

EMETERIO ORBE, PETITIONER-APPELLANT, VS. HON. ENRIQUE B. INTING, IN HIS CAPACITY AS JUDGE, CITY COURT, BRANCH II; FLORENTINA BALCITA AND PANFILO BALCITA, RESPONDENTS-APPELLEES.

G.R. No. L-28998. August 31, 1970

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

We dismiss as frivolous petitioner-appellant's appeal from the lower court's order of dismissal of his petition for a writ of certiorari against respondent city court's order denying his motion for production or inspection of documents allegedly to aid him in preparing his defense as defendant in a simple collection case.

On July 5, 1967, private respondents, the Balcita spouses as owners of Ine's Store" in Davao City, had filed a collection case against petitioner as defendant before respondent city court, for merchandise worth P3,112.70* purchased by petitioner on a cash basis. The purchases were evidenced by three checks totalling P2,183.50 issued by petitioner as payment, which were however dishonored by the drawee bank for lack of funds and a purchase order for P928.50 likewise issued by petitioner.

Petitioner, in his answer of July 27, 1967 to the complaint, admitted having issued the rubber checks, but claimed that he did so only to accommodate certain unnamed persons, who, he claimed, were the actual buyers of the merchandise and debtors of respondents -sellers.

After several postponements of trial obtained by petitioner, the trial of the case was reset for trial for the fourth time on September 22, 1967. Petitioner then filed on September 15, 1967 a motion for the production and copying of all the documents, particularly the invoices, evidencing the sale of the merchandise to him, and to set the time and place and manner of making the inspection and taking copies thereof, invoking the provisions of Rule 27, section 1(a) of the Rules of Court.[1] Respondents, in their opposition thereto, attached true copies of the three rubber checks and purchase order issued by petitioner. By virtue thereof, respondent city court thereupon denied on September 21, 1967 petitioner's motion for production, ruling furthermore that no good cause would be served by production of the supposed invoices sought by petitioner.

In an obvious dilatory move to forestall the trial of the case set for September 22, 1967, petitioner filed on the same date the present action for certiorari with the Court of First Instance of Davao, to annul respondent court's denial of his motion for production and to restrain it from continuing with the scheduled trial.

The lower court heard the parties on September 27, 1967 on petitioner's motion for a preliminary injunction and on the same date issued its denial order, ruling that "this court cannot find a valid or justifiable reason to grant this petition, there being no grave abuse of discretion performed by the Respondent Judge in denying the motion in question and that he acted properly within the limits of his jurisdiction by exercising his sound discretion in resolving the motion presented to him for consideration. Besides the petitioner does not satisfy this court in his

explanation to prove that he has a clear, undisputable right to the relief demanded and that a great or irreparable injury would result to the applicant if respondent Judge would continue the act and try said Civil Case No. 1116-B."

Thereafter, on October 12, 1967, upon respondents' motion and the lower court's finding on the issues reiterated anew by the parties that the petition lacked merit for the reasons stated in its previous order of September 27, 1967, the lower court ordered the dismissal of the petition.

Petitioner, nevertheless, filed the present appeal.

It is evident that no error of law, much less any grave abuse of discretion, was committed by respondent court in denying petitioner-appellant's motion for production of documents, since respondents had already furnished him with true copies of the evidences of his indebtedness consisting of the three rubber checks and the purchase order and there was no good cause shown by him for insisting on production before trial of the supposed sales invoices.

