

W. W. DEARING, PETITIONER, VS. FRED WILSON & CO., INC. AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-25884. July 25, 1980

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari to review the decision of the Court of Appeals in CA-G.R. No. 33904-R between the same parties, but in reverse positions, which set aside in a certiorari proceeding filed therewith the ruling of the Court of First Instance of Manila in Civil Case No. 47289, where herein petitioner was the plaintiff and herein private respondent the defendant, admitting in evidence the deposition of the plaintiff-petitioner taken in Los Angeles, California, U.S.A. upon written interrogatories.

As found by the Court of Appeals, the facts are as follows:

"On June 13, 1961, W. W. Dearing, an American citizen, filed a suit docketed as Civil Case No. 47289 of the Court of First Instance of Manila, against the Fred Wilson and Co., Inc., for the payment of P22,000.00 as the equivalent of 4 months' vacation leave and 2 first class tickets from the Philippines to the U.S. and back, P15,000.00 representing bonuses for 1959 and 1960, exemplary damages, and P3,000.00 as attorney's fees, under the terms of a contract of employment entered into on January 27, 1958 between the defendant as employer and the plaintiff as employee. Defendant filed its Answer dated July 31, 1962.

"Before the hearing and trial on the merits of Civil Case No. 47289, counsel for respondent Dearing filed a notice to take the deposition of said respondent W. W. Dearing in Los Angeles, U.S.A., upon written interrogatories.

"On June 18, 1963, defendant filed a 'Manifestation, Objection to the Deposition of W. W. Dearing and Motion to Rule on Objections', alleging that it was improper and violative of the spirit of the Rules of Court for said plaintiff to establish his case only by deposition, especially considering the express announcement by his counsel that Dearing intended to present no other evidence in the case except his deposition sought to be taken.

"On December 24, 1963, defendant received a notice from the lower court that the deposition of the plaintiff had been received by it on October 25, 1963.

"On January 14, 1964, defendant filed a 'Motion to Strike Out and Suppress Deposition' on the ground that Sec. 27, Rule 24 of the Rules of Court, requiring notice to be given by the officer taking the deposition, had not been complied with and praying that the deposition of the plaintiff upon written interrogatories be stricken out.

"On January 16, 1964, plaintiff filed his 'Opposition to Motion to Strike Out, and Suppress Deposition', on the ground that such objection should be made at the trial and at this stage it was premature and that the required notice had been complied with. The trial court denied defendant's motion to strike out and suppress deposition.

"When the case was heard again, plaintiff announced that the deposition would be introduced as the only evidence for the plaintiff to which defendant objected on two main grounds, namely: that respondent failed to show that the requisites provided for in the Rules of Court had been satisfactorily complied with and that,

furthermore, said deposition had been irregularly and improperly taken because the procedure followed by the officer who took said deposition, the Vice-Consul of the Republic of the Philippines for Los Angeles, California, U.S.A., did not follow the requirement that the testimony of the deponent be "taken stenographically."

"By court order dated March 11, 1954, defendant's objections were overruled and the deposition of the plaintiff admitted.

"On March 24, 1964, defendant filed a motion for reconsideration of the above order.

"On March 31, 1964, plaintiff filed his 'Opposition to Motion for Reconsideration.'

"On April 6, 1964, defendant filed his 'Reply' reiterating the grounds stated in his Motion for Reconsideration.

"By court order dated April 16, 1964, defendant's motion for reconsideration was denied.

"On April 25, 1964, defendant in civil case No. 47289 filed, as petitioner, the present special civil action against the plaintiff and trial judge in said case as respondents, for Certiorari with Preliminary Injunction, alleging that the trial court acted with grave abuse of discretion in its orders dated March 11, 1964 and April 16, 1964, and praying that (1) a preliminary injunction be issued to restrain respondents from taking any further action in Civil Case No. 47289 including the hearing or trial thereof until further orders of this Court, (2) after elevating the records of the said case to this Court and hearing thereof, the orders complained of be declared null and void and set aside, (3) and the deposition of W. W. Dearing be declared inadmissible in evidence, with costs against respondent.

