

PFEGER R. DULAY, GODOFREDO S. DULAY, SR., ROWENA R. DULAY, ENDZELIUS R. DULAY, GODOFREDO R. DULAY, JR., JIMPSEY R. DULAY, SHERYL R. DULAY, FLORDELIZA R. DULAY, BENITA R. DULAY, ...

G.R. No. 158857. November 11, 2005

Ponente: TINGA, J.

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TINGA, J.:

The instant petition seeks the review of the Decision[1] dated 30 May 2002 and Resolution[2] dated 28 May 2003 of the Court of Appeals in CA-G.R. SP No. 66993 entitled "Pfefer R. Dulay v. Hon. Alicia B. Gonzales-Decano, etc. and Rodrigo S. Dulay."

In a complaint[3] for recovery of his bank deposit with prayer for a writ of attachment and damages, Rodrigo S. Dulay, a naturalized American citizen, alleged that upon his petition sometime in October of 1996, his brother Godofredo S. Dulay, Sr. and nephew Pfefer R. Dulay immigrated to the United States of America. The two stayed with him in his house at Claremont, Massachusetts. Godofredo, however, decided to return to the Philippines because he could not endure the weather. Pfefer stayed behind to take care of Rodrigo. Having nurtured affection, love and trust for his nephew Pfefer, Rodrigo opened a trust account with the Bank of Boston on 27 January 1997 with a deposit of Two Hundred Thirty Thousand U.S. Dollars (\$230,000.00), naming Pfefer as trustee thereof. Five months later, Pfefer left Rodrigo's house allegedly to join his girlfriend in California. Rodrigo learned only later that Pfefer actually went back to the Philippines. Pfefer returned to the United States in November of 1997, but after a brief stay returned again to the Philippines where he went on a spending binge. Upon knowing this, Rodrigo verified the status of his account with the Bank of Boston, and to his shock and dismay discovered that Pfefer had already emptied the account. Rodrigo additionally claimed that Pfefer used the money from said account to buy several vehicles, loan money to several people, open bank accounts for his siblings, and buy a house and lot and jewelry for his wife. Whatever was left of the account was allegedly transferred to Pfefer's father, Godofredo.[4]

Denying the accusations, respondent claimed that the money deposited in the name of Pfefer was his own money and not Rodrigo's. They assailed the admissibility of the Statement of Account and the supporting Affidavit attached to the Complaint. For his part, Pfefer asserted that he spent his own money.[5]

Rodrigo filed a petition for the issuance of letters rogatory in order to get the depositions of several witnesses residing abroad.[6] Petitioners, on the other hand, moved to be allowed to file cross-examination questions to respondent's written interrogatories, which the trial court granted.[7] In an order dated 1 December 1999, the trial court stated:

These are petitions for letters Rogatory dated November 11, 1999 and November 22, 1999 respectively praying that this Court order the Clerk of Court to issue any order requiring the Clerk of Court in Boston Ma., USA to conduct the examination of the following parties:

- Mr. Rodrigo S. Dulay of 38 Claremont St. Malden, Ma., USA, and
- Manager or authorized representative of the Bank of Boston, Ma., USA and for the above-named persons to answer the attached questions (direct and cross) attached to each petition, and for the Clerk of Court of Boston to forward the same questions and answers as soon as the same were already properly answered.

SO ORDERED.[8]

Meanwhile, petitioners filed a motion to dismiss the complaint on the ground of failure to prosecute.[9] This was however denied by the trial court, which instead allowed Rodrigo to complete his depositions.[10] As it turned out, however, the depositions could not be taken before the Clerk of Court of Massachusetts, but were taken instead before a notary public in New York.

On 2 February 2000, Rodrigo submitted to the trial court his answers to the interrogatories and cross interrogatories of petitioners given before a notary public in the United States. Thereafter, petitioners filed their Motion Reiterating Motion to Dismiss Dated July 10, 2000,[11] which the trial court denied in its 28 September 2000 Order.[12] In the same Order, the trial court directed respondent to have the written and cross interrogatories taken by the notary public authenticated by the consulate. Thus, respondent filed a motion to withdraw the answers so that he could have them authenticated by a Philippine consul in the United States.[13]

