

FOUZIY ALI BONDAGJY, PETITIONER, VS. SABRINA ARTADI, RESPONDENT.

G.R. No. 170406. August 11, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

This is not the first time that the parties, Fouziy Ali Bondagjy (petitioner) and his wife Sabrina Artadi (respondent), resort to this Court to resolve yet another controversy between them,[1] one which calls for the resolution of a seeming procedural stalemate over the dissolution of their connubial bond.

Petitioner and respondent were married in accordance with Islamic Law on February 4, 1988 at the Manila Hotel.[2] After a few years, the marital union soured. Respondent soon filed in or about March 1996 a complaint for divorce by faskh[3] before the Third Shari'a Circuit Court at Isabela, Basilan[4] where it was docketed as SCC Case No. 541, alleging as ground therefor petitioner's neglect or failure to provide support since October 1994.

After what the Third Shari'a Circuit Court described as a "careful evaluation of the pleadings of the parties" consisting of respondent's Petition, petitioner's Answer to Affirmative Defenses, and the Reply of petitioner, said court, by Order[5] of June 24, 1996, dismissed respondent's complaint in this wise:

[T]he grounds relied upon by herein plaintiff in her petition for divorce against herein defendant does [sic] not exist as of the moment and not to mentioned [sic] the fact that herein plaintiff is not actually a resident of Zamboanga City. Nonetheless, it is very clear that herein defendant could have not provided support and companionship to herein plaintiff and their children. The fact that herein defendant brought his wife to Saudi Arabia wherein she operated a fashion shop with the help of herein defendant and that their children was born in Saudi Arabia is a clear manifestation that herein defendant cared for his wife and their children and could have not neglected them in Saudi Arabia in his own place and not to mentioned [sic] the fact that herein defendant belongs to a respectable family in Saudi Arabia and herein defendant being an arab muslim knows very well that it is a great sin not to provide support and companionship to his wife and children as head of the family.

The grounds for the petition for divorce as alleged in the complaint of herein plaintiff are mere allegations without evidences to support them. (Emphasis and underscoring supplied)

Respondent's motion for reconsideration of the order of dismissal was denied.[6] The dismissal order became final and executory, respondent not having appealed the same.

Close to two years thereafter or on March 20, 1998, respondent filed a petition for declaration of absolute nullity of marriage, custody and support before the Regional Trial Court (RTC) of Muntinlupa City. The petition was, by Order of January 28, 1999,[7] dismissed on the grounds of lack of jurisdiction over the persons of the parties, they being Muslims at the time of the marriage, and res judicata in view of the above-said dismissal order of the Third Shari'a Circuit Court.[8]

Six years later or on February 7, 2005, respondent filed another petition[9] for divorce by faskh before the Second

Shari'a Circuit Court at Marawi City where it was docketed as Civil Case No. 2005-111, on the grounds of neglect and failure of petitioner to provide support and to perform his marital obligations.[10]

Petitioner raised the affirmative defenses of res judicata, lack of jurisdiction over the person of respondent, and forum-shopping.[11]

Finding the affirmative defenses, except lack of jurisdiction, persuasive, and after considering the respective memoranda of the parties, the Second Shari'a Circuit Court dismissed respondent's petition by Order of June 22, 2005[12] on the ground of res judicata and failure to comply with the rule on forum shopping.

Respondent appealed to the Fourth Shari'a Judicial District Court at Marawi City which, by the present challenged Decision of October 17, 2005, ruled that res judicata does not apply in the case at bar since respondent may have new evidence to prove that she is indeed entitled to divorce. Brushing aside the Second Shari'a Circuit Court's finding that respondent failed to comply with the rule on forum-shopping, the Fourth Sharia's Judicial District Court held:

x x x x

Under oath, [petitioner] has substantially complied with Section 5, Rule 7, Rules of Court. In one case, the Supreme Court ruled that while the required certificate of non-forum shopping is mandatory, it is not jurisdictional. (Robern Development Corporation v. Quitain, 315 SCRA 150)

x x x x (Underscoring supplied)

The Fourth Shari'a Judicial District Court accordingly overturned the dismissal order of, and remanded the case, to the Second Shari'a Circuit Court for hearing on the merits. Hence, the present petition raising the issue of

WHETHER . . . THE [FOURTH] SHARI'A DISTRICT COURT OF MARAWI CITY ERRED IN REVERSING THE FINDINGS OF THE SECOND SHARI'A CIRCUIT COURT OF MARAWI CITY THAT A) CIVIL CASE [NO.] 2005-111 IS BARRED BY PRIOR JUDGMENT [OR] RES JUDICATA IN CIVIL CASE [NO.] 541 WHICH WAS DECIDED WITH FINALITY ON MARCH 5, 1996 [sic], INVOLVING THE SAME PARTIES AND ISSUES, AND B) NON-COMPLIANCE WITH THE RULE ON CERTIFICATION AGAINST FORUM SHOPPING.

