

**SPOUSES NESTOR A. CABASAL AND MA. BELEN S. CABASAL,
PETITIONERS, VS. HON. RAUL B. VILLANUEVA, PRESIDING JUDGE,
BR. 255, REGIONAL TRIAL COURT, LAS PIÑAS CITY, BPI FAMILY
SAVINGS ...**

Ponente: ASUNCION-VICENTE, J.

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ASUNCION-VICENTE, J.:

The Case

In this petition for certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure, petitioners seek to annul the Order dated June 25, 2004 of the Regional Trial Court of Las Piñas City, Branch 255, in the case docketed as Civil Case No. 01-0096, and the Order dated December 1, 2004 denying petitioners' motion for reconsideration of the previous Order.

The Facts

The facts of the case as culled from the records are as follows:

On March 26, 2001, petitioners spouses Nestor A. Cabasal and Ma. Belen S. Cabasal (hereinafter petitioners) filed a complaint[2] with the Regional Trial Court (RTC) of Las Pinas City against BPI Family Savings Bank, Inc. (hereinafter respondent Bank), Racquel Crisologo-Lara, ex-officio sheriff, and the Register of Deeds of Las Pinas City for injunction with preliminary injunction and temporary restraining order. The complaint was docketed as Civil case No. LP-01-0096 and raffled to Branch 255. The action sought to enjoin the defendants therein (among them herein respondent Bank) from proceeding with the scheduled public auction on April 17, 2001 of the real properties covered by Transfer Certificates of Title (TCT) Nos. T-64297 and T-64298 registered in the name of petitioners.

At the hearing on the prayer for the issuance of a writ of preliminary injunction on April 5, 2001, petitioners and respondent Bank agreed to maintain the status quo thereby rendering the issuance of the writ of preliminary injunction moot and academic. Accordingly, the then presiding Judge Florentino M. Alumbres of Branch 255 issued an Order[3] dated April 5, 2001 enjoining the defendants, respondent Bank in particular, from proceeding with any foreclosure of the property subject of the case.

On April 6, 2001, respondent Bank filed an Urgent Manifestation and Motion to Recall Order dated April 5, 2001[4] and thereafter proceeded with the scheduled public auction on April 17, 2001.[5] A Certificate of Sale[6] was issued in favor of respondent Bank on May 4, 2001 as the highest bidder.

Meanwhile, on April 25, 2001, respondent Bank filed a Motion to Dismiss[7] the complaint on the ground of forum-shopping and lack of cause of action. An Opposition[8] was filed by petitioners on April 27, 2001.

On July 24, 2001, petitioners filed an Omnibus Motion[9] to cite respondent Bank and Ex-Officio Sheriff Racquel Crisologo-Lara for indirect contempt for defying the Order dated April 5, 2001 and to cancel the certificates of

sale inscribed on TCTs Nos. T-64297 and T-64298. The Ex-Officio Sheriff filed her Comment[10] professing ignorance of the Order dated April 5, 2001 and praying to be relieved of liability for indirect contempt.

On August 16, 2001, petitioners filed a “Motion to Admit Amended Complaint With Accompanying One”[11] seeking to hold respondent Bank and the Ex-Officio Sheriff in contempt of court for defying the Order dated April 5, 2001.

In the Order[12] dated August 16, 2001 given in open court, then Acting Judge Bonifacio Sanz Maceda gave respondent Bank time to file comment on petitioners' Motion to Admit Amended Complaint and Omnibus Motion. In the same Order, respondent Bank's Motion to Dismiss the complaint was deemed submitted for resolution.

Thereafter, on October 5, 2001, Judge Maceda issued an Order[13] denying petitioners' Omnibus Motion to cite respondents for indirect contempt without prejudice to the filing of the appropriate action. In the same order, respondent Bank's Motion to Recall Order dated April 5, 2001 and Motion to Dismiss, as well as petitioners' Motion to Cancel Annotation of the certificate of sale on TCT Nos. T-64297 and T-64298 were deemed submitted for resolution.