On 10 January 2001, petitioners filed an Omnibus Motion,[14] praying that the written interrogatories be declared inadmissible and reiterating their prayer for the dismissal of the complaint. The lower court denied the motion on 20 February 2001, at the same time directing the archival of the case while waiting for the documents from the United States.[15] According to the trial court, the dismissal of the case is improper considering that Rodrigo had already commenced presenting his evidence and that it is mandated to hear the evidence on the counterclaims of the petitioners. Anent the objection to the admission of the answers to the written interrogatories, the trial court stated that the deposition taken before the Notary Public from New York, whose authority was duly certified by the Philippine Consul in New York, substantially complied with the Rules of Court.[16] Thus, on 31 August 2001, the trial court ordered the admission of the assailed documents. Petitioners moved for the reconsideration of the order but the motion was denied.[17]

Imputing grave abuse of discretion on the part of the trial judge, petitioners filed before the Court of Appeals an original action for certiorari on 7 October 2001. The appellate court dismissed the petition, finding that the questioned depositions were accomplished in substantial compliance with the Rules of Court.[18] According to the Court of Appeals, Rodrigo could not be faulted for the incidental delays in the proceedings, which were after all caused by the refusal of the American tribunal which brushed aside the letters rogatory issued by the trial court. Putting premium on merit rather than on technicality, the Court of Appeals held that "laxity in the application of the procedure is not tantamount to laxity in the rendition of justice when equitable circumstances exist to warrant the same." [19] Petitioners filed a motion for reconsideration to no avail as it was denied by the Court of Appeals.[20]

In the present petition for review, petitioners argue that the Court of Appeals erred when it refused to dismiss the case at the trial court level despite respondent's failure to prosecute his case with reasonable diligence. According to petitioners, the major delays in the litigation of the case were caused by respondent's failure to send on time the needed documents to the trial court.[21] In addition, petitioners allege that contrary to the ruling of the Court of Appeals the documents submitted by respondent were not taken in substantial compliance with the directive of the trial court itself but in violation of Sections 11, 12, and 14, Rule 23 of the Rules of Court.[22]

The Court is not persuaded.

Deposition is chiefly a mode of discovery, the primary function of which is to supplement the pleadings for the purpose of disclosing the real points of dispute between the parties and affording an adequate factual basis during the preparation for trial. It may be taken with leave of court after jurisdiction has been obtained over any defendant or over property that is the subject of the action; or, without such leave, after an answer has been served. A party's right to avail itself of this procedure is "well-nigh unrestricted" if the matters inquired into are otherwise relevant and not privileged, and the inquiry is made in good faith and within the bounds of the law. [23] Nevertheless, the use of discovery procedures is directed to the sound discretion of the trial courts,[24] which, in general, are given wide latitude in granting motions for discovery in order to enable the parties to prepare for trial or otherwise to settle the controversy prior thereto.[25]

While the letters rogatory issued by the trial court specifically directed the Clerk of Court of Boston to take the depositions needed in the case, it became impossible to follow the directive since the Clerk of Court of Boston merely brushed it aside and refused to cooperate. Respondent cannot be faulted for the resultant delay brought about by this circumstance. Neither can the trial court be faulted for allowing the admission of the depositions taken not in strict adherence to its original directive, nor for directing the petitioner to have the depositions authenticated. Obviously, it was not within the trial court's power, much less the respondent's to force the Clerk of Court of Boston to have the deposition taken before it. It would be illogical and unreasonable to expect respondent to comply with the letters rogatory without the cooperation of the very institution or personality named in the letters rogatory and requested to examine the witnesses. After all, while a court had the authority to entertain a discovery request, it is not required to provide judicial assistance thereto.[26] This reality was recognized by the trial court when it ordered respondent to have the questioned depositions authenticated by the Philippine consulate. Indeed, refusing the allowance of the depositions in issue would be going directly against the purpose of taking the depositions in the first place, that is, the disclosure of facts which are relevant to the proceedings in court.

More importantly, the Court finds that respondent substantially complied with the requirements for depositions taken in foreign countries.

In our jurisdiction, depositions in foreign countries may be taken: (a) on notice before a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the Republic of the Philippines; (b) before such person or officer as may be appointed by commission or under letters rogatory; or (c) before any person authorized to administer oaths as stipulated in writing by the parties.[27] While letters rogatory are requests to foreign tribunals, commissions are directives to officials of the issuing jurisdiction.[28]

Generally, a commission is an instrument issued by a court of justice, or other competent tribunal, directed to a magistrate by his official designation or to an individual by name, authorizing him to take the depositions of the witnesses named therein, while a letter rogatory is a request to a foreign court to give its aid, backed by its power, to secure desired information.[29] Commissions are taken in accordance with the rules laid down by the court issuing the commission, while in letters rogatory, the methods of procedure are under the control of the foreign tribunal.[30]

Leave of court is not required when the deposition is to be taken before a secretary of embassy or legation, consul general, consul, vice-consul or consular agent of the Republic of the Philippines and the defendant's answer has already been served.[31] However, if the deposition is to be taken in a foreign country where the Philippines has no secretary of embassy or legation, consul general, consul, vice-consul or consular agent, it may be taken only before such person or officer as may be appointed by commission or under letters rogatory.[32]

In the instant case, the authentication made by the consul was a ratification of the authority of the notary public

who took the questioned depositions. The deposition was, in effect, obtained through a commission, and no longer through letters rogatory. It must be noted that this move was even sanctioned by the trial court by virtue of its Order dated 28 September 2000.[33] With the ratification of the depositions in issue, there is no more impediment to their admissibility.

