

**ASIAN SHIPPING CORPORATION AND NICK PEPITO, PETITIONER, VS.
THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF
MANDAUE CITY, CEBU, BRANCH 56, HON. TERESITA A. GALANIDA
AND HOSAN...**

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Before Us is a petition for certiorari assailing the Order^[1] dated December 16, 2010, of the Regional Trial Court, 7^[th] Judicial Region, Branch 56, Mandaue City, declaring petitioner in default in Civil Case No. MAN-5192 for Recovery of Damages.

The Antecedent Facts

On July 11, 2005, Hosanna Shipping Corporation [Hosanna] and/or Golden Lines, Inc. filed before the RTC a complaint against Asian Shipping Corporation [Asian] the vessel M/T Stanley, Barge ASC Regine, Nick Pepito, Captain Arturo Villacampa and John Does. In said complaint, Hosanna alleged that it is the owner and operator of two ^[2] cargo ships M/V Golden Jaguar and M/T Golden Canada,^[2] Asian owned M/T Stanley, a motor vessel, as well as ASC Regine which was a barge towed by M/T Stanley.

M/V Golden Jaguar, M/T Golden Canada and a service boat were docked/moored at Shell Island, Pier, Cebu City. At around 3:30 o'clock in the morning on May 1, 2003, their caretaker Felix Langita [Langita] noticed M/T Stanley, towing ASC Regine full of cargoes and its very close approach and proximity with Hosanna's docked vessels. Due to the unsteady towing of M/T Stanley of ASC Regine and the close proximity thereto to the docked vessels of Hosanna, M/T Stanley rammed M/V Jaguar causing it to totally sink together with the service boat. M/V Golden Canada which was docked alongside M/V Golden Jaguar, likewise sustained damage as the steel forward ramp of Barge Regine made contact with the portside aft steel awning of the M/V Golden Canada causing its collapse including the engine funnel. Thereafter, Langita immediately filed a Marine Protest.

Attempts were made to settle the case amicably taking into consideration that the operators were both businessmen and know each other, however it was rendered futile because the parties could not arrive at a compromise. After two ^[2] years when Hosanna has not heard from ASC Regine, Hosanna instituted the instant action before the RTC on July 11, 2005.

On July 19, 2005, the RTC issued summons for Asian to answer, which summons was received by Asian on January 25, 2006.

In its answer filed on February 2, 2006, Asian alleged that its vessels were seaworthy in all respects, properly and diligently navigated by their crew and was in fact compliant with maritime rules for navigation particularly the prevention of collision at sea. On the contrary, it was Hosanna which miserably failed to observe the diligence required of them under the circumstance for its failure to obey the rules and regulations on mooring, maintenance and operation of vessels in general which likewise posed hazards to navigation and the public. Due to their negligence, Hosanna therefore assumed the risk of loss and in fact must be liable therefor.^[3]

On February 21, 2006, Hosanna filed its Reply/Answer to Counterclaim.[4] Both parties filed before the RTC their respective pre-trial briefs.[5] On April 10, 2006, Hosanna filed a Motion to Set Case for Pre-Trial Conference, asking the RTC for said hearing to be set on April 25, 2006.[6]

The RTC in its Order dated September 27, 2006, reset the pre-trial conference on January 30, 2007 because the presiding judge was on a forfeitable leave.[7]

On January 30, 2007, the case was referred for mediation pursuant to the Supreme Court circular. In the meantime, resetting was scheduled on May 25, 2007.[8]

In a pleading dated May 18, 2007, Asian asked for the postponement of the scheduled May 27, 2005 hearing for the reason that the mediation among the parties was not yet completed.[9]

In the RTC's Order dated September 26, 2007, only Hosanna's counsel appeared and upon inquiry, he revealed that Asian's counsel was not present during mediation. Upon motion, Hosanna's counsel was allowed to present its evidence ex-parte, which hearing was set on September 26, 2007.[10]

On November 6, 2007, Asian filed its Motion for Reconsideration asserting that it did not receive the court's order which scheduled the pre-trial conference on September 26, 2007.[11] Considering that records bear that Asian was indeed not furnished with notice of the scheduled preliminary conference on September 26, 2007, the RTC granted its motion and set the preliminary conference on May 14, 2009, as contained in the Order of the RTC dated November 10, 2008.[12]

