

CHAPTER 54

*MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT)

Ordinances Nos. 8 of 1922, 27 of 1929, 4 of 1932, 22 of 1961, 37 of 1966, Act No. 14 of 1975

AN ACT TO FACILITATE THE ENFORCEMENT IN FIJI OF MAINTENANCE ORDERS MADE IN ENGLAND OR IRELAND AND VICE VERSA
[16th June, 1922]

Short title

1. This Act may be cited as the Maintenance Orders (Facilities for Enforcement) Act.

Interpretation

2. In this Act, unless the context otherwise requires—

“certified copy” in relation to an order of a court means a copy of the order certified by the proper officer of the court to be a true copy;

“dependants” means such persons as that person is liable to maintain under the law in force in England, Ireland or Fiji as the case may be according as the maintenance order was made in England, Ireland or Fiji;

“Ireland” means Northern Ireland or the Republic of Ireland;

(Inserted by 37 of 1966, s. 15.)

“maintenance order” means an order, other than an order of affiliation, for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made;

“prescribed” means prescribed by rules of court.

Enforcement in Fiji of maintenance orders made in England or Ireland.

3.—(1) Where a maintenance order has, whether before or after the commencement of this Act, been made against any person by any court in England or Ireland and a certified copy of the order has been transmitted by the Secretary of State to the Governor-General, the Governor-General shall send a copy of the order to the prescribed officer of a court in Fiji for registration and, on receipt thereof, the order shall be registered in the prescribed manner and shall from the date of such registration be of the same force and effect and, subject to the provisions of this Act, all proceedings may be taken on such order as if it had been an order originally obtained in the court in which it is so registered, and that court shall have power to enforce the order accordingly.

(2) The court in which an order is to be so registered, as aforesaid shall, if the court in which the order was made was a court of superior jurisdiction, be the Supreme Court, and, if the court was not a court of superior jurisdiction, be a magistrates' court. *(Substituted by 4 of 1932, s. 2.)*

* Section 20 of the Maintenance Orders (Reciprocal Enforcement) Act (Cap. 55) which repealed this Act has not at the date of this revision (31 Dec. 1978) yet been brought into force.

Transmission of maintenance orders made in Fiji

4. Where a court in Fiji has, whether before or after the commencement of this Act, made a maintenance order against any person and it is proved to that court that the person against whom the order was made is resident in England or Ireland, the court shall send to the Governor-General for transmission to the Secretary of State a certified copy of the order.

Provisional order against person resident in England or Ireland

5.—(1) Where an application is made to a court in Fiji for a maintenance order against any person, and it is proved that that person is resident in England or Ireland, the court may, in the absence of that person, if, after hearing the evidence, it is satisfied of the justice of the application, make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the hearing, but in such case the order shall be provisional only and shall have no effect unless and until confirmed by a competent court in England or Ireland.

(2) The evidence of any witness who is examined on any such application shall be put into writing and such deposition shall be read over to and signed by him.

(3) Where such an order is made the court shall send to the Governor-General for transmission to the Secretary of State depositions so taken and a certified copy of the order together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing and such information as the court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(4) Where any such provisional order has come before a court in England or Ireland for confirmation and the order has by that court been remitted to the court which made the order for the purpose of taking further evidence, that court shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application. If upon the hearing of such evidence it appears to the court that the order ought not to have been made, the court may rescind the order, but in any other case the depositions shall be sent to the Governor-General and dealt with in like manner as the original depositions.

(5) The confirmation of an order made under this section shall not affect any power of a court to vary or rescind that order:

Provided that on the making of a varying or rescinding order the court shall send a certified copy thereof to the Governor-General for transmission to the Secretary of State, and that, in the case of an order varying the original order, the order shall not have any effect unless and until confirmed in like manner as the original order.

(6) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

Court may confirm maintenance order made in England or Ireland

6.—(1) When a maintenance order has been made by a court in England or Ireland and the order is provisional only and has no effect unless and until confirmed by a court in Fiji, and a certified copy of the order together with the

depositions of witnesses and a statement of the grounds on which the order might have been opposed has been transmitted to the Governor-General, and it appears to the Governor-General that the person against whom the order was made is resident in Fiji, the Governor-General may send the said documents to the prescribed officer of a court with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed and, upon receipt of such documents and requisition, the court shall issue such a summons and cause it to be served upon such person.

(2) A summons so issued may be served in Fiji in the same manner as if it had been originally issued or subsequently endorsed by a magistrates' court having jurisdiction in the place where the person happens to be.

(3) At the hearing it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto but no other defence, and the certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modification or with such modification as to the court, after hearing the evidence, may seem just.

(5) If the person against whom the summons was issued appears at the hearing and satisfies the court that for the purpose of any defence it is necessary to remit the case to the court which made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(6) Where a provisional order has been confirmed under this section it may be varied or rescinded in like manner as if it had originally been made by the confirming court, and where, on an application for rescission or variation, the court is satisfied that it is necessary to remit the case to the court which made the order for the purpose of taking any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(7) Where an order has been so confirmed, the person bound thereby shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the court confirming the order.

Regulations

7. The Minister, with the advice and assistance of the Chief Justice, may make regulations as to the manner in which a case can be remitted by a court authorised to confirm a provisional order to the court which made the provisional order, and generally for facilitating communications between such courts.

Mode of enforcing orders

8.—(1) The court in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of such court shall take all such steps for enforcing the order as may be prescribed.

(Amended by 4 of 1932, s. 3.)

(2) Every such order shall be enforceable in like manner as if the order were for the payment of a civil debt.

Proof of documents signed by officers of court

9. Any document purporting to be signed by a judge or officer of a court in England or Ireland shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

Depositions to be evidence

10. Depositions taken in a court in England or Ireland for the purposes of this Act may be received in evidence in proceedings before a court under this Act.

Further extension of Act by proclamation

11. Where the Governor-General is satisfied that reciprocal provisions have been made by the legislature of any country or territory of the Commonwealth or any territory under Her Majesty's protection for the enforcement within such country or territory of maintenance orders made by courts in Fiji, the Governor may, by proclamation, extend this Act to such country or territory and this Act shall thereupon apply in respect to such country or territory as though the reference to England or Ireland were references to such country or territory and the references to the Secretary of State were references to the Governor-General of such country or territory or to the person appointed under the law of such country or territory to receive and transmit maintenance orders.

(Amended by 27 of 1929, s. 2. 22 of 1961, s.2. and 37 of 1966. s.15.)

Controlled by Ministry of the Attorney-General