Besides, the allowance of the deposition can not be said to have caused any prejudice to the adverse party. They were given the opportunity to cross-examine the witnesses through their cross-interrogatories, which were in turn answered by the deponents. Save for the complaint of delay in the proceedings, petitioners were unable to point out any injury they suffered as a result of the trial court's action.

The ends of justice are reached not only through the speedy disposal of cases, but more importantly, through a meticulous and comprehensive evaluation of the merits of the case. The parties' right to be given full opportunity to ventilate their cases should not be hindered by a strict adherence to technicalities. After all, as this Court has so often enunciated, rules of procedure are not inflexible tools designed to hinder or delay, but to facilitate and promote the administration of justice.[34] A strict and rigid application of rules, resulting in technicalities that tend to frustrate rather than promote substantial justice, must be avoided.[35]

WHEREFORE, premises considered, the petition is DENIED. Costs against petitioners.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Callejo, Sr., JJ., concur.
Chico-Nazario, J., on leave.

[1]Penned by Associate Justice Bienvenido L. Reyes, JJ., Roberto A. Barrios and Edgardo F. Sundiam, concurring.

[2] Rollo, pp. 26-27.

[3] Id. at 30-36. The case was raffled to RTC Branch 48, Urdaneta City, Pangasinan presided by Judge Alicia Gonzales-Decano.

[4] Id. at 32-34.

[5] Id. at 40-45.

[6] Id. at 46.

[7] CA Rollo, p. 72.

[8]Id. at 47.

[9] Id. at 49-51.

[10]Id. at 52.

[11] Rollo, p. 49-A.

[12] Id. at 59.

[13]Id. at 60.

[14]Id. at 53-57.

[15] CA Rollo, pp. 25-26.

[16] Id. at 25.

[17] Id. at 28.

[18] Rollo, p. 24.

[19] Id. at 25.

[20] Id. at 26-27.

[21] Id. at 13.

[22] Ibid.

[23] Jonathan Landoil International Co., Inc. v. Mangudadatu, G.R. No. 155010, 16 August 2004, 436 SCRA 559, 573, citations omitted.

[24] People of Philippines v. Webb, 371 Phil. 491, 512 (1999).

[25] Security Bank Corporation v. Court of Appeals, 380 Phil. 299, 309 (2000).

[26] Intel Corp. v. Advanced Micro Devices, Inc., 542 U.S. 241 (2004).

[27] Rules of Court, Rule 23, Secs. 11 and 14:

Section 11. Persons before whom depositions may be taken in foreign countries. —In a foreign state or country, depositions may be taken (a) on notice before a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the Republic of the Philippines; (b) before such person or officer as may be appointed by commission or under letters rogatory; or the person referred to in Section 14 hereof.

Section 14. Stipulations regarding taking of depositions.— If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at any time or place, in accordance with these Rules, and when so taken may be used like other depositions.

[28] RULES OF COURT, Rule 23, Section 12. Commission or letters rogatory.— A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such direction as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed to the appropriate judicial authority in the foreign country.

[29] Vantstophorst v. Maryland, 2 US 401, McClure v. McIntock, 150 Ky 265, Ings v. Ferguson 282 F2d 149, cited in 23 Am Jur 2d 346, §15.

[30] United States v. Paraffin Wax, 23 FRD 289 cited in 23 Am Jur 2d 346, §15.

[31] Rules of Court, Rule 23, Sec. 16.

[32] Dasmariñas Garments, Inc. v. Reyes, G.R. No. 108229, 24 August 1993, 225 SCRA 622, 632.

[33] See note 17.

[34] Jaworski v. PAGCOR, G.R. No. 144463, 14 January 2004, 419 SCRA 317, 324.

[35] Posadas-Moya and Associates Construction Co., Inc. v. Greenfield Development Corporation, et al., G.R. No. 141115, 10 June 2003, 403 SCRA 530, 541.

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