THERMPHIL, INC., PETITIONER, VS. COURT OF APPEALS AND CASTELLANO ICE PLANT AND COLD STORAGE, INC., RESPONDENTS.

G.R. No. 129234. November 20, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

The instant petition seeks the review of the Decision of the Court of Appeals in CA-G.R. CV No. 39185 dated November 6, 1996,[1] which affirmed with modification the Decision of the Regional Trial Court of Manila, Branch 2, in Civil Case No. 91-59348 dated July 8, 1992.[2]

Petitioner is a corporation engaged in the business of rendering refrigeration, airconditioning, mechanical, electrical and other auxiliary services. On November 20, 1991, petitioner filed a complaint for specific performance and damages against respondent Castellano Ice Plant & Cold Storage Inc., seeking to collect from respondent the sum of P755,050.00, as consideration for the construction services petitioner performed at respondent's ice plant. Petitioner further prayed that respondent be ordered to deliver the components, equipment and parts stipulated in their contract, and to pay the amounts of P100,000.00 as unrealized income, P100,000.00 as exemplary damages, P100,000.00 as nominal damages, P185,000.00 as attorney's fees.

Instead of filing an answer, respondent filed a compromise agreement, admitting the material allegations of the complaint and asking for a period of twenty-three days within which to comply with the terms and conditions set forth in the complaint. Respondent also expressly stipulated that if no such payment is made within the twenty-three day period, petitioner shall be entitled to a writ of execution. The compromise agreement was signed by respondent's Vice-President and General Manager, Catalino I. Liwag.

On January 24, 1992, the trial court rendered judgment in accordance with the compromise agreement and enjoined the parties to comply with the same.

However, on March 17, 1992, respondent filed a "Motion to Annul Compromise Agreement and Reconsideration of the Decision Embodying the Compromise Agreement." It appears that petitioner refused to accept respondent's tender of payment of P673,846.83, since the amount did not include the damages and attorney's fees prayed for in the complaint. Respondent alleged that it executed the compromise agreement on condition that it shall only be liable for the principal obligation and interest, and that petitioner shall forego all claims for damages and attorney's fees.

Respondent also filed its answer to the complaint, wherein it admitted the existence of the contract as well as the balance of its obligations to petitioner, but denied the latter's claim for damages and attorney's fees. Respondent moved that it be allowed to consign the amount of P624,050.00 and interest of P49,796.83 with the court, and that it be ordered released from its obligations to petitioner. By way of counterclaim, respondent sought the payment of litigation expenses, transportation and attorney's fees in an unspecified amount.

Petitioner filed its opposition to respondent's motion to annul compromise agreement, alleging that the motion

was defective for lack of notice of hearing and that the judgment based on a compromise agreement was final and executory.

On April 20, 1992, an Order was issued rescinding the compromise agreement for its failure to express the true intention of the parties. The court sustained respondent's position that it would not have entered into the compromise agreement had it not been given any form of concession by petitioner. Accordingly, the court also set aside its judgment based on the compromise agreement.

Thereafter, the case was set for pre-trial conference. At the scheduled pre-trial on June 10, 1992, petitioner was declared non-suited for its failure to appear, and the complaint was accordingly dismissed. Respondent was allowed to present its evidence on the counterclaim on June 17, 1992.

Petitioner filed a motion for reconsideration of the Order of non-suit on July 21, 1992, alleging that it had not yet officially received a copy of the Order declaring it non-suited. Petitioner averred that its President and General Manager was indisposed on the date of the scheduled pre-trial conference, and submitted a medical certificate in support thereof.

Instead of resolving the aforesaid motion for reconsideration, the trial court rendered a decision on July 8, 1992, disposing of the case as follows:

WHEREFORE, the contract between the parties is hereby ordered rescinded; the plaintiff is ordered to pay the defendant the amount of P40,000.00 a month as interest on the loan obtained by the defendant; the sum of P20,000.00 as attorney's fees and costs of suit.

SO ORDERED.[3]

Petitioner filed a motion for reconsideration of the above decision, which was denied on August 7, 1992. Petitioner appealed to the Court of Appeals.

On November 6, 1996, the Court of Appeals rendered the assailed decision affirming the decision of the trial court with the following modification, to wit:

> WHEREFORE, premises considered, the challenged decision is AFFIRMED with the modification that appellant is ordered:
>
> 1) to return to appellee the sum of P131,000.00 with legal interest at 12% per annum to commence from January 10, 1992 until fully paid; and
>
> 2) to pay attorney's fees in the sum of P20,000.00 and the costs of suit.
>
> Costs against the appellant.
>
> SO ORDERED.[4]

The instant petition is anchored on the following grounds:

> - The respondent court erred when it failed to require private respondent to pay its admitted obligation to petitioner.
>
> - Respondent court erred in ordering petitioner to return to private respondent the sum of P131,000.00 representing partial payment made pursuant to the compromise agreement.
>
> - The respondent court erred in sustaining the rescission of the "Construction Contract" between petitioner and private respondent despite the fact that rescission is not a relief prayed for in the complaint.

