96 Phil. 395

[G.R. Nos. L-5325-26. January 19, 1955]

E.E. ELSER, INC., ET AL., PLAINTIFFS AND APPELLANTS, VS. MACONDRAY & CO., INC., ET AL., DEFENDANTS AND APPELLEES.

THE AUTOMOBILE INSURANCE CO., PLAINTIFF AND APPELLANT, VS. MACONDRAY & CO., INC., ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

JUGO, J.:

This is an appeal from the orders of dismissal of the two above entitled cases for failure of the plaintiffs-appellants to prosecute them under section 3, Rule 30.

In case G. R. No. L-5325, and in case G. R. No. L-5326,the defendants-appellees filed their answers in May and June, 1947, respectively, and the two cases were ready for trial in those months. The plaintiffs-appellants did not do anything until August, 1951, a period of four years, to have the cases tried by the Court of First Instance of Manila. In view of this delay of four years, the court below was constrained to order the dismissal of the two above mentioned cases. The appellants put up the excuse that there were five hundred similar cases which had to be distributed before the different branches of the Court of First Instance of Manila, and that was the reason why they did not ask for the trial of those two cases as they were waiting for the distribution of those other cases. This is not a valid excuse; it was the duty of the plaintiffs-appellants to see to it that the two cases were set for trial. It is true that the deputy clerk of court concerned should have set for trial, *motu proprio*, those two cases under sections 1, 2, and 3 of Rule 31. But it has been held by this Court in the cases of "Smith Bell & Co., Ltd., and Insurance Company of North America, et al. *vs*. American President Lines Ltd., and/or Manila Terminal Co., Inc., et al., G.R.

Nos. L-5304 to L-5324", that the said duty of the deputy clerk of court does not relieve the plaintiff from his obligation to have his case set for trial. Four years is quite a long time, and if the plaintiffs-appellants were really interested in their cases, we cannot imagine how they left a quadrennial pass with crossed-arms and without doing anything. It is a well known policy of the courts to expedite the disposal of cases and to prevent the clogging of the dockets. It is incumbent upon the parties, especially the plaintiffs, to take the initiative in the prompt disposal of their cases as a duty to themselves, to the courts, and to the public in general. In the performance of this duty the plaintiffs-appellants have failed for an excessive length of time without exerting ordinary or even special efforts to have their cases disposed of. It was only a few days before they received notice of orders of dismissal that they became aware and attempted to have them set for hearing. It is the duty and right of the courts to dismiss a suit for failure to prosecute it with due diligence. Due diligence has been lacking on the part of the plaintiffs-appellants. This court can correct the order of dismissal of the court below only in case of abuse of power or discretion. In view of the circumstances of these cases, we cannot attribute such abuse to the trial court. The present cases are almost exactly on-all-fours with the cases above cited.

In view of the foregoing, the orders of dismissal appealed from are affirmed, with costs against the appellants.

Paras, C.J., Pablo, Bengzon, Padilla, Reyes, Bautista Angelo, Labrador, Concepcion, and *Reyes, J.B.L., JJ.*, concur.

Order affirmed.

Date created: October 09, 2014