

1941

*Present : Soertsz J.*UMMA SAIDU *v.* HASIM MARIKAR481—*Kathi Court, 172/74.*

Muslim Marriage and Divorce Registration Ordinance (Cap. 99), s. 21 (3)
—*Maintenance proceedings, schedule III., rule 10.*

Rule 10 of Part I of the third schedule to the Muslim Marriage Registration Ordinance does not apply to maintenance proceedings.

A PPEAL from an order of the Board of Kathis.

L. A. Rajapakse (with him S. A. Marikar), for the respondent, appellant.

S. Seyed Ahamed, for the applicant, respondent.

September 16, 1941. SOERTSZ J.—

This is an appeal with the leave of this Court, granted on a previous occasion, from an order of the Board of Kathis affirming an order made in regard to maintenance by a Kathi Court. The proceedings were instituted by a woman who sought to obtain maintenance in respect of an illegitimate child of hers whose father she alleged was the respondent. The Kathi Court found that the respondent was, as alleged, the father of the child and directed him to pay the sum of Rs. 10 a month on account of the maintenance of that child. The Board of Kathis affirmed that finding, as I have already indicated.

On this appeal, Counsel for appellant took two points. He contended, in the first place, that these proceedings were vitiated by reason of the

fact that the witnesses who gave evidence before the Kathi in question in this case had failed to sign the order. He also contended that in regard to the amount decreed, viz., Rs. 10 a month that it was excessive and that there was no evidence before the Board of Kathis or the Kathi Court to show that the man could pay such an amount.

Counsel for respondent has invited my attention to the fact that rule 10 of Part I. of schedule III. which Counsel for appellant invokes in support of his first point is really a rule made primarily applicable to an order in a divorce case. But in regard to proceedings such as these, namely, maintenance proceedings, the section goes on to say that *mutatis mutandis* rule 10 of Part I. of schedule III. will apply. It is quite clear from the context that the order which rule 10, Part I., schedule III. requires to be attested not only by the Kathi but also by the husband and wife and the witnesses applies to an order made in a divorce proceedings and such a requirement cannot be enforced in proceedings such as these for several reasons.

So far as the matter of the amount of maintenance is concerned, it has also been brought to my notice that by the provision of the relevant Ordinance the persons chosen as assessors are persons who have intimate knowledge of the parties concerned coming as they do from the locality in which the parties concerned live. In those circumstances they are in a peculiarly strong position to be able to make an order with regard to the *quantum* of maintenance and when persons such as those have made an order it would be very difficult indeed for this Court to interfere with that order. Acting on this principle I refuse to make any alteration in regard to the amount.

In a word, the appeal fails and must be dismissed with costs.

Appeal dismissed.

