

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. M-361 of 2001

Between

**KASSIERAM CHOTOO**

Petitioner

And

**DOLLY BHAGOO CHOTOO**

Respondent

**In Chambers**

**Before the Honourable Mr. Justice J. Tam**

**Appearances:**

Ms. S. Capildeo for the petitioner

Mrs. I. Ramoutar-Liverpool for the respondent

### **Decision**

Before the Court are 2 applications. The first is the wife's application by Notice filed on August 28, 2001, in which she seeks maintenance pending suit for herself, periodical payments, presumably for the child of the parties (Ronny Taharam Chotoo, born July 19, 1984 and now aged 19 years) and periodical payments, presumably for her own support. (I use the word "*presumably*" because the actual wording of the Notice is not as clear as it ought to have been). The second application is the husband's Notice filed on April 10, 2003, seeking an order that the wife's Cross-Petition be dismissed, that all subsequent pleadings be struck out and that the wife be made to pay the costs of the application. It is with the husband's application that the Court is primarily concerned.

The following affidavits have been filed by the parties with respect to the husband's application -

- (a) The supporting affidavit of Kassieram Chotoo filed on April 10, 2003;
- (b) The supplemental affidavit of Kassieram Chotoo filed on July 9, 2003;
- (c) The further supplemental affidavit of Kassieram Chotoo filed on July 9, 2003;
- (d) The opposing affidavit of Dolly Bhagoo Chotoo filed on July 15, 2003; and
- (e) The still further supplemental affidavit of Kassieram Chotoo filed on July 15, 2003.

The ground of the husband's application is that the wife's Cross-Petition is scandalous, frivolous and vexations and will prejudice, embarrass and delay the fair trial of the petition and is an abuse of the process of the Court because before and during the continuance of the proceedings, the wife had initiated and completed concurrent proceedings for a dissolution of the marriage in the Circuit Court of the Seventeenth Judicial Circuit in Broward County, Florida, U.S.A. ("the Florida proceedings"). The wife has since admitted in her opposing affidavit that she initiated the Florida proceedings.

The facts are that on April 11, 2001, the husband filed his petition before this Court and had it served on the wife, who lodged an Acknowledgement of Service on July 10, 2001, and who filed an Answer and Cross-Petition on July 25, 2001. Thereafter, on August 28, 2001, the wife proceeded to file applications for custody of the child, for maintenance pending suit and for periodical payments (this latter application is the same application that is mentioned above). Between August 28, 2001 and April 10, 2003, various affidavits and documents were filed and exchanged between the parties and the matter was proceeding before this Court. The wife managed to obtain from

this Court an order for maintenance pending suit. However, unknown to the husband and to this Court, the wife had filed the Florida proceedings seeking a divorce since January 29, 2001 (i.e., approximately 2½ months before the husband had filed his petition herein) and had proceeded to obtain on or about December 10, 2001, what the Florida Court terms a “*Final Judgment of Dissolution of Marriage*”. It appears that this judgment for dissolution of the marriage is flawed in that the date of the marriage is stated as March 22, 1992, when the parties were actually married on March 22, 1972.

The basis of the husband’s argument is the wife’s deception of this Court by her omitting to disclose the Florida proceedings and by her proceeding simultaneously before both Courts without informing either of the existence of proceedings before the other. Although the wife has stated on affidavit that she denies deceiving this Court, she has not put forward the basis for that denial. The fact is that she omitted to inform this Court of the simultaneous Florida proceedings, being proceedings likely and/or capable of affecting the proceedings before this Court, and she has not provided this Court with an explanation or excuse for that omission. The wife has a duty to disclose to this Court and to the husband all proceedings that she knows of and that are capable of affecting the outcome of the proceedings before this Court. The Florida proceedings are clearly proceedings that were within her knowledge and which she chose, for whatever reason, to keep secret. That, most certainly, is deception. The Court therefore finds that to permit her to proceed in these circumstances will prejudice, embarrass or delay the fair trial of the suit and amount to an abuse of the process of this Court. (See Vol. 1, Rayden & Jackson On Divorce, 16<sup>th</sup> ed., paras. 18.6 – 18.7, p. 357)

In the circumstances, the order of this Court is as follows -

- (a) that the wife’s Answer and Cross-Petition filed herein be stayed, and the interim order for maintenance pending suit suspended, with immediate effect, unless by 4 p.m. on September 5, 2003, the wife provides

evidence to the Registrar of the Supreme Court that she has discontinued the proceedings in Florida;

- (b) that in default of the wife providing such evidence within the time stipulated, the wife's Answer and Cross Petition is hereby struck out and the petition is ordered to proceed as undefended and is to be listed for hearing on or before October 3, 2003, but without prejudice to the wife's right to challenge allegations of behaviour in ancillary proceedings;
- (c) that the wife's Notice filed on August 28, 2001, be adjourned generally; and
- (d) that the wife pay the husband's costs of the Summons filed on April 10, 2003, to be taxed in default of agreement.

Dated this 24<sup>th</sup> day of July, 2003.

Joseph Tam  
Judge.