MA. ROSARIO SUAREZ, PETITIONER, VS. JUDGE MARTIN S. VILLARAMA, JR., RTC, PASIG CITY, BRANCH 156 AND SPS. ESCOLASTICO & CORDELIA BALLAR, RESPONDENTS.

G.R. NO. 124512. June 27, 2006

Ponente: TINGA, J.

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TINGA, J.:

The instant petition challenges the orders of the Regional Trial Court[1] (RTC) dated 15 February[2] and 11 April 1996[3] dismissing Civil Case No. 63566 for failure to prosecute and denying the motion for reconsideration.

The factual background is as follows:

Petitioner Ma. Rosario Suarez instituted a complaint[4] for specific performance with prayer for attachment before the RTC against Spouses Escolastico and Cordelia Ballar (respondents) on 1 September 1993. As respondents were permanent residents of the United States, extraterritorial service of summons was allowed. After being granted an extension of time to file their responsive pleadings, respondents filed a motion to dismiss dated 11 January 1994. The motion was denied by the RTC on 9 March 1994, which gave respondents fifteen (15) days to file their answer.

Despite having received the order denying their motion to dismiss on 22 March 1994, it was only on 9 February 1995 that the RTC received a copy of respondents' answer dated 22 November 1994. In their answer, respondents averred that respondents issued four (4) post-dated checks, the first of which was dishonored when presented for payment for the reason of "Account Closed." This prompted respondents not to present the rest of the checks anymore. Consequently, petitioner cannot demand performance of their undertaking when petitioner herself failed to comply with her own undertaking.[5] They put up a counterclaim for moral and exemplary damages, as well as for payment of attorney's fees.

Due to repeated motions for postponement filed by both parties, it was only on 3 July 1994 that pre-trial was terminated. Trial on the merits commenced on 10 August 1995. Later however, the continuation of the trial was impeded by successive motions for postponement filed by both parties.

The subsequent dates of the trial were set for August 21, September 11 and 21. No hearing was held on 21 August due to petitioner's request to have it transferred to the succeeding scheduled dates. The hearings set for the 11th and 21st of September were also moved to the 28th on petitioner's motion. The hearing set on the 28[th] was also postponed upon respondents' motion as their lawyer had another case to attend to. The RTC moved the trial date to 23 October 1995. On said date, however, petitioner again moved for postponement of the hearing. The trial court transferred the hearing date to 7 December 1995. As petitioner was still out of the country at that time, the RTC moved the date of hearing to 15 February 1996 at the instance of petitioner's counsel. Finally, on 15 February 1996, petitioner as well as her counsel failed to appear at the continuation of the trial. Consequently, the trial court issued an order[6] of even date dismissing the case for failure to prosecute.

On 4 March 1996, petitioner filed an entry of appearance of new counsel as well as a motion for time to file her motion for reconsideration.[7] Petitioner filed the motion for reconsideration on 6 March 1996. Petitioner alleged that the failure of her counsel to appear on the date of the trial was due to her counsel being terminally ill.

In an order[8] dated 11 April 1996, the RTC denied the motion for reconsideration, on the ground that the 15-day period for appeal cannot be extended.

In a direct appeal to this Court via petition for review on certiorari on 23 April 1996, petitioner imputes grave abuse of discretion on the part of the RTC in dismissing the case for failure to prosecute and in denying her motion for reconsideration.

We deal first with the procedural issue, which is the propriety of the remedy availed by petitioner. Respondents argue that the remedy against an order dismissing a complaint is appeal, not certiorari.

We agree with respondents.

At the outset, it bears stressing that the trial court's 15 February 1996 order dismissing the case for failure to prosecute is a final order. It operates as a judgment on the merits.[9] Indeed, this is an express provision in Section 3,[10] Rule 17 of the Rules of Court. The same characterization applies to the 11 April 1996 order denying the motion for reconsideration. It is axiomatic that the remedy against such final order is appeal and not certiorari.[11]

In Murillo v. Consul,[12] which was later adopted by the 1997 Revised Rules of Civil Procedure, this Court had the occasion to clarify the three (3) modes of appeal from decisions of the RTC, namely: (1) ordinary appeal or appeal by writ of error, where judgment was rendered in a civil or criminal action by the RTC in the exercise of original jurisdiction; (2) petition for review, where judgment was rendered by the RTC in the exercise of appellate jurisdiction; and (3) petition for review to the Supreme Court.

