

**CORAZON FREMISTA AND JOSE ESCARIO, PETITIONERS, VS. HON. FRED G. JIMENA, IN HIS CAPACITY AS PRESIDING JUDGE OF RTC, BRANCH 55, IROSIN, SORSOGON; SALVADOR FUNGO, JOEL G. FREZA AN...**

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**GALAPATE-LAGUILLES, J:**

Assailed in this Petition[1] for Certiorari under Rule 65 of the Rules of Court are the following, to wit: 1.) the Order[2] dated 13 August 2012 of public respondent Regional Trial Court of Irosin, Sorsogon, Branch 55, in Civil Case No. 806, setting aside its earlier Order dated 9 July 2012 wherein it declared that its order of dismissal of private respondents Salvador Fungo, Joel Freza and Medelita Freza's complaint had become final and executory; and 2.) the Order[3] dated 22 October 2012 of the public respondent denying petitioners Corazon Fremista and Jose Escario's Motion for Reconsideration.

Sometime in September 2007, Fungo, on behalf of spouses Freza, filed a complaint for quieting of title against petitioners before the RTC of Irosin, Sorsogon, Branch 55, and docketed as Civil Case No. 806. Fungo was only armed with a General Power of Attorney[4] executed in his favor by spouses Freza on 7 August 2007.

During the hearing of the case, the petitioners assailed the authority of Fungo to file the case without impleading his principals, herein spouses Freza. Thus, the RTC issued an Order[5] on 17 March 2008 directing Fungo's counsel to file an amended complaint within ten (10) days. Subsequently, on 25 March 2008, the private respondents filed a motion to amend title of complaint, which was granted by the RTC in its Order[6] dated 22 April 2008 and setting the hearing of the case as previously scheduled on 19 May 2008.

During the 19 May 2008 pre-trial of the case, Fungo and his counsel failed to appear despite being notified of said hearing. Thus, upon petitioners' motion, the RTC issued an Order[7] on even date declaring Fungo as non-suited. The RTC then allowed the petitioners to present their evidence on their counterclaim.

On 3 June 2008, Fungo, on behalf of spouses Freza, filed a Motion for Reconsideration[8] assailing the 19 May 2008 Order of the RTC. Despite the opposition[9] by the petitioners, the RTC issued an Order[10] dated 6 June 2008 granting, in the interest of justice and fair play, the private respondents' Motion for Reconsideration. Consequently, it set aside its 19 May 2008 Order declaring Fungo as non-suited.

During the 16 October 2008 pre-trial of the case, the petitioners moved for the dismissal of the case on the ground that it was only Fungo who appeared and that he was not still armed with a Special Power of Attorney to file the case against them (petitioners). Thus, on even date, the RTC directed[11] Fungo to file his manifestation on the motion of the petitioners, while the latter was directed to file their opposition/comment. Pre-trial of the case was set on 15 December 2008. Thus, on 29 October 2008, the petitioners filed their Manifestation on the Motion to Declare Plaintiffs Non-Suited and/or to Dismiss the Case[12] supplicating anew that private respondents be declared non-suited and the case be dismissed.

On 22 December 2008, Fungo filed a Motion to Admit to Admit Additional Evidence[13] appending thereto a

Special Power of Attorney[14] executed by Joel Freza in favor of Fungo on 19 December 2008. Nonetheless, this was opposed by the petitioners on 9 January 2009.[15]

On 9 June 2009, the trial court issued an Order[16] declaring spouses Freza non-suited for non-appearance during the pre-trial of the case. Thus, the RTC dismissed the complaint of private respondents.

Subsequently, on 29 June 2009, the petitioners filed anew a Motion to Prosecute Counterclaim.[17] This was followed by a Motion for Reconsideration[18] sans a notice of hearing of the RTC's 9 June 2009 Order filed by Fungo on behalf of spouses Freza on 1 July 2009. The trial court, however, denied Fungo's Motion in its Order[19] dated 20 July 2009.

On 10 August 2009, Fungo filed a second Motion for Reconsideration[20] this time with a notice of hearing. This was opposed[21] by the petitioners arguing that the Rules of Court do not allow a second motion for reconsideration of the decision or order of the court. Moreover, the first motion for reconsideration was merely pro-forma and did not toll the running of the reglementary period. Fungo's second Motion for Reconsideration was denied by the RTC in its Order[22] dated 13 August 2009 stating that a second motion for reconsideration is prohibited under Rule 37 of the Rules of Court.

On 27 August 2009, Joel Freza filed a Notice of Appeal,[23] to which the petitioners opposed[24] arguing, among others, that the Order of the RTC declaring private respondents as non-suited and dismissing the case had already become final and executory.

On 14 September 2009, Atty. Sheila San Diego filed a Formal Entry of Appearance (With Motion to Withdraw Notice of Appeal with Manifestation to File Petition for Certiorari to the Court of Appeals).[25] Attached thereto was the Withdrawal As Counsel for the Plaintiff[26] by Atty. Romeo A. de los Reyes.

