

103 Phil. 226

[ G. R. No. L-11232. March 28, 1958 ]

**INTERNATIONAL TOBACCO CO., INC., PETITIONER, VS. HON. NICASIO YATCO, ETC., RESPONDENT.**

**D E C I S I O N**

**ENDENCIA, J.:**

Petitioner brought this action to secure the annulment of the order of respondent Judge of July 10, 1956, dismissing a claim in the sum of P 100,000, filed against the estate of the deceased, Co Keng in Special Proceeding Q-587 of the Court of First instance of Rizal, Branch V, as well as the order of August 30, 1956, denying the motion for reconsideration of said order of dismissal.

Briefly stated, the facts of the case are as follows: Petitioner International Tobacco Co., Inc., through its treasurer Yeng Huy, filed on February 21, 1956, in the aforementioned case, a claim for P100,000 and served copy thereof to the duly appointed administrator of the estate, Francisco Co Keng, who through his counsel Villareal & Amacio, on March 1, 1956 petitioned the court that he be given time to file his answer to the claim. The petition was granted by the respondent Judge, and on March 7, 1956, Francisco Co Keng filed a verified answer admitting that the deceased Co Keng was really indebted to the petitioner in the aforesaid amount of P100,000; that the said sum has not yet been paid and, therefore, offered no objection to the approval of the claim. In view of the answer, the claim was set for hearing on March 7, 1956, on which date Pedro T. Mendiola appeared in behalf of the claimant and presented to the respondent Judge the original voucher of the International Tobacco Co., Inc. showing the indebtedness note for the aforesaid sum, duly signed by the deceased Co Keng. These documents were then examined by the respondent Judge who made some remarks about them—the nature of which does not appear clear in the record—and which remarks prompted Assistant Attorney of Quezon City, Jaime Agloro, who appeared for the regional agent of the Internal Revenue of Quezon City, to petition the respondent Judge to hold in abeyance any action on the claim due to the effect that the

regional BIR agent has not completed his report on the state and inheritance taxes due from the estate of the deceased. This petition was granted by the respondent Judge.

On June 4, 1956, Assistant City Attorney Jaime Agloro again requested deferment of action on the claim in question, alleging that the report of the regional BIR agent was not yet finished, so the hearing of the claim was postponed for July 10, 1956; and when the claim was called for hearing on the appointed date, Assistant City Attorney Agloro appeared manifesting that he was ready to submit the report of the regional BIR agent. Pedro T. Mendiola failed however to appear and the respondent Judge forthwith dismissed the case, for lack of interest of the petitioner and adjourned the session. About ten minutes later, Francisco Co Keng and his Attorney Federico Amacio and Pedro T. Mendiola arrived and were informed by the deputy clerk of court that the claim was already ordered dismissed. When the session was resumed, Atty. Federico Amacio and Pedro T. Mendiola verbally moved for the reconsideration of the order of dismissal, but the respondent Judge, instead of acting thereon, ordered them to put the motion in writing since the order of dismissal had already been dictated in open court. Accordingly, on July 11, 1956, petitioner filed a verified motion for reconsideration on the following ground:

“That Mr. Pedro Mendiola, representative of the International Tobacco Co., Inc., and claimant herein arrived in the court room just TEN (10) minutes after this case was called at 8:30 of July 10, 1956;

“That the delay of Mr. Pedro Mendiola was unforeseen caused principally by the unpredictable congestion of traffic from San Nicolas District, Tondo, Manila to Quezon City on that day of hearing”, the truth of such is hereinbelow attested under oath by the said Mr. Pedro Mendiola;

“That the claim of P100.000 filed by the International Tobacco Co., Inc., with the estate of the deceased Co Keng has been duly presented to this Honorable Court with incontrovertible documentary proofs at the previous hearings of this case, as a matter of fact the administrator of the estate has no objection to said claim as well as the Internal Revenue Office which observation and recommendations for its allowance are with the Fiscal’s Office;

“That it has never been the intention of the herein claimant to abandon their claim, the same being a valid, just and subsisting claim of P100,000, Philippine currency.

“That the present claim is submitted pursuant to the order of this Honorable Court that motion for reconsideration be made in writing and above all, in the interest of JUSTICE we most deferentially beg the reconsideration of subject order dismissing the claim of the International Tobacco Co., Inc. for P100,000.

“WHEREFORE, in view of the foregoing it is most respectfully prayed this Honorable Court that the order dictated in open court last July 10, 1956 dismissing the claim of the International Tobacco Co., Inc., for failure of the parties to appear on that date of hearing, be reconsidered and lifted.”

The respondent Judge denied the foregoing motion, hence the filing of the present action.

In his answer to the petition, the respondent Judge practically admitted all the facts of the case as stated above, but, by way of affirmative defense, averred that the proper remedy was appeal in due time and not certiorari, contending that “the order of dismissal dated July 10, 1956 is not interlocutory in character but a final judgment on the case from which an appeal lies.”

As could be seen, the dismissal was, according to the respondent Judge, due to lack of interest of the petitioner because its representative Pedro T. Mendiola failed to appear on July 10, 1956 when the claim was called for hearing. It, however, appears that Pedro T. Mendiola arrived in court moments after the order of dismissal was dictated in open court and that, upon learning it, immediately moved the Court verbally that the dismissal be reconsidered and following the suggestion of the court a formal petition reiterating his verbal motion for reconsideration was filed. Petitioner, therefore, never lost interest in the claim—and we believe that he would not lose interest therein because the claim involves the considerable amount of P100,000 which was admitted by the administrator of the intestate estate of Co Keng to be true and unpaid—and therefore the respondent Judge, in our opinion, acted hastily when he dismissed the claim and certainly abused his discretion when he denied the verified motion for reconsideration which avers satisfactory explanation of Pedro T. Mendiola’s negligible delay to appear in court in due time. We do not overlook that the failure of Pedro T. Mendiola to appear on the very hour and date set for hearing of the claim in question may authorize the court to dismiss it; but after the dismissal, when a formal motion for reconsideration was filed on well-founded ground, the respondent Judge should not have resorted to legal technicalities in maintaining his order of dismissal, for he should have realized that the claim involves a big amount of money and was duly admitted

by the other party. Thus, we find that the respondent Judge committed a grave abuse of discretion amounting to a virtual refusal to perform his duty to liberally apply and construe our Rules of Court which requires our courts of justice, in the exercise of their functions, to act reasonably and not capriciously, and enjoins them not to commit grave abuse of discretion that may deprive the parties of well asserted right or rightful claim.

Anent the respondent's contention that the remedy was appeal from the disputed orders, we find that, ordinarily, in cases like the one at bar, appeal is the proper remedy; but in this particular case, were we to apply the ordinary rule, since the time to appeal might have expired and the order of dismissal in question might have become final, actually the petitioner may have no adequate remedy to protect its right and interest in the matter. Certainly, were we to dismiss the case on the technical ground that the remedy was appeal, a glaring abuse of discretion may remain uncorrected and may produce its legal effect, thereby depriving the petitioner of its right to substantiate its claim amounting to P100,000, which was already admitted by the administrator of the estate of the deceased as still unpaid.

Wherefore, the petition is hereby granted, and the orders of July 10, 1956 and August 30, 1956, are hereby set aside and the respondent Judge ordered to hear and decide the petitioner's claim in accordance with law. Without costs.

*Paras, C. J., Padilla, Montemayor, Bautista Angelo, Reyes, J. B. L., and Felix, JJ., concur.*

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