

1921.

Present : Ennis J.

**JEERISHAMY v. DAVITH SINNO.**

815—P. C. Tangalla. 766.

*Maintenance—Application for maintenance of children—Dismissal of application as applicant was absent—Subsequent application—Res judicata—Does appeal lie against refusal to order maintenance.*

The dismissal of an application for maintenance for children on the ground that applicant was absent is no bar to a fresh application.

Where a subsequent application was dismissed without inquiry. *Held*, that there was no appeal against the order. The applicant was directed to make a fresh application in the Police Court.

**T**HE facts appear from the judgment.

*Soertsz*, for the appellant.

*Keuneman*, for the respondent.

September 6, 1921. ENNIS J.—

This is an appeal from an order refusing to grant an application for maintenance.

It appears that the appellant had been in 1913 granted maintenance for herself and one child at the rate of Rs. 12·50 per month.

The counsel for the appellant contends that sometime afterwards the parties were reconciled, and that two other children were born to them.

On April 20, 1920, the appellant applied for maintenance in respect of these two children. At the date fixed for hearing she was absent, and her application was dismissed on April 24, 1920. She applied again on May 11, 1920, and once more in her absence her application was dismissed on June 14. She applied again on April 25, 1921, and on this occasion the respondent appeared and denied the paternity of the children. The case, however, did not proceed to trial, and was dismissed on August 1, 1921. The present appeal is from this dismissal.

On studying the case of *Ana Perera v. Emaliano Nonis*<sup>1</sup> it would seem that there was nothing to prevent the appellant from making a fresh application to the Court on the same cause of action, provided there is no bar as mentioned in the Ordinance, but it would seem that there is no appeal from an order made.

<sup>1</sup> (1910) 12 N. L. B. 263.

In the circumstances I would dismiss the appeal as the applicant can make a fresh application which should then be heard on its merits, and not dismissed on the ground that the decision on a previous occasion was final. Each side should pay its own costs.

1921.

EXNIS J.

Jerrishang  
Davith  
Sinno

*Appeal dismissed.*

