MA. CARMINIA C. ROXAS, PETITIONER, VS. HON. COURT OF APPEALS AND JOSE ANTONIO F. ROXAS, RESPONDENTS.

G.R. No. 139337. August 15, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari of the Decision[1] dated April 21, 1999 and Resolution[2] dated July 20, 1999 of the Court of Appeals nullifying the Orders[3] dated May 13, 1998, May 19, 1998 and September 23, 1998 of the Regional Trial Court of Parañaque City, Branch 260, which found private respondent Jose Antonio F. Roxas liable to pay support pendente lite and subsequently in contempt of court after failing to tender the required amount of support pendente lite.

The antecedent facts are as follows:

On November 4, 1997, petitioner Ma. Carminia C. Roxas filed with the Regional Trial Court of Parañaque City, Civil Case No. 97-0523, which is an action for declaration of nullity of marriage on the ground of psychological incapacity on the part of her husband, Jose Antonio F. Roxas, private respondent herein, with an application for support pendente lite for their four (4) minor children. The case was raffled to Branch 257 of the Regional Trial Court of Parañaque City presided by Judge Rolando C. How. But the petitioner, soon thereafter, filed in the said RTC Branch 257 a Notice of Dismissal dated November 20, 1997, to dismiss the complaint, without prejudice, pursuant to the provision of Section 1, Rule 17, of the 1997 Rules of Civil Procedure, considering that summons has not yet been served and no responsive pleading has yet been filed.

The same complaint, now docketed as Civil Case No. 97-0608, was re-filed on November 25, 1997. It was raffled in due course to Branch 260 of the Regional Trial Court of Parañaque City presided by Judge Helen Bautista-Ricafort.

On May 13, 1998, when the case was called for a pre-trial conference, the matter of plaintiff's (petitioner's) application for support pendente lite of their four (4) minor children was taken up. Judge Bautista-Ricafort received evidence on the application for support pendente lite. The private respondent and her counsel, Atty. Alberto Diaz, participated in that proceedings by conducting an extensive cross-examination of the petitioner. The trial court then issued its Order dated May 13, 1998 declaring the proceedings on the application for support pendente lite terminated and deemed submitted for resolution; and as prayed for by the parties, also set the case for pre-trial on June 15, 1998 at 8:30 a.m.

On May 19, 1998, Judge Bautista-Ricafort, issued an Order[4] granting the application for support pendente lite, the pertinent portion of which reads:

> xxx xxx xxx
>
> The plaintiff, testifying under oath, submitted Exhibit "A" itemizing the expenses incurred for the support of the children over a period of time during their stay at Ayala-Alabang; and showed that their total monthly

> average expense is P84,585.00, or P42,292.50 per month, per spouse. Interestingly, the defendant did not adduce any evidence to dispute the figures presented to the Court by the plaintiff, nor did he present proof of his financial incapacity to contribute more than 50% of the children's school tuition fees.
>
> The court has painstakingly reviewed the item included in Exhibit "A", and found the same reasonable, xxx.
>
> Under Art. 49 of the Family Code, there being no written agreement between the plaintiff and the defendant for the adequate support of their minor children xxx, this Court finds the prayer for support pendente lite to be in order. Accordingly, the defendant is hereby ordered to contribute to the support of the above-named minors, (aside from 50% of their school tuition fees which the defendant has agreed to defray, plus expenses for books and other supplies), the sum of P42,292.50 per month, effective May 1, 1998, as his share in the monthly support of the children until further orders from this Court. xxx. All expenses for books and other school supplies shall be shouldered by the plaintiff and the defendant, share and share alike. Finally, it is understood that any claim for support-in-arrears prior to May 1, 1998, may be taken up later in the course of the proceedings proper.

