

SECOND DIVISION

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

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

D E C I S I O N

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

9. 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;

10. 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;

11. **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

13. 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

10. 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;