

LIRAG, MAÑALAC, SARANGAYA, AND TANCO SECURITIES CORPORATION, PETITIONER, VS. HONORABLE RICARDO D. GALANO IN HIS CAPACITY AS THE PRESIDING JUDGE OF BRANCH XIII, CFI OF MANILA, ES...

G.R. No. L-46244. August 18, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A Petition for Certiorari, Prohibition and Mandamus instituted by petitioner to annul the Order of respondent Judge of the then Court of First Instance of Manila, Branch XIII, dismissing Civil Case No. 100798, entitled "Lirag, et als., Securities Corp. vs. Estrellita A. Ramos, et als."

The factual setting, shorn of non-essentials for purposes of this Resolution, follows:

1. On 12 January 1976, petitioner filed an action for a Sum of Money against private respondents, before the then Court of First Instance of Manila, Branch XIII (Civil Case No. 100798), presided over by respondent Judge.
2. On 29 August 1976, private respondents filed a Motion for Bill of Particulars alleging, among others, that the allegation in the Complaint with respect to the accountability of each of the defendants, is vague and indefinite.
3. On 20 September 1976, respondent Judge issued an Order, copy of which was received by petitioner on 5 October 1976, granting the Motion and giving petitioner-plaintiff a period of ten (10) days from receipt of a copy of the Order within which to file the Bill of Particulars, or an Amended Complaint.
4. There was no compliance by petitioner.
5. On 15 November 1976, private respondents filed a Motion to Dismiss on the ground that notwithstanding the lapse of sufficient time, petitioner had failed to present a Bill of Particulars or an Amended Complaint as directed by the Court. Said Motion to Dismiss was set for hearing on 1 December 1976.
6. At said hearing, upon petitioner's request, respondent Court granted it five (5) days, to expire on 6 December 1976, within which to file an Amended Complaint.
7. On 6 December 1976, petitioner filed an ex-parte Motion for an extension of another seven (7) days, or up to 13 December 1976, within which to file either a Bill of Particulars or an Amended Complaint, which respondent Court again granted in its Order of 14 December 1976.
8. On 13 December 1976, petitioner requested for a third extension of another seven (7) days from 13 December 1976 within which to submit its Amended Complaint, which period expired on 20 December 1976. Still, no compliance by petitioner.
9. On 5 January 1977, private respondents filed a second Motion to Dismiss, invoking Section 3 of Rule 17, which was set for hearing on 13 January 1977.

10. On the scheduled date of hearing, petitioner did not appear but, instead, filed an "Opposition to Motion to Dismiss giving as reasons pressure of work, relocation of their law office, etc."

11. On 13 January 1977, respondent Judge issued the questioned Order reading as follows:

"Finding the motion to dismiss filed by counsel for the defendants on January 5, 1977, for the reasons stated therein, to be meritorious, the above entitled case should be, as it is hereby DISMISSED. Without pronouncement as to costs." (Rollo, p. 5)

12. On 24 February 1977, petitioner filed a Motion for Reconsideration of the afore-quoted Order on the ground that it is contrary to law and/or Jurisprudence because it has a meritorious case and the dismissal is a denial of due process. Further, that even if the Complaint be dismissed, the same should be without prejudice. Respondent Judge denied reconsideration in its Order of 3 March 1977.

The sole question for determination is whether or not respondent Judge acted with grave abuse of discretion in refusing to reconsider his Order dismissing the complaint below for failure to prosecute.

We rule in the negative.

Section 1 (c) of Rule 12 of the Rules of Court provides:

"Section 1. Motion for bill of particulars. –

xxx xxxxxx

(c) Refusal. - If an order of the court to make a pleading more definite and certain or for a bill of particulars is not obeyed within ten (10) days after notice of the order or within such other time as the court may fix, the court may order the striking out of the pleading to which the motion was directed or make such other order as it deems just. It may, upon motion, set aside the order, or modify it in the interest of justice."

Rule 17 on "Dismissal of Actions" also states:

"Sec. 3. Failure to prosecute. - If plaintiff fails to appear at the time of the trial or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court."

Upon the facts, it is clear that petitioner had failed, if not "refused", to comply with the Orders of respondent Judge to file a Bill of Particulars or an Amended Complaint notwithstanding the extensions of time granted him. Pursuant to Section 1 (c) of Rule 12, therefore, the Court could "make such other order as it deems just." Respondent Court deemed it just to dismiss the case for failure to prosecute under Section 3, Rule 17 of the Rules of Court.

Respondent Court did not exceed the bounds of judicial discretion thereby. It acted well within its prerogatives to dismiss the case, even with prejudice, a matter addressed to its sound discretion. If, indeed, petitioner had a meritorious case and that its claim was infeasible, it should have prosecuted its case promptly and

expeditiously. As it was, petitioner disregarded the Orders of respondent Court. Petitioner cannot justifiably claim that it was denied substantial justice and due process since it was given all the opportunity to file the pleadings required, but it chose not to.

We find the Order complained of, therefore, consistent with law and jurisprudence.

"The striking out of a complaint by the lower court upon motion of the defendant because of the failure of plaintiff to comply with the order requiring him to submit a bill of particulars is a ground for dismissal equivalent to an adjudication on the merits unless otherwise provided by the court."(Vda. de Quillosa vs. Salazar, G. R. No. L-18172, July 20, 1968, 14 SCRA 656)

ACCORDINGLY, the Petition is hereby dismissed. Costs against the petitioner.

SO ORDERED.

Paras, Padilla and Sarmiento, JJ., concur.

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