

PHILIPPINE BANKING CORPORATION, PETITIONER, VS. HON. SALVADOR S. TENSUAN, JUDGE OF THE REGIONAL TRIAL COURT, NATIONAL CAPITAL REGION, BRANCH 146 MAKATI; BRINELL METAL WORKS CORP...

G.R. No. 104649. February 28, 1994

Ponente: NOCON, J.

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NOCON, J.:

On the strength of the provision in the promissory notes sued upon that Manila shall be the venue of any action which may arise out of the promissory notes, the Regional Trial Court of Makati, Metro Manila granted the motion to dismiss the complaint in Civil Case No. 91-3366 entitled “Philippine Banking Corporation v. Brinell Metal Works Corp., et al.” for improper venue. Supported by a plethora of decisions evincing a view contrary to that of the trial court, petitioner comes to us on a petition for review on certiorari.

Briefly, the facts show that petitioner, Philippine Banking Corporation, filed a complaint below with prayer for preliminary attachment on December 5, 1991 against private respondents herein, Brinell Metal Works Corporation and Spouses Jose and Nally Ang, for collection of a loan evidenced by two (2) promissory notes.

On December 16, 1991, respondent Court issued an order granting the petitioner’s prayer for the issuance of writ of preliminary attachment.

On January 28, 1992, private respondents filed with the respondent court a motion to dismiss on the grounds of (a) lack of jurisdiction over the persons of the defendants; and (b) improper venue. They claim that summons was served on defendant corporation’s customer who was not authorized to receive the same for and in behalf of the corporation. They likewise object to the venue claiming that the plaintiff’s complaint is based on two promissory notes which commonly declare, among others:

“I/WE HEREBY EXPRESSLY SUBMIT TO THE JURISDICTION OF THE COURTS OF MANILA, ANY LEGAL ACTION WHICH MAY ARISE OUT OF THIS PROMISSORY NOTE.”[1]

On February 28, 1992 respondent Court issued the following questioned order, to wit:

“Acting on defendants’ Motion to Dismiss dated January 28, 1992, on grounds of a) lack of jurisdiction over the corporate defendant insofar as service of summons upon it was effected on a person not authorized in law to receive the same; and b) improper venue; and plaintiff having failed to appear for today’s hearing and/or to formally oppose the same notwithstanding a showing of receipt of the subject motion as early as January 31, 1992.

“Finding the motion to be studiously well-taken particularly in connection with the dismissal of this action on grounds of improper venue consistent with the provisions of Sec. 13, Rule 14 of the Rules of Court, it appearing on the face of the actionable document sued upon that venue had been by agreement of the parties laid in Manila.

“WHEREFORE, said motion to dismiss is hereby granted forthwith on grounds of impropriety of venue. The above-entitled case is accordingly dismissed without pronouncement as to costs.

“SO ORDERED.”[2]

On March 2, 1992, petitioner moved for reconsideration of the aforesaid order granting the motion to dismiss anchored on the ground that in view of the absence of qualifying or restrictive words in the agreement which would indicate that Manila alone is the venue agreed upon by the parties, the plaintiff still has the choice to file the action in the place of his residence citing the case of *Polytrade Corporation v. Blanco*[3]

On March 11, 1992, respondent court denied petitioner’s motion for reconsideration and remained steadfast in its position explaining that its dismissal order is predicated on the doctrinal rule enunciated in *Bautista v. Hon. Juan de Borja, et al.*[4] that the proper court of Manila is the venue for an action upon a document stipulating such “in case of any litigation herefrom, or in connection herewith,” on a rationale that neither party reserved the right to choose venue as provided for in Section 2(b), Rule 4 of the Rules of Court, as would have been done had the parties intended to retain such right of election.

Respondent court brushed aside *Polytrade v. Blanco*[5] stating that *Bautista* and *Polytrade* appear not to square with each other and that perhaps, the clear parameters on the rule vis-a-vis proper venue should be defined.

Thus, the sole issue to be resolved in this petition is whether or not the respondent court erred in holding that the venue of the action was improperly laid.

Under Section 1(c), Rule 16 of the Revised Rules of Court, a motion to dismiss an action may be made within the time for pleading on the ground that venue is improperly laid. Venue relates to the place of trial or geographical location in which an action or proceeding should be brought and not to the jurisdiction of the court. The matter of venue is regulated by the Rules of Court, so that the choice of venue is not left to the caprices of plaintiff.[6]

As a general rule, all personal actions may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff.[7] However, by written agreement of the parties, the venue of an action may be changed or transferred from one province to another.[8] Besides, when improper venue is not objected to in a motion to dismiss it is deemed waived.[9] In other words, venue is waivable. It is procedural, not a jurisdictional matter. It is intended to provide convenience to the parties, rather than restrict their access to the courts. The rules on venue simply arrange for the convenient and effective transaction of business in the courts and do not relate to their power, authority or jurisdiction over the subject matter of the action.

As early as the case of *Central Azucarera de Tarlac v. De Leon*,[10] this Court ruled that an agreement in a contract fixing the venue of actions arising therefrom is a valid waiver of the venue as fixed by law.

