

CONRADO CALALANG, PETITIONER, VS. THE COURT OF APPEALS AND FILIPINAS MANUFACTURERS BANK, RESPONDENTS.

G.R. No. 103185. January 22, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

This is a petition for review on certiorari seeking to annul the decision[*] of the Court of Appeals which set aside the order of dismissal issued by the lower court,**] in Civil Case No. 36907 entitled "Filipinas Manufacturers Bank, plaintiff, versus Hugo Arca, Conrado Calalang, Rio Arturo R. Salceda and Acropolis Trading Corporation, defendants".

The antecedent facts, as culled from the records, are as follows:

On April 29, 1980, respondent Filipinas Manufacturers Bank filed a complaint for collection of a sum of money[1] against petitioner Conrado Calalang and 3 other defendants namely, Hugo M. Arca, Rio Arturo Salceda and the Acropolis Trading Corporation with the Court of First Instance of Rizal, 7th Judicial District Branch 36, Makati under Judge Segundo M. Zosa.

Petitioner, after having been served with summons on May 19, 1980, filed a Motion to Dismiss on June 2, 1980. The other summoned defendant, Hugo M. Arca, filed a Motion for Bill of Particulars on June 5, 1980. The two other defendants namely, the Acropolis Trading Corporation and Rio Arturo Salceda were also summoned but only a clerk-employee of the Acropolis Trading Corporation received the summons while Arturo R. Salceda was no longer residing at his given address.

Over a year after, the Motion for Bill of Particulars was granted on August 24, 1981 by Judge Zosa. Meanwhile, the Motion to Dismiss filed by petitioner Calalang was left unresolved. The last pleading filed regarding the Motion to Dismiss was the reply of petitioner Calalang to the opposition to the motion to dismiss by respondent bank which was filed on August 5, 1980.

On August 10, 1981, Batas Pambansa Blg. 129 (The Judiciary Reorganization Act) was passed by the Batasang Pambansa and subsequently approved by then President Marcos on August 14, 1981.

On November 27, 1981, defendant Arca filed a Motion to Dismiss which necessitated the filing of various pleadings in relation thereto by respondent bank herein, and defendant Arca.

On May 25, 1983, a hearing was scheduled under Judge Florentino Dela Peña of the Makati Regional Trial Court, Branch 134. But then, the case was transferred to the Makati Regional Trial Court, Branch 150, presided over by Judge Benigno M. Puno who, on August 8, 1985, issued an Order to wit:

"After a careful and thorough study of the defendant Calalang's (petitioner herein) motion to dismiss, dated May 31, 1980 and the Counter Manifestation and motion to dismiss dated November 25, 1981, filed by defendant Arca, together with the plaintiff's opposition, defendant movants' replies or rejoinder, the Court finds that the matters relied upon by said movants for the dismissal of the Complaint are evidentiary in character, the

truth or veracity of which are better determined at the hearing on the merits and, therefore, said motions are DENIED for lack of merit.

WHEREFORE, defendants are hereby ordered to file their Answers to the Complaint within the reglementary period.

SO ORDERED."[2]

On October 3, 1986, Gella Reyes Vergara Alcala and Associates entered its appearance as counsel for respondent bank.

On October 30, 1985, defendant Arca filed his answer with compulsory counterclaim to the complaint which was received by respondent bank's former counsel, Emerito M. Salva and Associates on November 4, 1985.

It appears that this case has been set several times for pre-trial (November 29, 1985, January 29, 1986, May 12, 1986, November 19, 1986, January 14, 1987 and February 27, 1987). For the first two scheduled hearings, respondent bank's counsel failed to appear causing the dismissal without prejudice of the case which was nevertheless set aside upon respondent bank's motion for reconsideration of the dismissal. The November 19, 1986 hearing was transferred to January 14, 1987 upon agreement by both counsels. For the last two scheduled dates counsel for the defendant Hugo Arca failed to appear.

Judge Benigno M. Puno was replaced by Judge Federico Y. Alikpala, Jr. as the presiding judge of the Makati Regional Trial Court, Branch 150 who, on March 6, 1987, issued an Order, quoted hereunder as follows:

"The records of this case show that among the defendants herein are: (a) Rio Arturo R. Salceda; and (b) Acropolis Trading Corporation. The Sheriff's Return, dated June 4, 1980 (Records Page 33) show the following report on the service of summons thereto:

As to defendant Acropolis Trading Corporation: "Served upon the defendant thru Miss BETH REYES, Clerk-employee, employed thereat, who signed for the receipt hereof."

As to defendant Rio Arturo Salceda: "Not serve (sic), defendant is not residing at the given address, occupant is Leonito Acuron."

The Court hereby informs the plaintiff that it shall not consider defendant Acropolis Trading Corporation as having been properly brought under the jurisdiction of this Court in view of the improper service of summons on said corporation (Sec. 13 of Rule 14, Revised Rules of Court).

