follows:

- (a) By payment by her of the sum of \$10,000.00 available to her by way of borrowings.
- (b) By transfer of the BMW motor vehicle ordered by me in September 2015 to be her separate property to Mr Singh at its then value of \$10,000.00.
- (c) The sum payable by her to Mr Singh to be reduced by the sum of \$5,719.00 being post-separation payments made by her to meet instalments in respect of the BMW debt.
- (d) Payment of the balance owing to Mr Singh at a rate of \$60.00 per week.

[4] Section 33 of the Act reads as follows:

**33 Ancillary powers of court**

- (1) The court may make all such other orders and give such directions as may be necessary or expedient to give effect, or better effect, to any order made under any of the provisions of [sections 25 to 32](#).
- (2) The court may, at any time it thinks fit, extend, vary, cancel, or discharge any order made under any of the provisions of [sections 26 to 32](#), and may vary any terms or conditions upon or subject to which any such order has been made.

- (3) In particular, but without limiting the generality of subsections (1) and (2), the court may make any 1 or more of the following orders:
- (a) an order for the sale of the relationship property or any part of the relationship property, and for the division, vesting, or settlement of the proceeds:
  - (b) in the case of property owned by both spouses or partners jointly, an order vesting the property in both spouses or partners in common in such shares as the court considers just:
  - (c) an order vesting the relationship property, or any part of the relationship property, in either spouse or partner:
  - (d) an order postponing the vesting of any share in the relationship property, or any part of such share, until a future date specified in the order or until the occurrence of a future event specified in the order:
  - (e) an order for the partition or vesting of any property:
  - (f) in the case of property owned by one spouse or partner, an order vesting the property in both spouses or partners jointly or in common in shares that the court considers just:
  - (g) in the case of property owned by both spouses or partners, jointly or in common, an order vesting the property in one of them:
  - (h) an order for the cancellation of the settlement of a joint family home:
  - (i) an order for the payment of a sum of money by one spouse or partner to the other:
  - (j) an order for the transfer of land, or of any interest in land, including a lease, licence, or tenancy:
  - (k) an order for the transfer of shares or stock, or of mortgages, charges, debentures, or other securities, or of the title or documents of title of any property:
  - (l) an order for the transfer of rights or obligations under any instrument or contract, and an order of this kind has effect regardless of any provision or term of the instrument or contract:
  - (m) an order varying the terms of any trust or settlement, other than a trust under a will or other testamentary disposition:
  - (n) in the case of money or other property that is part of the separate property of one spouse or partner, an order

requiring that spouse or partner to pay the money, or transfer the other property, to the other.

- (4) Where under any order made under this Act one spouse or partner is or may become liable to pay to the other a sum of money, the court may direct that it shall be paid either in 1 sum or in instalments, and either with or without security, and otherwise in such manner and subject to such conditions (including a condition requiring the payment of interest) as the court thinks fit.
- (5) Where, pursuant to this Act, the court makes an order for the sale of any relationship property and for the division, application, or settlement of the proceeds, the court may appoint a person to sell the property and divide, apply, or settle the proceeds accordingly; and the execution of any instrument by the person so appointed shall have the same force and validity as if it had been executed by the person in whom the property is vested.
- (6) Any order under this Act may, subject to the provisions of this Act, be made upon such terms and subject to such conditions (if any) as the court thinks fit.
- (7) Where the court, by any order under this Act, appoints a person (including a Registrar or other officer of the court) to sell any property and to divide, apply, and settle the proceeds, the court may make provision in that order for the payment of remuneration to that person and for the reimbursement of his or her expenses.

[5] Mr Singh, through counsel Ms Sumich, argued that the ancillary powers available under s 33 of the Act applied only in respect of orders made by the Court pursuant to ss 25 – 32 of the Act.

She argued that compensation ordered pursuant to ss 18B or 18C of the Act does not amount to an order made pursuant to ss 25 – 32 of the Act and that accordingly there was not power available to make ancillary orders pursuant to s 33 of the Act in respect of the compensation owed by Ms Kaur to Mr Singh.

[6] I say at the outset that I do not accept Ms Sumich's submission as s 33(4) is plain it unlike the remainder of the section, specifically providing for payment by instalments in respect of any sum ordered to be paid under the Act.

[7] Ms Kaur's application has been framed by her counsel Ms Taefi as follows:

- (a) Use of the s 33 ancillary powers available to the Court to transfer ownership of the BMW motor vehicle declared by me in my 2015 judgment to be Ms Kaur's separate property, to Mr Singh at its then value.
- (b) Adjustment of my 2015 decision to credit back to Ms Kaur post-separation debt reduction made by her in respect of the BMW motor vehicle.
- (c) After payment to Mr Singh of her borrowed \$10,000.00 and credit (if granted) of the value of the transferred BMW motor vehicle and the post-separation debt reduction adjustments of the balance owing to Mr Singh by instalments.

[8] In support of her submission that I should in effect vary my 2015 judgment as to the BMW motor vehicle and reduction of debt relating to it, Ms Taefi referred me to the decision of *Penny v Penny*<sup>1</sup> in which decision I note Judge Strettell said as to the s 33 ancillary powers as follows:

[10] I am satisfied that there is a general jurisdiction to give better effect to existing orders to both parties but not to vary final orders. It would seem obvious that in circumstances where final orders create an impasse by their very nature, the power to vary to enable final disposition and a clean cut, as required by the legislation, must inevitably be permitted.

