

**MA. TERESA BELONIO, PETITIONER, VS. RICHARD RODRIGUEZ AND
AND THERESA C. REYES, DOING BUSINESS UNDER THE NAME AND
STYLE "T.C. REYES CONSTRUCTION &
SUPPLY, &"; RESPONDENTS.**

G.R. NO. 161379. August 11, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 76433 affirming the Order[2] dated December 3, 2001 and subsequent Order[3] dated October 21, 2002 denying the motion for reconsideration thereof of the Regional Trial Court (RTC) of General Santos City, Branch 36, in Civil Case No. 6092 which dismissed the complaint for collection of sum of money and damages on the ground of failure to prosecute under Section 3, Rule 17 of the Rules of Court.

On July 14, 1997, petitioner Ma. