

JUAN JOSE RODOM T. FETIZA FOR HIMSELF AND FOR THE BENEFIT OF THE HEIRS OF DOMINGO A. FETIZA, JR. AND BALTAZAR A. FETIZA, PETITIONER-APPELLANT, VS. THE MUNICIPAL GOVERNMENT OF SI...

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

This appeal seeks to nullify or set aside the Orders dated December 1, 2009[1] and March 16, 2010[2], rendered by the Regional Trial Court (RTC), Branch 12, San Jose, Antique in Civil Case No. 08-12-3675.

Stripped of non-essentials, the facts are as follows:

On December 5, 2008, petitioner-appellant, Juan Jose Rodom T. Fetiza (for himself and for the benefit of the heirs of Domingo A. Fetiza, Jr. and Baltazar A. Fetiza)[3] filed a Petition[4] for Consignation of Redemption Price before the RTC against respondent-appellee, the Municipal Government of Sibalom (represented by Municipal Treasurer Violeta V. Acupan)[5] docketed as Civil Case No. 08-12-3675.

In response, the respondent filed its Answer[6] to the petition on February 23, 2009.

On April 28, 2009, the RTC issued a Notice of Pre-Trial Conference[7] which inter alia set the schedule of the Pre-Trial Conference on August 20, 2009 and also directed the parties and their counsels to submit their respective brief at least three days before the date of the pre-trial.

On August 13, 2009, the appellant filed a Motion to Reset Pre-Trial Hearing[8] asking the court a quo to reset the pre-trial hearing of the case to a date not earlier than September 16, 2009. He cited as reason that he cannot concentrate on this case since he had taken a leave from work in order to attend to his wife who gave birth to their 5th child on August 3, 2009.

The following day, on August 14, 2009, the appellee submitted its Pre-Trial Brief[9] before the RTC.

When the case was called for Pre-Trial Conference on August 20, 2009, Atty. Felix Saldajeno[10] appeared for the appellee and manifested that he is ready for pre-trial conference. On the other hand, the appellant or any other heirs of Domingo R. Fetiza, Jr. and Baltazar Fetiza were not present in court. Atty. Saldajeno further manifested that the appellant did not file the required pre-trial brief notwithstanding the fact that he (appellant) received the Notice of Pre-Trial Conference on May 18, 2009 as shown by the Postal Return Receipt attached to the record. Thus, Atty. Saldajeno asked the court for ten days to file a motion to dismiss for the failure of the appellant to comply with the court's notice. The verbal motion was granted by the court a quo in an Order[11] rendered on even date.[12]

On August 25, 2009, the respondent filed its Motion to Dismiss[13] anchored on Secs. 5[14] and 6[15] of Rule 18 of the Rules of Court.

On September 25, 2009, the appellant filed his Opposition (To Respondent's Motion to Dismiss dated August 25,

2009)[16]. He explained that he was unable to file the pre-trial brief within the period prescribed because of the medical condition of his newborn baby who was initially tested positive for Galactosemia in the newborn screening test conducted. Also, he thought that his request for postponing the pre-trial already carries with it the request for postponement of the filing of the pre-trial brief.

On December 1, 2009, the RTC issued the assailed Order[17], dismissing the case, the dispositive portion whereof is hereunder quoted;

“PREMISES CONSIDERED, the respondent's Motion to Dismiss is hereby granted. Consequently, the petitioner's petition is hereby dismissed.

Costs de officio.

SO ORDERED.” (Bold Letters in the Original)

Aggrieved, the appellant filed a Motion for Reconsideration[18] on January 11, 2010 but it was likewise denied by the court a quo in its Order[19] dated March 16, 2010.

Hence, this appeal.

Assignment of Errors

THE APPELLANT INTERPOSED THE FOLLOWING:

“1. The Lower Court erred in dismissing the petition for non-filing by petitioner-appellant of pre-trial brief notwithstanding that petitioner-appellant had filed a motion to re-set the pre-trial conference.

The Lower Court erred in ruling on the merits of the case when there has been no pre-trial yet and on issues that had not been raised in the motion to dismiss[.]

The Lower Court erred in denying the motion for reconsideration based on personal biases and bases not contained in the records[.]”

The Ruling of this Court

In the instant case, the court a quo dismissed the Petition for Consignation of Redemption Price filed by the appellant primarily on the ground of failure to file the pre-trial brief. The dismissal is in accordance with Secs. 5 and 6, of Rule 18 of the Rules of Court, thus:

“Sec. 6. Pre-trial brief. - The parties shall file with the court and serve on the adverse party, in such manner as shall insure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

x x x

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.” (Bold Letters Ours)

“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.” (Bold Letter Ours)

In *Republic v. Oleta*[20], the Supreme Court (SC) held that the trial court has the discretion to dismiss a case for failure of a plaintiff to file pre-trial brief. The SC stressed that whether an order of dismissal should be maintained

under the circumstances of a particular case or whether it should be set aside depends on the sound discretion of the trial court.