[11] Nevertheless it seems also clear that the exercise of the discretion should be used sparingly and not to prevent finality if it is able to be reached by the parties without further order, even if it means inconvenience or the need for one party to re-adjust its position in respect to retention of assets or manner in which settlement is reached.

[9] Ms Taefi also urged upon me that to transfer the BMW motor vehicle to Mr Singh would not be a departure from the judgment but rather an alternate way of dividing assets without disturbing the spirit of the substantive judgment.

[10] I do not share Ms Taefi's view.

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<sup>1</sup> 2006 NZFLR at 477.

[11] My September 2015 judgment is now some nine months old.

[12] The BMW motor vehicle was defined by me in my September 2015 judgment as Ms Kaur's separate property.

[13] It will have by now depreciated.

[14] Mr Singh should not bear the burden of the vehicle's depreciation.

[15] There of course is nothing to prevent Ms Kaur selling the motor vehicle and then using the proceeds received from such sale (which will be enhanced by the reduction of debt post-separation that she has been responsible for) to reduce the debt owing by her to Mr Singh.

[16] I am not prepared to vary my judgment in the manner sought by Ms Kaur.

[17] It follows also therefore that I am not prepared to allow credit to Ms Kaur for the principle reduction made by her to the BMW motor vehicle.

[18] Ms Taefi for Ms Kaur then asks me to order that the compensation payable by her to Mr Singh be paid by her to him at a rate of \$60.00 per week.

[19] Assuming that Ms Kaur reduces the amount of debt owed by the \$10,000.00 that she says she has borrowed for that purpose and after set off of the compensation that I ordered be paid by Mr Singh to Ms Kaur (if not already paid) there would remain a debt owing by Ms Kaur to Mr Singh of \$35,548.86 pursuant to my judgment.

[20] Paid off at a rate of \$60.00 per week the debt would be repaid after 11.4 years. That of course does not allow for interest.

[21] Ms Taefi referred me to the decision of *DPC v PNB* a decision of Judge Walker in the Auckland Family Court on 290 March 2013 in support of her proposition.

[22] I have already above concluded that jurisdiction exists for the ordering of payment by instalment.

[23] Ms Taefi urged me to consider the reality that upon Ms Kaur's currently disclosed financial information she has disposable income of only \$60.43 per week and disclosed bank funds available to her of only \$1,706.82.

[24] She urged that I consider the significant disparity in circumstances post-separation between her client and Mr Singh who had, the Court was informed, good earnings.

[25] Ms Taefi urged that to expose Ms Kaur to the possibility of bankruptcy would affect her ability to get herself "back on her feet" and to travel to see her family in India. She urged this was contrary to interests of natural justice.

[26] The issue for me becomes simply whether the Court should define how Ms Kaur is to make payment of the sum owing or simply leave it as a sum owing that Mr Singh may recover as a creditor would recover any debt which would include, of course, the ability to apply to bankrupt Ms Kaur.

[27] Mr Singh, through counsel Ms Sumich, raised as his primary concern the view that pre-separation Ms Kaur had transferred funds from New Zealand to India, those funds now being outside of the Court's jurisdiction.

[28] Ms Sumich reminded me that I had concluded with relation to my decision that compensation was payable by Ms Kaur in respect of her dissipation of funds that she had had a "guilty mind". Ms Sumich also argued that to consign Mr Singh to receipt of his compensation at a rate of \$60.00 per week would be unjust because:

- (a) The value of the compensation would be significantly reduced by virtue of payment over time, there having been built into Ms Kaur's proposal no adjustment for interest or inflation.
- (b) That likely Ms Kaur had funds available to her in India as a result of her dissipation of funds.

[29] It is not lost on the Court that if Mr Singh was to apply to bankrupt Ms Kaur he would be limited as to what he would receive by virtue of the Official Assignees actions to what was recoverable over the period of Ms Kaur's bankruptcy.

[30] In this Court at a short submissions hearing I have had limited evidence before me and none by way of independent enquiry such as would be instigated as a result of an application by Mr Singh to have Ms Kaur placed in bankruptcy.

[31] If Ms Kaur was placed in bankruptcy the Official Assignee would conduct an independent and no doubt wide ranging enquiry as to the funds available to Ms Kaur that could be utilised to pay to Mr Singh the compensation payable to him. This Court is limited to the evidence provided by Mr Singh and Ms Kaur.

[32] A further reality is that in determining that the compensation payable by Ms Kaur should be paid by way of instalment over 11 or more years, this Court does not have access to information as to what funds might come into Ms Kaur's hands in the future that could otherwise have been used to effect direct payment to Mr Singh.

[33] The reality for these parties is that when the substantive issues were dealt with by me in 2015 there was a limited pool of funds from which either could have expected to have immediate access to post-decision to recover what would amount to the judgment debt owing to them.

[34] That position has not changed.

[35] What does however remain is:

- (a) Lack of clarity about the funds available to Ms Kaur no independent information being available to the Court.
- (b) The reality that payment over time significantly reduces the value of the compensation paid to Mr Singh in his hands.
- (c) To order payment over time by way of instalment would be circumventing the powers that the Official Assignee would have

should Mr Singh choose to use them to make a full and wide ranging investigation as to what monies were available to Ms Kaur from which the monies owing to him could be paid.

[36] In the above circumstances I am not prepared to order payment of the compensation owing to Mr Singh by way of instalment as sought by Ms Kaur.

S J Maude  
Family Court Judge

*Signed 15 June 2016 at 10:45 am*