On July 22, 1998, the petitioner filed a manifestation and motion praying the trial court to cite private respondent in contempt of court in accordance with Section 5, Rule 61 of the 1997 Rules of Civil Procedure, after the latter failed to comply with the said Order dated May 19, 1998 of the trial court. Private respondent, through his counsel, Atty. Alberto Diaz, filed a counter-manifestation and motion admitting that "xxx there is really no genuine issue as to his obligation and willingness to contribute to the expenses for the support of his minor children xxx. He simply wants to make sure that whatever funds he provides for the purpose will go to the expenses for which they are intended."[5] Thus, he prayed that the manner and mode of payment of his contribution to the expenses of his minor children be modified such that he will pay directly to the entities or persons to which the payment for such expenses are intended. On September 23, 1998, Judge Bautista-Ricafort issued an Order[6] directing the private respondent "to comply fully with the Order of this Court dated May 19, 1998 by updating payment of his share in the support of the minor children, pendente lite, covering the period May 1998 to September 1998, within five (5) days from his receipt hereof xxx under pain of legal sanctions if he still fails to do so. xxx."

On September 28, 1998, or about four (4) months later, private respondent, through his new counsel, Atty. Francisco Ma. Guerrerro, filed an Omnibus Motion (1) applying to be authorized to discharge Atty. Alberto Diaz as his counsel and to substitute him with the new counsel; (2) to re-open hearing on the Motion for Support Pendente Lite; and (3) to temporarily stay execution of the Orders dated May 19, 1998 and September 23, 1998. The omnibus motion was set for hearing on October 2, 1998. Private respondent requested that before the omnibus motion is heard the May 19, 1998 Order be temporarily suspended. When the presiding judge did not grant that request of private respondent, the latter's new counsel refused to proceed with the hearing of his omnibus motion.

On October 8, 1998, Judge Bautista-Ricafort issued an Order giving private respondent ten (10) days to comply with the May 19, 1998 Order, otherwise, he would be cited for contempt of court.

On October 23, 1998, private respondent filed with the Court of Appeals a petition for certiorari questioning the Orders of the trial court dated May 19, 1998, September 23, 1998 and October 8, 1998.

Meanwhile, on November 27, 1998, Judge Bautista-Ricafort issued another Order,[7] the dispositive portion of which reads:

> xxx xxx xxx
>
> Accordingly, and on the strength of the provisions of Sec. 5 Rule 61 of the 1997 Rules of Civil Procedure, the

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> defendant (herein private respondent) is hereby pronounced guilty of Contempt of Court, and is hereby ordered arrested and confined at the City Jail of Parañaque City, Metro Manila, without bail, and as long as he has not complied with and obeyed in full the Order of this Court dated May 19, 1998 by updating his monthly contribution of P42,292.50 for the period of May 1998 to the date, giving the said amount directly to the plaintiff, or depositing it with the Clerk of Court, who shall therefor (issue) the corresponding receipts.
>
> xxx xxx xxx

Private respondent was arrested by the agents of the National Bureau of Investigation (NBI) on December 14, 1998 but he was released on the following day after the appellate court temporarily enjoined Judge Bautista-Ricafort from enforcing her November 27, 1998 Order as well as her Orders dated May 19, 1998, September 23, 1998, and October 8, 1998. When the temporary restraining order lapsed on March 11, 1998, the respondent was again arrested by virtue of a warrant of arrest issued by Judge Bautista-Ricafort. After depositing with the clerk of court of the trial court the amount of support in arrears stated in the Orders of the trial court, private respondent was released from custody.

On April 21, 1999, the Court of Appeals rendered a Decision in favor of private respondent, the dispositive portion of which states:

> WHEREFORE, being meritorious, the instant petition is GRANTED. Consequently, all the proceedings/actions taken by respondent Judge on the matter of support pendente lite in Civil Case No. 97-0608 (formerly Civil Case No. 97-0523) are hereby declared NULL and VOID, and said CASE is ordered RETURNED to Branch 257 of the Regional Trial Court of Parañaque City, for appropriate proceedings.
>
> SO ORDERED.[8]

The appellate court nullified the Orders and the proceedings of the trial court for the reason that the certificate of non-forum shopping of the petitioner did not mention the prior filing of Civil Case No. 97-0523 before the sala of Judge How and the dismissal thereof without prejudice. The decision of the appellate court elaborated the reasons for the granting of the petition, to wit:

> xxx xxx xxx
>
> While a complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer (Sec. 1, Rule 17), there is however a need to state the fact of prior filing and dismissal thereof in the certification on non-forum shopping, in the event the complaint is refiled, as in this case. This must be so in order to prevent the plaintiff or principal party from invoking Section 1 of Rule 17 in the hope that, if and when refiled, the complaint will be raffled to a more sympathetic judge.
>
> To the mind of the Court, private respondent availed of Section 1 of Rule 17 not for any other reason or purpose than to take the case out of the sala of Judge How and to have it assigned to another. This belief finds support from the fact that private respondent's lawyer and respondent Judge were classmates at the UP College of Law.
>
> Not only that. While private respondent actually resides in Ayala Alabang, Muntinlupa City, it was made to appear in the complaint that she is a resident of Parañaque City, where respondent Judge is one of the RTC Judges. While the question of venue was not properly raised on time, this circumstance is being cited to support petitioner's charge of forum-shopping.
>
> xxx xxx xxx
>
> Needless to say, forum-shopping merits such serious sanctions as those prescribed in Section 5, Rule 7 of the 1997 Rules of Civil Procedure. Considering, however, that when the complaint was withdrawn, no substantial

> proceedings had as yet been taken by the court to which it was first raffled, and that the dismissal thereof was then a matter or (sic) right, the Court is not inclined to impose any of the said sanctions. Instead, for the peace of mind of petitioner who entertains some doubts on the impartiality of respondent Judge, the annulment case should be returned to Branch 257 of the RTC of Parañaque City, to which it was originally raffled. And, to enable the Presiding Judge of said Branch to act on the matter of support pendente lite, which gave rise to this petition for certiorari and disqualification, the proceedings/actions taken by respondent Judge relative thereto should be set aside, the same having been attended with grave abuse of discretion.[9]
>
> xxx xxx xxx

In the instant petition the petitioner poses the following statement of issues, to wit:

> I
>
> DID THE HONORABLE COURT OF APPEALS ERR IN HOLDING THE HEREIN PETITIONER GUILTY OF FORUM SHOPPING?
>
> II
>
> DID THE HONORABLE COURT OF APPEALS ERR IN NULLIFYING JUDGE RICAFORT'S ORDER OF SUPPORT PENDENTE LITE AND HER RELATED IMPLEMENTING ORDERS WHICH IT WAS HER JUDICIAL DUTY TO ISSUE UNDER ART. 49 OF THE FAMILY CODE AND OTHER RELATED PROVISIONS OF LAW?
>
> III
>
> DID THE HONORABLE COURT OF APPEALS ERR IN NULLIFYING THE PROCEEDINGS ALREADY HELD BEFORE JUDGE RICAFORT AFFECTING HER QUESTIONED ORDERS, AT THE SAME TIME IMPLIEDLY UPHOLDING THE VALIDITY OF THE REST OF THE PROCEEDINGS INCLUDING THE TRIAL ON THE MERITS OF THE CASE FOR ANNULMENT OF MARRIAGE?
>
> IV
>
> DID THE HONORABLE COURT OF APPEALS ERR IN ORDERING THAT CIVIL CASE NO. 97-0523 RAFFLED TO JUDGE RICAFORT BE "RETURNED" TO JUDGE HOW OF BRANCH 257 OF THE RTC OF PARANAQUE CITY?

In other words, if a case is dismissed without prejudice upon the filing by the plaintiff of a notice of dismissal pursuant to Section 1 of Rule 17, before the service of the answer or responsive pleading, would the subsequent re-filing of the case by the same party require that the certificate of non-forum shopping state that a case involving the same issues and parties was filed and dismissed without prejudice beforehand? Would the omission of such a statement in the certificate of non-forum shopping render null and void the proceedings and orders issued by the trial court in the re-filed case?

It is our considered view and we hold that the proceedings and orders issued by Judge Bautista-Ricafort in the application for support pendente lite (and the main complaint for annulment of marriage) in the re-filed case, that is, in Civil Case No. 97-0608 were not rendered null and void by the omission of a statement in the certificate of non-forum shopping regarding the prior filing and dismissal without prejudice of Civil Case No. 97-0523 which involves the same parties and issues.

