

BENJAMIN M. BITANGA, PETITIONER, VS. HON. NOEMI J. BALITAAN, PRESIDING JUDGE, REGIONAL TRIAL COURT OF PARAÑAQUE CITY, BRANCH 258 AND EDGARDO L. SEVILLA, ET AL., RESPONDENTS.

Ponente: DIAMANTE, FRANCHITO N., J.

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DIAMANTE, FRANCHITO N., J.:

The instant Petition for Certiorari with Urgent Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction filed under Rule 65 of the Rules of Court seeks to reverse and set aside the Orders dated July 28, 2014[1] and August 14, 2014,[2] respectively, of the Parañaque City Regional Trial Court, Branch 258, in a complaint for “Declaration of Nullity of Contracts”,[3] docketed as Civil Case No. 08-0385.

With the filing of private respondents' Comment to the Petition and the petitioner's Reply thereto, the case at bench is hereby declared submitted for decision pursuant to Our Resolution dated November 12, 2014.[4]

On October 20, 2008, private respondents Edgardo L. Sevilla, Elizabeth Sevilla, Ciara Marise Sevilla, Miguel Sevilla, Kristina Sevilla, Retno Sevilla, Ramoncito Yudistiro Sevilla, Rozelle Sevilla, Ursula Sevilla Nido, Luis L. Sevilla, Carina Sevilla Trajano and Teodoro Sevilla filed the aforesaid complaint against Planters Development Bank and petitioner Benjamin M. Bitanga before the Parañaque City RTC, Branch 258. Their complaint sought, among others, to nullify the Deed of Exchange dated May 26, 1996 entered into by and between Elisa L. Sevilla and Macrogen Realty Corporation, and the Deed of Assignment dated December 4, 2006 executed by and between petitioner and Planters Development Bank.

On October 18, 2013, petitioner filed a Motion to Dismiss (Demurrer to Evidence)[5] after private respondents had rested their case based on the ground that upon the facts and the law, private respondents had shown no right to relief. On February 10, 2014,[6] the public respondent denied his motion and set the initial presentation of his evidence.

On April 30, 2014, petitioner was supposed to testify on the matters set forth in his Answer/Judicial Affidavit but he failed to appear at the hearing. His counsel simply relayed to public respondent that petitioner had an emergency to attend to. As a result, the public respondent directed him to show cause why he should not be cited for contempt for failure to appear at said hearing, despite notice, through the Order dated April 30, 2014.[7] The initial presentation of petitioner's evidence was reset to June 9, 2014, and later, to July 28, 2014 per Order dated May 26, 2014.[8]

In compliance with public respondent's show cause order, petitioner filed on June 17, 2014 a Manifestation[9] and attached a machine copy of his medical certificate to justify his absence at the April 30, 2014 hearing and to prove that he was suffering from acute tonsillopharyngitis at that time.

At the scheduled July 28, 2014 hearing, petitioner again failed to appear in court without prior explanation or excuse. Private respondents moved to declare him in default for failing to appear at April 30, 2014 and July 28, 2014 hearings. The public respondent, in open court, then issued the assailed Order dated July 28, 2014, the

pertinent portion of which reads:

xxx xxx xxx

“In view of the continuing absence of defendant Benjamin M. Bitanga and for his failure to show cause for his none (sic) appearance during the last hearing on April 30, 2014, as prayed for by the plaintiffs, the defendants' (sic) right to present Benjamin Bitanga is hereby considered waived.

As prayed for by the defendant, let subpoena duces tecum ad/testificandum (sic) be issued to Gerardo E. Del Rosario, Assistant Director for Corporate Filing and Records Division, Securities and Exchange Commission (SEC).

For the mean time, reset the continuation of defendants (sic) evidence to September 17, 2014 at 8:30 in the morning.

SO ORDERED.”[10]

Petitioner immediately moved to have the aforesaid Order reconsidered by alleging that he was not able to appear and testify at the July 28, 2014 hearing “due to unavoidable circumstances” and that he had to leave for abroad. The Judicial Affidavit he submitted on April 25, 2014 also clearly showed his intention to appear and to testify in court.[11] Nonetheless, in the Order dated August 14, 2014, his motion for reconsideration was denied.