Interpreting a stipulation in the written contracts sued upon that “in case of any litigation arising (t)herefrom or in connection (t)herewith, the venue of action shall be in the City of Manila, Philippines,” this Court held in *Bautista v. De Borja*,[11] that the parties must reserve their right of election if they want to file in a place other than the venue agreed upon, thus:

x x x. We note that neither party to the contracts reserved the right to choose the venue of action as fixed by law (i.e., where the plaintiff or defendant resides, at the election of the plaintiff (par. [b], Section 2, Rule 4, Revised Rules of Court), as is usually done if the parties purported to retain that right of election granted by the Rules. Such being the case, it can reasonably be inferred that the parties intended to definitely fix the venue of action, in connection with the written contracts sued upon in the proper courts of the City of Manila only, notwithstanding that neither party is a resident of Manila. x x x”

Subsequently, in *Polytrade Corporation vs. Blanco*,^[12] this Court expostulated a contrary doctrine that as long as the stipulation does not set forth qualifying or restrictive words to indicate that the agreed place alone and none other is the venue of the action, the parties do not lose the option of choosing the venue, to wit:

“x x x. An accurate reading, however, of the stipulation, ‘The parties agree to sue and be sued in the Courts of Manila,’ does not preclude the filing of suits in the residence of plaintiff or defendant. The plain meaning is that the parties merely consented to be sued in Manila. Qualifying or restrictive words which would indicate that Manila and Manila alone is the venue are totally absent therefrom. We cannot read into that clause that plaintiff and defendant bound themselves to file suits with respect to the last two transactions in question only or exclusively in Manila. For, that agreement did not change or transfer venue. It simply is permissive. The parties solely agreed to add the courts of Manila as tribunals to which they may resort. They did not waive their right to pursue remedy in the courts specifically mentioned in Section 2(b) of Rule 4. *Renuntiatio non praesumitur*.”

The latter case made reference to *Engel v. Shubert Theatrical Co.*^[13] where an analogous stipulation which read: “In case of dispute, both contracting parties agree to submit to the jurisdiction of the Vienna courts” was interpreted as follows: “By the clause in question the parties do not agree to submit their dispute to the jurisdiction of the Viennese court, and to those courts only. There is nothing exclusive in the language used. They do agree to submit to the Viennese jurisdiction, but they say not a word in restriction of the jurisdiction of courts elsewhere; and whatever may be said on the subject of the legality of contracts to submit controversies to courts of certain jurisdictions exclusively, it is entirely plain that such agreements should be strictly construed, and should not be extended by implication.”

The doctrine in *Polytrade* was reiterated in *Nicolas v. Reparations Commission*^[14] where the issue posed was also whether the stipulation on venue is restrictive or merely permissive. The Court therein held:

“x x x venue in personal actions is fixed for the convenience of the plaintiff and his witnesses and to promote the ends of justice. We cannot conceive how the interests of justice may be served by confining the situs of the action to Manila, considering that the residences or offices of all the parties, including the situs of the acts sought to be restrained or required to be done, are all within the territorial jurisdiction of Rizal.

“While the parties have agreed to submit their dispute to the jurisdiction of the Manila courts, there is nothing in the language used in the aforecited stipulation which clearly shows that the intention of the parties was to limit the venue of the action to the City of Manila only. Such agreements should be construed reasonably and should not be applied in such a manner that it would work more to the inconvenience of the parties without promoting the ends of justice.”

Without reference to *Polytrade* nor to *Nicolas* cases, this Court enunciated the same doctrine in *Tantoco v. Court of Appeals*,^[15] to wit:

“It is elementary that venue is waivable, since it is a procedural, not a jurisdictional, matter. The record shows that the parties agreed that the courts of Manila shall have jurisdiction to try this case. The agreement is evidenced by sales contracts duly presented at the ex parte hearing of March 25, 1966, whereby the parties submitted themselves to the jurisdiction of the courts of Manila for any legal action arising out of their transaction. In short, the parties agreed to add the courts of Manila as tribunals to which they may resort in the event of suit, and not only to the courts either of Rizal, of which private respondent is a resident, or of Bulacan, where petitioner resides, pursuant to Section 2(b) of Rule 4 of the Revised Rules of Court.”

On the other hand, private respondents cite the case of *Hoechst Philippines, Inc. v. Torres*^[16] in support of the trial court’s decision. The stipulation: “In case of litigation arising out of this agreement, the venue of any action shall be in the competent courts of the Province of Rizal” was interpreted therein that any action by either of the

parties would have to be filed only in the competent courts of Rizal province exclusively. Noteworthy, however, is the fact that on May 19, 1978, or the day following the promulgation of the Hoechst case in May 18, 1978, this Court interpreted a similar stipulation on venue as unenforceable in *Sweet Lines, Inc. v. Teves*.^[17] Condition 14 of the shipping ticket issued by Sweet Lines, Inc. which provides “that any and all actions arising out of the condition and provisions of this ticket, irrespective of where it is issued, shall be filed in the competent courts in the City of Cebu” was held subversive of public policy on transfers of venue of actions. The Court therein explained that the philosophy underlying the provisions on transfer of venue of actions is the convenience of the plaintiffs as well as his witnesses and to promote the end of justice. Considering the expense and trouble a passenger residing outside of Cebu City would incur to prosecute a claim in the City of Cebu, he would most probably decide not to file the action at all, the Court said.

