

ALJEM'S CORPORATION (LOGGING DIVISION), REPRESENTED BY ITS PRESIDENT, PACIFICO V. DIZON, JR., PETITIONER, VS. COURT OF APPEALS, HON. HILARIO I. MAPAYO, PRESIDING JUDGE OF THE RE...

G.R. No. 122216. March 28, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision,[1] dated April 18, 1995, of the Court of Appeals in CA-G.R. No. 34831, affirming the approval by the Regional Trial Court, Branch 8, Davao City, of the report of a commissioner on the examination of the accounting records of petitioner.

The facts are as follows:

Petitioner Aljem's Corporation Logging Division (Aljem) was a joint venture entered into between petitioner's representative, Pacifico V. Dizon, Jr. and private respondent Rudy Y. Chua. Dizon served as the venture's president, while private respondent was its vice-president.[2] The joint venture operated from June 1988 to August 1990. The parties initially agreed upon a 55-45 sharing basis (with the higher percentage going to the petitioner), which they later modified to 50-50.[3]

On August 11, 1992, private respondent sued petitioner for a sum of money and for damages. In his complaint filed with the Regional Trial Court, Branch 8, Davao City, private respondent alleged, among other things, that according to the financial report prepared by a certified public accountant commissioned by him, the logging operations of the joint venture earned an income of P3,659,710.07 from January to August 1990.[4] Private respondent alleged that this figure was subsequently confirmed by petitioner's certified public accountant,[5] but despite repeated demands by him for the payment of his 50% share of the income from the logging operations of their joint venture, petitioner refused to pay him his share.[6]

In its answer, petitioner alleged that private respondent's auditor bloated the joint venture's net operating income for the year 1990 to P3,659,710.07 and that the correct amount, as found by petitioner's accountant, was only P2,089,141.80.[7] Petitioner alleged that pursuant to a partial liquidation of the joint venture on August 2, 1990, private respondent received P2,632,719.85 which represents his share in the assets as well as in the net operation income of the venture. What was left to be liquidated, according to petitioner, were the disposition of undivided equipment and collection of receivables, payment of taxes, and adjustment of private respondent's share upon the arrangement on the value of petitioner's equipment share in the amount of P55,970.32.[8]

As an affirmative defense, petitioner averred that taking into account the entire operation of the joint venture, the amount of the joint venture's undistributed assets from 1988 to 1990 was only P584,657.63. It claimed that private respondent had no cause of action against it (petitioner) and that the latter's claim was based on a fraudulent scheme.[9]

During the pre-trial conference of the case, the parties agreed to refer the case to a commissioner. For this reason, Leonora B. Cainglet was appointed commissioner by the trial court and ordered to conduct an audit of petitioner's accounting records.[10] The commissioner thereafter required the parties to produce the records of the company, consisting of the joint venture agreement, books of accounts from the start of the joint venture's operations up to its liquidation, sales invoices, cash vouchers, journal vouchers, payrolls, and other documents pertaining to business transactions, monthly bank statements, used and canceled checks, bank reconciliations, savings passbooks, if any, financial statements, and statement of joint venture liquidation.[11] The commissioner interviewed petitioner's representative as well as private respondent, after which she filed her report in court, furnishing copies of the same to the parties on March 15, 1993.

On March 26, 1993, petitioner filed a Manifestation and Motion, alleging that there were discrepancies concerning sales, depreciation, and interest between the audit report and the report of its (petitioner's) auditor. Petitioner asked for copies of certain cash vouchers, journal vouchers, and checks covering, among other things, repairs and maintenance, representation, fuel, oil and lubricants, and freight and handling. It was subsequently allowed to examine the documents in court.

On May 27, 1993, petitioner filed its comments and objections to the commissioner's report, praying that the commissioner be directed to identify the transactions, receipts, or documents which she disallowed, disapproved, or excluded, covering the abovementioned variances, and be ordered to correct the errors which she had allegedly committed.[12] The trial court conducted a total of fourteen (14) hearings from May 29 to September 28, 1993 to clarify the variances pointed out by petitioner.[13]

On December 6, 1993, the trial court issued an order confirming the commissioner's report and adopting her findings of facts and conclusions as those of the court.[14] Petitioner filed a motion for reconsideration, contending that the commissioner did not observe the mandatory requirements of Rule 33, §§3 and 5 of the 1964 Rules of Court[15] relative to the conduct of hearings before the commissioner and the setting of the time and place for the first meeting of the parties, and that it was error for the trial court to approve the commissioner's report over the objections of petitioner.[16] Petitioner contended that instead of merely interviewing the parties, the commissioner should have subpoenaed witnesses who could enlighten her under oath about the true agreements, oral and written, of the parties and about the manner in which they conducted their venture and that it was not within the power of the commissioner to alter or modify what had been agreed upon by the joint venturers themselves.[17]

On August 1, 1994, the trial court denied petitioner's motion for reconsideration.[18] Petitioner filed a petition for certiorari and prohibition to set aside the orders of the trial court, but the Court of Appeals dismissed its petition. Petitioner filed a motion for reconsideration, but its motion was likewise denied. Hence this petition.