In the instant case, although the assailed order is in accordance with the rules, We however, find it to harsh too dismiss the case on sheer technicality considering that it was the first and only procedural lapse committed by the appellant as shown in the records. There is also no manifest intention, on the part of the appellant to unduly delay the case. The appellant explained in his Opposition (To Respondent's Motion to Dismiss dated August 25, 2009)[21] that he was unable to submit the pre-trial brief because he thought that his request for postponement of the pre-trial already carries with it the postponement for the filing of the pre-trial brief. The reason why he requested for the postponement of the pre-trial is because of heavy workload and the medical condition of his 5th child who was initially diagnosed with Galactosemia in the new born screening conducted.

The Court is fully aware that procedural rules are not to be belittled or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.[22]

In *BPI v. Dando*[23] the SC relaxed the rules on failure to file Pre-Trial Brief due to the "heavy pressure of work" invoked by the counsel of BPI because it was the first and only procedural lapse committed by the bank and there is no manifest an evident pattern or scheme to delay the disposition of the case, to quote:

"The counsel of BPI invokes "heavy pressures of work" to explain his failure to file the Pre-Trial Brief with the RTC and to serve a copy thereof to Dando at least three days prior to the scheduled Pre-Trial Conference. True, in *Olave v. Mistas*, we did not find "heavy pressures of work" as sufficient justification for the failure of therein respondents' counsel to timely move for pre-trial. However, unlike the respondents in *Olave*, the failure of BPI to file its Pre-Trial Brief with the RTC and provide Dando with a copy thereof within the prescribed period under Section 1, Rule 18 of the Rules of Court, was the first and, so far, only procedural lapse committed by the bank in Civil Case No. 03-281. BPI did not manifest an evident pattern or scheme to delay the disposition of the case or a wanton failure to observe a mandatory requirement of the Rules. In fact, BPI, for the most part, exhibited diligence and reasonable dispatch in prosecuting its claim against Dando by immediately moving to set Civil Case No. 03-281 for Pre-Trial Conference after its receipt of Dando's Answer to the Complaint; and in instantaneously filing a Motion for Reconsideration of the 10 October 2003 Order of the RTC dismissing Civil Case No. 03-281."

Besides, the ends of justice and fairness would be best served if the parties in the instant civil case are given the full opportunity to thresh out the real issues and litigate their claims in a full-blown trial. The appellees would not be prejudiced should the RTC proceed with the hearing of the case since it is not stripped of any affirmative defenses nor deprived of due process of law.[24]

Also, We find it a reversible error for the trial court to prematurely rule that the requisites of a valid consignment are not attendant in this case since it already delved into the merits of the case. Notably, the only ground raised by the appellee in their motion to dismiss is the failure of the appellant to file the pre-trial brief and nothing more. However, the court a quo went overboard and also dismissed the case on its merits without allowing the parties to present evidence. The instant case, is still fresh from conception since it is merely on its pre-trial stage and there is nothing in the records that would show that the appellee filed a motion for judgment on the pleading nor moved for summary judgment. It would be at the height of injustice to decide the case on its merit based only on the petition and the answer without even allowing the parties to present evidence aliunde since what is required under Sec. 1, Rule 8[25] of the Rules of Court is that only ultimate facts are to be embodied in a pleading, any

evidentiary facts are supposed to be omitted.

Lastly, We disagree with the argument of the appellant that the assailed orders are tainted with bias considering that the principal cause of the dismissal of the case which is failure to file pre-trial brief is indeed in accordance with the rules. We however apply leniency and liberality of the rules in view of its attending circumstances and to better serve the ends of justice. Hence, the case is remanded to the RTC for further proceeding. Considering however, the manifest spirit of animosity existing between the trial judge and the appellant, We deem it proper to re-raffle the instant case to a new judge to resolve the issues of this case.

WHEREFORE, the appeal is GRANTED. The assailed Orders dated December 1, 2009 and March 16, 2010, rendered by the Regional Trial Court, Branch 12, San Jose, Antique in Civil Case No. 08-12-3675 are hereby REVERSED and SET ASIDE. The records of this case are remanded to Regional Trial Court, for further proceedings and to re-raffle the case with dispatch to another sala.

SO ORDERED.

[*]Hernando, (Chairperson) and [*]Quijano-Padilla, JJ., concur.

[*] Acting Chairperson per Office Order No. 05-14-ELDS dated February 26, 2014

[*] Acting Junior Member per Office Order No. 472-13-ABR dated December 12, 2013

[1] Rollo, pp. 48-53

[2] Rollo, pp. 54-61

[3] Hereinafter referred to as Appellant

[4] Records, pp. 2-9

[5] Hereinafter referred to as appellee

[6] Records, pp. 17-25

[7] Records, pp. 37-38

[8] Records, pp. 40-42

[9] Records, pp. 44-46

[10] Atty. Saldajeno for brevity

[11] Records pp. 49-50

[12] Culled from the Order of the RTC dated August 20, 2009, Records, id.

[13] Records, pp. 52-53

[14] *infra*

[15] *infra*

[16] Records, pp. 56-64

[17] *Supra* note 1

[18] Records, pp. 74-94

[19] Supra note 2

[20] G.R. No. 156606, August 17, 2007

[21] Records, pp. 56-64

[22] BPI v. Dando, G.R. No. 177456, September 4, 2009

[23] Id.

[24] See BPI vs. Dando, Id.

[25] Section 1. In general. - Every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts.

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