Section 5 of Rule 7 of the 1997 Rules of Civil Procedure provides that:

> SEC. 5. Certification against forum shopping. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto

> and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as a cause for administrative sanctions. (n)

Forum shopping is an act of a party against whom an adverse judgment has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of certiorari, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. The language of the Supreme Court circular (now the above-quoted Section 5, Rule 7, 1997 Rules of Civil Procedure) distinctly suggests that it is primarily intended to cover an initiatory pleading or an incipient application of a party asserting a claim for relief.[10] The most important factor in determining the existence of forum shopping is the "vexation caused the courts and parties-litigants by a party who asks different courts to rule on the same or related causes or grant the same or substantially the same reliefs."[11]

Since a party resorts to forum shopping in order to increase his chances of obtaining a favorable decision or action, it has been held that a party cannot be said to have sought to improve his chances of obtaining a favorable decision or action where no unfavorable decision has ever been rendered against him in any of the cases he has brought before the courts.[12] Forum shopping exists where the elements of litis pendencia are present, and where a final judgment in one case will amount to res judicata in the other.[13] For the principle of res judicata to apply, the following must be present: (1) a decision on the merits; (2) by a court of competent jurisdiction; (3) the decision is final; and (4) the two actions involve identical parties, subject matter and causes of action.[14]

In the case at bar, there was no adverse decision against the petitioner in Civil Case No. 97-0523 which was the first case filed and raffled to the sala (Branch 257) of Judge How. The dismissal without prejudice of the complaint in Civil Case No. 97-0523 at the instance of the petitioner was pursuant to Section 1, Rule 17 of the 1997 Rules of Civil Procedure[15] considering that it was done before service of answer or any responsive pleading. The dismissal does not amount to litis pendencia nor to res judicata. There is no litis pendencia since the first case before Judge How was dismissed or withdrawn by the plaintiff (herein petitioner), without prejudice, upon her filing of a notice of dismissal, pursuant to Section 1, Rule 17 of the 1997 Rules of Civil Procedure. To use the wording of that rule, Judge How's order is one merely "confirming the dismissal" of the complaint by the plaintiff (herein petitioner). Neither is there res judicata for the reason that the order of dismissal was not a decision on the merits but a dismissal "without prejudice".

Thus, private respondent's apprehension that the case was dismissed in order to be transferred to the sala of a judge who is allegedly more sympathetic to the petitioner's cause is baseless and not a valid reason to declare the petitioner guilty of forum shopping. First, the petitioner is not assured that the case would be raffled to a more sympathetic judge. There are five (5) RTC branches in Parañaque, namely, branch nos. 257, 258, 259, 260 and 274. Second, Judge Bautista-Ricafort of RTC of Parañaque, Branch 260, is presumed to be fair and impartial

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despite private respondent's claim that she is an alleged law school classmate of the petitioner's counsel. In any event, at the slightest doubt of the impartiality of the said trial judge, private respondent could have filed before the same judge a motion for her inhibition on that ground. But private respondent did not.

Private respondent is also estopped in questioning the proceedings and orders of Judge Bautista-Ricafort. He tacitly acknowledged the validity of the proceedings and the orders issued by the said trial judge by participating actively in the hearing on the application for support pendente lite and by praying for the modification of the Order of May 19, 1998 in that he should be allowed to directly pay to the persons or entities to which payments of such expenses are intended in connection with the required support pendente lite of their minor children. Private respondent cannot validly claim that he was not ably and sufficiently represented by his first counsel, Atty. Diaz, especially during the hearing on that incident on May 13, 1998 when he himself was present thereat.

It is also too late for the private respondent to claim wrong venue in the Regional Trial Court of Parañaque City as a alleged proof of forum shopping. He should have raised that ground in his answer or in a motion to dismiss. But he did not, so it is deemed waived. Besides, petitioner is also a resident of Parañaque where the family of her parents reside.