"By Resolution of this Court dated April 29, 1964, this petition was dismissed outright for lack of merit. Upon motion for reconsideration by petitioner, the Petition was given due course and a writ of preliminary injunction was ordered issued upon the filing of a P500.00 bond by petitioner.

"On September 11, 1964, respondents filed their Answer alleging that:

"(1) The proper basis for the admission of the deposition of Dearing was laid and the circumstances for the taking of deposition were justified by the provisions of the Rules of Court. Petitioner offered no proof that respondent wilfully refused to testify in open court;

"(2) Sufficient notice of the filing of the deposition was given to petitioner, first in open court and later by written notice;

"(3) The taking of the deposition direct to the typewriter and not thru stenographic notes signed by the witness and attested to by the deposition officer was sufficient compliance with the requisites of Rule 24, Sec. 17 of the Rules of Court as the rights of the petitioner had been fully protected;

"(4) Petitioner has other adequate and speedy remedy in the ordinary course of law thru appeal;

"(5) This Petition was filed to delay the termination of Civil Case No. 47289 and obstruct the administration of justice."

On this factual background, petitioner now urges upon Us the following assignment of errors:

"I

"RESPONDENT COURT OF APPEALS (HEREINAFTER REFERRED TO AS RESPONDENT COURT) ERRED IN GIVING DUE COURSE TO, AND GRANTING THE PETITION FOR CERTIORARI IN CA-G.R. NO. 33904-R, FOR THE ALLEGED CORRECTION OF THE TRIAL COURT'S RULINGS ON ADMISSION OF EVIDENCE, IN A CASE WHERE SAID TRIAL COURT HAD UNDISPUTED JURISDICTION.

"II

"RESPONDENT COURT ERRED IN SUPPRESSING THE DEPOSITION ON THE GROUND OF THERE HAVING BEEN NO NOTICE GIVEN TO RESPONDENT FRED WILSON & CO., INC. (HEREINAFTER REFERRED TO AS RESPONDENT WILSON) OF ITS FILING, BY THE OFFICER BEFORE WHOM THE DEPOSITION WAS TAKEN, ALTHOUGH RESPONDENT WILSON WAS SUBSEQUENTLY NOTIFIED BY THE TRIAL COURT OF THE FILING OF THE DEPOSITION WITH THAT COURT.

"III

"RESPONDENT COURT ERRED IN SUPPRESSING THE DEPOSITION ON THE GROUND OF ITS HAVING BEEN RECORDED DIRECTLY THROUGH A TYPEWRITER.

"IV

"RESPONDENT COURT ERRED IN NOT HOLDING THAT PETITIONER DID NOT 'PROCURE' HIS ABSENCE FROM THE PHILIPPINES, FOR PURPOSES OF DETERMINING THE ADMISSIBILITY OF HIS DEPOSITION."

As may be seen, the first error assigned by petitioner questions the propriety of the remedy of certiorari for the situation on hand, which involves nothing more than the admission by respondent judge as evidence of the deposition taken abroad of petitioner. The impugned ruling of the trial court was made when counsel for plaintiff-petitioner announced that he was offering the said deposition as the only evidence of plaintiff. Counsel for the defendant objected on the main grounds that plaintiff had failed to show compliance with the requisites of the rules for the taking of depositions, particularly, the manner of taking directly on the typewriter instead of stenographically and that no notice of the filing of the same was ever sent to defendant or its counsel by the officer who took it. The trial court overruled the objection, and without awaiting further proceedings, the present petition was filed.

It is the contention of petitioner that under the foregoing facts, the remedy of private respondent is not certiorari but merely to assign in its brief on appeal, should one be necessary, after final judgment has been rendered by the trial court, such ruling as an error. Petitioner is correct.

