NIZAM
v.
BEEBI

COURT OF APPEAL
ISMAIL, J.,
J. A. N. DE SILVA, J.
C. A/LA 25/85 (LG)
BOARD OF QUAZI – BQ/2542
QUAZI COURT, KURUNEGALA – 1622/CM
SEPTEMBER 22, 1997, NOVEMBER 03, 1997.

Muslim Marriage and Divorce (Amendment) Act 1 of 1965 – S. 6, 47 (1) (cc) and 48 – Right of an illegitimate child to claim maintenance – Age of Majority Ordinance – Maintenance Ordinance S. 2 and 6 – Corroboration.

The respondent claimed maintenance from the appellant for the child born to her out of weock, alleging that he is the father of the child. The Quazi made order against the appellant. The appeal to the Board of Quazis was dismissed.

In appeal, it was contended that the Quazi had no jurisdiction to entertain the application for maintenance in view of S. 6 of the Maintenance Ordinance. It was further contended that as Muslim Law imposes no obligation on a natural father to maintain his illegitimate child the only law which provides liability is the Maintenance Ordinance, which creates a statutory liability.

Held :

(a) An illegitimate child is conferred the right to claim maintenance from the putative father by S. 47 (1) (cc) of the Muslim Marriage and Divorce Act and the Muslim Law to the extent that it does not impose a liability on a father to maintain his illegitimate child has thereby been abrogated.

The Board of Quazis was justified in holding that the judgment of the Quazi was not rendered void for the reason that the application for maintenance has been made to him after the period prescribed in the Maintenance Ordinance.

APPLICATION for Leave to Appeal. – Leave been granted.

Cases referred to:

(i) *Mohideen v. Asiya Mariam* – Vol. IV – *Muslim Marriage & Divorce* Law Reports at 141.
(ii) *Pallithamby v. Savariathumma* – 64 NLR 572 at 573.
(iii) *Ummul Marzoona v. A. W. A. Samad* – 79 NLR 209.

Faisz Musthapa, PC with *Rumy Marzook* for appellant.

A. R. M. Kaleel for respondent.

Cur. adv. vult.

December 01, 1997

ISMAIL, J.

The respondent Thajun Beebi filed an application before the Quazi, Kurunegala in case bearing No. 1622/CM claiming a monthly allowance as maintenance from the appellant for the child named Nazar born to her out of wedlock, on 26.9.1978, alleging that he is the father of the child. The appellant denied paternity. The learned Quazi made his order against the appellant on 26.3.1983 and upon finding that he is the father of the child ordered the payment of a sum of Rs. 100/- as maintenance monthly with effect from 1.9.1981.

The appellant being aggrieved by this order lodged an appeal to the Board of Quazis in case bearing No. BQ/2542. The Board affirmed the order of the Quazi and dismissed the appeal on 30.1.1985.

The appellant filed an application to this Court dated 26.2.1985 for leave to appeal from the aforesaid order of the Board of Quazis dated 30.1.1985. The matter was supported on 28.2.1985 and an order was made that it be listed for hearing with notice to the respondent. The respondent was represented by counsel on 17.6.1985 and on his application the matter was relisted for hearing on 6.8.1985. The parties were represented by counsel on that date and an order was made that it be listed for hearing again in October 1985. However, the matter was next listed to be mentioned almost 7 years thereafter on 23.7.1992. Since that date it was listed for hearing on six further dates and finally when it was taken up on 29.11.1995 the appellant was granted leave to appeal.

The appeal itself was fixed for hearing on six dates thereafter. It had to be postponed on several occasions as the record had not been received from the Board of Quazis. Finally when it came up for hearing on 22.8.1997 both counsel agreed to tender written submissions. The written submissions of the petitioner were tendered on 22.9.1997 and that of the respondent on 3.11.97. Learned counsel for the respondent has devoted a paragraph in his written submissions to 'laws delays'.

It is in these circumstances that this judgment is being delivered, 12 years and 9 months after the petition was filed in this court, and about three months after the child born to the respondent would have completed his 19th birthday.

Learned counsel for the appellant has conceded that a Quazi has jurisdiction to inquire into and adjudicate upon claims for maintenance in respect of illegitimate children in view of the provisions of section 6 of the Muslim Marriage and Divorce (Amendment) Act, No. 1 of 1965. The Muslim Marriage and Divorce Act (cap. 114) vol. VI LE (1980) revised edition (unofficial) now provides that the powers of the Quazi shall include the power to inquire into and adjudicate upon –

> "(cc) notwithstanding anything to the contrary in section 2, any claim for maintenance by or on behalf of an illegitimate child where the mother of such child and the person from whom maintenance is claimed are Muslims."