Hence, the instant petition alleging that:

I.

THE RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, WHEN IT UNJUSTIFIABLY DECLARED THAT THE PETITIONER HAS ALREADY WAIVED HIS RIGHT TO PRESENT HIS TESTIMONY.

A. THE GROUND RELIED UPON BY THE RESPONDENT JUDGE IN WAIVING THE RIGHT OF THE PETITIONER IS ERRONEOUS.

B. THE JURISPRUDENCE INVOKED BY THE RESPONDENT JUDGE IS NOT APPLICABLE IN THE INSTANT CASE.

C. THE FAILURE OF PETITIONER TO APPEAR BEFORE THIS HONORABLE COURT IS DUE TO JUSTIFIABLE REASONS.

D. THE PETITIONER MADE AN EFFORT IN GOOD FAITH, THROUGH THE UNDERSIGNED COUNSEL, TO SECURE THE APPEARANCE OF ANOTHER WITNESS TO TESTIFY ON 28 JULY 2014 SO AS NOT TO DELAY THE PROCEEDINGS OF THE CASE.

In sum, petitioner lamented that public respondent's act of considering his right to present his testimony as having been waived was highly irregular and improper because he was deprived of his day in court. He argued that he should not be solely blamed for the delays in the proceedings as private respondents themselves had thrice asked for a resetting of the case, which was generously granted by the trial court. He believed that he should be afforded that same consideration as his failure to attend the scheduled hearings was justifiable for he was suffering from tonsillopharyngitis and/or was abroad at that time. In issuing the first assailed Order dated July 28, 2014, respondent judge had acted arbitrarily in abdicating his right to present his testimony because there was no prior warning given to him in the earlier Order dated April 30, 2014.[12] He further argued that the jurisprudence[13] cited by the respondent judge in the second assailed Order dated August 14, 2014 pertains to administrative cases filed against judges who failed to comply with the reglementary period in deciding cases and is, thus, not applicable to him.

We are not persuaded.

Postponements lie in the court's discretion.[14] A motion for postponement should not be filed on the last hour especially when there is no reason why it could not have been presented earlier.[15]

In the case at bench, petitioner was ordered by public respondent to appear at the April 30, 2014 hearing but failed to appear and testify in court on said date. Instead of sending a prior notice to the court or to private respondents, what the petitioner's counsel did was to simply tell the court on the date of the hearing itself, that his client, the petitioner, could not attend the same as he had “an emergency to attend to” without elaborating the details thereof and then moved for a resetting of the case.

The facts and circumstances of the case also do not support petitioner's claim that the public respondent was partial and bias in the conduct of the proceedings. Public respondent, to Our mind, displayed liberality in granting his request for a postponement of the April 30, 2014 hearing despite the apparent lack of sufficient explanation of his absence. In the Order dated April 30, 2014, petitioner was additionally given the chance to explain his absence when he was directed by public respondent to show cause, within seventy two (72) hours from receipt of the Order, on why he should not be cited for contempt of court for failure to appear at the hearing despite due notice. However, despite receipt of the notice, petitioner only complied with said show cause order on June 20, 2014, or more than a month after he received the notice on May 15, 2014,[16] without offering an explanation or apology or seeking leave of court for the belated filing of his Manifestation.

We have also observed that, based on the machine copy of the Medical Certificate[17] attached in his Manifestation, petitioner likewise had the opportunity to inform the court of his absence and to present a copy of his Medical Certificate on the day of April 30, 2014 hearing because he had consulted his doctor a day before it. Despite his undertaking that he would submit the original copy of his Medical Certificate on the next scheduled hearing, petitioner failed to fulfill the same as he again did not appear in the July 28, 2014 hearing without prior explanation or excuse, which eventually led to the issuance of the assailed July 28, 2014 Order. Public respondent, instead of holding him in contempt for not complying with the lawful orders of the court, opted to consider petitioner to have waived his right to present his testimony.