On May 14, 2009, in order to give the parties an opportunity to settle the case amicably, the court reset the hearing on June 16, 2009.[13] On June 16, 2009, since the parties could not still come up with a compromise, the parties gave it one last chance to settle and reset pre-trial on January 28, 2010.[14]

On January 18, 2010, due to the triple bypass of Hosanna's counsel of record, a motion for postponement on the January 28, 2010 pre-trial was filed.[15] The RTC granted the motion and reset the case on August 11, 2010.[16]

On August 11, 2010, the RTC reset the case on December 16, 2010 due to the forfeitable leave of the presiding judge.[17]

On December 13, 2010, Asian filed a motion for postponement because its counsel had a previous commitment to attend the meeting of the National Board of Governors and Officers of the Integrated Bar of the Philippines and the Christmas party.[18] On December 16, 2010, only counsel for Hosanna was present and when asked to comment on the motion for postponement filed by the counsel of Asian, the former vehemently tendered his objection stating that the sole reason for postponement was to attend a Christmas party which do not deserve merit. The motion for postponement of Asian was denied and it was likewise declared in default. Hosanna was able to present the testimony of their witness but due to the time constraints, it was set for continuation on May 19, 2011.[19]

On August 26, 2011, Asian filed a Motion to Lift Order of Default[20] stating that they had neither manifested their lack of interest to defend their position nor had they needlessly delay the proceedings. It added that the issuance of orders of default should be the exception rather than the rule, to be allowed only in clear cases of obstinate refusal by the defendant to comply with the orders of the trial court.[21] On February 2, 2012, the RTC denied Asian's Motion to Lift Order of Default.[22]

Subsequently, on March 13, 2012, Asian filed its Motion for Reconsideration, For Voluntary Inhibition and to Set the Case for Mediation.[23] On December 13, 2010, he notified Hosanna's counsel of the intended postponement to which the latter tendered no objection to the resetting. So that he was surprised to have been declared in default.

Considering that he had a valid cause of his non-attendance, then his non-appearance to the scheduled hearing is excused pursuant to Section 4, Rule 18[24] of the Rules of Court. Asian subsequently filed a Supplement to the Motion for Reconsideration[25] attaching therein the Minutes of the IBP Meeting.[26]

In its motion to set the case for mediation, Asian averred that on January 30, 2007, the RTC directed that the instant case be referred for mediation. On March 7, 2007, both parties failed to attend the mandatory mediation. The Mediator's Report dated July 20, 2007 reflected such fact and thus it referred the case back to court. As there was no actual mediation pursuant to A.M. No. 11-1-6-SC-PHILJA, the parties have not been able to exhaust the remedy of mediation for the purpose of exploring the possibility of amicable settlement, therefore, the case should be set for mediation.[27]

On the motion for voluntary inhibition. The following grounds as appearing on Asian's motion is hereby partially, quoted, thus:

“23. Noteworthy is plaintiff's [Hosanna] prayer in its Complaint, wherein the alleged actual damages is P6,654,032.76. The strong desire of the Honorable Judge to settle the case at P6,000,000.00 is tantamount to saying that defendants (Asian) had already been defeated. Indeed to settle at that amount is extremely unreasonable and prejudicial to the defendants as the alleged actual damages is close to Php 6,000,000.00. Hence, the Honorable Judge had already pre-judged the present case.

24. Because of the manifest strong interest of the Honorable Judge to settle the case at Php 6,000,000.00 and even COMMISSIONING the undersigned and the defendant Nick Pepito to settle at the said amount, the impartiality of the Honorable Judge is now doubted. This undue interest of the Honorable Judge to settle the case beyond reasonable terms have rendered defendants uneasy and uncertain as to whether they shall secure an impartial and honest judgment granting that defendants were also inconsiderably declared in default for failure to appear in the continuation of the preliminary conference despite the fact the defendants moved for postponement and despite the fact that mediation has not yet [been] exhausted.

25. The Honorable Judge cannot compel upon the defendants to settle the case. Compromise Agreement is a matter left to the discretion of the parties to come up with a reasonable terms and not a matter imposed or compelled upon the parties. With all due respect, the Honorable Judge has no authority in law to commission the defendants to settle the case.[28]

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29. While the order of default is interlocutory in nature, the Honorable Judge should have given explanation and legal basis why the motion to lift order of default was denied. The denial was given in open court only on 2 February 2012 during the continuance of the reception of plaintiff's evidence. Because of the delay in resolving the said motion and because the same was denied only in open court without clear basis under the law, defendants are incited to believe that the Honorable Judge had not diligently ascertain whether the order of default should be lifted or not and that the Honorable Judge is partial to the cause of plaintiff.”[29]

On November 16, 2012 the RTC in its Order denied the foregoing motion of Asian adding that the Court merely suggested that the case be settled at P6,000,000.00 and does not in anyway impose upon the parties the exact amount that they would agree on to eventually settle the case.[30]

Aggrieved, Asian comes to Us via petition for certiorari with the following assignment of errors, to wit:

“I. RESPONDENT JUDGE'S ORDERS DATED 16 DECEMBER 2010, 2 FEBRUARY 2012 AND 16 NOVEMBER 2012 RESPECTIVELY DECLARING HEREIN PETITIONERS IN DEFAULT, DENYING THE MOTION TO LIFT ORDER OF DEFAULT AND DENYING THE MOTION FOR RECONSIDERATION WERE ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION;

II. RESPONDENT JUDGE HAS PREJUDGED THE CASE AND DEMONSTRATED UNDUE INTEREST ON ITS SETTLEMENT; AND

III. THE SETTING OF THE CASE FOR PRE-TRIAL CONFERENCE IS PREMATURE CONSIDERING THAT MEDIATION PROCEEDINGS, PURSUANT TO SECTION 2A, RULE 18, 1997 RULES OF CIVIL PROCEDURE AND THE SECOND REVISED GUIDELINES FOR THE IMPLEMENTATION OF MEDIATION PROCEEDINGS APPROVED BY THE SUPREME COURT ON 16 OCTOBER 2001, HAS NOT BEEN EXHAUSTED.”[31]

Our Ruling

Asian asserts that the continuation of the preliminary conference was set on December 16, 2010 however, on December 14, 2010, a motion for postponement was filed by Asian's counsel, Atty. Jaime M. Vibar [Atty. Vibar] for the scheduled hearing so that he could attend the meeting of the National Board of Governors and Officers of the Integrated Bar of the Philippines [IBP] as well as the Christmas Party. He notified Hosanna's counsel, Atty. Ivan P. Herrero [Atty. Herrero] of the intended postponement on December 13, 2010 through facsimile transmittal and through the telephone on the same day and the latter did not tender any objection.

Taking into consideration that the other counsel did not object to the postponement, Atty. Vibar believed in good faith that the scheduled hearing on December 16, 2010 will be canceled and be reset to another date. Later on, he received the assailed Order dated December 16, 2010 of the RTC declaring them in default.

Atty. Vibar argues that the RTC should not have declared his client in default for the reason that he did not have in his mind any malicious and deliberate intent to delay the proceedings of the trial court. The RTC should have considered that he was still the National Executive Director of the IBP and he needs to attend the meeting because important agenda were discussed pertaining to legal aid and disciplinary actions against erring lawyers. Atty. Vibar went on to stress that he and his clients had actively participated in the proceedings of this case from its inception which is indicative of its vigorous resolve to defend the case with promptitude. Thus, in the absence of a pattern to delay the proceedings and disposition of the case, the non-appearance of the counsel in one instance should be excused.

A word of caution, the Supreme Court in the case of *Heirs of Gayares v. Pacific Overseas Shipping Corporation, et al.*[32] has this to say on postponements “lawyers should never presume that their motions for extension or postponement will be granted or that they will be granted for the length of time they pray for.” A motion for postponement is a privilege and not a right. A movant for postponement should not assume beforehand that his motion will be granted. The grant or denial of a motion for postponement is a matter that is addressed to the sound discretion of the trial court. In deciding whether to grant or deny a motion for postponement of pre-trial, the court must take into account the following factors: (a) the reason for the postponement, and (b) the merits of the case of movant.[33]

Following the foregoing jurisprudential barometer, We find that the motion for postponement of Atty. Vibar for the scheduled hearing on December 16, 2010 should have been granted by the RTC.

The reason for postponement of the December 16, 2010 hearing filed by Atty. Vibar was not solely grounded on the fact that he would be joining a Christmas party but primarily because he will be attending the governor's meeting which will be held on that same day as the scheduled pre-trial. As such, Minutes No. XIX-22-2010 of the Integrated Bar of the Philippines[34] was appended by Atty. Vibar in its Supplement to the Motion for Reconsideration[35] to show that he was at IBP Office in Pasig, Metro Manila on December 16, 2010.