The submission on behalf of the appellant is that the Quazi had no jurisdiction to entertain the application for maintenance in view of the provisions of section 6 of the Maintenance Ordinance and that therefore the order for the payment of maintenance has been made without jurisdiction. Section 6 of the Maintenance Ordinance (cap. 100) vol. V (1980) revised edition (unofficial) provides that an application for a monthly allowance for the maintenance of an illegitimate child shall not be entertained unless made within 12 months from the birth of such child or unless it be proved that the man alleged to be the father of such child has at any time within 12 months next after the birth of the child has maintained it or paid money for its maintenance.

It was submitted that the application for the maintenance of the child born on 26.9.1978 has been made on 26.9.1981 after the period prescribed in section 6 of the Maintenance Ordinance and that there was no evidence that the appellant has maintained the child at any time. It was contended therefore that the judgment of the Quazi is void as he had no jurisdiction to entertain the application.

A similar submission was rejected by the Board of Quazis in the case of *Mohideen v. Asiya Mariam*[1]. It was held that: "Section 6 of the Maintenance Ordinance would apply only where an action has been instituted under section 2 of that Ordinance. Since the matter

in appeal is an action instituted under section 47 (c) of the Act, No. 13 of 1951, the Maintenance Ordinance has no relevance and no opertative effect".

It appears that the respondent had originally initiated proceedings on 23.2.1979 in case bearing No. 48309 in the Magistrate's Court, Kurunegala, seeking maintenance for the child from the appellant.

It was further submitted that as Muslim law imposes no obligation on a natural father to maintain his illegitimate child, the only law which provides for that liability is the Maintenance Ordinance which creates a statutory liability. The appellant relied on a passage in the judgment in *Pallithamby v. Savariathumma*[2] at 573 in which it was noted that section 2 of our Maintenance Ordinance is in exactly the same terms as section 488 of the Indian Criminal Procedure Code which imposed a statutory liability, not confined to Muslims alone, to maintain an illegitimate child. It was there observed as follows: "So that the same statutory liability as in India is imposed here on a person whether he is a Muslim or not". The only ground urged by the counsel in that case was that a Muslim in this country is not obliged to maintain his illegitimate child. His application for leave to appeal was refused after the court approved his concession later that a Muslim is liable to maintain his illegitimate child and that the amendment to section 47 (1) (c) empowered a Quazi to inquire into and adjudicate upon a claim for maintenance made on behalf of an illegitimate child when the mother of the child and the person from whom the maintenance is claimed are Muslims. This judgment does not support the proposition that the Quazi is bound to apply the provisions of the Maintenance Ordinance in an inquiry and adjudication into the claim for maintenance of an illegitimate child.

It is quite clear therefore that in this country an illegitimate child is conferred the right to claim maintenance from the putative father by section 47 (1) (cc) of the Muslim Marriage and Divorce Act and the Muslim law to the extent that it does not impose a liability on a father to maintain his illegitimate child has thereby been abrogated.

In *Ummul Marzoona v. A. W. A. Samad,*[3] a divisional bench of the Supreme Court confirmed that section 48 of the Muslim Marriage and Divorce Act vests exclusive jurisdiction in the Quazi in respect of marriage and divorce and matters connected therewith such as maintenance and that neither the provisions of the Maintenance

Ordinance nor those of the Age of Majority Ordinance applies to Muslims. The Board of Quazis was therefore justified in holding that the judgment of the Quazi was not rendered void for the reason that the application for maintenance has been made to him after the period prescribed in the Maintenance Ordinance.

Learned Counsel for the appellant submitted further that the requirement of corroboration has not been considered either by the Quazi or the Board of Quazis. On the contrary it appears from the order of the Board of Quazis that the issue of corroboration has been fully considered. They have found that the evidence of the respondent has been corroborated by the evidence of her sister and have summarised the matter as follows:

"In the light of these, when the evidence of the respondent is examined it is supported by the evidence of her younger sister, Fouzul Inaya. This witness has seen the appellant enter their house at night on more than one occasion, seen him blow off the bottle lamp and keep on chatting with the respondent on the bed until such time that witness fell asleep. She had threatened to report this matter to the mother. She also knows that the appellant took the respondent to Kurunegala to get medicine and she accompanied them. Later her sister, the respondent, informed her about the pregnancy. About this time the appellant got married to someone else. It was brought to the notice of the mother. The mother with her husband, the stepfather of the respondent, lodged a complaint at the Kumballanga Jumma mosque on 10.06.1978. The document marked P1 refers to that inquiry held into this complaint. At this inquiry the appellant refused to take an oath that this child is not his child. The learned Quazi has quoted the significant question that the appellant had asked the respondent at this inquiry, i.e. 'Am I the only person who came there ?' These facts leave no doubts on the question of corroboration."

For the reasons set out above the appellant cannot succeed in this appeal.

The appeal is therefore dismissed with costs fixed at Rs. 1,500.

J. A. N. DE SILVA, J. – I agree.

Appeal dismissed.