

MANILA CORDAGE COMPANY, PETITIONER, VS. HON. MAGNO GATMAITAN, ETC., AND HARRY M. IKDAL, RESPONDENTS.

G.R. No. L-17135. December 28, 1961

Ponente: DE LEON, J.

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DE LEON, J.:

This is a petition for certiorari to annul the order dated July 23, 1959, the decision, and the writ of execution, issued by the Court of First Instance of Manila in Civil Case No. 39537.

On March 9, 1959, Harry M. Ikdal filed a complaint, Civil Case No. 39539, against the Manila Cordage Company in the Court of First Instance of Manila, entitled "Harry M. Ikdal vs. Manila Cordage Company", for breach of contract and damages, allegedly resulting from defendant's failure or refusal to pay the plaintiff, as sales agent, 5% commission on all sales of , ' defendant's ropes to Thoresen & Co., a shipping firm, during the year 1956, except the sales made in January and March of the same year. Answering the complaint, the defendant Manila Cordage Company (herein petitioner) denied the existence of any contract authorizing plaintiff Ikdal as defendant's sales agent, and explained that the 5% commissions alleged by plaintiff were not really in the nature of commissions but were customary trade discounts and/or deductions allowed to all buyers of the company.

On April 6, 1959, plaintiff Ikdal (now respondent) filed an interrogatory, pursuant to Rule 20 of the Rules of Court, requesting the defendant to answer the following question:

"Q. What is the total amount (in pesos) of your gross sales (e.g., before deduction discounts or commissions) on ropes, or your products, to , Thoresen & Co., Ltd., of Hongkong, and/or to the ships owned, operated, managed or represented by said firm, from January 1956 up to the date of your receipt of this interrogatory? Indicate sub-totals for each month for the said period."

The defendant objected to said interrogatory on the grounds that it had already been answered and that the data requested are irrelevant to the issues and unrelated to the important facts of the case. An answer to this objection was filed, and the parties were, subsequently, required to present the interrogatories in question for the examination by the court. After plaintiff had complied with this requirement, the trial court, in an order dated June 8, 1959, required the defendant to answer the plaintiff's interrogatory.

Failing to obtain a reconsideration of the order last mentioned, the defendant on July 6, 1959 filed its answer, pertinent portion of which, as amended, reads as follows:

"The total amount (in pesos) of defendant's gross-sales on rope to Thoresen & Co., Ltd., of Hongkong, for which the plaintiff had a hand or actually consummated in behalf of defendant, from October, 1955 to the date of receipt of the written interrogatory, before deducting discounts or commissions, are as follows:

1. October 12, 1955, MV-HAI HING -
Invoice No. 5220-----P258.58

2. November 29, 1955, MV-HERVAR -
Invoice No. 5663-----P373.41

3. January 28, 1956, MV-HAI MENG -
Invoice No. 6965-----P894.69

4. March 23, 1956, MV-HENRICK -
Invoice No. 7763-----P614.60."

Dissatisfied with this answer, plaintiff filed a motion seeking to have it stricken out; to hold defendant in contempt; to declare defendant in default for failure to answer the interrogatory, pursuant to section 3, Rule 24 of the Rules of Court; and to set a date for the reception of his (plaintiff's) evidence. Hearing on this motion was had, and on the 23rd of July, 1959, the court, finding that the answer to the interrogatory did not really meet the requirements thereof, issued an order declaring the defendant in default.

A motion for reconsideration of the order of default having been filed, the court, on August 5, 1959, issued a subpoena duces tecum to the president of the defendant company or his duly authorized representative to appear before a commissioner on August 7, 1959 and to bring with him records of the company, such as sales journals, sales invoices and the subsidiary ledger from January to July 1959.

Two urgent motions to postpone indefinitely the scheduled hearing and the reception of evidence were filed by defendant. Upon opposition filed by plaintiff, the court denied the motions. After this denial, plaintiff proceeded to present his evidence ex parte. Later, however, the court granted an urgent ex parte motion of defendant praying for the suspension or stay of the examination of its books, pending resolution of an "Original Action for Certiorari and Prohibition with Preliminary Injunction" (Manila Cordage Co. vs. Hon. Froilan Bayona, etc., et al., G. R. No. L-15883), which they have filed with this Court, seeking to review the order of default.

On September 10, 1959, the petition filed with this Court was dismissed for lack of merit. Reconsideration of the order of dismissal having been denied, the judgment became final, and the case was returned to the trial court.

Upon return of the case to the court below, plaintiff proceeded with the examination of petitioner's books, presented the rest of his evidence and rested his case, in the meantime, Judge Froilan Bayona, in whose sala the case was being heard, retired and the case was reassigned for decision to Hon. Judge Gatmaitan.

Subsequently, Judge Gatmaitan rendered decision condemning the defendant to pay the plaintiff the sum of P2,348.92, with legal interest from the date of the filing of the complaint, plus another item of damage in the sum of P250 for accountant Expenses, plus attorney's fees and costs. Upon plaintiff's motion, and despite opposition, a writ of execution of the judgment by default was issued on July 7, 1960.

The following day, the defendant filed an urgent motion to dissolve the writ of execution. Plaintiff moved to strike out this motion, but the respondent judge in open court allowed the stay of execution until July 15, 1960.

On July 13, 1960, the defendant filed the present petition questioning, in the main, the declaration of default and the judgment thereof. As prayed for, a writ of preliminary injunction was issued by this Court restraining the sheriff of the City of Manila from carrying out the writ of execution issued by the lower court.

After going over the record, We find that the matters treated in the present petition are basically identical with

those raised and determined by this Court in G.R. No. L-15883, Manila Cordage Co. vs. Hon. Froilan Bayona, etc., et al., which we have dismissed for lack of merit. As there are no new grounds and issues alleged that would merit a modification of our resolution of dismissal we are reiterating our holding on the matter.

This Court does not trifle with petitions like this, the allegations of which are mere repetitions of those in a previous similar petition involving the same parties and raising similar issues, which have already been determined and passed upon by Us, be it by decision or minute resolution. They are, apparently, intended either to mislead the Court or to delay legal proceedings.

WHEREFORE, let the preliminary injunction heretofore issued be dissolved and the petition for certiorari dismissed. Costs against petitioner.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

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