From the foregoing, it is evident that public respondent did not gravely abuse her discretion in waiving petitioner's right to present his testimony in view of his continuing absence and failure to show cause for his non-appearance at the April 30, 2014 hearing. Petitioner had utterly disobeyed the clear directive of the court to comply with the show cause order within the prescribed period, and for deliberately asking postponements at the last hour without offering any documentary evidence such as affidavits, sworn certificate or a medical certificate showing that the character of his illness is such as to render his non-attendance at the April 30, 2014 hearing excusable,[18] or a copy of his passport, airline tickets, travel order, or other proof of travel to support his allegation that his travel abroad was due to unavoidable circumstances and thus, he could not attend the July 28, 2014 hearing.

Moreover, We find no merit in petitioner's allegation of good faith because of his effort to secure the appearance of another witness to testify on the July 28, 2014 hearing after realizing or knowing that he would not be able to appear and testify on said date.[19] If indeed petitioner was telling the truth, it puzzles Us then why he had never bothered to inform public respondent that he would not be available at the hearing when he knew all along that he had to travel abroad at said date? We also note that the public respondent was not able to promptly act upon his Ex-Parte Motion for the Issuance of Subpoena Duces Tecum Ad Testificandum because it was filed only on July 22, 2014, or a few days before the July 28, 2014 hearing.

Petitioner is to be reminded that the court does not allow the relaxation of the rules based solely on last minute empty excuses as “rules prescribing the time for doing specific acts or for taking certain proceedings are

considered absolutely indispensable to prevent needless delays and to orderly and promptly discharge judicial business.”[20] As declared by the Supreme Court in the case of Rural Bankers Association of the Philippines vs. Tanghal-Salvaña:

“Obedience to the requirements of procedural rules is needed if the parties are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction. Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.”[21]

WHEREFORE, in view of the foregoing, the instant petition is hereby DENIED and the Orders dated July 28, 2014 and August 14, 2014, respectively, issued by the Parañaque City Regional Trial Court, Branch 258 in Civil Case No. 08-0385 are AFFIRMED.

Costs against the petitioner.

SO ORDERED.

Dimaampao, J. B., Chairperson, and Manahan, C.S., JJ., concur.

He even made an effort to secure the appearance of another witness, Mr. Del Rosario of the Securities and Exchange Commission, to testify on the July 28, 2014 hearing but unfortunately,

is a total abuse of discretion, which is tantamount to lack of jurisdiction and is highly irregular and improper in a proceeding because he was denied of his day in court. He argued that the delays in the proceedings below was not solely attributable to him. During the presentation of private respondents' evidence, the latter even asked for the resetting of the case thrice (3) which were generously granted by public respondent. He should be afforded the same consideration given to private respondents, bearing in mind that his absences were justifiable as he was suffering from tonsillopharyngitis and he was abroad during the scheduled hearing. He also pointed out that the Order dated April 30, 2014 did not contain a warning that it would be his last opportunity to give his testimony. It was thus arbitrary on the part of respondent judge to instantaneously abdicate his right to present his testimony absent any warning. Petitioner was also scheduled to testify on June 9, 2014 but when public respondent had issued the Order resetting the hearing to July 28, 2014, which at that time petitioner was already abroad.

Moreover, petitioner argued that the case of Gonzales vs. Torres[22] cited by public respondent in denying his motion for reconsideration of the assailed Order is not applicable to the instant case as the cited case was about an administrative complaint filed against Judge Torres for not complying with the reglementary period in deciding cases. In case of reception of evidence, the Rules of Court does not specifically provide for a period within which the same should be completed.

We are not convinced.

First, As laid down by respondent, petitioner failed to explain his failure to attend the scheduled hearings. His counsel manifested in open court that petitioner could not attend due to “emergency reasons” but could not explain or state what those “emergency reasons” were when asked by the court. Private respondents opposed his motion to reset the case because it was not substantiated but public respondent granted the motion in the interest

of justice. The manifestation was also filed more than a month, instead of 72 hours after petitioner has received the show cause order, assuming petitioner had indeed received the Order on May 15, 2014 as shown in the Registry Card No. 42048. He neither expressed any apology for the belated filing or sought leave of court for his belated filing. Public respondent was being lenient or gracious when she opted to declare his right to present his testimony waived, instead of finding him guilty of contempt when he failed to comply with her order.