The purpose of the rule, which dates back to our old Code of Civil Procedure (Act 190), "is to furnish litigants with a speedy and summary mode of obtaining evidence necessary to the immediate re-resolution of a controversy before the court." [2] The application for production of the desired documents, under the rule's requirements, "should describe them with sufficient certainty and state positively: (1) the existence of the described documents; (2) the possession or control of them by the adverse party, his servant, or agent; (3) the information wanted; and (4) that the books and papers referred to, contain such entries and that the latter are material and necessary to a proper determination of the issues involved." [3]

Petitioner utterly failed to meet the rule's requirements as to purpose, existence of the documents, materiality and necessity. The trial of the case was already scheduled on September 22, 1967 (his motion having been denied on the eve thereof) and he could just as speedily and expeditiously accomplish at the trial what he purportedly sought through the production of the invoices, to wit, that the unnamed persons whom he allegedly accommodated as the actual buyers had manifested to him that they had not received all the goods requisitioned by his purchase orders but only so much thereof as appeared in the invoices.

Yet the trial was actually held by respondent court on September 23, 1967 as scheduled with respondents having presented their evidence and documentary exhibits consisting of the three rubber checks and purchase order issued by petitioner, and the record fails to show that petitioner ever questioned respondents on the alleged invoices, or present secondary evidence thereof, or present the testimonial evidence either of himself or of the unnamed actual buyers allegedly accommodated by him, with reference to his purported defense. It should furthermore be noted that if such invoices had been in fact issued (contrary to what appears on the record), the originals or purchaser's copies thereof would have been delivered at the time of purchase and in the ordinary course of business to petitioner or his representative(s), and discovery procedures do not permit a party to ask for the production from the adverse party of evidence which he has already under his possession or control.

Respondent court eventually rendered under date of January 17, 1968 its judgment in respondents' favor, with the case having been submitted for decision upon petitioner having failed to present his own evidence, after having secured two continuances of the trial, the last of which was for November 10, 1967. [4] Petitioner appealed respondent court's adverse decision to the court of first instance, where he properly should raise on appeal the very same questions he unwarrantedly raises in this special civil action. But no mention whatever of his appeal is made by petitioner in his brief here filed on October 31, 1968, where he obstinately insists on his gratuitous notion that 'for the showing of a good cause under the law, an allegation in the motion that the documents sought to be produced and inspected are necessary for the preparation of movant's defense is enough' [5] and would make of the trial court a mere automaton without control of the proceedings and without discretion to rule on the

materiality and necessity of the documents sought to be produced.

We find under the circumstances the present appeal was but a frivolous tactic vainly resorted to by petitioner to delay prompt resolution of the collection case and to prolong litigation unnecessarily, unworthy of counsel who is bound to certify as an officer of the court by virtue of his signature on the pleadings that there is good ground to support them and that they are not interposed for delay. Such conduct deserves condemnation as the Court has pointed out in several cases,[6] because it is a glaring misuse of the right to resort to the extraordinary remedy of certiorari in proper cases of grave abuse of discretion by an inferior court and needlessly wastes the time that courts could well devote to meritorious cases. Fortunately, since the enactment of Republic Act 5440 on September 9, 1968, frivolous appeals such as the case at bar may no longer be elevated to the Court as a matter of right, but have to be sought through a petition for review on certiorari, which permits the Court to weed out and peremptorily dis-miss such unmeritorious appeals.

WHEREFORE, the lower court's dismissal order is affirmed and petitioner-appellant's coun-sel shall pay treble costs in both instances. Let this decision be noted in the personal record of said counsel.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.

* A differential of P0.70, after adding up the items, is not accounted for, and is probably due to clerical error in the record submitted.

[1] Section 1. Motion for production or inspection; order. - Upon motion of any party showing good cause therefor and upon notice to all other parties, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photo-graphs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; x x x

[2] 2 Martin's Rules of Court, 2d. Ed., p. 98.

[3] Idem, p. 100.

[4] Respondents' brief, Annex "A" and p. 6.

[5] Petitioner-Appellant's brief, p. 9.

[6] Uyjuangco vs. Equitable Bank, 27 SCRA 1272 (Apr. 30, 1969); J. P. Juan & Sons, Inc. vs. Lianga Industries, Inc., 28 SCRA 807 (July 28, 1969); Pajares vs. Abad Santos, 30 SCRA 748 (Nov. 29, 1969).

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