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> - The respondent court erred in declaring the compromise agreement as null and void on the ground of vitiated consent.
>
> - The respondent court erred in sustaining the order of the trial court declaring petitioner non-suited for failure to appear during the pre-trial conference.[5]

After a careful deliberation of the substantive issues raised in the instant case, the trial court's order declaring petitioner as non-suited is set aside and the case is ordered remanded to the court of origin for further proceedings.

In Bank of the Philippine Islands v. Court of Appeals,[6] we cautioned the courts against the improvident dismissal of cases based on a declaration of the plaintiff as non-suited, viz:

> While a court can dismiss a case on the ground of non prosequitur, 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.

In the case at bar, petitioner cannot be said to be "chargeable with want of due diligence in failing to proceed with reasonable promptitude." Neither has it manifested a "pattern or a scheme to delay the disposition of the case nor a wanton failure to observe the mandatory requirement of the rules." It appears from the record that petitioner was prompt in all the instances when it had to file responsive pleadings. Upon learning of the Order declaring it non-suited, it forthwith filed a motion for reconsideration even though it had not yet officially received a copy of the said Order. There is no proof showing petitioner's absence at any of the hearings of the case, nor is there any instance that it had refused to comply with the court's orders or processes.

Moreover, the complaint appears on its face to be meritorious. In fact, respondent has expressly and judicially admitted the material allegations of the complaint. Only petitioner's claim for consequential damages and attorney's fees remains to be resolved by the trial court.

In sum, we find that the case should be reinstated in the interest of substantial justice. The policy of the Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that the Court is empowered to suspend its rules, or to exempt a particular case from the application of a general rule, when the rigid application thereof tends to frustrate rather than promote the ends of justice.

As regards the compromise agreement, we agree with the trial court that the same did not clearly embody the true intent of the contracting parties. While it is well-settled that a judicial compromise has the effect of res judicata and is immediately executory and not appealable, it may be set aside on the ground of mistake, fraud, violence, intimidation, undue influence or falsity of documents.[7] In the case at bar, respondent has sufficiently established that it entered into the compromise agreement with the understanding that it would only be liable for the principal claim and interests and not for damages and attorney's fees.

It bears stressing that respondent never prayed for the rescission of the compromise agreement. On the contrary,

respondent sought in its counterclaim that it be allowed to consign the amount of its indebtedness and that it be released from its obligations to petitioner in accordance with the law on tender and payment.[8] Surely, its option to fulfill its obligations under the contract is inconsistent with a prayer for rescission. There was no substantial breach in the performance of petitioner's obligations under the contract, if it had committed any breach at all. It appears that petitioner had already performed 90% of its obligations, the remaining 10% being left unaccomplished because of respondent's failure and refusal "to pay its obligations and to deliver or make available the components, equipment and parts in accordance with the terms of the contract." It is worth noting that the rescission of a contract will not be permitted for a slight or casual breach, but only such substantial and fundamental breach as would defeat the very object of the parties in making the agreement.[9] Thus, the Court of Appeals committed reversible error in ordering petitioner to return the amount of P131,000.00 to respondent.

WHEREFORE, in view of the foregoing, the petition for review is GRANTED. The decision of the Court of Appeals in CA-G.R. CV No. 39185 dated November 6, 1996 is REVERSED and SET ASIDE. The case is REMANDED to the Regional Trial Court of Manila, Branch 2, for further proceedings.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

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[1] Penned by then Court of Appeals Associate Justice Arturo B. Buena and concurred in by Associate Justices Angelina Sandoval Gutierrez and Conrado M. Vasquez, Jr.; Rollo, pp. 25-32.

[2] Penned by Judge Napoleon R. Flojo; Records, Civil Case No. 91-59348, pp. 96-97.

[3] Rollo, p. 56.

[4] Ibid., pp. 31-32.

[5] Petition, p. 5.

[6] 303 SCRA 19 [1999], citing Marahay v. Melicor, 181 SCRA 811 [1990].

[7] Civil Code, Article 2038.

[8] Answer with Counterclaim, Records, p. 28.

[9] Laforteza v. Machuca, 333 SCRA 643 [2000], citing Ocampo v. Court of Appeals, 233 SCRA 551 [1994].

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