

JOSE E. ABINALES AND SOL F. BELTRAN, PETITIONERS, VS. THE COURT OF FIRST INSTANCE OF ZAMBOANGA CITY, BRANCH I, AND ROQUE CANTOS, RESPONDENTS.

G.R. No. L-41530. April 30, 1976

Ponente: MARTIN, J.

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MARTIN, J.:

This is a question of involuntary dismissal on ground of non prosecutur entered by the respondent trial court in its Civil Case No. 1198, a civil action for separation pay, commissions due, and moral damages instituted by the two petitioners herein against private respondent.

The petitioners, Jose E. Abinales and Sol F. Beltran, were formerly the employees of private respondent Roque Cantos at his Rocan Shell Shop in Zamboanga City. Jose E. Abinales was the manager, while Sol F. Beltran was the cashier and bookkeeper. On or about the 6th or 7th of October, 1967, the two petitioners received from private respondent a letter dated September 21, 1967, terminating their services as of October 1, 1967. Petitioners treated this dismissal as arbitrary, and so, on March 2, 1968, they commenced the subject Civil Case No. 1198 before the respondent Court of First Instance against private respondent.

On August 15, 1969, the pre-trial of petitioners' case was completed. Thereafter, trial on the merits began and by the last hearing on November 20, 1971, petitioners have substantially adduced their proofs on their claims for separation pay, commissions due and moral damages. Only the corroborative evidence on the moral damages remains to be presented, after which, petitioners would rest their case. In this last hearing, the case was re-scheduled for December, 1971. However, no hearing ever took place on that date nor at any time subsequent thereto.

Three years after or on December 27, 1974, respondent trial court dismissed petitioners' complaint without prejudice for "failure to prosecute." According to respondent Court, petitioners have lost interest in the prosecution of their case, because for the last 3 years after that last hearing of November 20, 1971, they have not taken any move to bring their case to its final termination.

On January 23, 1975, petitioners moved for a reconsideration of the dismissal order, pointing out that considerable evidence has already been introduced by them and that their counsel did not fail in requesting the clerk of court to schedule their case for trial but was regularly told that the calendar was full and preference should be given to criminal cases, particularly those involving smuggling. Petitioners prayed that their case be included in the February 1975 calendar of the court.

No resolution of this motion was forthcoming from the respondent Court for exactly 3 months after its filing; hence, on April 23, 1975, petitioners moved that their motion be acted upon.

On May 9, 1975, respondent trial court denied petitioners' motion for reconsideration.

Whereupon, petitioners commenced the present petition for review on certiorari which the Court treats as a

special civil action.[1]

We rule that respondent trial court gravely abused its discretion in dismissing petitioners' complaint for non prosecutur.

1. It is unquestionable that a court of first instance possesses authority to dismiss of its own accord an action on ground of non prosecutur. Section 3, Rule 17 of the Revised Rules of Court neatly provides that "(i)f plaintiff fails * * * to prosecute his action for an unreasonable length of time * * *, the action may be dismissed upon motion of the defendant or upon the court's motion." [2] The principle behind this rule is that if the litigant who would be prejudiced by the inaction of the court is not interested in accelerating the progress of his suit, the court should declare that it has less interest in entertaining his suit by dismissing it forthwith. [3] However, length of time alone is not a test of due diligence in prosecuting a pending action. [4] Laches does not depend, unlike the statute of limitations, upon the lapse of a certain time since the cause of action accrued, but whether, under all the facts and circumstances of a particular case, the plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. [5] What would be an "unreasonable length of time" in times of peace would not necessarily be "unreasonable length of time" in times of war. [6] The reckoning point is the unjustified failure to take such steps as may have been ordered by the court or required by procedure and without which the court could not proceed with the hearing to the final termination of the case. [7]

2. Sufficient reasons do not obtain for the respondent trial court to justifiably declare petitioners' complaint as non-prosessed. The records show that petitioners were earnest in pursuing their litigation since its inception in 1969 such that by the last hearing on November 20, 1971, they have already introduced the greater mass of their evidence. The testimony of the doctor who attended to petitioner Jose E. Abinales when the latter suffered nervous breakdown was the only evidence left to be presented. And, credence lies in the representation of petitioners' counsel that he has made verbal requests to the clerk of court for the inclusion of their case in the trial calendar which, unfortunately, was occupied. Indeed, during the years 1971, 1972, 1973, and 1974, the caseload of respondent trial court appeared heavy. In 1971, respondent trial court's pending cases totalled 1163; in 1972, 924; in 1973, 833; and in 1974, 716. [8] In fact, respondent trial court took even 3 months before finally resolving petitioners' motion for reconsideration. [9] Furthermore, the conditions of peace in Southern Mindanao at that time, including the region of Zamboanga, might have germinated apprehensive feelings among the civilian populace, thereby affecting, understandably, their normal pursuit of life, let alone litigations.

3. The reconsideration of the dismissal order becomes more proper when it is considered that trial courts have, after all, the duty to dispose of controversies after trial 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." [10] While it is true that the dismissal of an action on grounds specified under Section 3, Rule 17 of the Revised Rules of Court is addressed to their discretion, [11] such discretion must be exercised soundly with a view to the circumstances surrounding each particular case. [12] If facts obtain that serve as mitigating circumstances for the delay, the same should be considered and dismissal denied or set aside, [13] especially where the suit appears to be meritorious and the plaintiff was not culpably negligent and no injury results to defendant. [14]

It appears in the present case that petitioners have already adduced the substance of their evidence when the dismissal order was issued. Already, the two petitioners have testified on their claims for separation pay, commissions due, and moral damages. The only evidence left was the testimony of the doctor who attended to petitioner Abinales purportedly to corroborate the latter's evidence on moral damages. Dismissal, therefore, of the proceedings at that stage is not only wasteful but also uncalled for. A move to speed up the cause would have sufficed to end the delay and would have been the more proper measure under the circumstances. [15] It is no argument to say that the dismissal is nevertheless "without prejudice" and petitioners could renew their action

against private respondent if they want to. That would be another expense of time and effort on the part of the litigants and the court, a mere repetition of the proceedings previously had. Worse still, the litigation between the parties would just be prolonged needlessly.

