

JULIAN B. DACANAY, PETITIONER, VS. HON. CARMELINO G. ALVENDIA, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA AND CONSOLIDATED MINES, INC., RESPONDENTS.

G.R. No. L-22633. October 31, 1969

Ponente: CASTRO, J.

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CASTRO, J.:

We are asked, by virtue of the present original action for mandamus, to order the respondent Judge Carmelino G. Alvendia* to give due course to the proposed appeal of the petitioner Julian B. Dacanay, as plaintiff in civil case 33872 of the Court of First Instance of Manila.

The antecedent facts and events leading to the present petition, as gleaned mainly from a single-spaced typewritten record on appeal of 93 pages, with appendices A to T and accompanying annexes, are not complicated.

On September 28, 1957 Julian B. Dacanay lodged a complaint with the Court of First Instance of Manila, Branch XVI, presided by the respondent judge, against the Consolidated Mines, Inc. (hereinafter referred to as the respondent corporation), praying that the latter be condemned to pay to him an alleged contingent fee due him in connection with auditing services supposedly rendered by him in the gathering of evidence for the prosecution of civil case 18938 of the Court of First Instance of Manila, entitled "Consolidated Mines, Inc. vs. Benguet Consolidated Mining Co."

On October 17, 1957 the respondent corporation moved to dismiss the complaint on the grounds that Dacanay had no legal capacity to sue and that his claim had already been released. Hearings were had on this motion to dismiss, whereat considerable evidence was introduced, after which memoranda were submitted. Thereafter, by order dated March 27, 1958, the respondent judge deferred action on the said motion "until final decision on the merits is rendered after due trial," because the grounds alleged in the motion "are not indubitable."

On April 21, 1958 the respondent corporation filed its answer containing admissions and denials, and, on the strength of specific defenses stated therein, prayed for the dismissal of the complaint; by way of counterclaim, it asked for damages consisting of attorney's fees and expenses of litigation. On November 14, 1960 it filed an amended answer, with an additional counterclaim of P50,000 for actual and exemplary damages.

On January 30, 1961 Dacanay answered the respondent corporation's counterclaim, with a counterclaim (to the counterclaim) for damages in such amount as may be assessed by the court.

The respondent court then set the case for pre-trial on February 1, 1962. On this date the parties expressly agreed and conceded that the sole issue is whether the respondent corporation had actually recovered and received from the Benguet Consolidated Mines Co. any amount or amounts on account of items 2, 3 and 4 as specified in the letter dated February 8, 1954 of Ollada, Dacanay & Associates, namely, shortages in chrome ore inventories, anomalies in the payment of salaries and wages, and fictitious hauling of ore, respectively.

At the hearing had on August 30, 1962 documents were produced in court by the counsel of the respondent corporation in compliance with a subpoena duces tecum issued by the court at the behest of the petitioner. On September 6, 1962 the respondent judge, the petitioner and the latter's counsel examined all the documents, and all these three agreed that "said documents ... have absolutely no relevancy to the issues in this case."

On February 4, 1963 Dacanay filed a motion to admit a first amended complaint; this amended complaint was admitted by the court per its order of May 8, 1963.

On May 21, 1963 the respondent corporation filed an omnibus motion praying for the dismissal of the first amended complaint, or for a reconsideration of the order of May 8, 1963, "so as to bar any amendatory allegations that are contradictory to and inconsistent with the admissions and agreements made by the parties at the pre-trial hearing on February 1, 1962."

The court, by order dated July 15, 1963, (a) dismissed the alternative cause of action (quantum meruit) alleged in the petitioner's first amended complaint on the ground that "it varies the theory of the plaintiff;" (b) required the latter "to amend the same" (first cause of action of the first amended complaint) by alleging ultimate and principal facts which would support his claim that the respondent corporation had recovered from the Benguet Consolidated Company for shortages in chrome ore inventories, wages, and fictitious hauling of ore, within ten days from receipt of the said order; and (c) warned the petitioner that "after the lapse of said period if plaintiff has not filed his second amended complaint, the case shall be dismissed."

On August 6, 1963 the petitioner moved to reconsider the order of July 15, 1963, posing the issue of "whether or not a court . . . may allow a party to amend his complaint to allege additional facts and/or litigate on more issues than that determined at a pre-trial hearing." The respondent corporation opposed and prayed for the denial of this motion, contending inter alia that in the said motion the "plaintiff merely reiterates his previous contentions x x x which had been fully considered and rejected by this Honorable Court in its Order of July 15, 1963."

On August 29, 1963 the court issued an order denying both the petitioner's motion for reconsideration and the respondent corporation's motion to dismiss, and ordered the former to comply with its order of July 15, 1963, within five days from receipt of the said order, under pain of having his complaint dismissed.