The main issue in this case is whether the order of the trial court confirming and adopting the commissioner's report should be set aside on the ground that the commissioner merely based her report on her interview of the parties and did not hold any formal hearing.

In dismissing the petition for certiorari and prohibition filed by petitioner, the Court of Appeals held:

While the procedure laid down by the [Rules of Court] in the conduct of the auditing process concerning the requirement that the parties and/or their respective counsels should be summoned by the commissioner for a "first" meeting, and that the persons who are summoned by the commissioner should be placed under oath, [was] not done by the court commissioner appointed by the respondent court, We find and so hold that under Rule 33, Section 3 of the Rules, the order of reference may specify or limit the powers of the commissioner, the court can direct the commission[er] to report only upon particular issues, or to do or perform certain particular acts, or receive evidence only, or fix the date for the beginning and closing of the hearings. Thus, the

court-appointed commissioner can act and perform the power and authority only in accordance with, and within the limits of the very order directly handed down by the court which appointed him. The commissioner is obliged to work only under those constraints and within specific pre-determined concerns.

Respondent court's order to Mrs. Cainglet was specific, "to conduct an audit of defendant's (petitioner's) accounting records." In compliance with, and in fulfillment of, the order, Mrs. Cainglet required the parties to submit the relevant documents and papers, after which she examined them and on the basis of which she prepared and submitted the audit report in the court. With respondent's court order as frame of reference, we find and so hold that the court commissioner performed her task within the well-defined order to the letter. She did not hold any hearing and swore no witnesses for she was not ordered to do so.[19]

The Court of Appeals rejected petitioner's assertion that it was not afforded the opportunity to object to the disallowance or disapproval of certain items in the computation of the assets of petitioner. It pointed out that, among the persons who were interviewed by the commissioner, were petitioner's representative, Pacifico V. Dizon, Jr., and private respondent. Petitioner, therefore, had an adequate opportunity to inquire about the progress of the audit and challenge the commissioner's report if there were certain items therein that in its opinion should be disallowed, disapproved, or excluded.[20]

In this appeal, petitioner contends that the commissioner should have conducted a formal hearing as the order of the trial court directed her to conduct an "audit" of petitioner's accounting records. It argues that the term "audit" means "a formal or official examination and authentication of accounts with witnesses, vouchers, etc." [21] Citing Rule 33, §2(a) of the 1964 Rules of Court, petitioner likewise contends that as the work of the commissioner involved the examination of a long account, a hearing was necessary and that interviews do not suffice as the parties cannot register their objections during an interview. Finally, petitioner says that the conduct of a hearing and the swearing of witnesses do not require a specific order from the court. Rather, it is only when the court specifically orders the commissioner not to hold a hearing and swear witnesses that he/she is barred from performing such acts. Here, the trial court's order did not specify or limit the commissioner's powers; hence the commissioner necessarily had to swear and hear witnesses.[22]

Petitioner's contentions are well taken. Rule 33 of the 1964 Rules of Court, under which this case was decided below, provides in pertinent part:

SEC. 3. Order of reference, powers of the commissioner. $\frac{3}{4}$ When a reference is made, the clerk shall forthwith furnish the commissioner with a copy of the order of reference. The order may specify or limit the powers of the commissioner, and may direct him to report only upon particular issues, or to do or perform particular acts, or to receive and report evidence only, and may fix the date for beginning and closing the hearings and for the filing of his report. Subject to the specifications and limitations stated in the order, the commissioner has and shall exercise the power to regulate the proceedings in every hearing before him and to do all the acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may issue subpoenas and subpoenas duces tecum, swear witnesses, and unless otherwise provided in the order of reference he may rule upon the admissibility of evidence. The trial or hearing before him shall proceed in all respects as it would if held before the court.

SEC. 5. Proceedings before commissioner. $\frac{3}{4}$ Upon receipt of the order of reference and unless otherwise provided therein, the commissioner shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within ten (10) days after the date of the order of reference and shall notify the parties or their attorneys.