The later cases of *Lamis Ents. v. Lagamon*^[18] *Capati v. Ocampo*;^[19] *Western Minolco v. Court of Appeals*;^[20] *Moles v. Intermediate Appellate Court*;^[21] *Hongkong and Shanghai Banking Corporation v. Sherman*;^[22] *Nasser v. Court of Appeals*;^[23] and just recently, *Surigao Century Sawmill Co. v. Court of Appeals*,^[24] all treaded the path blazed by *Polytrade*. The conclusion to be drawn from all these is that the more recent jurisprudence shall properly be deemed modificatory of the old ones. Restating the rule, venue stipulations in a contract, while considered valid and enforceable, do not as rule supersede the general rule set forth in Rule 4 of the Revised Rules of Court. In the absence of qualifying or restrictive words, they should be considered merely as an agreement on additional forum, not as limiting venue to the specified place. They are not exclusive but, rather permissive. For, to restrict venue only to that place stipulated in the agreement is a construction purely based on technicality which, on the contrary, should be liberally construed. Thus, we hold that the petitioner in this case is not barred nor proscribed from filing its case against private respondents in Makati where petitioner holds its residence, pursuant to Section 2(b) of Rule 4 of the Revised Rules of Court.

WHEREFORE, the petition in this case is GRANTED and the orders of respondent Presiding Judge of the Regional Trial Court Branch 146, at Makati, dated February 28, 1992 and March 11, 1992 dismissing the complaint and denying the motion for reconsideration are hereby REVERSED and the complaint in the captioned civil case is REINSTATED.

SO ORDERED.

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

Padilla, J., see dissenting opinion.

[1] Rollo, pp. 21 and 28.

[2] Rollo, p. 39.

[3] G.R. No. 27033, 30 SCRA 187 (1969).

[4] G.R. No. L-20600, 18 SCRA 474 (1966).

[5] *Supra*.

[6] *Clavecilla Radio System v. Antillon*, G.R. No. L-22238, 19 SCRA 379 (1967).

[7] Sec. 2(b), Rule 4 of the Revised Rules of Court.

[8] Sec. 3, Rule 4 of the Revised Rules of Court.

[9] Sec. 4, Rule 4 of the Revised Rules of Court.

[10] 56 Phil. 169.

[11] Supra.

[12] Supra.

[13] 151 N.Y.S. 593, 594.

[14] G.R. No. L-28649, 64 SCRA 110.

[15] G.R. No. L-29345, 77 SCRA 225 (1977).

[16] G.R. No. L-44351, 83 SCRA 297.

[17] G.R. No. L-37750, 83 SCRA 361 (1978);

[18] G.R. No. 57250, 108 SCRA 740 (1981);

[19] G.R. No. 28742, 113 SCRA 794 (1982);

[20] G.R. No. 51996, 167 SCRA 592 (1988);

[21] G.R. No. 73913, 169 SCRA 777 (1989);

[22] G.R. No. 72494, 176 SCRA 331 (1989);

[23] G.R. No. 32945-46, 191 SCRA 783 (1990)

[24] G.R. No. 83889, 218 SCRA 619 (1993)

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DISSENTING OPINION

PADILLA, J.:

Section 3, Rule 4 of the Rules of Court allows the parties to agree on the change or transfer of venue.

The doctrine in *Polytrade Corporation vs. Blanco*, 30 SCRA 187 (1969) which is upheld by the majority in this case, that the general rules on venue remain applicable in the absence of qualifying or restrictive words in the agreement which indicate that the place specified is the only venue agreed upon, was laid down to prevent undue hardship or inconvenience to the parties.

In my view, the issue of whether or not an agreement fixing the venue of actions prevents the application of the general rule on venue under Sections 1 and 2 of Rule 4, Rules of Court, should be settled by keeping the purpose of the doctrine in mind.

There is hardly any question that a stipulation in contracts of adhesion, fixing venue to a specified place only, is void for, in such cases, there would appear to be no valid and free waiver of the venue fixed by the Rules of Court. However, in cases where both parties freely and voluntarily agree on a specified place to be the venue of actions, if any, between them, then the only considerations should be whether the waiver (of the venue fixed by the Rules of Court) is against public policy and whether the parties would suffer, by reason of such waiver, undue hardship and inconvenience; otherwise, such waiver of venue should be upheld as binding on the parties. The waiver of venue in such cases is sanctioned by the Rules of Court and would still be subject to and limited by the

rules on jurisdiction.

In the case at bench, there is no showing that any party would, in any way, be unduly inconvenienced in adhering to their agreed venue; besides, the two (2) venues involved, namely Makati and Manila, are so geographically close to each other, such that there is no perceivable reason why there would be any substantial difference between the said two (2) venues. In such a case, the venue agreed by the parties should control.

I therefore vote to DENY the petition and uphold the decision of the court a quo.

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