

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

In the matter of an application
for Leave to Appeal under
Section 62(1) of the Muslim
Marriage and Divorce Act
No.13 of 1951 from an order
of the Board of Quazis dated
28.10.2017.

Jailabdeen Mohamed Rizan
No.16, Stuart Street,
Colombo 02.

Presently in
1112/1, Dalupitiya Road,
Hunupitiya, Wattala.
Respondent-Petitioner-
Petitioner

C.A.Applicaiton No.CA/LA/11/17

Board of Quazis Case No: BQ/59/17/R/CMB

Quazi Court of Colombo South Case No: 6233/CM

Vs.

Tuwan Anwar Nona Harifa
No.127/B, Palitha Place,
Veluwana Road,
Dematagoda,
Colombo 09.

Applicant-Respondent-
Respondent

Before: Mahinda Samayawardhena, J
Counsel: Safana Gul Begum instructed by M.M.P. Risda
for the Respondent-Petitioner-Petitioner.
Nadun Wijesiriwardena instructed by A.J. Irfana
for Respondent.

Argued & Decided: 09.10.2018

Mahinda Samayawardhena, J.

The respondent-petitioner-petitioner (petitioner) has filed this appeal with leave obtained from the previous Bench against the order of the Board of Quazis dated 28.10.2017 whereby (whilst notice being issued on the substantive application on the respondent) the ex parte application made seeking a direction to the Quazi Court to recall the enforcement certificate sent to the Magistrate's Court until the determination of the substantive application was refused. This appeal is against the refusal of the said interim order.

The substantive application is against the order of the Quazi Court dated 06.04.2017 directing the petitioner to pay maintenance to the child whose paternity is, according to the learned counsel for the petitioner, denied by the petitioner. That is a matter to be decided on evidence by the Quazi Court and irrelevant for the present appeal.

Learned counsel for the petitioner says that the order of the Quazi Court dated 06.04.2017 was made ex parte and therefore until a proper inquiry is held, the Board of Quazis should have made the interim order.

As the Board of Quazis in the impugned order has observed, if the order was made ex parte, the petitioner could have availed himself of the proviso to section 66 of the Muslim Marriage & Divorce Act to reopen the proceedings before the Quazi Court. Learned counsel for the petitioner admits that no such application was made before the Magistrate's Court up to now.

As seen from the journal entry dated 21.09.2017 of the Magistrate's Court proceedings, the petitioner had on that day appeared before the Magistrate's Court for the first time on summons. He had been represented by a lawyer as well. However as the respondent was not physically present although represented by a lawyer, the Court has warned the petitioner to appear on 12.10.2017 to work out a modality of payment of maintenance when the respondent is present.

Thereafter, according to the petitioner himself, on 12.10.2017 he has paid Rs. 50,000/= as maintenance and the case has been postponed to 15.11.2017 to make the balance payment. Learned counsel for the petitioner says that the said payment of Rs. 50,000/= was made out of fear of getting a default (custodial) sentence. I cannot accept that submission at all (a) having regard to the manner the learned Magistrate has dealt with the petitioner when he first appeared on 12.10.2017 and (b) in the absence of a copy of the proceedings dated 15.11.2017. The proceedings dated 15.11.2017 has not been tendered to the Board of Quazis and the Board of Quazis has made a particular reference to that matter in the order. The petitioner does not tender a copy of the said proceedings to this Court either. The inference which could be drawn is that the petitioner does so because those proceedings are unfavorable to him.

The petitioner has gone before the Board of Quazis in between 12.10.2017 (the date of the first payment of Rs.50,000/=) and 15.11.2017 (the date of the balance payment)—to be exact on 24.10.2017, and made the said application ex parte, which was rightly refused by the Board of Quazis.

The order of the Board of Quazis is a perfect order. There is absolutely no merit in this appeal.

Appeal is dismissed with costs which I fix at Rs.50,000/=.

Judge of the Court of Appeal

Lwm/-