Certiorari presupposes either lack or excess of jurisdiction or grave abuse of discretion. In the instant case, no question of jurisdiction is possible simply because undoubtedly the trial court had jurisdiction over petitioner's case, considering its nature and the amount involved.

Anent grave abuse of discretion, *Icutanim vs. Hernandez* 81 Phil. 161, it was held that appeal and not certiorari, is the proper remedy for the correction of any error as to the competency of a witness committed by an inferior court in the course of trial, since such a situation involves an error of law constituting a violation of the rules of evidence, apart from the fact that to allow any special civil action under the circumstances would lead to multiplicity of suits and lead to protracted if not endless trials. Similarly and for the same reasons, that rule would apply to the admission or rejection of a deposition being offered as evidence. Thus, the jurisprudence rule is that the admission or rejection of certain interrogatories in the course of discovery procedure could be an error of law but not an abuse of discretion, much less a grave one. Again, the reason for this rule is that the procedure for the taking of depositions whether oral or thru written interrogatories is outlined in the rules leaving no discretion to the court to adopt any other not substantially equivalent thereto. Should the judge substantially deviate from what the rule prescribes, he commits a legal error, not an abuse of discretion. (*Araneta Inc. vs. Rodas*, 81 Phil. 506) Hence, if for the reason alone that certiorari in the Court of Appeals was not the appropriate remedy open to private respondent, We could already dismiss the instant petition.

The gripes of petitioner in its second and third assignments of error deal with matters that are so trivial that ought not to have reached this Court at all. Private respondent admittedly received notice from the court, albeit not from the Vice-Consul before whom petitioner's deposition was taken, of the filing with it of the same. Obviously, this is a harmless error of form. This Court has already held that such notice from the court or any similar one for that matter, provided the adverse party is informed of such filing should be considered sufficient substantial compliance with the rules. (Moran, Rules of Court, Vol. I, 1952 ed., p. 455; Philippine National Bank vs. Olila, No. L-8189, March 23, 1956 (98 Phil. 1002, unreported); Velayo's Digest New Series, Vol. VIII p. 12.) And We see no point at all in the objection of private respondent, sustained by the Court of Appeals, that the deposition was taken directly on the typewriter instead of stenographically as specified in the rules, particularly because respondent has not alleged any error or mistake prejudicial to it in the typing of the deposition. In many instances, taking of a deposition direct on the typewriter is even more convenient because the deponent can readily read his testimony even while it is being recorded and could always immediately call attention to any error therein.

After careful deliberation, We also sustain petitioner's fourth assignment of error. We are convinced that petitioner did not deliberately "procure his absence" for the purpose of avoiding having to testify personally before the court. He had been dismissed from the service by private respondent. He was a foreigner with no home in Manila. Consequently, he left, according to the record, a few days after filing his complaint. And in this connection, the Court notes that while the complaint was filed on June 13, 1961, private respondent filed its answer, for reasons not disclosed by any of the parties, only on July 31, 1962 or more than a year afterwards. For private respondent to expect petitioner to wait here in Manila for the trial of the case that long is too much. Indeed, it was, as the trial court observed, better that petitioner left early in order to seek employment in his homeland thereby to minimize the damages for which respondent could be liable for his allegedly unjust dismissal.

Moreover, respondent could have had a lawyer to represent it in the taking of petitioner's deposition in Los Angeles. On the other hand, evidently, respondent's own evidence was to be presented in the absence of the petitioner. For obvious reasons, respondent could also derive practical and tactical advantages in such circumstance.

It is, therefore, Our conclusion that respondent's position has no substantial merit and the Court of Appeals erred in rendering judgment in its favor.

WHEREFORE, the decision of the Court of Appeals is hereby reversed and the ruling of the trial court admitting in evidence petitioner's deposition is sustained, without prejudice to the continuation of the trial to its logical conclusion. Costs against private respondent.

Aquino, Concepcion, Jr., and De Castro, JJ., concur.

Abad Santos, J., in the result.

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