The case of *Ventura v. Baysa*[16] supplies no authority for the respondent trial court to justify the dismissal under consideration. In that case, the plaintiffs took no move for more than four years after their case had been finally set for hearing. Upon the assumption that they have thus lost interest in the litigation, the trial court dismissed the case *motu proprio*. On review, the Court held that the dismissal was proper, ruling that although the clerk of court has the duty under the rules to calendar a case after joinder of the issues and to serve notice thereof upon the parties, the plaintiffs are not thereby relieved of their own duty to prosecute their case diligently. Such want of diligence though does not exist in the present case. Since the onset of the trial in 1969, petitioners have unfailingly offered their evidence supporting their complaint until in the last hearing of November 20, 1971, they were almost through with it. Likewise, petitioners' counsel has not failed to make verbal representations to the clerk of court to include their case in the trial calendar of the court. As a matter of fact, respondent Court found even no occasion to warn petitioners of any neglect or unwarranted delay in the progress of their suit prior to its order on December 27, 1974, outrightly dismissing their case.[17]

4. The policy of the courts to expedite disposal of cases and prevent clogging of dockets is well-nigh desirable.[18] Nonetheless, inconsiderate dismissals, even if without prejudice, do not constitute "a panacea nor a solution to the congestion of court dockets; while they lend a deceptive aura of efficiency to records of individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits; and final disposition of the cases before the court." [19] The desire to reduce docket congestion should not be allowed to justify the sacrifice of the substantial rights of the litigants. Speed in judicial administration should not be promoted at the expense of justice, which is indispensable to any court system worthy of its name. Any attempt to cut down on court congestion by dismissal of meritorious lawsuits "is doomed to fail even in its misguided purpose of promoting speed in judicial administration," because litigants with meritorious lawsuits are not likely to accept such rulings without exhausting all available appellate remedies. As a result, any reduction of trial court dockets accomplished by such dismissals will be more than offset by the increased burden on appellate courts.[20]

ACCORDINGLY, the order of the respondent trial court dated December 27, 1974, dismissing petitioners' civil complaint for failure to prosecute, as well as that of May 9, 1975, denying their motion for reconsideration, are hereby reversed and set aside. Respondent trial court is hereby directed upon receipt hereof to immediately resume the reception of petitioners' evidence and decide the case on the merits. No costs. So ordered.

Teehankee, (Chairman), Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] Supreme Court Resolution of November 17, 1975.

[2] See *Manila Herald Publishing Co. v. Ramos*, 88 Phil. 98 (1951).

[3] See Separate Opinion of Justice Barredo in *Vda. de Palanca v. Chua Keng Kian*, L-26430, March 11, 1969, 27 SCRA 390.

[4] 24 Am Jur 2d 50-51; 38 L. Ed. 1037.

[5] *Manson v. First Nat. Bank*, 366 Pa 211, 77 A 2d 399.

[6] *Brandt v. Behn, Meyer & Co.*, 38 Phil. 354-356 (1918).

- [7] See Dissenting Opinion of Justice Tuazon in *Chuan v. De la Fuente*, 90 Phil. 816-17 (1952).
- [8] See monthly reports of respondent court from 1971 to 1974 on file with the Statistics Division of the Supreme Court.
- [9] The motion was filed on January 23, 1975 and the opposition thereto on January 31, 1975. Respondent court denied the motion on May 9, 1975, after petitioners have filed a motion on April 23, 1975, for resolution of the motion for reconsideration.
- [10] *Municipality of Dingras v. Bonoan*, 85 Phil. 458-59 (1950).
- [11] *Flores v. Phil. Alien Property Administrator*, 107 Phil. 778 (1960); *Montelibano v. Benares*, 103 Phil. 110 (1958); *Adorable v. Bonifacio*, 105 Phil. 1269 (1959); *Inter-Island Gas Service, Inc. v. De la Cerna*, L-17631, October 19, 1966, 18 SCRA 390.
- [12] *Vernus-Sanciangco v. Sanciangco*, L-16219, April 28, 1962, 4 SCRA 1209.
- [13] *Rudd v. Rogerson*, 15 ALR 2d 672; *Cervi v. Greenwood*, 147 Colo 190, 362 P 2d 1050 (1961).
- [14] 27 C.J.S. 235-36; 15 ALR 3rd 680.
- [15] *Municipality of Dingras v. Bonoan*, see fn. 10.
- [16] L-12960, January 31, 1962, 4 SCRA 167.
- [17] See *Arellano v. CFI of Sorsogon, Branch I*, L-34897, July 15, 1975, Second Division, per Barredo, J., 65 SCRA 63-64; *Pagadian Iron Mines, Inc. v. Surigao Consolidated Mining Co., Inc.*, L-29454, July 22, 1971, 40 SCRA 54; *Mina v. Pacson*, L-17828, August 31, 1963, 8 SCRA 778.
- [18] *Elser, Inc. v. Macondray & Co.*, 96 Phil. 397 (1955).
- [19] *Macasa v. Herrera*, 101 Phil. 47-48 (1957).
- [20] See Separate Opinion of Justice Douglas in *Link v. Wabash R. Co.*, 8 L. Ed. 2d 741 (1962).

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