Admittedly, there was delay in the instant case, however, such delay is not the delay warranting the other party to

be declared in default. To Our mind, delay must not only be lengthy but also unnecessary resulting in the trifling of court processes. There is no proof that Asian intended to delay the proceedings in this case, much less abuse judicial processes.[36] Considering that Atty. Vibar's non-attendance was explained and substantiated and that there was no showing that there was a manifest scheme to delay the proceedings, justice is better served by a brief continuance, trial on the merits, and final disposition of cases before the court.[37] Moreover, Atty. Herrero was informed prior to the scheduled hearing about the intended motion thereby causing no inconvenience to him or to his client.

While it is desirable that the Rules of Court be faithfully observed, courts should not be obsessively strict over the occasional lapses of litigants. Given a good reason, the trial court should set aside its order of default, constantly bearing in mind that it is the exception and not the rule of the day. A default order must be resorted to only in clear cases of obstinate refusal or inordinate neglect to comply with the orders of the court. Indeed, the dismissal of a case whether for failure to appear during trial or prosecute an action for an unreasonable length of time rests on the sound discretion of the trial court. But this discretion must not be abused, nay gravely abused, and must be exercised soundly. Deferment of proceedings may be tolerated so that cases may be adjudged only after a full and free presentation of all the evidence by both parties.[38] It must be remembered that the desideratum of a speedy disposition of cases should not, if at all possible, result in the precipitate loss of a party's right to present evidence and either the plaintiff's being non-suited or the defendant's being held liable under an ex parte judgment. It is a far better and more prudent course of action for a court to excuse a technical lapse and afford the parties a review of the case on the merits rather than dispose of the case on technicality and cause a grave injustice to the parties. This gives a false impression of speedy disposition of cases while actually resulting in more delay, if not miscarriage of justice.[39]

As reflected in the Mediator's Report[40] dated July 20, 2007, on the scheduled hearing on March 7, 2007, both parties in the instant case failed to appear before the PMC. As part of the pre-trial under Sections 4-5, Rule 18 of the Rules of Court, provides:

“Sec. 4. Appearance of parties.-It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

Sec. 5. Effect of failure to appear.-The failure of the plaintiff to appear 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.”

As can be perused therefrom, the non-appearance of the plaintiff during pre-trial without any justifiable reason or valid cause carries out a penalty of dismissal. However, in line with Our thrust to render justice to every litigant and considering that both parties are equally at fault and most of all considering the amount involved in the instant case, it would be the height of injustice if We are to dismiss the instant case because both parties and specially Hosanna did not appear during the mediation proceedings. Considering that even after the lapse of time, it becomes readily apparent that the parties have not reached and were not able to reach an amicable settlement, there is therefore no need to refer the same to the Philippine Mediation Center. After the conclusion of the presentation of the testimonial evidence of Hosanna, Asian should likewise be allowed to cross-examine Hosanna's witnesses and likewise present their evidence.

However, if the parties so agree, they could revert the case to pre-trial pursuant to the ruling of the Supreme Court in *Young v. CA, et al.*[41] “ No one can question the soundness and wisdom of the doctrine that the pre-trial stage

is completed after a party had been ordered non-suited or declared as in default, as the case may be, and that an order lifting it does not revert the action to its pre-trial stage, or authorize, much less, a second pre-trial. However, neither the Rules nor the doctrine bars the parties from agreeing, after such lifting, to hold a pre-trial and to effectively accomplish its objectives which could not have been done at the first pre-trial because of the absence of the plaintiff, resulting in his non-suit, or the absence of the defendant, resulting in his being declared as in default.”

With respect to the inhibition of judges.

The rule on inhibition and disqualification of judges is laid down in Section 1, Rule 137 of the Rules of Court:

“Section 1. Disqualification of judges.—No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.”