Accordingly, on September 10, 1963, the petitioner filed a second amended complaint. The respondent corporation, on September 16, 1963, moved to strike out and/or dismiss the second amended complaint on the grounds (1) that it absolutely failed to comply with the order of July 15, 1963; (2) that it was but a reiteration of identical allegations contained in the first amended complaint already held "to be baseless and totally unsubstantiated;" and (3) that it was "undisputably established that plaintiff's claim has been absolutely released by him." The petitioner filed an opposition to the said motion of the respondent corporation.

On October 23, 1963 the court issued an order the pertinent portions of which read as follows:

"After considering the allegations in the aforesaid motion together with the arguments of the plaintiff contained in his opposition to the motion, the Court rules that the second amended complaint filed by the plaintiff dated September 9, 1963 failed to comply with the orders of this Court dated July 15, and August 29, 1963.

"In view of the foregoing considerations, the Court hereby dismisses the second amended complaint with costs against the plaintiff."

The petitioner received a copy of the order of October 23, 1963 on October 28, 1963. On November 21, 1963, he filed a motion for reconsideration thereof, praying the court to set aside its order of October 23, 1963 and to enter another directing the respondent corporation to answer the second amended complaint. The respondent corporation opposed this motion.

On December 14, 1963 the court issued an order denying for lack of merit the petitioner's motion for reconsideration.

On January 2, 1964 the petitioner filed a notice of appeal from the court's orders of October 23, 1963 and December 14, 1963, manifesting therein that he had already filed the necessary appeal bond. On January 10, 1964 the court issued an order stating that "there being no objection to the record on appeal filed by the plaintiff-appellant, said record on appeal is hereby approved."

On January 20, 1964, or 18 days from its receipt of the petitioner's record on appeal, the respondent corporation filed its opposition thereto.

Thereafter, by order of January 23, 1964, the court dismissed the appeal, stating that

"... the filing of the notice of appeal and the record on appeal was out of time as they were filed way beyond the 30-day period within which plaintiff should have filed said notice of appeal. As pointed out by counsel for the defendant, the motion for reconsideration filed by the plaintiff was but a pro forma motion. It did not suspend the running of the period within which to appeal. It appearing that copy of the order dismissing the complaint was served on the plaintiff thru his counsel on October 28, 1963, the period within which the plaintiff should interpose his appeal expired on November 27, 1963. The notice of appeal filed on January 2, 1964 is, therefore, filed out of time.

"Another ground for the opposition to the record on appeal which the Court also finds well-founded is that the pleadings had before this Court were not entirely reproduced by the appellant contrary to the Rules of Court."

The petitioner's motion for reconsideration of the above-quoted order was denied by the court on March 13, 1964.

Hence, the present recourse - an original petition for mandamus.

The focal issue presented for resolution is whether or not the petitioner's motion for reconsideration dated November 21, 1963 was pro forma.

For the reasons hereinbelow set forth, we rule that the said motion was pro forma and consequently uphold the dismissal by the lower court of the petitioner's proposed appeal.

1. If the petitioner (as plaintiff) could not and did not allege ultimate and principal facts which would support his claim that the respondent corporation had recovered any amount from the Benguet Consolidated Mining Company on account of three specific items (namely, shortages in chrome ore inventories, anomalies in the payment of salaries and wages, and fictitious hauling of ore), his complaint would fail to state a cause of action and his claim must consequently be considered as having been released by virtue of a voucher signed by him on May 2, 1957 (exh. 3), wherein he acknowledged receipt from the respondent corporation of the sum of P2,000 as "payment of bonus and in full payment for all services claimed by (plaintiff) to have been rendered to the company and its lawyers in connection with the company's terminated cases against Benguet Consolidated Mining Co.," the release being conditioned, as stated in his letter (exh. 4) of the same date, on the respondent corporation not having recovered any amount for any of the said three specific items.

Worthy of note in this connection is the affidavit (appendix G) dated October 15, 1957, of Felipe Ollada (who took in the petitioner as a partner in his firm), unequivocally stating that "all stipulated fees of fixed amounts due to him and his firm from Consolidated Mines, Inc., under the special engagements undertaken by him for said corporation as well as all retainer fees and reimbursement for travelling, hotel and other expenses which were for the account of said corporation have been all fully and timely paid by said corporation and he and his firm have no outstanding claims whatsoever against said Consolidated Mines, Inc." and that "upon the withdrawal of (petitioner) from the partnership with him (on January 16, 1956) there was no official liquidation of their

partnership as there was nothing due to (petitioner) and the dissolved partnership ... had no properties or collectible assets." Ollada also testified, on December 7, 1957, that the three specific items already adverted to were not included in the suit of the respondent corporation against the Benguet Consolidated Mining Co. and, therefore, there could be no basis for the present claim of the petitioner Dacanay. The stipulated fixed fee for the special engagement as to these items in the amount of P12, 500 and the concomitant travelling and hotel expenses in the total sum of P25, 417.76 had all been duly paid by the respondent corporation.