On May 9, 2002, Judge Maceda issued an Order[14] denying the Motion to Recall Order dated April 5, 2001, granting the Motion to Admit Amended Complaint and admitting the Amended Complaint and denying the motion to cancel annotation for prematurity, leaving unresolved respondent Bank's Motion to Dismiss the complaint.

On motion for reconsideration filed by petitioners of the Order dated May 9, 2002, Judge Maceda issued the Order[15] dated June 28, 2002, granting the motion to cancel the annotation of the certificate of sale on the titles of petitioners, still leaving unresolved the motion to dismiss.

Two years after, or on June 25, 2004, public respondent Judge Raul Bautista Villanueva, now presiding judge of Branch 255, issued the first assailed Order[16] declaring that, with the admission of the amended complaint, the Motion to Dismiss the original complaint is deemed mooted. At the same time, and in the same Order, the respondent Judge dismissed the Amended Complaint for failure to prosecute. Petitioners' motion for reconsideration of the said Order was denied by the respondent Judge in his second assailed Order[17] dated December 1, 2004. Hence, this petition for certiorari ascribing grave abuse of discretion to the respondent Judge for issuing the twin assailed Orders.

The Issue

The pivotal issue to be resolved in this petition is whether or not the respondent Judge gravely abused his discretion when he, in one and the same Order, acted on respondent Bank's motion to dismiss declaring it mooted with the admission of the amended complaint, and dismissed petitioners' amended complaint for failing to prosecute their case for an unreasonable length of time.

The Court's Ruling

The petition is impressed with merit.

In the present petition, petitioners pray that the Orders dated June 25, 2004 and December 1, 2004 be set aside and that the case be reinstated for further proceedings. They maintain that the respondent Judge gravely abused his discretion in dismissing the amended complaint and acting on respondent Bank's motion to dismiss in just one order. They argue that the motion to dismiss was a pending incident which needed to be resolved first before they could further prosecute their amended complaint. They contend that for the two (2) years that lapsed, from the last

order issued by the court on May 9, 2002, through then acting Judge Bonifacio Sanz Maceda, admitting petitioners' amended complaint, up to June 25, 2004 when Judge Raul Bautista Villanueva, now respondent Judge, dismissed the amended complaint, the petitioners were merely waiting for the court to resolve the pending motion to dismiss filed by respondent Bank before they could proceed with the prosecution of their case. Petitioners assert that with the court admitting their amended complaint, the next move should have been now on the part of respondents.

The contention is meritorious.

When a motion to dismiss is filed by a defendant in an action, the defendant is obliged to submit an answer if the motion is denied. This is expressly provided for by the Rules in Section 4, Rule 16 of the 1997 Rules of Civil Procedure, to wit:

Time to Plead - If the motion is denied, the movant shall file his answer within the balance of the period prescribed by Rule 11 to which he was entitled at the time of serving his motion, but not less than five (5) days in any event, computed from his receipt of the notice of the denial. If the pleading is ordered to be amended, he shall file his answer within the period prescribed by Rule 11 counted from service of the amended pleading, unless the court provides a longer period.

The law thus makes it incumbent upon the defendant to make the next move when the court denies the motion to dismiss. Petitioners here are, therefore, correct in claiming that respondent Bank's motion to dismiss was a pending incident that needed to be resolved first before they could take any further action towards prosecuting their amended complaint. Petitioners could not have considered on their own that the court's admission of the amended complaint mooted the motion to dismiss especially since the grounds raised in the motion to dismiss were not directly addressed in the amended complaint.

Even with the admission of the amended complaint, it was still incumbent upon the defendant to file an answer to the same. Section 3, Rule 11 of the 1997 Rules of Civil Procedure provides:

Answer to amended complaint – Where the plaintiff files an amended complaint as a matter of right, the defendant shall answer the same within fifteen (15) days after being served a copy thereof.

Where its filing is not a matter of right, the defendant shall answer the amended complaint within ten (10) days from notice of the order admitting the same. An answer earlier filed may serve as the answer to the amended complaint if no new answer is filed.

This Rule shall apply to the answer to an amended counterclaim, amended cross-claim, amended third (fourth, etc.)-party complaint, and amended complaint-in-intervention.

It would appear from the records that respondent Bank has not yet filed its answer to petitioners' complaint presumably because the court had not yet resolved the motion to dismiss.

