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G.R. No. 130243. October 30, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision, dated August 8, 1997, of the Court of Appeals, which affirmed the dismissal by the Regional Trial Court of Makati City of the complaint filed by the petitioners against private respondents Pepsi Cola Products Phils., Inc. (PCPPI) and Pepsico, Inc. (PI) on the ground of refusal to make discovery.

The facts of the instant case are as follows:

Petitioners are holders of softdrink bottle caps bearing the number 349, allegedly a winning digit in a contest sponsored by respondents PCPPI and PI to promote their beverage products. Respondent PCPPI is a domestic corporation engaged in the production, bottling, and distribution of carbonated drinks, while private respondent PI, a foreign corporation licensed to do business in the Philippines, is the major stockholder of respondent PCPPI.

Due to the refusal of respondents PCPPI and PI to deliver the prizes, petitioners on August 24, 1994 filed eight (8) separate complaints against the former for specific performance and damages in the Regional Trial Court of Makati City. Respondent PI filed answers to the complaints of petitioners, while respondent PCPPI filed motions to dismiss the same on the grounds of failure to state a cause of action and forum shopping. The cases were later consolidated and assigned to Branch 142 of the trial court. Petitioners likewise filed separate motions for authority to litigate in forma pauperis.

On November 22 and 23, 1994, respondent PI sent written interrogatories to petitioners consisting of 59 questions aimed at determining their eligibility to litigate as paupers. Petitioners received the written interrogatories between November 23 and December 12, 1998. The following are typical of the questions included in the interrogatories:

- 1) Are you employed?
- 2) If you are employed,
 - a) who is your employer?
 - b) what position do you hold in your present employment?
 - c) what is your annual gross compensation for 1993?
 - d) how long have you been employed with your present employer?
- 3) Are you engaged in any business?

- 4) If you are engaged in business,
a) what type of business are you engaged in?
b) how long have you been engaged in business?
c) what is your annual gross income derived from business for 1993?

....

7) Do you own real property?

- 8) If you own real property,
a) how many and what types of real properties do you own?
b) where are these real properties located?
c) what is the present market value of each of these real properties?
d) what is the latest assessed value of each of these real properties?

....

56) What type of dwelling do you live in?

57) If you live in a house, do you own the house?

58) If you are merely renting your dwelling, how much is your monthly rent?

59) If you are without viable means of income, how are you and your family being financially supported?[1]

On November 25 1994, the Regional Trial Court of Makati issued an order suspending the proceedings until petitioners could complete the documents required for establishing their right to litigate as paupers.

It appears that petitioners did not answer the written interrogatories because, as it turned out, they thought that the order of the court suspended all matters connected with the case except those relating to the submission of the papers showing their qualifications to litigate as paupers. Respondent PI filed a motion to dismiss the case on the ground of refusal of petitioners to make discovery. Petitioners opposed the motion. In an order, dated March 9, 1995, the trial court granted the motion to dismiss stating:

There is nothing in the order which authorized plaintiffs to ignore the interrogatories served upon them. For that matter, the answers required would reflect as to whether they are entitled to litigate as paupers, the issue which the court directed the parties to clarify within thirty (30) days. The sanctions on the party who refuses to make discovery are clear in the rules as well as in the applicable case law. There is absolutely no reason why plaintiffs should be excused therefrom.[2]

Petitioners filed a motion for reconsideration but the trial court denied their motion in an order, dated June 16, 1995. They then filed a special civil action for certiorari in this Court to set aside the aforesaid orders of the trial court. The case was referred to the Court of Appeals, which on August 8, 1997, affirmed the orders of the Regional Trial Court.[3] The appellate court held:

Undoubtedly, the petitioners' failure to serve their answers within the reglementary period constitutes a valid ground for the dismissal of their actions or any part thereof.

While it is true that aside from the dismissal of the actions, there are other sanctions that may be imposed for failure of a party to serve answers to interrogatories, however, since respondents are precisely seeking the dismissal of the complaints because of the petitioners' non-compliance with all the requirements that would entitle them to litigate as paupers, such failure justifies the action taken by the court a quo, which had previously required the parties to "perfect their pleadings." Needless to state, by not answering the interrogatories, the petitioners rendered it difficult for respondent Pepsico to substantiate its opposition to their

request to litigate as paupers, as directed by the court a quo.

At any rate, the dismissal ordered by the court a quo is without prejudice, thus implicitly reserving the petitioners' right to further pursue their cases.[4]

Hence, this petition for review on certiorari tendering the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR IN NOT CONSIDERING THAT THE REMEDY OF DISMISSAL UPON FAILURE OF A PARTY TO SERVE ANSWERS TO INTERROGATORIES IS AVAILABLE OR MAY BE RESORTED TO ONLY WHEN THE SUBJECT MATTER THEREOF REFERS TO THE VERY MERITS OF THE CASE.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR IN NOT CONSIDERING THAT THE PETITIONERS HAD SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS ON WRITTEN INTERROGATORIES.

We find the instant petition to be well taken, but first we shall dispose of the procedural objections raised by respondents PCPPI and PI, to wit: (1) that the instant petition is not accompanied by a sworn certification on non-forum shopping as required by Rule 45, §4 of the 1997 Rules of Civil Procedure and (2) that the said petition raises a question of fact which cannot be dealt with in a petition for review on certiorari under §1 of the said rule.

With respect to the first objection, contrary to the claim of respondents, there is attached to the petition a sworn certification, dated October 2, 1997, executed by Jaime Garlitos (one of the petitioners herein), stating that:

3. No other action or proceeding involving the same issues have been commenced with this Honorable Supreme Court, the regular courts, the Honorable Court of Appeals, or any other tribunal or agency.
4. To the best of my knowledge, no such action or proceeding is pending before this Honorable Supreme Court, the regular courts, the Honorable Court of Appeals, or any other tribunal or agency.
5. If I should thereafter learn that a similar action or proceeding has been filed or is pending before this Honorable Supreme Court, the regular courts, the Honorable Court of Appeals, or any other tribunal or agency, I hereby undertake to report that fact to this Honorable Supreme Court within five (5) days from having gained knowledge thereof.[5]

This is sufficient compliance with Rule 45, §4 of the 1997 Rules of Civil Procedure.

On the contention that the instant petition raises a question of fact, we hold that the question raised is a question of law, tested by the standards laid down in *Ramos v. Pepsi-Cola Bottling Co. of the P.I.*, [6] recently affirmed in *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*: [7]

. . . there is a question of law in a given case when the doubt or difference arises as to what the law is on a certain set of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of the alleged facts.

For the question in this case is whether petitioners' failure to answer written interrogatories is a sufficient reason for the dismissal of their complaints. The resolution of this question does not depend on the evaluation of proof but on a consideration of the applicable legal provisions and case law.

It is time to move on to the substantive issues in this case.

Under Rule 24, §1 and Rule 25, §1 of the 1964 Rules of Court, a litigant may serve, with leave of court and after jurisdiction has been obtained over the defendant or, even without such leave, after an answer has been served, written interrogatories on the adverse party. Like the other modes of discovery authorized by the Rules of Court,

the purpose of written interrogatories is to assist the parties in clarifying the issues and in ascertaining the facts involved in a case. As this Court explained in *Republic v. Sandiganbayan*:^[8]

What is chiefly contemplated is the discovery of every bit of information which may be useful in the preparation for trial, such as the identity and location of persons having knowledge of relevant facts; those relevant facts themselves; and the existence, description, nature, custody, condition, and location of any books, documents, and other tangible things.

To ensure the efficacy of the various modes of discovery, the Rules provide sanctions against a party who refuses to make discovery. Rule 29, §5 for example states:

If any party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 25, after proper service of such interrogatories, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, and in its discretion, order him to pay the reasonable expenses incurred by the other, including attorney's fees.

This Court has upheld the dismissal of an action due to the refusal of the plaintiff to make discovery. In *Arellano v. Court of First Instance of Sorsogon*,^[9] it affirmed the dismissal of a suit for reconveyance of a parcel of land with a claim for damages when the plaintiff unjustifiably failed to answer the written interrogatories sent by the defendant regarding the alleged title of the former. However, the determination of the sanction a court should impose for the failure of a party to comply with the modes of discovery rests on sound judicial discretion. As we said in *Insular Life Assurance Co., Ltd. v. Court of Appeals*:^[10]

The matter of how, and when, the above sanctions should be applied is one that primarily rests on the sound discretion of the court where the case pends, having always in mind the paramount and overriding interest of justice. For while the modes of discovery are intended to attain the resolution of litigations with great expediency, they are not contemplated, however, ultimately to be causes of injustice. It behooves trial courts to examine well the circumstances of each case and to make their considered determination thereafter.