The first mode of appeal, governed by Rule 41, is taken to the Court of Appeals on questions of fact or mixed questions of fact and law. The second mode of appeal, covered by Rule 42, is brought to the Court of Appeals on questions of fact, of law, or mixed questions of fact and law. The third mode of appeal, provided for by Rule 45, is elevated to the Supreme Court only on questions of law.

It is axiomatic that a question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.

In the instant case, petitioner brought this petition for review on certiorari raising mixed questions of fact and law. She impugns the decision of the RTC dismissing her complaint for failure to prosecute. The resolution of the propriety of dismissal entails a review of the factual circumstances that led the trial court to decide in such manner. On the other hand, petitioner also questions the lower court's denial of her motion for reconsideration on the ground that it was filed out of time. There is indeed a question as to what and how the law should be applied. Therefore, petitioner should have brought this case to the Court of Appeals via the first mode of appeal under the aegis of Rule 41.

Section 4 of Circular No. 2-90, in effect at the time of the antecedents, provides that an appeal taken to either the Supreme Court or the Court of Appeals by the wrong mode or inappropriate mode shall be dismissed. This rule is now incorporated in Section 5,[13] Rule 56 of the 1997 Rules of Civil Procedure.

Moreover, the filing of the case directly with this Court runs afoul of the doctrine of hierarchy of courts. Pursuant to this doctrine, direct resort from the lower courts to the Supreme Court will not be entertained unless the appropriate remedy cannot be obtained in the lower tribunals. This Court is a court of last resort, and must so

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remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition.[14] Thus, a petition for review on certiorari assailing the decision involving both questions of fact and law must first be brought before the Court of Appeals.

Notwithstanding the dismissibility of this case, we shall proceed to address the other issue involving a well-settled question of law.

Petitioner argues that the motion for reconsideration was filed on time. Petitioner received the order of dismissal on 20 February 1996, thus, the 15-day period for filing of the motion for reconsideration would expire on 6 March 1996. On 4 March 1996, petitioner's new counsel filed the Entry of Appearance with Motion for Time to File Motion for Reconsideration. Petitioner surmised that she has until 19 March 1996 within which to file her motion for reconsideration. In fact, she filed the said motion on 11 March 1996, still within the 15-day period.

Furthermore, petitioner begs to differ from the trial court's interpretation of the ruling in Habaluyas Enterprises, Inc. v. Japson[15] that the 15-day period for appealing or for filing a motion for reconsideration cannot be extended. Petitioner claims that the filing of the motion for extension was based on valid, legitimate and reasonable grounds, like her former counsel had been terminally sick and her new counsel needed more time to study the case.[16]

Respondents contend that the motion for extension to file the motion for reconsideration may no longer be filed before all courts lower than the Supreme Court.

As ruled in Habaluyas, settled is the rule that the 15-day reglementary period for appealing or filing a motion for reconsideration or new trial cannot be extended, except in cases pending with the Supreme Court as a court of last resort which may in its sound discretion either grant or deny the extension requested.[17]

The trial court did not err in dismissing the motion for reconsideration. Petitioner received the order of dismissal on 20 February 1996. She had until 6 March 1996 to file the motion for reconsideration. The filing of the motion for extension did not toll nor extend the 15-day reglementary period. Hence, the period had already lapsed by the time petitioner filed her motion for reconsideration on 11 March 1996.

Petitioner later beseeches this Court's liberality in addressing her procedural lapses. She claims that the lower court committed grave abuse of discretion in dismissing her case for non-suit. She argues that the RTC should have considered the fact that she had already started presenting her evidence to prove her causes of action, as well as the merits of her new counsel's reason in asking for extension of time to file the motion for reconsideration.[18]

It is an accepted tenet that rules of procedure must be faithfully followed except only when, for persuasive and weighting reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal interpretation of the rules of procedure, however, should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.[19]

In the case at bar, petitioner has not demonstrated any cogent reason for the Court to take an exception. Petitioner committed a blatant disregard of the basic procedural rules in appeals. The 15-day reglementary period for the filing of the motion for reconsideration is mandatory and jurisdictional.[20] Furthermore, the filing of the wrong mode of appeal to this Court is a patent ground for its dismissal.

