

PEPSI COLA PRODUCTS PHILS., INC., PETITIONER, VS. COURT OF APPEALS, HON. SIXTO MARELLA, JR., SPS. EDGARDO DE VERA AND SALVACION LOCSIN DE VERA AND ANNA A. LOCSIN, RESPONDENTS.*G.R. No. 122629. December 02, 1998*

Ponente: QUISUMBING, J.

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Subject of the present petition for review on certiorari under Rule 45 is the decision of the Court of Appeals in CA-G.R. SP. No. 37701[1] which affirmed the order of the Regional Trial Court of Makati, Branch 138[2] denying petitioner's oral Motion for Postponement of a scheduled hearing due to unavailability of witnesses and declaring that petitioner has waived the right to present evidence in support of its defenses, and further denying petitioner's Motion for Reconsideration of the aforesaid order.

The instant case arose out of the "Pepsi Number Fever Promotion" sponsored by petitioner Pepsi Cola Products Philippines, Inc. ("PCPPI"), wherein numerous holders of the supposedly winning "349" crowns were not honored and paid by petitioner due to an alleged mistake in the security codes in the crowns.[3] Private respondents Edgardo De Vera, Salvacion Locsin De Vera, and Anna A. Locsin are unpaid holders of "349" Pepsi Crowns who instituted in the Regional Trial Court of Makati a civil case for collection of sum of money and damages against petitioner herein.

From its inception, the case was fraught with cancellations of scheduled hearings by reasons of the absence and/or illness of the presiding Judge and the postponements sought by the petitioner herein. While private respondents commendably finished the presentation of evidence on the scheduled dates of hearings, petitioner, however, has repeatedly sought and was granted postponements due to unavailability of its witnesses.

The presentation of petitioner's evidence was initially scheduled on May 28, 1993, July 15, 1993, August 6, 1993, and August 23, 1993. On May 28, 1993, petitioner presented its first witness Mr. Luisito V. Gutierrez. However, the other scheduled hearings were cancelled due to the absence of then presiding Judge Hon. Fernando Agdamag. The further hearing for presentation of petitioner's evidence was reset to October 14, 1993, but on the day of the hearing, petitioner orally moved for cancellation of hearing due to the absence of its witnesses, which was granted by the trial court with a warning that the failure to present its witnesses on the next scheduled hearing would be deemed a waiver of its right to present evidence. Hence, the hearing was reset to December 10, 1993, wherein petitioner presented its second witness Mr. Rafael Eladio Battung, Jr.. The scheduled hearings on January 20, 1994 and February 9, 1994 were also cancelled because the Presiding Judge was then on leave. In the intervening period, the Presiding Judge retired and was replaced by public respondent Hon. Sixto Marella, Jr., and petitioner's counsel[4] was substituted by its in-house counsel, De Jesus and Associates.

The hearing for the presentation of petitioner's evidence was reset to November 18, 1994, but on said date, petitioner once more orally moved for postponement due to the inability of petitioner's witnesses to appear. The hearing was reset to January 20, 1995 and February 9, 1995, with the directive to petitioner's counsel to finish

with the presentation of its evidence, and that should the allocated time in the morning be insufficient, the parties should be ready for continuance in the afternoon of the same dates. The court also issued a warning that the scheduled hearings are "intransferrable in character."

On January 20, 1995, heedless of the trial court's previous warnings, petitioner's counsel appeared and orally moved for cancellation of the hearing on the ground that its witnesses were all preoccupied with other commitments. Finding no merit in the verbal motion, the trial court denied the motion and issued the questioned Order dated January 20, 1995[5] which reads:

ORDER

"The Court finds no merit in the motion of the defendant for cancellation of today's hearing considering that these settings have been agreed upon as early as November 18, 1994 at which time an order was issued setting this case for today and on February 9, 1995 for the presentation of evidence for the defendant. In said Order the Court directed that the settings shall be intransferrable in character.

On motion of the plaintiff, and it appearing that the defendant had been given ample opportunity to present its evidence but still failed, the defendant is hereby declared to have waived its right to present further evidence in support of its defenses.

Let this case be deemed submitted for decision after thirty (30) days during which period parties are directed to file their respective memoranda in support of their respective claims and defenses.

The hearing scheduled on February 9, 1995 is hereby cancelled.

SO ORDERED."

On February 8, 1995, petitioner filed a Motion for Reconsideration[6] of the aforesaid Order. Petitioner explained that its intended witness, Ms. Rosemarie Valera, was also the witness on the same day (January 20, 1995) in Civil Case No. Ir-2486 entitled "Silvino Amoroso vs. PCPPI," pending with the Regional Trial Court of Iriga City, Branch 37, and that substitute witnesses in the persons of Atty. Juan Cruz Madarieta and Atty. Edgardo L. de Jesus were also not available since Atty. Madarieta was the handling lawyer of "Silvino Amoroso vs. PCPPI" and was also in Iriga City, while Atty. Edgardo L. de Jesus was counsel for petitioner in Civil Case No. 62726 entitled "Pepe Pagdanganan vs. PCPPI" at the Regional Trial Court of Pasig, Branch 163, on the same day.