In view of the foregoing, plaintiff is hereby directed to inform the Court, within ten (10) days from its receipt hereof, what steps plaintiff intends to take with respect to the said two defendants so that the Court will know whether plaintiff is still interested in the prosecution and/or outcome of this case.

With respect to defendants Conrado T. Calalang, the latter had filed a motion to dismiss which, however, was denied by the Court per Order dated August 8, 1985. The records of this case do not, however, show whether a copy of the said Order was transmitted to, or received by, counsel for the said defendant. In any event, said defendant had not filed any motion for the reconsideration of the said Order, nor had said defendant filed his answer in this case. Let, therefore, a copy of the Order dated August 8, 1985 be sent to the defendant Conrado T. Calalang, through his counsel of record, Attys. N.J. Quisumbing & Associates of the Lawyers' Inn.

Inasmuch as it would appear that the setting of this case for pre-trial was premature, since issues herein do not appear to have been really joined, the pre-trial conference scheduled in this case for April 8, 1987 is cancelled until further assignment or until any of the parties herein shall make the appropriate steps in connection therewith.

x x x x x."[3]

The above Order was received by petitioner's counsel on March 13, 1987.[4]

On March 17, 1987, respondent bank, in response to the Order dated March 6, 1987, filed a manifestation stating that:

"1. It is very much interested in prosecuting the complaint against the defendants Acropolis Trading and Salceda;

2. Pursuant to this, counsel has requested the Credit Investigation Department of plaintiff to verify the correct addresses of said defendants including all necessary facts for the proper service of summons on them;

3. Upon verification, plaintiff will then move for the issuance of Alias Summons on the said defendants."[5]

Thereafter, on March 24, 1987, petitioner Calalang moved to dismiss the complaint on the ground that respondent bank failed to prosecute the case for an unreasonable length of time.[6]

On April 3, 1987, the trial court issued another Order, to wit:

"Before this Court is plaintiff's "Manifestation" filed on March 18, 1987 stating that plaintiff is interested in prosecuting its complaint against defendants Acropolis Trading and Rio Arturo R. Salceda; this manifestation was made as a consequence of the directives set out in the second paragraph of the Order dated March 6, 1987.

Since the Court cannot let an unreasonable period pass for plaintiff to cause service of alias summons on the aforesaid defendants, the Court hereby resolves that if plaintiff shall still be unable to cause service of alias summons on the said defendants within thirty (30) days from plaintiff's receipts hereof, then this Court will dismiss the complaint as against said defendants and proceedings herein shall be limited to the defendants on whom summons had been served as of the lapse of said 30-days' period."[7]

Thereafter, on May 8, 1987, respondent bank moved for the issuance of alias summons on defendant Acropolis Trading Corporation through its President/Director Conrado T. Calalang or through its director Hugo M. Arca.[8]

Judge Zosimo Z. Angeles of the Makati Regional Trial Court, Branch 58, to whom the case was assigned after Judge Federico Y. Alikpala, Jr., then issued an Order, dated July 16, 1987, denying the Motion to Dismiss filed by petitioner for lack of merit. The motion for alias summons was granted. Entry of appearance of Atty. Crisostomo J. Danguilan as counsel for respondent bank was noted in the same order.[9]

Petitioner then filed his answer only on November 10, 1987.[10]

On November 16, 1987, the trial court issued an Order setting the pre-trial of the case for January 7, 1988 at 8:30 a.m. .[11]

At the pre-trial conference, respondent bank's counsel arrived 15 minutes late or at 8:45 a.m. . However, the case had already been dismissed. Thus, in the Order of January 7, 1988, the court declared:

"For failure of plaintiff's counsel to appear inspite of notice and considering that this case has been pending for seven (7) years, without plaintiff having taken positive steps to prosecute the same, it is hereby DISMISSED pursuant to Section 3, Rule 17, Rules of Court. Defendants' counterclaim is likewise dismissed."[12]

On January 12, 1988, counsel for the respondent bank filed a Motion for Reconsideration of the order of dismissal citing as reason for his late arrival "the unusually heavy traffic, he encountered along Kamias Road in Quezon City, which was caused by a stalled jeepney along the main thoroughfare."[13] The motion was denied on January 26, 1988. The respondent bank appealed the dismissal to the respondent Court. On October 25, 1991, the respondent Court promulgated the assailed decision, the dispositive portion of which is quoted hereunder:

"WHEREFORE, the Order of the court a quo dated January 9, 1988 dismissing this case and its Order dated January 26, 1988 denying reconsideration of the first order are hereby SET ASIDE, and this case is ordered remanded to the court of origin for further proceedings.

No pronouncement as to costs.