Considering that the complaint in Civil Case No. 97-0523 was dismissed without prejudice by virtue of the plaintiff's (herein petitioner's) Notice of Dismissal dated November 20, 1997 filed pursuant to Section 1, Rule 17, of the 1997 Rules of Civil Procedure, there is no need to state in the certificate non-forum shopping in Civil Case No. 97-0608 about the prior filing and dismissal of Civil Case No. 97-0523. In Gabionza v. Court of Appeals,[16] we ruled that it is scarcely necessary to add that Circular No. 28-91 (now Section 5, Rule 7 of the 1997 Rules of Civil Procedure) must be so interpreted and applied as to achieve the purposes projected by the Supreme Court when it promulgated that Circular. Circular No. 28-91 was designed to serve as an instrument to promote and facilitate the orderly administration of justice and should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules or procedure – which is to achieve substantial justice as expeditiously as possible. The fact that the Circular requires that it be strictly complied with merely underscores its mandatory nature in that it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances.[17]

Thus, an omission in the certificate of non-forum shopping about any event that would not constitute res judicata and litis pendencia as in the case at bar, is not fatal as to merit the dismissal and nullification of the entire proceedings considering that the evils sought to be prevented by the said certificate are not present. It is in this light that we ruled in Maricalum Mining Corp. v. National Labor Relations Commission[18] that a liberal interpretation of Supreme Court Circular No. 04-94 on non-forum shopping would be more in keeping with the objectives of procedural rules which is to "secure a just, speedy and inexpensive disposition of every action and proceeding."

For a party to be adjudged guilty of forum shopping in the trial courts, a motion to dismiss on the ground of either litis pendencia or res judicata must be filed before the proper trial court and a hearing conducted thereon in accordance with Section 5, Rule 7 of the 1997 Rules of Civil Procedure. The same ground cannot be raised in a petition for certiorari before the appellate court while the main action in the trial court is still pending for the reason that such ground for a motion to dismiss can be raised before the trial court any time during the proceedings and is not barred by the filing of the answer to the complaint.[19]

The petition for certiorari in the case at bar on the ground of alleged forum shopping in the trial court is premature for the reason that there is an adequate and speedy remedy available in the ordinary course of law to private

respondent, i.e., a motion to dismiss or a motion for reconsideration on the ground of either litis pendencia or res judicata before the trial court. But private respondent did not file such a motion based on either of said grounds. And where the ground is short of res judicata or litis pendencia, as in the case at bar, the Court of Appeals acted with grave abuse of discretion amounting to excess of jurisdiction when it granted the petition for certiorari filed by herein private respondent. The trial court should have been given an opportunity to rule on the matter of alleged forum shopping in consonance with the hierarchy of courts.

WHEREFORE, the Decision and Resolution dated April 21, 1999 and July 20, 1999 respectively, of the Court of Appeals are hereby REVERSED, and the Orders dated May 13, 1998, May 19, 1998 and September 23, 1998 of the Regional Trial Court of Parañaque City, Branch 260, are REINSTATED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

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[1] Penned by Associate Justice Artemio G. Tuquero and concurred in by Associate Justices Eubulo G. Verzola and Mariano M. Umali; Rollo, pp. 30-36.

[2] Rollo, p. 38.

[3] Rollo, pp. 78-82.

[4] Rollo, pp. 78-80.

[5] Rollo, pp. 86-88.

[6] Rollo, p. 81.

[7] Rollo, pp. 102-103.

[8] Rollo, pp. 35-36.

[9] Rollo, pp. 34-35.

[10] Santo Tomas University Hospital v. Surla, 294 SCRA 382, 391 (1998).

[11] Benguet Electric Cooperative, Inc. v. Flores, 287 SCRA 449, 458 (1998); Borromeo v. Intermediate Appellate Court, 255 SCRA 75, 84 (1996).

[12] Executive Secretary v. Gordon, 298 SCRA 736, 741 (1998); International Container Terminal Services, Inc. v. Court of Appeals, 249 SCRA 389 (1995).

[13] Saura v. Saura, Jr., 313 SCRA 465, 475 (1999); Prubankers Association v. Prudential Bank & Trust Company, 302 SCRA 74, 83 (1999).

[14] Alejandrino v. Court of Appeals, 295 SCRA 536, 554 (1998).

[15] Rule 17, Section 1. Dismissal upon notice by plaintiff. – A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.

[16] 234 SCRA 192.

[17] Loyola v. Court of Appeals, 245 SCRA 477, 483-484 (1995).

[18] 298 SCRA 379, 386 (1998), citing Section 6, Rule 1, 1997 Rules of Civil Procedure.

[19] Section 1, Rule 10 and Section 1, Rule 16 of the 1997 Rules of Civil Procedure.

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