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Nos. 2019/0053 & BV16D22276

Royal Courts of Justice

Strand

London,

WC2A 2LL

IN THE FAMILY COURT SITTING  
AT THE ROYAL COURTS OF JUSTICE  
On appeal from the Central Family Court  
[2021] EWFC 13

Wednesday, 3 February 2021

Before:

MR JUSTICE COHEN

B E T W E E N :

ARIF HUSSAIN

Applicant

- and -

SAIMA HUSSAIN

Respondent

MR S. KUMAR (Counsel) appeared on behalf of the Applicant Husband.

MR P. SQUIRE (Counsel) appeared on behalf of the Respondent Wife.

J U D G M E N T

MR JUSTICE COHEN:

- 1 I am today dealing with an application by Mr Hussain, the former husband (“the husband”), for permission to appeal out of time an order made in financial remedy proceedings by HHJ Hess in the Central Family Court as long ago as 24 January 2018. A notice of appeal was not filed until a date in March 2019, and so this application is massively out of time. I do not regard the husband’s reasons or explanation for the delay as satisfactory and I would have unhesitatingly dismissed this application, but for one matter.
- 2 In her Form E, Mrs Hussain, the former wife (“the wife”), described the matrimonial home in Slough as being worth £250,000 and subject to a mortgage of £100,000. The husband did not file a Form E and did not engage in the proceedings, so her assertion went unchallenged. The order of the judge provided for a clean break upon payment of a lump sum of £125,000, being nearly all the assumed equity, with a sale in default of that sum being produced.
- 3 In May 2019, the husband did file a Form E in support of his appeal, long after the proceedings had finished, in which he asserted that the mortgage was just under £200,000, and indeed he has produced documentary evidence which shows that four months after the judge made his order the mortgage was standing at just under £200,000, and he confirms that this has always been the approximate sum owing. Thus, the order made by the judge for a lump sum was equal to 2-3 times the amount of the equity in the property, the only asset in this case. It is inconceivable that the judge would have made such an order if he had known the correct figure. Further, it would appear to be unenforceable. The wife said that her figure of £100,000 for the mortgage balance was something that she had overheard said a few years before, and was not based on any document that she had seen.
- 4 I am afraid this unhappy saga illustrates the danger of shortcuts. There was no valuation of the matrimonial home and no one seems to have thought to get the office copy entries, which would have revealed the identity of the lender and opened the door to getting an accurate statement of the outstanding mortgage on the property.
- 5 It seems to me in the circumstances that I have no choice but to grant permission to appeal and, having discussed this route with the parties and them accepting that it is appropriate, allow the appeal, set aside the order of 24 January 2018 and make directions to try and bring this case to an early resolution.
- 6 There has been, I should interpose, no satisfactory explanation of why it has taken from when directions were given by Gwynneth Knowles J in April 2019 and by me in May 2019, when I ordered an oral hearing of the application for permission to appeal, for this application to come before the court. It seems that both parties simply sat on the matter without taking any steps to chase up either the Appeals Office in the Royal Courts of Justice or the Clerk of the Rules, but nevertheless that is what has happened (or not happened). They are both responsible for the delay.
- 7 Both parties’ circumstances inevitably will have changed dramatically in the last three years. I know that to be the case so far as the husband is concerned because he has remarried and is back in the home with his new family. The wife too has been rehoused and her needs for housing have, therefore, been met. In the circumstances, it is plain that the 2018 order would not be appropriate in the current circumstances.
- 8 For the avoidance of doubt, if there is any, but for this one key factor, I saw no merits in the husband’s other grounds of appeal. But, on this one issue, it seems to me that he has an irrefutable claim for the matter to be looked at again.

- 9 I remit the matter to the Central Family Court. The parties have sensibly come to an agreement about what further documentation should be provided with updated Forms E, so that the parties will thus not have the need to resort to questionnaires. I urge both parties to ensure that they provide all the documents that are required on time. If, for any reason, one document is not available on time when all the others are, then that party must provide all the documents that are available by the due date and the missing document can be provided when it becomes available. But the fact that a party may be waiting for one document is not a ground for not providing everything else.
  
  - 10 The matter will be listed for an FDR in the Financial Remedies Court in the Central Family Court on the first open day after the 1 April 2021, which will give the parties time to provide all the necessary information and to obtain a valuation of the matrimonial home.
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**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 has been approved by the Judge \*\***