In an Order dated May 12, 1995,[7] the trial court denied the Motion for Reconsideration stating that:

"The Court does not find merit on the ground cited by the defendant, for reasons (a) the Court has directed that the setting on January 20, 1995 shall be intransferable in character; Defendant was therefore forewarned that it should be ready to present its evidence on said date; Assuming that the witnesses were in fact, attending to the other cases there was no showing on record which was earlier set hence would warrant priority attention. In addition, the setting on January 20, 1995 was by agreement of the parties, made as aearly (sic) as November 18, 1994 or about two (2) months, which is sufficient to allow defendant to make reasonable arrangement with other courts; (b) fairness dictates that given the predicament of the defendant, assuming the same to be true, it should have filed the corresponding written Motion for Cancellation of the hearing long before the scheduled date, instead of a mere verbal motion presented on the day of the hearing itself; (c) the Motion for Reconsideration does not state the nature of the testimony of the intended witnesses, hence, the Court does not have basis to determine whether they would merely be corroborative or simply cumulative to the evidence already presented; (d) the case has been pending for quite sometime; and (e) defendant has been given ample opportunity to present its evidence but it opted not to exercise its right.

IN VIEW THEREOF, defendant's Motion for Reconsideration is hereby DENIED.

SO ORDERED."

On July 6, 1995, petitioner filed with the Court of Appeals a petition for certiorari[8] under Rule 65 with a prayer for the issuance of a temporary restraining order and writ of preliminary injunction alleging that respondent Judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the questioned orders denying both petitioner's Motion for Postponement and Motion for Reconsideration.

On November 9, 1995, the Court of Appeals denied due course to the petition holding that:[9]

"Counsel for petitioner knows as early as November 18, 1994 or thereabout of the date scheduled for continuation of reception of petitioner's evidence on January 20, 1995 since the November 18th hearing was cancelled upon motion of counsel. Counsel therefore has more than two months within which to prepare for the January 20th scheduled trial. He has to schedule and prepare the witnesses that he intends to present. He is expected to manage and budget his time fairly, equally, and allot the same to avoid conflict of schedule of trials before respondent court and before the other courts where he has to present the same set of witnesses. He should also be conscious of the fact that private respondents had formally rests (sic) their case as early as February 5, 1992, and that on January 20, 1995, the case has been pending for about three years. Most importantly, there is the court's directive for him to finish with the presentation of his witnesses, and the court was prepared to hear petitioner's witnesses morning and afternoon. There is also the court's warning that the hearing as scheduled is "intransferrable in character". Obviously, petitioner's counsel preferred to present his witness before other courts.

The comment of counsel for private respondents that those numerous cases involving the crowns bearing number 349 against petitioner, as well as the fact that they have the same set of witnesses that they presented or intended to present on those cases, can not be considered as legal justifications for giving preference to the other cases to the detriment and the resulting delay of the disposition of the case at bar.

On the whole, We find that the reasons stated in respondent court's Order of May 12th is in order, in line with the rules that motions for continuance or postponement of hearing are addressed to the sound discretion of the court and its action thereon will not be disturbed by appellate courts in the absence of a patent and manifest abuse of discretion.

WHEREFORE, the petition for certiorari is hereby DENIED DUE COURSE and is DISMISSED."

Hence, the present recourse to this Court by way of petition for review on certiorari under Rule 45. Petitioner contends that, first, the decision of the Court of Appeals contravenes the due process clause and is not in accord with law and jurisprudence. Second, the trial court's departure from accepted and usual course of judicial proceedings call for the exercise of the Supreme Court of its supervisory powers. And third, the Court of Appeals committed grave abuse of discretion in upholding the orders of the trial court denying the oral motion for postponement and motion for reconsideration.

We find the petition devoid of merit.

A motion for continuance or postponement is not a matter of right,[10] but is addressed to the sound discretion of the court,[11] and its action thereon will not be disturbed by appellate courts in the absence of clear and manifest abuse of discretion resulting in a denial of substantial justice.[12] Section 4 of Rule 22 of the Revised Rules of Court[13] specifically requires that "[a] motion to postpone a trial on the ground of absence of evidence can be granted only upon affidavit showing the materiality of evidence expected to be obtained, and that due diligence has been used to procure it. x x x" In considering motions for postponement of trials or for new trials, two circumstances should be taken into account by the court, namely, (1) the merit of the case of the movant, and (2) the reasonableness of the postponement or new trials.[14] The records would show that petitioner not only failed to allege and prove the materiality of the testimonies of its witnesses, it even refused to make such an averment contending that the materiality of testimonies of its witnesses can only be appreciated after they are presented in

