

**AMEERA JABIR
V.
YASMIN JABIR NEE
NAZICK**

COURT OF APPEAL
P.R.P. PERERA, J. (PRESIDENT C.A.) AND
WEERSEKERA, J
C.A. APPLICATION NO. 134/90
QUAZI COURT COLOMBO SOUTH
NO. 3572/20
BOARD OF QUAZIS NO 3085/R
04 JUNE AND 01 JULY 1991

Muslim Law - Fasah Divorce - Leave to appeal from order of Board of Quazis.

Held

An order made by the Board of Quazis in the exercise of their powers under sections 43 and 44 of the Muslim Marriage and Divorce Act does not come within the ambit of the order envisaged in Section 60(1) of that Act which provides for an appeal to

the Board of Quazis by a party aggrieved by any final order made by a Quazi under the Rules in the Third Schedule or in an inquiry under section 47. No leave to appeal can be granted where the petitioner who was the mother of the divorced husband did not hold a power of attorney from him

APPLICATION for leave to appeal under section 62 of the Muslim Marriage and Divorce Act.

M. Farook Thahir with *M. Ashroff Rumi* for petitioner.

M. Markhani with *A. Kalam* for respondent.

Cur.adv.vult.

August 02, 1991

P.R.P. PERERA, J. (P/CA)

This is an application for leave to appeal against the order of the Board of Quazis dated 5th September 1990 upholding a preliminary objection raised on behalf of the applicant-respondent that the petitioner has no status to file a revision application before that Board, on the ground that she did not hold a power of Attorney from her son Innam Jabir, who was the respondent to the application before the Quazi Court. The petitioner in that application sought to have the order of the Quazi Court of Colombo South set aside by the Board of Quazis in terms of Section 44 of the Muslim Marriage & Divorce Act (Cap. 134).

The facts of this case are briefly as follows:-

The applicant-respondent filed an application bearing No. 3572/20 in the Quazi Court of Colombo South seeking a Fasah divorce on or about 10th March 1990.

The respondent to that application the "divorced husband" did not appeal from the said order, but his mother the present petitioner filed an application for revision before the Board of Quazis on or about 23rd April 1990, under the provisions of Sections 43 & 44 of the Muslim Marriage & Divorce Act (Chap. 134). This application was dismissed by the Board of Quazis after due consideration on 5th September 1990, on the ground that the petitioner was not entitled to maintain such application as she did not hold a power of Attorney from her son Innam Jabir who was the respondent to the original

application before the Quazi Court. Admittedly the petitioner was not a party before that Court.

When the present application for leave to appeal came up for argument on 4th June 1991, Counsel for the applicant-respondent raised a preliminary objection that an application for leave to appeal did not lie to this Court from orders made by the Board of Quazis under the provisions of Sections 43 & 44 of the Muslim Marriage & Divorce Act (Chap. 134.)

Counsel for the applicant-respondent in my opinion, very rightly submitted that the only provision in the Muslim Marriage & Divorce Act which dealt with matters relating to leave to appeal was contained in Section 62 of that Act. Section 62(1) provides that any party aggrieved by any act of the Board of Quazis on any appeal under Section 60 may with the leave of the Court of Appeal had and obtained appeal to that Court from that order.

It would therefore be relevant to consider the provisions of Section 60 of this Act which is reproduced below. "Any party aggrieved by any final order, made by a Quazi under the Rules in the Third schedule or in an inquiry under Section 47 shall have an appeal to the Board of Quazis provided that there shall be no appeal from an order absolute made in accordance with the Rules in the 4th Schedule in any inquiry under Section 47.

It was counsel's submission therefore that Section 62 places a specific limitation upon the matters in respect of which an application for leave to appeal to the Court of Appeal may be entertained. Counsel contended further that an order made by the Board of Quazis in the exercise of their powers under Section 43 & 44 of the Muslim Marriage & Divorce Act did not come within the ambit of the order envisaged in Section 60(1) of that Act.

I have carefully perused the provisions of Section 47 and the rules in the 3rd Schedule and I agree with counsel that this Statute provides a right of appeal only to a party aggrieved by an order made by the Board of Quazis on any appeal lodged against a final order made by a Quazi under the Rules in the 3rd Schedule or in any inquiry under Section 47 of this Act. I hold therefore that the order made by the Board of Quazis in this case under the provisions of Section 44 does not come within the purview of Section 60 of this Act.

The question of granting leave to appeal to the Court of Appeal in terms of Section 62(1) would therefore not arise.

The application for leave to appeal is accordingly dismissed with costs fixed at Rs. 525/-.

WEERASEKERA, J. - I agree

Application dismissed.