Petitioner contends that the Fourth Shari'a District Court erred in remanding the case to the Second Shari'a Circuit Court for hearing on the merits, the former not having even found in the pleadings any new evidence to support respondent's petition for divorce by faskh. And he asserts that, as it was respondent who refused to cohabit with him, he cannot be faulted for failing to support her and their children.[13]

Petitioner further asserts that respondent's petition filed before the Second Shari'a Circuit Court did not contain the required certification of non-forum shopping, and if there was one, it failed to disclose the priorly filed civil case for declaration of absolute nullity of marriage which was dismissed by Branch 256 of the RTC of Muntinlupa for lack of jurisdiction and res judicata.[14]

The petition fails.

For res judicata to bar the institution of a subsequent action, the following requisites must concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (4) there must be, as between the first and second actions, identity of parties, of subject matter, and of causes of action.[15]

The presence of the first three requisites is not disputed. The Third Shari'a Circuit Court had jurisdiction over the first complaint-SCC Case No. 541, for divorce by faskh. And it had rendered a decision on the merits, which

decision had become final.

It is with respect to the presence of the fourth requisite - that there is identity of causes of action in SCC Case No. 541 and Civil Case No. 2005-111 - that the decision of the present petition hinges. The Court finds no such identity of causes of action.

The test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and present causes of action.[16] If the same evidence would sustain both actions, they are considered the same and covered by the rule that the judgment in the former is a bar to the subsequent action.

Under P.D. No. 1083 or the Code of Muslim Personal Laws, the court may decree a divorce by faskh, upon petition of the wife, on any of the following grounds:

- (a) Neglect or failure of the husband to provide support for the family for at least six consecutive months;
- (b) Conviction of the husband by final judgment sentencing him to imprisonment for at least one year;
- (c) Failure of the husband to perform for six months without reasonable cause his marital obligation in accordance with this code;
- (d) Impotency of the husband;
- (e) Insanity or affliction of the husband with an incurable disease which would make the continuance of the marriage relationship injurious to the family;
- (f) Unusual cruelty of the husband as defined under the next succeeding article; or
- (g) Any other cause recognized under Muslim law for the dissolution of marriage by faskh either at the instance of the wife or the proper wali.[17] (Emphasis and underscoring supplied)

The material allegations in respondent's petition in SCC Case No. 541 are:

x x x x

- As a matter of fact, it was only her income from this business in Jeddah that was used by the plaintiff to support her and family [sic] and sometimes even the mother of the defendant;
- Plaintiff has begged many times the defendant to attend to his family and perform his function and role as a father and husband but was never fulfilled by the defendant;
- On account of the continued absences and complete disregard of the defendant of his obligation to the plaintiff and their children, plaintiff decided to come back to the Philippines after six (6) years of their married life with their children sometime in October 1993 and stayed with plaintiff's mother;

x x x x

- On the other hand, despite the fact that defendant refused to perform a divorce by thalaq to the plaintiff, defendant also continuously failed and refused to give financial support, companionship as well as love and affection to the plaintiff and her children even up to the present time[.][18]

x x x x (Emphasis and underscoring supplied),

The material allegations in respondent's petition in Civil Case No. 2005-111 subject of the present case are:

x x x x

- That while Petitioner's earlier attempts in seeking divorce failed, the Respondent harassed and coerced her by filing unfounded cases which added to the Petitioner's worries and anxieties;
- That the Petitioner is willing to narrate before this Honorable Court the untold sufferings and pain that she had incurred during her years of marriage with the Respondent, which would justify the issuance of a Divorce by Faskh as provided for in the Code of Muslim Personal Laws;
- That since then, the Respondent has failed and continuously failed to perform his legal, moral and religious obligations to support the Petitioner and her children for a period of more than ten (10) years;[19]

x x x x (Emphasis and underscoring supplied)

From the foregoing material allegations in the two petitions, the Court finds that the causes of action are based on different periods during which petitioner allegedly neglected or failed to support his family and perform his marital obligations.

