

1965 *Present* : H. N. G. Fernando, S.P.J., and G. P. A. Silva, J.

A. ABDUL CADER, Petitioner, *and*
P. WEERAMAN (District Registrar) and 3 others, Respondents

*S. C. 280/65—Application for Writ of Mandamus and/or
Certiorari on the District Registrar, Kurunegala, and 3 others.*

*Muslim Marriage and Divorce Act (Cap. 115)—Sections 16, 17, 21, 29—Validity of
divorce despite non-registration—Second or subsequent marriage—Duty of
registrar to register it.*

If a Muslim divorces his wife, section 16 of the Muslim Marriage and Divorce Act makes the divorce valid even if it is not registered. He is, therefore, entitled to contract a second marriage on the basis that he does not have a wife of another marriage. The registrar has no power then to refuse to register the second marriage on the ground that the notices required by section 24 of the Act have not been given.

APPPLICATION for Writ of *mandamus* and/or *certiorari* on the District Registrar, Kurunegala.

M. T. M. Sivardeen, for the petitioner.

S. Sivarasa, Crown Counsel, for the 1st to 4th respondents.

September 22, 1965. H. N. G. FERNANDO, S.P.J.—

This is an application for a *mandamus* requiring a District Registrar, the third respondent, to register the petitioner's marriage under section 17 of Chapter 115.

It would appear that the petitioner had been previously married and that upon application duly made to a Quazi, the wife of that marriage was divorced in accordance with the procedure set out in the second schedule to the Act. Thereafter, under section 29, it was the duty of the Quazi to register the divorce. But I understand that the registration was not effected for the reason that Quazis had received certain instructions from the Registrar-General in consequence of a decision of this Court regarding their jurisdiction. It is not necessary to decide in this case whether the Quazi lacked the power to register the divorce under section 29.

Although the divorce was not registered, section 16 of the Act preserves the validity of a divorce under the Muslim Law notwithstanding that the divorce is not registered. In refusing to register the marriage of the petitioner, the third respondent relied upon the provisions of section 24 which prevents the registration of a marriage, in the case of a male Muslim already having a wife, unless certain notices are issued to and exhibited by the Quazi of the area. The third respondent took the view that since the divorce of the petitioner had not been registered, it was not a valid divorce and the former marriage was still subsisting. On this view, the present marriage could not be registered because the notices required by section 24 had not been given.

But I have pointed out above that the petitioner's divorce was by virtue of section 16 valid, notwithstanding non-registration. Therefore, for the purpose of section 24, he does not have a wife of another marriage.

The third respondent is directed to register the marriage on the application already made to him by the petitioner.

G. P. A. SILVA, J.—I agree.

Application allowed.