SO ORDERED."[14]

The petitioner's Motion for Reconsideration having been denied by the Court of Appeals, he filed this instant petition with this Court alleging that the respondent Court erred in:

- 1.) absolving respondent bank for the delay in the pursuit of the case;
- 2.) declaring the January 7, 1988 pre-trial as premature;
- 3.) holding that respondent bank "did not entirely fail to appear";
- 4.) invoking the liberal application of the rules of procedure in favor of the respondent bank;
- 5.) not having found abuse in the dismissal by the lower court of the case at bar, there is no basis for the respondent court to reverse the order of dismissal.

The pre-trial conference scheduled for January 8, 1987 was not premature. A pre-trial cannot validly be held until the last pleading has been filed, which last pleading may be the plaintiff's reply, except where the period to file the last pleading has lapsed.[15] The period to appear and file the necessary pleading having expired on the Acropolis Trading Corporation, the lower court can direct that a pre-trial conference be held among the answering defendants. However, though it is within the discretion of the trial court to declare a party non-suited for non-appearance in the pre-trial conference, such discretion must not be abused. The precipitate haste of the lower court in declaring the respondent bank non-suited was uncalled for and deserved a second look. Considering the fact that the counsel for the plaintiff/respondent bank did arrive for the pre-trial conference, though a bit late and that counsel for the defendant was himself also late, the trial court should have called the case again. An admonition to both counsels to be more prompt in appearing before the Court as scheduled would have sufficed, instead of having dismissed the complaint outright.

Unless a party's conduct is so negligent, irresponsible, contumacious, or dilatory as to provide substantial grounds for dismissal for non-appearance, the courts should consider lesser sanctions which would still amount into achieving the desired end.[16]

"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."[17]

And there is authority that an order dismissing a plaintiff's complaint without prejudice for failure of his counsel to appear at a pre-trial conference must be reversed as too severe a sanction to visit on a litigant where the record is devoid of evidence reflecting the litigant's willful or flagrant disregard for the Court's authority.[18]

Petitioner's contention that the respondent Court erred in absolving respondent bank for the delay in the resolution of this case, maintaining that "the case was dismissed out of its inordinate refusal to heed the warnings of the court", is not borne out by the records of this case. The seven-year delay is not attributable to the respondent bank alone but to circumstances beyond its control. The respondent Court found that:

"While it is true that the case had been pending for that length of time we find that the delay is not to be attributed entirely to the plaintiff in this case. The records show that various incidents were raised by the defendants Calalang and Arca who filed separate pleadings and were represented by different counsels.

Calalang filed a motion for the dismissal of the case on the ground that the plaintiff had no cause of action against him. This necessitated the filing of an opposition from the plaintiff, a reply to said opposition from the defendant Calalang, and a rejoinder to the said reply. The defendant Arca, on the other hand, initially sought an extension of time to file a responsive pleading, then filed a motion for bill of particulars, then later also a motion to dismiss the case. After his motion to dismiss was denied Arca filed a motion for reconsideration. In all these incidents pleadings and counter-pleadings were filed and hearings held on the motions, which resulted in the case dragging on for a considerable time.

The case was set for pre-trial several times when, as aforesaid, the issues were not yet joined for only Arca had initially filed his answer to the complaint. The case was ordered dismissed at least two (2) times when the plaintiff's counsel failed to appear at these pre-trials but the dismissals were reconsidered and the case set anew.

Another factor that contributed to the confusion in the proceedings and the delay in the case is the fact that the case was assigned from one judge to another due probably to the judicial reorganization that took place. The records show that there were no less than four (4) judges who handled the case -- Judges Segundo Zosa, Benigno M. Puno, Federico Alikpala, Jr., and Zosimo Angeles.

The answer of defendant Arca to the complaint was filed only on October 30, 1985 while that of defendant Calalang was filed only on November 10, 1987."^[19]

Again, petitioner's contention that the fact that respondent bank had not caused service of summons on the two other defendants, the Acropolis Trading Corporation and Rio Arturo Salceda, for almost seven years after the complaint was filed on April 29, 1980 indicated "abuse of judicial leniency and tolerance" is bereft of merit. Summons is issued by the clerk of court upon the filing of the complaint. When it was informed later on by Judge Alikpala, Jr. in his Order dated March 6, 1987 that there was an improper service on defendants Acropolis Trading Corporation and Rio Arturo Salceda, respondent bank, in compliance therewith, filed a motion for alias summons, as permitted by the law.

Considering the judicial reorganization which took place during the pendency of this case and the numerous instances raised by both petitioner and respondent bank as contributing to the delay, petitioner cannot now claim that respondent bank's "abuse of judicial leniency and tolerance is the single greatest component of this delay".^[20]

The acts of the respondent bank do not manifest lack of interest to prosecute, in the absence of proof that it indeed abandoned or intended to abandon its case against petitioner and the other defendants. Admittedly there was delay in this case, but such delay, We hold, is not the delay warranting dismissal. To be a sufficient ground for dismissal, delay must not only be lengthy but also unnecessary and dilatory resulting in the trifling of judicial processes.

In *Marahay vs. Melicor*,^[21] the Court set forth the test for dismissal of a case due to failure to prosecute, to wit:

"While a court can dismiss a case on the ground of non prosecutur, the real test for the exercise of such power is whether, under the circumstances, plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. In the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss."

Dismissal of a case for failure to prosecute is a matter addressed to the sound discretion of the court. That discretion, however, must not be abused. Thus, courts may not enter a dismissal which is not warranted by the circumstances of the case.[22] The availability of this recourse must be determined according to each case's procedural history, situation at the time of the dismissal and whether, and under the circumstances of the particular case, the plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude.[23]

"x x x. 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 in plaintiff's being non-suited or the defendant's being pronounced liable under an ex-parte judgment.

"x x (T)rial courts have x x 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' (Municipality of Dingras v. Bonoan, 85 Phil. 458-59 [1950]). 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 (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 Gerna, L-17631, October 19, 1966, 18 SCRA 390), such discretion must be exercised soundly with a view to the circumstances surrounding each particular case (Vernus-Sanciangco v. Sanciangco, L-12619, April 28, 1962, 4 SCRA 1209). If facts obtain that serve as mitigating circumstances for the delay, the same should be considered and dismissal denied or set aside (Rudd v. Rogerson, 15 ALR 2d 672; Cervi v. Greenwood, 147 Colo 190, 362 P. 2d 1050 [1961]), especially where the suit appears to be meritorious and the plaintiff was not culpably negligent and no injury results to defendant (27 C.J.S. 235-36, 15 ALR 3rd 680)." (Abinales vs. Court of First Instance of Zamboanga City, Br. I, 70 SCRA 590, 595).

"It is true that the allowance or denial of petitions for postponement and the setting aside of orders previously issued, rest principally upon the sound discretion of the judge to whom they are addressed, but always predicated on the consideration that more than the mere convenience of the courts or of the parties of the case, the ends of justice and fairness would be served thereby (Camara Vda. de Zubiri v. Zubiri, et al., L-16745, December 17, 1966). x x x."[24]

IN VIEW OF THE FOREGOING, the petition is DISMISSED. The decision of the Court of Appeals dated October 25, 1991 and its Resolution of December 12, 1991 are both AFFIRMED.

Costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Nocon, JJ., concur.

[*] CA-G.R. CV No. 27344, Associate Justice Salome A. Montoya, ponente, Associate Justices Eduardo R. Bengzon and Fortunato A. Vailoces, concurring.

[**] Makati Regional Trial Court, Branch 58, presided over by Judge Zosimo Z. Angeles.

[1] P1,350,000.00 evidenced by a promissory note titled "Commercial Paper No. CP 115511".

[2] Original Records, p. 136.

[3] Original Records, pp. 222-223.

[4] Original Records, p. 223, Registry Receipt No. 1199.

[5] Original Records, p. 224.

- [6] Revised Rules of Court, Rule 17, Sec. 3.
- [7] Original Records, p. 236.
- [8] Original Records, p. 237.
- [9] Original Records, p. 239.
- [10] Original Records, p. 240.
- [11] Original Records, p. 245.
- [12] Original Records, p. 249.
- [13] Original Records, p. 250.
- [14] Court of Appeals Records, p. 95.
- [15] 1 REGALADO, REMEDIAL LAW COMPENDIUM 183 (5th Rev. Ed.), citing Pioneer Insurance & Surety Corp. vs. Hontanosas, 78 SCRA 447 (1977).
- [16] 62A Am. Jur. 2d 602 citing Willis v. RCA Corp. (Cuyahoga Co.), 12 Ohio App. 3d 1, 12 Ohio BR 57, 465 N.E. 2d 924.
- [17] Ruiz vs. Estenzo, 186 SCRA 8 (1990) citing Macasa vs. Herrera, 101 Phil. 44 (1957).
- [18] 62A Am. Jur. 2d 602 citing Garland v. Dixie Ins. Co. (Fla App. D4) 495 So. 2d. 785, 11 FLW 1986; Aller v. Editorial Planeta, S.A. (Fla App. D3) 389 So. 2d. 321.
- [19] Rollo, p. 22.
- [20] Rollo, p. 13.
- [21] 181 SCRA 811 (1990), citing 1 MORAN, COMMENTS ON THE RULES OF COURT 521 (1979 Ed.), Perez, et al. v. Perez, et al., 73 SCRA 517 (1976).
- [22] Supra, note 17.
- [23] 24 Am. Jur. 2d 50.
- [24] Padua vs. Ericta, 161 SCRA 458, 459-460 (1988).

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