2. What then clearly emerges from a painstaking and perceptive reading of the prolix record of this case is that from February 4, 1963 - when the petitioner tried to file his first amended complaint (after the respondent judge had crystallized the issues at the pre-trial hearing of February 1, 1962 with the agreement of the parties) - he made repeated futile attempts to have the court recognize (what he continues to aver) as the sufficiency of his first amended complaint. After the court issued its basic order of July 15, 1963 rejecting the first amended complaint and giving the petitioner 10 days within which to file a second amended complaint that would allege "facts which support the claim of plaintiff that defendant recovered from Benguet Consolidated Mining Company" on three specific items - to which the issue had been "pegged," in petitioner's own language - the petitioner filed his motion for reconsideration of August 6, 1963 wherein he "reiterated" his contentions as to the sufficiency of his first amended complaint, thus:

"In other words, we respectfully reiterate before this Honorable Court that it view plaintiff's case with more allowance and understanding; that the issue be construed to mean that defendant did seek to recover these items, for which defendant agreed to pay plaintiff a contingent fee in the event defendant actually recovers and receives from said items such that if there has been no recovery from these items upon seeking them, then there is release, and, in the alternative, if defendant did not really seek from Benguet these items and hence did not recover from them, then plaintiff should be entitled to payment of services rendered by him on the basis of Quantum Meruit."

As early as August 21, 1963, the respondent corporation had already assailed the petitioner's insistence (expressed in his motion for reconsideration) on the sufficiency of his first amended complaint as being a repetition or reiteration of contentions already rejected by the court. The respondent corporation reproduced the transcript of the hearing on the motion, where the petitioner admitted that he was trying to change the theory of his complaint after the documents produced by subpoena duces tecum issued at his behest failed to show anything in support of his claim.

In filing his second amended complaint of September 10, 1963, which in sum and substance is not materially different from his first amended complaint, the petitioner in effect persisted in urging the court to accept the fact of sufficiency of his rejected first amended complaint. In his opposition of September 19, 1963 to the respondent corporation's motion to strike it out and to dismiss the case, the petitioner again insisted that "our Second Amended Complaint is a faithful compliance of this Honorable Court's Order of July 15, 1963," notwithstanding that the court had already ruled to the contrary, with a warning of dismissal, in its order of August 29, 1963, and likewise had ruled twice (in both its said order and the earlier basic order of July 15, 1963) that the self-same allegations were insufficient to make out a cause of action against the respondent corporation.

In its order of October 23, 1963, the court ruled once more, that is, for the second time, that the petitioner's allegations in his second amended complaint "failed to comply with the orders of the Court dated July 15, and August 29, 1963," and ordered the dismissal of the same, with costs against the petitioner. In point of fact, the court was then ruling for the third time that the petitioner's allegations were insufficient.

In yet filing on November 21, 1963 his motion for reconsideration of the third order of October 23, 1963, again insisting on the sufficiency of his second amended complaint notwithstanding the court's three previous adverse

rulings, the petitioner was completely aware of the court's precise position. As expressly stated by him in his said motion for reconsideration, "(T)he position then of the Honorable Court at this stage of the case - without any trial had, as yet, - is that our Amended Complaint and our Second Amended Complaint (and we hasten to add - even our Original Complaint) do not allege facts sufficient enough [sic] for the Honorable Court to establish a cause of action against defendant." (emphasis supplied) He then again reiterated his persistent assertion - thrice rejected by the court - that "(w)hat more facts the Hon. Court desires, we cannot conceive, for on the strength of the authorities hereunder quoted, our Complaints state clearly succinctly, sufficiently, our cause of action against defendant." (emphasis supplied)

The court summarily rejected this position of the petitioner - for the fourth time - in its order of December 14, 1963.

Upon the foregoing facts and sequence of events, we cannot sustain the petitioner's contention that the court was in error in ruling, in its order of January 23, 1964, that "the motion for reconsideration filed by the plaintiff was but a pro forma motion" and therefore did not suspend the running of the period within which to appeal, and that the petitioner's appeal was filed "out of time" (by 36 days) since the reglementary 30-day period expired on November 27, 1963, whereas he posted his appeal only on January 2, 1964.

3. The court's ruling is in accord with the prevailing doctrine on pro forma motions enunciated in *Samudio vs. Mun. of Gainza* Cam. Sur.[1] where we held that "although on November 29, 1962 the defendant filed his so-called motion for new trial, based exactly on the very ground alleged in its first motion for reconsideration dated October 17, 1952, said motion for new trial did not suspend the thirty (30) days granted by law for perfecting an appeal, because it is mere repetition of the motion for recon-sideration of October 17, 1952."