Indeed, the hibernation of the case for two (2) years was not caused by petitioners' own inaction but by the court's failure to resolve a pending incident which was the motion to dismiss. It can be gleaned from the orders of the court that the instant case had gone through the hands of three (3) judges, the last one to handle it being herein respondent Judge Villanueva.

The precipitate action of Judge Villanueva in dismissing the case which had been pending in the court's docket for two (2) years was probably impelled by his desire to dispose of the case with the utmost dispatch. However, as the saying goes: "Haste makes waste". While actions must be disposed of with dispatch, the essential ingredient is the administration of justice and not mere speed.^[18] Although a court has the duty to dispose of controversies on the merits whenever possible, it is deemed an abuse of discretion for them, on their own motion, "to enter a dismissal

which is not warranted by the circumstances of the case”[19].

In the case at bench, the respondent Judge dismissed petitioners' amended complaint for failure to prosecute for an unreasonable length of time. It is to this Court's mind that the circumstances of this case do not warrant the dismissal of petitioners' amended complaint on that basis. Section 3, Rule 17 of the 1997 Rules of Civil Procedure provides:

Sec.3. Dismissal due to fault of plaintiff. - If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. The dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

Under this Rule, there are three instances where the complaint may be dismissed due to the plaintiff's fault: (1) if he fails to appear during a scheduled trial, especially on the date for the presentation of his evidence in chief; (2) if he fails to prosecute his action for an unreasonable length of time; and (3) if he fails to comply with the rules or any order of the court.[20]

There is failure to prosecute when the plaintiff, being present, is not ready or is unwilling to proceed with the scheduled trial or when postponements in the past are due to the plaintiff's own making, intended to be dilatory or cause substantial prejudice on the part of the defendant.[21] In the present case, the dismissal was mainly attributed to the perceived inaction of petitioners from the time their amended complaint was admitted on May 9, 2002. However, as discussed above, the supposed inaction of petitioners during said period was not attributable to them.

While it is true that the dismissal of an action on grounds specified under Section 3, Rule 17 of the 1997 Rules of Civil Procedure is addressed to the court's discretion, such discretion must be exercised soundly with a view to the circumstances surrounding each particular case. If facts obtain that serve as mitigating circumstances for the delay, the same should be considered and dismissal denied or set aside, especially where the suit appears to be meritorious and the plaintiff was not culpably negligent and no injury results to defendant.[22]

The petitioners' inaction in this case not being of their own making, but due to the delayed resolution of the pending motion to dismiss by the trial court, the respondent Judge committed grave abuse of discretion in dismissing the case precipitately without considering the circumstances or causes of delay in prosecuting the case.

WHEREFORE, the petition is GIVEN DUE COURSE and accordingly GRANTED. The assailed Orders dated June 25, 2004 and December 1, 2004 are hereby ANNULLED and SET ASIDE. The Regional Trial Court of Las Piñas City, Branch 255, is DIRECTED to reinstate Civil Case No. LP-01-0096 and to continue with the proceedings with dispatch.

SO ORDERED.

Sabio, Jr., (Chairman) and Villon, JJ., concur.

[1] pp. 2-15, Rollo

[2] pp. 23-27, Rollo

[3] p. 75, Rollo

- [4] pp. 76-77, Rollo
- [5] p. 94, Rollo
- [6] pp. 95-96, Rollo
- [7] pp. 79-83, Rollo
- [8]]pp. 84-89, Rollo
- [9] pp. 90-92, Rollo
- [10] pp. 101-105, Rollo
- [11] pp. 108-109, Rollo
- [12] p. 124, Rollo
- [13] pp. 139-140, Rollo
- [14] p. 148, Rollo
- [15] pp. 155-156, Rollo
- [16] pp. 19-20, Rollo
- [17] pp. 21-22, Rollo
- [18] *Belonio vs. Rodriguez*, 466 SCRA 557
- [19] *Ibid.*
- [20] *Olave vs. Mistas*, 444 SCRA 479
- [21] *Marahay vs. Melicor*, 181 SCRA 811
- [22] *Belonio vs. Rodriguez*, *supra*

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