On 24 September 2009, the RTC issued an Omnibus Order[27] admitting the withdrawal as counsel of Atty. De los Reyes; denying the opposition by the petitioners to the Notice of Appeal filed by the private respondent for being moot and academic; noting the appearance of Atty. San Diego; and granting the withdrawal of the Notice of Appeal.

On 8 February 2010, the petitioners filed a Motion to Prove Counterclaim.[28] Nonetheless, the RTC issued an Order[29] dated 6 July 2010. Considering that no petition for certiorari was filed before this Court, the petitioners filed anew a Manifestation and Reiterative Motion to Prove Counterclaim[30] on 9 August 2010. Thus, in its Order[31] dated 16 August 2010, the RTC granted the motions of petitioners and set the presentation of evidence to prove counterclaim on 20 September 2010 at 8:30 in the morning.

On 25 June 2011, Fungo filed a Motion to Reinstate Complaint,[32] to which the petitioners opposed on the ground that a case can be revived only if the same is still pending or archived and not when the same had been dismissed and the order of dismissal had already become final and executory as in the case of private respondents' complaint.[33] Thus, on 9 July 2012, the RTC issued an Order[34] denying the Motion of Fungo on the ground that the order of dismissal of their complaint had already become final and executory.

Still undeterred, Fungo filed a Motion for Reconsideration[35] on 2 August 2012. Hence, the trial court issued the first assailed Order[36] dated 13 August 2012 granting the said motion for reconsideration in the highest interest of justice and setting aside its 9 July 2012 Order wherein it declared that the order of dismissal of private respondents' complaint had already become final and executory. The petitioner moved for reconsideration[37] but this was struck down by the RTC in the second assailed Order dated 22 October 2012.

Hence, the instant Petition raising this lone issue for the Court's resolution, viz:

WHETHER OR NOT PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE TWO ASSAILED ORDERS REINSTATING THE COMPLAINT DESPITE THE FACT THAT THE CASE HAD BEEN DISMISSED AND THE DISMISSAL HAD LONG BEEN BECOME (sic) FINAL AND EXECUTORY.[38]

The Petition is meritorious.

Section 5,[39] Rule 18 of the Rules of Court provides that the dismissal of an action due to the plaintiff's failure to appear at the pre-trial shall be with prejudice, unless otherwise ordered by the court. In any case, the rule is settled in *Chingkoe, et al. v. Republic, et al.*,[40] citing *Mondonedo v. Court of Appeals*,[41] where the Supreme Court said:

The Court finds no reversible error in the said Resolutions of the Court of Appeals. Well-settled is the rule that a dismissal for failure to appear at the pre-trial hearing is deemed an adjudication on the merits, unless otherwise stated in the order.

For non-appearance at the pre-trial, a plaintiff may be non-suited and a dismissal of the complaint for failure to prosecute has the effect of an adjudication upon the merits unless otherwise provided by the trial court.

And the remedy of a plaintiff declared non-suited is to appeal from the order of dismissal, the same being a final resolution of the case (Regalado, *Remedial Law Compendium*, 1988 ed., p. 185). Further, if a motion for reconsideration had been filed by the plaintiff but was denied, appeal lies from both orders (*ibid.*). And where appeal is the proper remedy, certiorari will not lie.

The rule is clear enough that an order of dismissal based on failure to appear at pre-trial is with prejudice, unless the order itself states otherwise.[42] The 9 June 2009 Order of dismissal of the trial court did not specify that the dismissal is without prejudice. There should be no cause for confusion, and the trial court is not required to explicitly state that the dismissal is with prejudice. The private respondents are not then left without a remedy, since the Rules itself construes the dismissal to be with prejudice. It should be considered as adjudication on the merits of the case, where the proper remedy is an appeal under Rule 41.[43] Thus, the appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from.[44] Considering that private respondents filed a motion for reconsideration of the RTC's Order of dismissal, they had a fresh period of 15-days from the receipt of the order denying their motion for reconsideration within which to file their notice of appeal as laid down in *Neypes v. Court of Appeals*. [45] Instead, Fungo filed a second motion for reconsideration and thereby lost their right to appeal.[46] It bears emphasis that a second motion for reconsideration is a prohibited pleading[47] pursuant to Section 5,[48] Rule 37 of the Rules of Court. The private respondents' subsequent motions for reconsideration should be considered as mere scraps of paper, not having been filed at all, and unable to toll the reglementary period for an appeal.[49]

Clearly, the RTC Order dated 9 June 2009 dismissing private respondents' complaint became final and executory after fifteen (15) days from receipt of the denial of the first motion for reconsideration.[50] It is elementary that once a decision becomes final and executory, it is "immutable and unalterable, and can no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land." [51] Thus, the RTC decision, even if erroneous, can no longer be modified.[52] When the dismissal order attained finality, the jurisdiction that the trial court had over the case was finally discharged and terminated.[53] It is quite surprising then that despite its lack of jurisdiction and its declaration in its Order dated 9 July 2012 that the court's order of dismissal had become final and executory, the RTC still granted the Motion for Reconsideration of private respondents filed on 2 August 2012 and in effect, reinstated Fungo's complaint against the petitioners.