SCC Case No. 541 which was dismissed on June 24, 1996 covered the period prior to March 1996 (the date of its filing), while Civil Case No. 2005-111 subject of the present petition which was filed on February 7, 2005 covered the period in the interim. In other words, in the first case, petitioner's alleged negligence and/or failure to support and perform his marital obligations occurred at least six months before March 1996. Whereas in the second case, similar grounds-bases of the cause of the action occurred at least six months before February 7, 2005. The causes of action in the two cases are thus independent of each other, the circumstances relating to non-support and non-performance of marital obligations being disparate.

Respondent would thus have to present evidence to support her petition in Civil Case No. 2005-111 filed on February 7, 2005 that petitioner had, after the dismissal of SCC Case No. 541 on June 24, 1996 and for at least six months prior to February 7, 2005, "continuously failed to perform his . . . obligations to support [her] and her children," independently of any evidence which may have been appreciated by the judge in SCC Case No. 541. It bears emphasis at this juncture that the Third Shari'a Circuit Court, in dismissing SCC Case No. 541, merely evaluated "the pleadings submitted by the parties," following which it concluded that "the grounds relied upon by herein [respondent]" . . . does [sic] not exist as of the moment and not to mentioned [sic] the fact that [she] is not actually a resident of Zamboanga City." (Underscoring supplied). In so doing, the said court applied the third paragraph of Section 6 of the Special Rules of Procedure in Shari'a Courts[20] reading:

SEC. 6. PRE-TRIAL. (1) x x x.

x x x x

(3) SHOULD THE COURT FIND, UPON CONSIDERATION OF THE PLEADINGS, EVIDENCE AND MEMORANDA, THAT A JUDGMENT MAY BE RENDERED WITHOUT NEED OF A FORMAL HEARING, THE COURT MAY DO SO WITHIN FIFTEEN (15) DAYS FROM THE SUBMISSION OF THE CASE FOR DECISION.

x x x x (Emphasis and underscoring supplied)

To reiterate, the Third Shari'a Circuit Court decided SCC Case No. 541 merely on the basis of the pleadings of the parties.

In a similar vein, the Second Shari'a Circuit Court denied respondent's petition in Civil Case No. 2005-111 only after conducting a hearing of the affirmative defenses and a consideration of the memoranda submitted by the parties in connection therewith. In other words, the two courts did not conduct a formal hearing of respondent's petitions.

The findings of the Second Shari'a Circuit Court were at best superficial, however, given the distinctiveness of Shari'a Court procedures. Thus, under Muslim Procedural Law, the Shari'a court is mandated to adhere to sources of Muslim Law relating to the number, status or quality of witnesses, and evidence required to prove any fact, and to apply the Rules of Court only suppletorily.[21]

By and large, jurisprudence on Muslim Law recognizes three kinds of evidence: first, shahadah or testimonial evidence; second, igrar or admission; and third, yamin or oath.[22] Documentary evidence is considered outside the mode of proofs (i.e., testimony, admission and oath), but at times accepted as substitute for oral testimony.[23]

Muslim Law thus places a premium on testimonial evidence as mode of proof. This unique legal precept a fortiori applies in the case at bar. For neglect or failure to provide support and to perform one's marital obligations requires proof by substantial evidence, not by inference as what the judge of the Third Shari'a Circuit Court did as reflected in the earlier-quoted portions of his June 24, 1996 Order. Not infrequently, the testimonies and contra-declarations of the parties, the children or their witnesses are secured to prove their respective allegations and defenses.

Petitioner's contention that respondent failed to adduce documentary evidence to prove her claim does not thus lie.

