

**S. Z. ABEDIN, PETITIONER, VS. FELIPE NATIVIDAD ET AL.,
RESPONDENTS.***G.R. No. 48491. October 28, 1942*

Ponente: YULO. C.J.

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Petitioner was defendant in Civil Case No. 203 of the Court of First Instance of Cotabato, wherein his wife, represented by the respondents herein, Teodulfo Suner, Alfredo Ramos and Apolonio Elevado, as her attorneys, sought to obtain a decree of divorce, the liquidation of the conjugal partnership, alimony pendente lite, attorneys' fees, and other relief. On March 26, 1940, the parties having failed to appear personally at the trial, upon statements made by counsel that the parties were apparently in cordial terms at the time, and believing that they had arrived at an amicable settlement of their differences, the Court entered an order dismissing the case. As no pronouncement was made with regard to the attorneys' fees claimed by the plaintiff, her attorneys, the respondents herein, filed a motion two days later praying that said fees be fixed at P3,000 and that defendant, petitioner herein, be ordered to pay the same. After due hearing, the Court, on February 18, 1941, issued an order fixing the sum of P300 as reasonable compensation for the services of plaintiff's attorneys, and ordered the defendant to pay that amount. Petitioner now seeks the annulment of this order, as having been issued in excess of jurisdiction and with abuse of discretion.

Petitioner's contention is not well taken. It is the rule in this jurisdiction that where the wife has to live apart from her husband and the latter fails to perform his duty to support her, making it necessary for her to resort to the courts in order to enforce her right to such support, the husband can be compelled not only to comply with that duty but also to pay for the necessary expenses of the suit, including reasonable attorneys' fees and judicial costs. (*Mercado vs. Ostrand and Ruiz*, 37 Phil., 179; *Arroyo vs. Vazquez de Arroyo*, 42 Phil., 54, 56; *Arroyo vs. Barrios and Vazquez*, G. R. No. 45408. June 5, 1937.) In the instant case, it is not denied that petitioner's wife was not living with him when the complaint was filed, and the lower court had actually ordered the said petitioner to pay his wife a monthly pension upon the inception of the suit. The mere fact that the parties had later on arrived at an amicable settlement of their differences does not free the husband from his responsibility to pay the fees of his wife's attorneys. (*Wing vs. Vera, Lasala and Lee*, G. R. No. 46102, 36 Off. Gaz., 3303.)

The contention that the order under review is void because it was issued long after the order of dismissal had become final is likewise devoid of merit. The records show that plaintiff's motion was filed only two days after the order of dismissal was issued, and it was in effect but a motion to amend so that the said order might include one of the reliefs prayed for in the complaint, which had been overlooked.

Respondents aver that an appeal from the order under consideration would have been the proper remedy for the petitioner and on this ground the writ prayed for should have been denied. It is unnecessary to pass upon this point, as in the interest of a prompt administration of justice, we have preferred to dispose of this case on its merits.

The order under review is affirmed, with costs against the petitioner. So ordered.

Moran, Ozaeta, Paras, and Bocobo, JJ., concur.

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