Indubitably, the public respondent committed the gravest abuse of discretion amounting to lack of jurisdiction when it issued the assailed Order dated 13 August 2012 setting aside its earlier Order dated 9 July 2012 declaring that the court's order of dismissal had become final and executory; and the 22 October 2012 denying petitioners' motion for reconsideration.

As the failure of the private respondents to appear at the pre-trial amounted to a failure to comply with the Rules or any order of the court, the dismissal of their complaint was essentially due to their fault and the therein defendants (herein petitioners), could still prosecute their counterclaim in the same or in a separate action.[54] However, despite the motions filed by the petitioners to prosecute their counterclaim, the same had not been acted upon by the lower court. Thus, it is only proper that the instant case be remanded to the lower court for further proceedings on the counterclaim of the petitioners.

WHEREFORE, premises considered, the instant Petition is GRANTED. The Orders dated 13 August 2012 and 22 October 2012, respectively, of the Regional Trial Court of Irosin, Sorsogon, Branch 55, in Civil Case No. 806, are NULLIFIED. The case is REMANDED to the lower court for further proceedings on the counterclaim of the petitioners.

**SO ORDERED.**

Librea-Leagogo, C.C., Chairperson and Lazaro-Javier, A.C. JJ., concur.

[1] Rollo, pp. 5-26.

[2] Id., p. 33, Annex "A" to the Petition.

[3] Id., p. 34, Annex "B" to the Petition.

[4] Id., pp. 35-36, Annex "C" to the Petition.

[5] Id., p. 38, Annex "E" to the Petition.

[6] Id., p. 37, Annex "D" to the Petition.

[7] Id., p. 39, Annex "F" to the Petition.

[8] Id., pp. 40-41, Annex "G" to the Petition.

[9] See Opposition to the Motion for Reconsideration, id., pp. 43-44, Annex "H" to the Petition.

[10] Id., p. 46, Annex "I" to the Petition.

[11] Id., p. 47. See Order dated October 16, 2008, Annex "J" to the Petition.

[12] Id., pp. 48-62, Annex "K" to the Petition.

[13] Id., pp. 55-56, Annex "L" to the Petition.

[14] Id., pp. 57-58.

[15] See Opposition/Comment to the Motion to Admit Additional Evidence, id., pp. 59-61, Annex "N" to the Petition.

[16] Id., p. 62, Annex "O" to the Petition.

[17] Id., pp. 63-64, Annex "P" to the Petition.

[18] Id., pp. 66-67, Annex “Q” to the Petition.

[19] Id., p. 76, Annex “S” to the Petition.

[20] Id., pp. 77-79, Annex “T” to the Petition.

[21] Id., pp. 81-83. See Opposition/Comment to the Second Motion for Reconsideration, Annex “U” to the Petition.

[22] Id., p. 84, Annex “V” to the Petition.

[23] Id., p. 85, Annex “W” to the Petition.

[24] Id., pp. 86-90, Annex “X” to the Petition.

[25] Id., pp. 91-92, Annex “Y” to the Petition.

[26] Id., p. 93. Annex “Z” to the Petition.

[27] Id., pp. 94-95, Annex “AA” to the Petition.

[28] Id., pp. 96-98, Annex “AB” to the Petition.

[29] Id., p. 116, Annex “AJ” to the Petition.

[30] Id., pp. 99-100, Annex “AC” to the Petition.

[31] Id., p. 102, Annex “AD” to the Petition.

[32] Id., pp. 103-104, Annex “AE” to the Petition.

[33] See Opposition/Comment to the Motion to Revive Case, id., pp. 105-107, Annex “AF” to the Petition.

[34] Id., p. 108, Annex “AG” to the Petition.

[35] Id., pp. 109-110, Annex “AH” to the Petition.

[36] Id., p. 33, Annex “A” to the Petition.

[37] Id., p. 34, Annex “B” to the Petition.

[38] Id., p. 19.

[39] SEC. 5. Effect of failure to appear. – The failure of the plaintiff to appear [at the pre-trial] when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.

[40] G.R. No. 183608, July 31, 2013.

[41] G.R. No. 113349, January 18, 1996, 252 SCRA 28, 30.

[42] Chingkoe, et al. v. Republic, et al., supra.

[43] Id.

[44] Section 3, Rule 41 of the Rules of Court.

[45] G.R. No. 241524, April 14, 2005, 469 SCRA 633.

[46] Cf. *Guzman v. Guzman, et al.*, G.R. No. 172588, March 13, 2013.

[47] *Id.*

[48] SEC. 5. Second motion for new trial. - x x x

No party shall be allowed a second motion for reconsideration of a judgment or final order.

[49] *Guzman v. Guzman, et al.*, *supra*.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] Cf. *Engr. Jose K. Tupaz, et al v. Hon. Salvador Y. Apurillo, Presiding Judge, RTC, Leyte, Branch 8 and People of the Philippines*, G.R. Nos. 151380-91, December 10, 2004.

[54] *Spouses Corpuz v. Citibank, N.A., et al.*, G.R. Nos. 175677 and 177133, July 31, 2009.

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