Anent the dismissal of the case for failure to prosecute, we find no fault on the part of the lower court. It is the duty of the plaintiff to appear on the date of the presentation of his evidence in chief on the complaint, prosecute his action within a reasonable length of time, and comply with the Rules and court orders. Failure to do so would

justify the dismissal of the case.[21] The true test for the exercise of the power to dismiss a case on the ground of failure to prosecute is whether, under the prevailing circumstances, the plaintiff is culpable for want of due diligence in failing to proceed with reasonable promptitude.[22]

There had been countless postponements of the trial dates upon motion of petitioner's counsel which culminated in their non-appearance on the scheduled date of hearing. This fact, coupled with petitioner's failure to comply with procedures laid down by the Rules of Court, justifies the dismissal of this case.

WHEREFORE, the petition is DISMISSED. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and Velasco, Jr., JJ., concur.

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[1]Penned by Judge (now Court of Appeals Justice) Martin S. Villarama, Jr.

[2]Rollo, p. 36.

[3]Id. at 43.

[4]Id. at 12-18.

[5]Id. at 30.

[6]Rollo, p. 143.

[7]Records, p. 144.

[8]Supra note 3.

[9]Heirs of the Late Flor Tungpalan v. Court of Appeals, G.R. No. 136207, 21 June 2005, 460 SCRA 392, 398; Ilasco v. Court of Appeals, G.R. No. 88983, 14 December 1993, 228 SCRA 413, 418.

[10]Section 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 the 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.

[11]Meneses v. Court of Appeals, G.R. No. 109053, 7 October 1994, 237 SCRA 484, 492.

[12]Resolution of the Court En Banc in UDK-9748, 1 March 1990.

[13]Section 5. Grounds for dismissal of appeal. – The appeal may be dismissed motu propio or on motion of the respondent on the following grounds:

(a) Failure to take the appeal within the reglementary period;
(b) Lack of merit in the petition;
(c) Failure to pay the requisite docket fee and other lawful fees or to make a deposit for costs;
(d) Failure to comply with the requirements regarding proof of service and contents of and the documents which should accompany the petition;
(e) Failure to comply with any circular, directive or order of the Supreme Court without justifiable cause;

(f) Error in the choice or mode of appeal; and
(g) The fact that the case is not appealable to the Supreme Court. (Emphasis supplied)

[14]Ouano v. PGTT International Investment Corporation, 434 Phil. 28, 34 (2002).

[15]G.R. No. L-70895, 5 August 1985, 138 SCRA 46.

[16]Rollo, p. 6.

[17]Barnes v. Padilla, G.R. No. 160753, 30 September 2004, 439 SCRA 675, 685 citing Amatorio v. People, 397 SCRA 445, 453ï¿½454 (2003); Secretary of Agrarian Reform v. Tropical Homes, Inc., 414 Phil. 389, 403-404 (2001); Heirs of Andrea Cristobal v. Court of Appeals, 387 Phil. 729, 734-735 (2000); Argel v. Court of Appeals, 374 Phil. 867, 875 (1999); Uy v. Court of Appeals, 349 Phil. 1002, 1011-1012 (1998); Caltex (Philippines), Inc. v. Intermediate Appellate Court, G.R. No. 72703, 13 November 1992, 215 SCRA 580, 587; Rolloque v. Court of Appeals, G.R. No. 78179, 18 January 1991, 198 SCRA 47, 55.

[18]Rollo, pp. 90-91.

[19]Navarro v. Metropolitan Bank & Trust Company, G.R. No. 138031, 27 May 2004, 429 SCRA 439, 446, citing Sebastian v. Morales, 397 SCRA 549 (2003); Cresenciano Duremdes v. Agustin Duremdes, G.R. No. 138256, 12 November 2003, 415 SCRA 684.

[20]Manipor v. Ricafort, 454 Phil. 825, 832 (2003) citing Sy Chin v. Court of Appeals, 345 SCRA 673, 681 (2000), citing Laza v. Court of Appeals, 336 Phil. 631 (1997).

[21]RULES OF COURT, Rule 17, Sec. 3.

[22]Belonio v. Rodriguez, G.R. No. 161379, 11 August 2005, 466 SCRA 557, 580.

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