

**HATHIBHAI BULAKHIDAS, PETITIONER, VS. THE HONORABLE
PEDRO L. NAVARRO, AS PRESIDING JUDGE OF THE COURT OF FIRST
INSTANCE OF RIZAL, SEVENTH JUDICIAL DISTRICT, PASIG, METRO
MANILA,...**

G.R. No. L-49695. April 07, 1986

Ponente: PATAJO, J.

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PATAJO, J.:

This is a petition for review on certiorari of the order of the then Court of First Instance of Rizal, Branch II dated August 21, 1978, dismissing petitioner's complaint.

Petitioner, a foreign partnership, filed a complaint against a domestic corporation, Diamond Shipping Corporation, before the Court of First Instance of Rizal for the recovery of damages allegedly caused by the failure of the said shipping corporation to deliver the goods shipped to it by petitioner to their proper destination. Paragraph 1 of said complaint alleged that plaintiff is "a foreign partnership firm not doing business in the Philippines" and that it is "suing under an isolated transaction." Defendant filed a motion to dismiss the complaint on the ground that plaintiff has no capacity to sue and that the complaint does not state a valid cause of action against defendant.

Acting on said motion to dismiss, the Court of First Instance dismissed the complaint on the ground that plaintiff being "a foreign corporation or partnership not doing business in the Philippines it cannot exercise the right to maintain suites before our Courts."

Hence, this petition.

The issue of whether or not a foreign corporation not engaged in business in the Philippines can institute an action before our courts is already well settled in this jurisdiction.

Aetna Casualty and Surety Co. vs. Pacific Star Lines, 80 SCRA 635, is a case similar to the present one in that the action is also one for recovery of damages sustained by cargo shipped on defendants' vessels. Defendants set up the defense that plaintiff is a foreign corporation not duly licensed to do business in the Philippines and, therefore, without capacity to sue and be sued. In overruling said defense, this Court said:

"It is settled that if a foreign corporation is not engaged in business in the Philippines, it may not be denied the right to file an action in Philippine courts for isolated transactions.

"The object of Sections 68 and 69 of the Corporation Law was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts. It was never the purpose of the Legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines, from securing redress in the Philippine courts.

In *Mentholatium Co. Inc. et al. vs. Mangaliman, et al.*, this Court ruled that:

'No general rule or governing principle can be laid down as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Indeed, each case must be judged in the light of its peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. (*Traction Cos. v. Collectors of Int. Revenue* [C.C. A. Ohio], 223 F. 984, 987.) The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization. (*Griffin v. Implement Dealers Mut. Fire Ins. Co.*, 241 N.W. 75, 77; *Pauline Oil & Gas Co. vs. Mutual Tank Line Co.*, 246 P. 851, 852, 118 Okl. 111; *Automotive Material Co. vs. American Standard Metal Products Corp.*, 158 N.E. 698, 703, 327 Ill. 367.)'

And in *Eastboard Navigation, Ltd. et al vs. Juan Ysmael & Co., Inc.*, this Court held that:

'(d) While plaintiff is a foreign corporation without license to transact business in the Philippines, it does not follow that it has no capacity to bring the present action. Such license is not necessary because it is not engaged in business in the Philippines. In fact, the transaction herein involved is the first business undertaken by plaintiff in the Philippines, although on a previous occasion plaintiff's vessel was chartered by the National Rice and Corn Corporation to carry rice cargo from abroad to the Philippines. These two isolated transactions do not constitute engaging in business in the Philippines within the purview of Sections 68 and 69 of the Corporation Law so as to bar plaintiff from seeking redress in our courts. (*Marshall-Wells Co. vs. Henry. W. Elser & Co.* 49 Phil., 70; *Pacific Vegetable Oil Corporation vs. Angle O. Singson*, G.R. No. L-7917, April 29, 1955.)'

Again, in *Facilities Management Corporation vs. De la Osa*, 89 SCRA 131, 139, following *Aetna Casualty & Surety Co. vs. Pacific Star Line*, supra, held a foreign corporation not engaged in business in the Philippines is not barred from seeking redress from the courts of the Philippines.

The case of *Atlantic Mutual Insurance Co. vs. Cebu Stevedoring Co.*, 17 SCRA 1037, cited by respondent finds no application to the case at bar. It must be observed in the Atlantic case that there was no allegation in the complaint that the two foreign corporations involved therein were not engaged in business in the Philippines. All that was averred in the complaint was that they were both foreign corporations existing under the laws of the United States. Thus, the qualifying circumstance of the said foreign corporations' capacity to sue is wanting. Contrary to the Atlantic case, the complaint filed by petitioner herein sufficiently alleged that it is a foreign partnership (or corporation) not engaged in business in the Philippines and that it was suing under an isolated transaction.

WHEREFORE, the order of respondent Court dismissing the petitioner's complaint is hereby set aside and the case remanded for further proceedings, with costs against private respondent.

SO ORDERED.

Teehankee, C.J., Melencio-Herrera, Plana, and Gutierrez, Jr., JJ., concur.

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