Respecting the Fourth Shari'a Judicial District Court's challenged conclusion that respondent had substantially complied with the requirement of Section 5 of Rule 7 of the Rules of Court, the fourth paragraph of respondent's "Verification" of her petition in Civil Case No. 2005-111 which reads:

x x x x

- That except for the earlier petition for divorce which was dismissed, there is no other similar case now pending with the Supreme Court, Court of Appeals or before any other court or tribunal; that should I discover that there is such of similar nature and character, I will promptly inform this Honorable Court.[24]

x x x x (Emphasis and underscoring supplied),

bears it out. The sworn certification need not be in a separate segment. Thus, Section 5 of Rule 7 provides:

SEC. 5. Certification against forum shopping. -The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

x x x x (Emphasis and underscoring supplied; italics in the original)

As for the omission by respondent to include in the certification the dismissal of the annulment case she filed with the RTC of Muntinlupa City, it is not fatal. An omission in the certificate of non-forum shopping about any event that would not constitute *res judicata* and *litis pendencia* is not fatal as to merit the dismissal and nullification of the entire proceedings, given that the evils sought to be prevented by the said certification are not present.[25]

As priorly discussed, the order dismissing SCC Case No. 541 does not constitute *res judicata* on Civil Case No. 2005-111 subject of the present case. Nor does the order dismissing Civil Case No. 98-070, an action for declaration of absolute nullity of marriage under Article 36 of the Family Code. For the grounds for nullity of marriage under the Family Code are dissimilar to the grounds for divorce by *faskh* under the Code of Muslim

Personal Laws. Besides, Civil Case No. 98-070 was, in the main, dismissed by the RTC of Muntinlupa for lack of jurisdiction over the person of petitioner and of respondent.

WHEREFORE, the petition is, in light of the foregoing disquisition, DENIED. The October 17, 2005 Decision of the Fourth Shari'a Judicial District Court at Marawi City is AFFIRMED.

Let the records of the case be remanded to the court of origin, the Second Shari'a Circuit Court at Marawi City, which is ordered to reinstate Civil Case No. 2005-111 in its docket and to conduct further proceedings thereon with dispatch.

Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Corona, Velasco, Jr., and Brion, JJ., concur.

* Spelled as "Fouzi" in some pleadings in the records and rollo.

** Also known as "Sabrina Artadi-Bondagjy."

*** Additional member in lieu of Justice Dante O. Tinga per Special Order No. 512 dated July 16, 2008.

[1] In G.R. No. 140817, "Bondagjy v. Bondagjy," 423 Phil. 127 (2001), where this Court awarded the custody of then minors Abdulaziz and Amouaje Bondagjy to the mother, Sabrina Artadi-Bondagjy.

[2] Rollo, at 46.

[3] Vide photocopy of complaint, rollo, pp. 27-34; under Article 52 of Presidential Decree No. 1083 (1977) or the Code of Muslim Personal Laws.

[4] Rollo at 27-34.

[5] Id. at 35-37.

[6] Id. at 38-40.

[7] Id. at 45.

[8] Ibid.

[9] Id. at 46-49.

[10] Ibid.

[11] Id. at 64-73.

[12] Id. at 140-149.

[13] Id. at 14-16.

[14] Id. at 18.

[15] Williams v. Court of Appeals, G.R. No. 166177, December 18, 2006, 511 SCRA 152; Filinvest Land, Inc. v. Court of Appeals, G.R. No. 142439, December 6, 2006, 510 SCRA 127; Balanay v. Paderanga, G.R. No. 136963, August 28, 2006, 499 SCRA 670; Heirs of Enrique Diaz v. Virata, G.R. No. 162037, August 7, 2006, 498 SCRA 141; Coastal Pacific Trading Inc. v. Southern Rolling Mills Co. Inc., G.R. No. 118692, July 28, 2006, 497 SCRA

11; Parayno v. Jovellanos, , G.R. No. 148408, July, 14, 2006, 495 SCRA 85; Heirs of Rolando Abadilla v. Galarosa, G.R. No. 149041, July 12, 2006, 494 SCRA 675; Republic v. Yu, G.R. No. 157557, March 10, 2006, 484 SCRA 416; Philippine National Oil Co. v. National College of Business and Arts, G.R. No. 155698, January 31, 2006, 481 SCRA 298.

[16] Serdoncillo v. Spouses Benolirao, 358 Phil. 83,103.

[17] P.D. 1083, supra note 3.

[18] Id. at 29-30.

[19] Rollo, p. 47.

[20] Promulgated by the Supreme Court on September 20, 1983.

[21] Id. at Sec. 16.

[22] Arabani Sr., Philippine Shari'a Courts Procedure (2000), p. 582.

[23] Ibid. citing Abdur Rahim, Muh. Jurisprudence, p. 382; cit. Fahtawa Alamgirriyah, Vol. III, p. 5341, Mejelle, p. 297.

[24] Rollo, p. 49.

[25] Roxas v. Court of Appeals, 415 Phil 430, 445 (2001).

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