The court a quo was quite liberal in affording the petitioner opportunity to make out a case, and in "not closing any avenue" for him to do so, notwithstanding that as early as the first hearing on the incident held on June 27, 1963, before it issued its ba-sic order of July 15, 1963, it had already unmistakably stressed to the petitioner that "(w)e have clarified the issue and the Court believes that we cannot go beyond the issue."

In *Estrada vs. Sto Domingo*,[2] recently decided by this Court, we once again called the attention of the bar and litigants to the "principle already forged by this Court ... that a motion for reconsideration which has no other purpose than to gain time is pro forma and does not stop the period of appeal from slipping away." Mr. Justice Dizon pointed out in his concurring opinion that "The motion aforesaid is pro forma on yet another ground: in substance it was but a reiteration of reasons and arguments previously set forth in respondent *Sto. Domingo's* memorandum submitted to the trial court and which the latter had already considered, weighed and resolved adversely to him when it rendered its decision on the merits.[3] "And earlier in *Lonaria vs. De Guzman*,[4] we held that "(T)he filing of the second motion on Jan-uary 22, 1963 did not suspend the running of the period, first, because it was pro forma based on grounds already existing at the time of the first motion."

Here, where the court had already thrice previously re-jected the petitioner's self-same contentions and assertions, the motion for reconsideration reiterating the same contentions and assertions for the fourth time was unquestionably pro forma.

4. We are not at all impressed by the petitioner's main argument in his present petition that his last motion for reconsi-deration insisting on the sufficiency of his amended complaints - in the face of three previous contrary rulings of the court - "specifically pointed out to respondent judge for the first time that the Second Amended Complaint complied faithfully with his orders of July 15 and August 29, 1963 because it alleged facts ... (which) constitute sufficient cause of action against respondent corpora-tion in the light of these elementary rules of pleading theretofore not brought to the attention of respondent judge." The fact is that in his first motion for

reconsideration (of August 6, 1963) of the court's basic order of July 15, 1963, he had already cited and placed reliance on pertinent provisions of the Rules of Court and other authorities in urging "flexibility and liberality" in the matter of allowing amendments. Mere citation and/ or amplification of authorities not previously brought to the court's attention on the same argument does not remove the pleading from the ambit of the pro forma doctrine.

The Rules of Court, looking with disfavor on piecemeal argumentation, have provided the omnibus motion rule, where under "(A) motion attacking a pleading or proceeding shall include all objections then available, and all objections not so included shall be deemed waived."^[5] The salutary purpose of the rule is to obviate multiplicity of motions as well as discourage dilatory pleadings. As we said in *Medran vs. Court of Appeals*,^[6] "litigants should not be allowed to reiterate identical motions, speculating on the possible change of opinion of the Court or of the judges thereof." The mere citation of additional authorities by the petitioner in his last motion for reconsideration reiterating his thrice-rejected identical arguments as to the sufficiency of his amended complaints did not salvage the said motion from the pro-per application thereto of the pro forma doctrine.

5. Upon the foregoing disquisition, it will serve no useful purpose for us to dwell at length on the court's other ground for re-jecting the petitioner's appeal - "that the pleadings had before this Court were not entirely reproduced by the appellant contrary to the Rules of Court." Suffice it to state that section 7 of Rule 41 of the Rules of Court prescribes a ten-day period within which a party should correct and redraft a deficient record on appeal, where no time is fixed by the court - and compliance by the petitioner with this rule has not been shown.

The conclusion is thus irresistible that the petitioner has not demonstrated a ministerial duty on the part of the respondent court to give due course to his appeal.^[7]

ACCORDINGLY, the present petition for mandamus is denied, at petitioner's cost.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Barredo, JJ., concur. Teehankee, J., did not take part.

* Now an Associate Justice of the Court of Appeals.

[1] 100 Phil. 1013, 1018 (Feb. 28, 1957).

[2] L-30570, July 29, 1969, 28 SCRA 891, 914 (per Sanchez, J.)

[3] At 28 SCRA, p. 925; vide *Arnaldo vs. Bernabe*, 87 Phil. 379; *Federal Films, Inc. vs. Judge of First Instance*, 78 Phil. 472; *Medran vs. Court of Appeals*, 83 Phil. 164; *Marquez vs. Panganiban*, L-15842, Oct. 31, 1960; *Mallare vs. Panahon*, 98 Phil. 154.

[4] L-20940, Sept. 29, 1967, 21 SCRA 349, 354.

[5] Rule 15, section 8.

[6] 83 Phil. 164.

[7] *Villamor, et al. vs. Lacson, et al.*, L-15845, Nov. 28, 1964; *Llanto vs. Dimaporo*, L-21905, March 31, 1966.

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