These provisions are substantially reproduced in Rule 32, §§3 and 5 of the present Code of Civil Procedure. The underscored portions of §§3 and 5 indicate quite clearly the necessity for a formal hearing and the swearing of witnesses; otherwise, the commissioner cannot determine factual questions which arise in the course of his

examination of the accounts. For this purpose, the witnesses must necessarily be sworn in and offered for cross-examination by the parties so that the truth of any question may be determined. This would not be possible were the commissioner merely to interview the parties. Where controversial questions are involved, such as whether certain items must be allowed or disallowed, an adversary proceeding is particularly indicated. That is why the last sentence of §3 says that "The trial or hearing before him shall proceed in all respects as it would be held before the court." For the fact is that the commissioner substitutes for the judge, and whatever the judge can or cannot do, the commissioner also can or cannot do. Consequently, if a judge cannot decide a question without hearing the parties on oath or affirmation, neither can the commissioner.

Indeed, what §3 authorizes to be limited is the scope of the proceedings before the commissioner, but not the modality thereof. Thus, the order of reference may specify only particular issues to be determined by the commissioner. It may direct him to do only particular acts or just to receive and report evidence. Whichever may be the case, the requirement for the commissioner to hold a hearing is clear, for this is the essence of due process.

Nor can it be maintained that petitioner waived the right to object to the proceedings before the commissioner. Because of the lack of a formal hearing, petitioner was denied the opportunity to object to the procedure followed by the commissioner as well as to the disallowance by her of certain items in the computation of the corporation's assets.

Neither can Rule 32, §10 of the 1964 Rules of Court be cited to bar petitioner from questioning the failure of the commissioner to hold a hearing. This provision states in pertinent part:

Objections to the report based upon grounds which were available to the parties during the proceedings before the commissioner, other than objections to the findings and conclusions therein set forth, shall not be considered by the court unless they were made before the commissioner.

The objections referred to are those which a party could have made during the hearings before the commissioner, such as those relating to the admissibility of evidence. But this presupposes a hearing or a trial, during which the objections should be made. Otherwise, there would be neither occasion nor opportunity for making the objections.

The Court of Appeals held that petitioner raised the question of lack of hearing before the commissioner only in its motion for reconsideration of the August 1, 1994 order of the trial court.[23] This is not correct. The records show that it actually did so in the May 28, 1993 hearing conducted by the trial court on the commissioner's report.[24] This was the first time petitioner had an opportunity to do so since no hearing was held before the commissioner. Moreover, since the proceedings before the commissioner were null and void because of the denial of due process to petitioner, the nullity of the proceedings can be raised at any stage of case. It was error, therefore, for the trial court to approve the commissioner's report over the objection of petitioner.[25]

WHEREFORE, the ORDERS, dated December 6, 1993 and August 1, 1994, of the Court of Appeals are REVERSED, and this case is REMANDED to the trial court for further proceedings in accordance with law.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Justice Artemon D. Luna, Chairman, and concurred in by Justices Eubulo G. Verzola and B.A. Adefuin-Dela Cruz.

[2] Petition for Review on Certiorari, pp. 2-3; Rollo pp. 8-9.

[3] Id., p. 3; id., p. 9. See also Decision of the Court of Appeals, p. 2; id., p. 26.

[4] Rollo, p. 26.

[5] Private respondent's Complaint, p. 3; Rollo, p. 97.

[6] Id., pp. 1-2; id., pp. 97-98.

[7] Decision of the Court of Appeals, p. 3; id., p. 3.

[8] Id.

[9] Id.

[10] Decision of the Court of Appeals, p. 4; Rollo, p. 28.

[11] Id.

[12] Id.

[13] Comment on the Petition for Review on Certiorari, p. 4; Rollo, p. 353.

[14] Rollo, pp. 296-301.

[15] Now Rule 32, §§3 and 5 of the 1997 Rules of Civil Procedure.

[16] Motion for Reconsideration, p. 1; Rollo, p. 77.

[17] Id., p. 4; id., p. 80.

[18] Rollo, p. 93.

[19] Decision of the Court of Appeals, pp. 11-12; Rollo, pp. 35-36.

[20] Id., p. 13; id., p. 37.

[21] Petition for Review, p. 9; id., p. 15.

[22] Id., p. 10; id., p. 16.

[23] Decision of the Court of Appeals, p. 13; Rollo, p. 37.

[24] TSN, p. 9, May 28, 1993.

[25] See 1 F. D. Regalado, Remedial Law Compendium 353 (1999).

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