court.[15] Neither did petitioner present a meritorious claim or defense. Instead petitioner simply cited cases of different factual milieu wherein postponements were allowed for valid cause. Thus, in *De Guzman v. Elbinias*, 172 SCRA 240, 245 (1989), postponement of the first hearing for the defense was justified by the following circumstances: (1) counsel for petitioner had a previous intransferable hearing in a criminal case scheduled on the same day; (2) counsel only received the notice of hearing two days prior to the said hearing; (3) the distance of some 65 kilometers from the residence of counsel and the Regional Trial Court of Bulacan, Branch 5. None of the aforementioned circumstances are availing in the instant case. In *Philippine Long Distance Telephone Co. v. Genovea*, 116 SCRA 395, 400, 405 (1982), counsel for defendant (PLDT) moved for another postponement of a scheduled hearing for presentation of evidence on the ground of sudden illness of its witness. The trial court, upon objection of defendant's counsel, denied the motion and plaintiff was deemed to have waived its right to present its evidence and the case deemed submitted for decision. While we later on ordered the reopening of the case for the reception of defendant's evidence in the interest of substantial justice, we admonished defendant to present its evidence with the least possible delay, limiting requests for postponement to the minimum. We do not find petitioner herein similarly situated as the grounds relied upon for postponement are different. In *Sayson v. People*, 166 SCRA 680, 689-690 (1988), also cited by petitioner, we ruled that there was no grave abuse of discretion in the trial court's denial of a motion for postponement due to illness of counsel considering that petitioner's motion was not seasonably filed as the three-day notice required under Rule 15, Section 4 of the Revised Rules of Court was not complied with, and that said motion was not accompanied by an affidavit or medical certificate to support the alleged illness of counsel, contrary to Rule 22, Section 5 of the Revised Rules of Court.

It would not be amiss to point out that the case below was instituted in the trial court on or about June 11, 1992, and private respondents formally rested their case on February 5, 1993. Petitioner had already been allowed several postponements due to unavailability of its witnesses and the case dragged on for a period of almost two (2) years. Yet on the next scheduled hearing on January 20, 1995, petitioner brazenly sought another postponement due to the absence of its witnesses who were then allegedly testifying in similar cases elsewhere - a contingency which counsel could have easily foreseen and avoided by a careful scheduling of the hearings of its witnesses. Petitioner blithely explained that it did not file a written Motion for Postponement because it was hoping that even at the last hour, a witness would be available for that day's hearing.[16] How can petitioner make this preposterous claim when it knew fully well that its intended witness, Ms. Valera was already in Iriga City even two (2) days before the hearing, and that Atty. Madarieta was likewise in Iriga City on the day of the hearing itself, while Atty. de Jesus had a hearing on the same day in Pasig City? The granting of a motion to postpone, especially one made on the day of the hearing itself, is discretionary upon the courts and a litigant should not act on the assumption that it would be automatically granted.[17] We also note that counsel for petitioner has shown a reprehensible propensity for dilatory schemes which we have always viewed with grave concern and utmost disfavor.

As officers of the court, lawyers have a responsibility to assist in the proper administration of justice. They do not discharge this duty by filing pointless petitions that only add to the workload of the judiciary, especially this Court, which is burdened enough as it is. A judicious study of the facts and the law should advise them when a case, such as this, should not be permitted to be filed to merely clutter the already congested judicial dockets. They do not advance the cause of law or their clients by commencing litigations that for sheer lack of merit do not deserve the attention of the courts.[18]

WHEREFORE, the instant petition is hereby dismissed for lack of merit. Double costs against petitioner.

SO ORDERED.

Davide Jr., C.J., (Chairman), Bellosillo, Vitug, and Panganiban, JJ., concur.

[1] Penned by Associate Justice Artemon D. Luna, concurred in by Justices Ramon A. Barcelona and Portia Alino-Hormachuelos, of the Fourteenth Division of the Court of Appeals.

[2] Presided by Judge Sixto Marella, Jr.

[3] See Petition, Rollo, pp. 11-13.

[4] Ponce Enrile, Cayetano, Reyes and Manalastas Law Firm

[5] Annex "D" to the Petition, Rollo, p. 77.

[6] Annex "E" to the Petition, Rollo, pp. 78-86.

[7] Annex "F" to the Petition, Rollo, pp. 87-88.

[8] Annex "G" to the Petition, Rollo, pp. 89-107.

[9] Annex "A" to the Petition, Rollo, pp. 30-31.

[10] *Presbitero v. Court of Appeals*, 217 SCRA 372, 380-381 (1993).

[11] *Id.*, *Belstar Transportation, Inc. v. Board of Transportation*, 181 SCRA 209, 213 (1990), *Alcaraz v. Racimo*, 125 SCRA 328, 334 (1983), *Sumadchat v. Court of Appeals*, 111 SCRA 488, 500 (1982), *Balleza v. Bolinas*, 82 SCRA 366, 367 (1978).

[12] *De Vera v. Santos*, 79 SCRA 72, 78 (1977).

[13] Now Section 3 of Rule 30 of the 1997 Rules of Civil Procedure.

[14] *Sardinia-Linco v. Hon. Gregorio Pineda*, 104 SCRA 757, 766 (1981).

[15] Reply, Rollo, p. 123.

[16] See Petition for Certiorari, Annex "G" to the Petition, Rollo, p. 100.

[17] See *Balleza v. Bolinas*, 82 SCRA 366, 367 (1978).

[18] *Banogon v. Zerna*, 154 SCRA 593, 598 (1987).

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