The Rules contemplate two kinds of inhibition: compulsory and voluntary. Under the first paragraph of the cited Rule, it is conclusively presumed that judges cannot actively and impartially sit in the instances mentioned. The second paragraph, which embodies voluntary inhibition, leaves to the sound discretion of the judges concerned whether to sit in a case for other just and valid reasons, with only their conscience as guide.[42]

The pertinent portion of the Order[43] of Judge Teresita A. Galanida, dated November 16, 2012, explaining the reason for the denial of the motion for inhibition, reads:

“On the Motion for Voluntary Inhibition, the Court likewise finds the assertions of defendants bereft of merit. It is very clear that in the Order dated 02 February 2012, the Court merely suggested to defendants' counsel and defendant Pepito that this case be settled at P6,000,000.00. It does not in any way impose upon the parties the exact amount that they would agree on to eventually settle this case. The Court is simply doing its duty to try to settle cases amicably. This does not mean that the Court is already partial to the cause of plaintiff. Hence, the Motion for Inhibition is likewise denied for lack of merit”

We find the explanation to be well-taken and thus uphold it upon the grounds so stated. Mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. Extrinsic evidence must further be presented to establish bias, bad faith, malice, or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. This Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased or partial.

An allegation of prejudgment, without more, constitutes mere conjecture and is not one of the “just or valid reasons” contemplated in the second paragraph of Section 1, Rule 137 of the Rules of Court for which a judge may inhibit himself from hearing the case. The bare allegations of the judge’s partiality, as in this case, will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role of dispensing justice in accordance with law and evidence, and without fear or favor. Stated differently, the bare allegations of the judge’s partiality will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role of dispensing justice in accordance with law and evidence, and without fear or favor.[44] Verily, for bias and prejudice to be considered valid reasons for the involuntary inhibition of judges, mere suspicion is not enough.[45]

WHEREFORE, in view of the foregoing, the Order dated December 16, 2010 of the Regional Trial Court, 7[th]

Judicial Region, Branch 56, Mandaue City, declaring petitioner in default in Civil Case No. MAN-5192 for Recovery of Damages, is hereby REVERSED and SET ASIDE. The February 2, 2012 Order is likewise SET ASIDE.

The instant case is hereby remanded to the Regional Trial Court, 7th Judicial Region, Branch 56, Mandaue City for further proceedings.

SO ORDERED.

Hernando, J., Chairperson, and Azcarraga-Jacob, JJ., concur.

[1] Rollo, p. 27, penned by the Honorable Judge Teresita A. Galanida

[2] Rollo, p. 32

[3] Rollo, p. 59

[4] Rollo, pp. 62-64

[5] Rollo, pp. 67-75

[6] Rollo, p. 65

[7] Rollo, p. 76

[8] Rollo, p. 77

[9] Rollo, pp. 78-80

[10] Rollo, p. 81

[11] Rollo, pp. 82-84

[12] Rollo, p. 95

[13] Rollo, p. 96

[14] Rollo, p. 97

[15] Rollo, pp. 98-100

[16] Rollo, p. 102

[17] Rollo, p. 103

[18] Rollo, pp. 104-106

[19] Rollo, p. 27

[20] Rollo, pp. 108-114

[21] Rollo, p. 112

[22] Rollo, p. 28

[23] Rollo, pp. 124-137

[24] Sec. 4. Appearance of parties.-It shall be the duty of the parties and their counsel to appear at the pre-trial.

The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

[25] Rollo, pp. 141-142

[26] Rollo, pp. 144-152

[27] Rollo, p. 130

[28] Rollo, p. 132

[29] Rollo, p. 133

[30] Rollo, p. 29

[31] Rollo, p. 11

[32] G.R. No. 178477, July 16, 2012

[33] Philippine American Life & General Insurance Company v. Enario, G.R. No. 182075, September 15, 2010

[34] Rollo, pp. 144-152

[35] Rollo, pp. 141-142

[36] Republic of the Philippines v. Heirs of Oribello, Jr., G.R. No. 199501, March 6, 2013

[37] Real Bank, Inc. v. Samsung Mabuhay Corporation, G.R. No. 175862, October 13, 2010

[38] RN Development Corporation v. A.I.I. System, Inc., G.R. No. 166104, June 26, 2008

[39] Agulto, et al. v. Tecson, G.R. No. 145276, November 29, 2005

[40] Rollo, p. 138

[41] G.R. No. 81239, December 4, 1991

[42] Ramiscal, Jr. v. Hernandez, G.R. Nos. 173057-74, September 20, 2010

[43] Rollo, p. 29

[44] Barnes v. Reyes, et al., G.R. No. 179583, September 3, 2009

[45] Ramiscal, Jr. v. Hernandez, G.R. Nos. 173057-74, September 20, 2010

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