

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. COURT OF APPEALS CITIWIDE MOTORS INC., RESPONDENTS.

G.R. No. 117385. February 11, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

We are perturbed that this rather trivial issue still has to clog the dockets of the courts a quo and be elevated to this Court. Whether a civil case should be dismissed for supposed lack of interest to pursue it after the complainant failed to attend a conference, is a matter which should be resolved by the trial court, and should not even be brought to the Court of Appeals. But this seemingly inconsequential case has literally hibernated in the court dockets for more than fifteen (15) years now and the parties have yet to go through the pre-trial conference.

On 6 October 1983 respondent Citiwide Motors, Inc., (CMI from hereon) filed a Complaint for Nullification of Foreclosure and Auction Sale with Injunction against petitioner Bank of the Philippine Islands (BPI from hereon) before the RTC of Quezon City, Br. 97, docketed as Civil Case No. Q-39581. After almost five (5) years of resolving the issue of preliminary injunction, the trial court set the case for pre-trial on 21 June 1988.

On 11 June 1988 the entire records of the case were burned in a fire which gutted several floors of the Quezon City Hall. On 6 October 1989 respondent CMI filed a petition for reconstitution of the burned records attaching thereto pertinent documents which its counsel was able to gather. On 11 January 1990 the trial court directed both parties to examine each and every page of the annexes to the petition and to initial them before they could be considered part of the reconstituted records of the case.

On 2 February 1990 petitioner's counsel manifested that he could not comply with the order of the trial court because the attending counsel, Atty. Alberto F. Serrano, resigned from the law firm and went abroad and the substituting counsel still had to locate the records for comparison with the courts records. Thereupon, on 26 March 1992, petitioner moved to dismiss the complaint for failure of respondent CMI to reconstitute the records. On 29 April 1992 the trial court denied the motion for lack of merit and directed the parties and their counsel to attend a conference on 28 May 1992 "to discover ways and means of expediting disposition, including submission of this case for mediation."

The scheduled conference on 28 May 1992 was reset to 4 August 1992 and then to 10 September 1992. On 10 September 1992 the trial court dismissed the complaint "upon failure of (private respondent's counsel) to appear in Court x x x evidencing lack of interest to pursue this case." Petitioner's counsel then moved to reconsider the dismissal of the case alleging that she failed to attend the conference on 10 September 1992 because she was physically indisposed due to her monthly period. On 3 December 1992 the motion was denied. On 15 December 1992 private respondent elevated the case to the Court of Appeals.

On 27 September 1994 the appellate court[1] reversed and set aside the Order of the court a quo and remanded the case for further proceedings. Respondent Court of Appeals held that 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 achieve the desired end. In the absence of clear lack of merit or intent to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court.

Petitioner is now before this Court contending that the dismissal of the complaint by the trial court was in accordance with the rules, and that respondent Court of Appeals should not have disturbed the discretion of the trial court in determining what constituted an "unreasonable length of time" in the absence of patent abuse.

Not quite. The Revised Rules of Court, particularly Sec. 3, Rule 17, provides -

SEC. 3. Failure to prosecute. If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. The dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court.

Similarly, Sec. 3, Rule 17, 1997 Rules of Civil Procedure, states -

SEC. 3. Dismissal due to fault of plaintiff. - If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

The rules contemplate certain instances where the complaint may be dismissed due to the plaintiff's fault: (1) if he fails to appear during a scheduled trial, especially on the date for the presentation of his evidence in chief; (2) if he fails to prosecute his action for an unreasonable length of time; (3) if he fails to comply with the rules or any order of the court; or, (4) where the plaintiff fails to appear when so required at the pre-trial.[2] None of these is applicable to the instant case.

Here, the complaint was dismissed by the trial court after lengthy proceedings, "upon failure of the latter (counsel for private respondent) to appear in Court today, evidencing lack of interest to pursue this case." But the conference which counsel for private respondent failed to attend was not a regular trial or trial where she would be presenting her evidence. Neither was it a pre-trial conference under Rule 18 of the 1997 Rules of Civil Procedure. What counsel failed to attend was simply a conference set by the trial court "to discover ways and means of expediting disposition, including submission of (the) case for mediation." Hence, in the absence of any pattern to delay, the trial court committed a reversible error in dismissing the complaint solely on the ground of counsel's failure to attend a conference called by the court.

Neither could counsel for private respondent be accused of failing to prosecute the action for an unreasonable length of time, as petitioner contends. While Atty. Cinchona Cruz indeed failed to attend the 10 September 1992 conference as she was allegedly physically indisposed, which could have possibly delayed the disposition of the case, this alone does not justify the dismissal of the case for failing to prosecute an action for an unreasonable length of time. It must be remembered that petitioner itself contributed largely to the delay of the proceedings. For, it could not immediately comply with the order of the trial court, after the records of the case were burned, to examine the pages of the reconstituted records because its lawyer handling the case, Atty. Alberto F. Serrano, supposedly resigned from the law firm and went abroad, and the defendant in the trial court had yet to locate the records for comparison with the court's records to complete the process of reconstitution. Worse, petitioner later even filed a motion to dismiss the complaint for failure to reconstitute the records of the case, delaying further the disposition of the complaint.

Also, it is on record that on 4 August 1992 the trial court was notified that private respondent was going to have a new counsel. As such, the absence of private respondent's new counsel on 10 September 1992 was her first. Accordingly, the trial court should have been more indulgent by giving the new counsel another opportunity.

In fine, private respondent cannot be said to have lost interest in pursuing the case. The mere filing of a petition for reconstitution of the burned records of the case, attaching thereto the pertinent documents to prove a cause of action after a protracted litigation, is enough manifestation that it was still very interested in pursuing its complaint to a successful conclusion. In *Marahay v. Melicor*[3] we said -

While a court can dismiss a case on the ground of non prosecution, the real test 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 a 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 rather than wield their authority to dismiss.

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. The propriety of dismissing a case must be determined by the circumstances surrounding each particular case. There must be sufficient reason to justify the dismissal of a complaint. We certainly do not find any in the instant case.

This case has been pending in our courts for an inordinately long time and solely on this rather insignificant issue. And the appeal to this Court only shows the indifference of counsel for petitioner. For, this Court has far more important official matters to attend to. We thus admonish counsel for petitioner to be more prudent and circumspect in filing motions and appeals, and to bear in mind that as an officer of the court, he is tasked to observe the rules of procedure, not to unduly delay a case and defeat the ends of justice but to promote respect for law and the legal process. Perhaps, too, we should remind trial courts to exert efforts to resolve the matters before them on the merits and adjudge them accordingly to the satisfaction of the parties so that appeals may be discouraged, lest in hastening the proceedings they further delay the resolution of cases.

WHEREFORE, the instant petition is DENIED. The Decision of the Court of Appeals dated 27 September 1994 is AFFIRMED. Civil Case No. Q-39581 is REMANDED to the court of origin which is DIRECTED to resolve the case with dispatch. Costs against petitioner.

SO ORDERED.

Puno, Mendoza, Quisumbing, and Buena, JJ., concur.

[1]Decision penned by Associate Justice Consuelo Ynares-Santiago, concurred in by Associate Justices Emeterio C. Cui and Conchita Carpio-Morales, Court of Appeals (Eight Division).

[2]See Sec. 5, Rule 18, 1997 Rules of Civil Procedure.

[3]G.R. No. 44980, 6 February 1990, 181 SCRA 811.

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