The medical certificate dated June 2, 2014 signed by Ma. Bella German showed that petitioner consulted her on April 29, 2014 or a day before the scheduled hearing and he was prescribed only paracetamol, co-amoxiclav and bactidol gargle. He also undertook to present the original copy of his medical certificate during the scheduled hearing on 28 July 2014. Unfortunately, he failed to show up on said date and failed to substantiate or show cause why he failed to appear in the April 30, 2014 hearing. For this, there is no reason or ground to conclude that grave abuse of discretion was committed. See Section 4, Rule 30 of the Rules of Court. His illness was not severe as to make the absence excusable. No prior motion to reset or notice was sent before the second hearing.

Second, when petitioner again failed to appear in the July 28, 2014 hearing, his counsel only told the court that he had to travel abroad due to unavoidable circumstances which was objected to by Sevilla and granted by the court. The decision to waive his right to testify is proper since petitioner did not show any plane tickets, passport markings, hotel vouchers or receipts to prove that he indeed went abroad during the hearing. His counsel merely states, without explanation. See *De Castro vs. De Castro* (589 SCRA 277). The reasons he cited were not unavoidable and one that could not have been foreseen.

Third, petitioner's good faith effort to continue with the proceedings with this attempt to secure the attendance of another witness to testify during the hearing on July 28, 2014 is not supported by circumstances. As his letter request for him to testify was not granted, he filed an Ex-Parte Motion for the issuance of a subpoena to secure the attendance of that witness. Respondent judge even commented during the hearing that she could not have acted on the motion as it was filed late since it was filed on July 22, 2014, or a few days before the July 28, 2014 hearing. The fact that he knew beforehand that the SEC denied his request but failed to inform the court of his unavailability on that hearing is proof of lack of good faith on his part.

Fourth, private respondent belied petitioner's claim that the respondent judge was unfair. The resetting of two motions by Sevilla was due to the unavailability of his witness Melanie Portuga, an employee of MacroGen where petitioner is a director and employed as President.. Sevilla failed to secure the cooperation of petitioner to voluntarily bring to court, he filed a Motion for the Issuance of Sub Poena Ad Testificandum for her to appear in court. The resetting of hearing by Sevilla was brought about by the failure of the process server to locate Portuga at her given address or to serve the subpoena to her.

In the case of petitioner, his motions to reset was caused by his own omission and failure to cooperate with the proceedings in court. He either offered no explanation or substantiate his explanation. All he had were empty excuses.

Comment on Petition:

[1] Rollo, p. 28

[2] Id. at 29-31

[3] Id. at 32-46

[4] Id. at 178

- [5] Rollo, pp. 110-124
- [6] Id. at 125-128
- [7] Id. at 129
- [8] Id. at 134
- [9] Id. at 130-133
- [10] Rollo, p. 28
- [11] Id. at 139-145
- [12] Rollo, p. 129
- [13] Gonzales vs. Torres, A.M. No. MTJ-06-1653, July 30, 2007, 528 SCRA 490
- [14] Hap Hong Hardware Co., Inc. vs. Philippine Milling Co., G.R. No. L-16778, May 23, 1961
- [15] Republic vs. Sandiganbayan, G.R. No. 123997, January 20, 1999, 301 SCRA 237
- [16] Page 3 of the August 14, 2014 Order, Rollo, p. 31
- [17] Id. at 149
- [18] Section 4, Rule 30 of the Rules of Court
- [19] Paragraph 66 of Petition, Rollo, p.19
- [20] Bolos vs. Bolos, G.R. No. 186400, October 20, 2010 citing Laguna Metts Corporation vs. Court of Appeals, G.R. No. 185220, July 27, 2009, 594 SCRA 139, 143, citing Yutingco vs. Court of Appeals, 435 Phil. 83 (2002); citing Gonzales vs. Torres, A.M. No. MTJ-06-1653, July 30, 2007, 528 SCRA 490
- [21] G.R. No. 175020, October 4, 2007, 534 SCRA 721, 740-741.
- [22]

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