In the case at bar, we think the trial court was rather precipitate in dismissing the complaints of petitioners against respondents PCPPI and PI.

The written interrogatories served by respondent PI on petitioners dealt with ancillary matters which, although may be inquired into through the proper modes of discovery provided in the Rules of Court, are not directly related to the main issues in the suit. As already mentioned, the written interrogatories sent by respondent PI to petitioners were for the purpose of finding out if the latter were entitled to litigate as paupers, that is, whether they should be exempted from paying docket fees.

Since the payment of docket fees is jurisdictional,^[11] respondent PI was certainly entitled to know whether petitioners were eligible to litigate as paupers. The fact that petitioners later submitted affidavits, documents, and other supporting papers on this matter did not justify their failure to answer the written interrogatories since at the time these were served, respondent PI obviously did not have the information contained in the said documents. However, since after all respondent PI was able to get the information it needed, the dismissal of petitioners' complaints appears to be rather a drastic action to take for failure to answer questions dealing with ancillary matters and not with the main issues in a case.

Furthermore, it appears that petitioners' failure to answer the written interrogatories was due, not to intransigence, but to a misapprehension of the scope of the trial court's order, dated November 25, 1994, suspending the proceedings until petitioners could complete the documents required for establishing their eligibility to litigate as

paupers. Petitioners thought that the court's order had the effect of suspending all other matters connected with the case, including the service of answers to the written interrogatories of private respondent PI and for this reason did not respond to the same. Unlike the plaintiff in *Arellano v. Court of First Instance of Sorsogon*,^[12] who deliberately disregarded successive orders of the trial court to explain his refusal to make discovery, there is no showing in the case at bar that petitioners were guilty of defying or disregarding any court order to answer the written interrogatories of respondent PI in order to delay the proceedings.

It is of course true that written interrogatories may be sent to adverse parties and answered by the latter without court intervention. Orders of the court do not affect ongoing processes of discovery between the parties, unless the same expressly so provide.

It would be unjust, however, to impose on petitioners such a drastic sanction as the dismissal of their complaints for a mistake committed in good faith. In *Insular Life Assurance Co., Ltd. v. Court of Appeals*,^[13] where the plaintiffs did not answer the written interrogatories sent by the defendant on account of a misconception as to the scope thereof, we excused plaintiffs' failure through a liberal application of Rule 29, §5 of the 1964 Rules of Court. We believe that the circumstances in the instant case similarly warrant a benign attitude towards petitioners' failure to answer the written interrogatories. Hence, petitioners should be given a chance to substantiate in court their claims against private respondents PCPPI and PI.

The trial court should have required petitioners to answer the subject interrogatories, with a warning of the possible consequences if they did not comply. The dismissal of their action would be justified only in the event they bucked such an order.

WHEREFORE, the decision of the Court of Appeals is REVERSED and the case is REMANDED to the Regional Trial Court of Makati, Branch 142 for trial according to law.

SO ORDERED.

Melo, (Acting Chairman), Puno, and Martinez, JJ., concur.

[1] Rollo, pp. 68-73.

[2] Rollo, p. 39.

[3] Per Justice Artemio G. Tuquero and concurred in by Justices Eugenio S. Labitoria and Romeo J. Callejo, Sr.

[4] Rollo, p. 31.

[5] Id., p. 40.

[6] 19 SCRA 289 (1987).

[7] G.R. No. 115104, October 12, 1998.

[8] 204 SCRA 212, 224 (1991).

[9] 65 SCRA 46 (1975).

[10] 238 SCRA 88, 93 (1994).

[11] Sun Insurance Office Ltd. v. Asuncion, 170 SCRA 274 (1989).

[12] See note 9, *supra*.

[13] See note 10, *supra*.

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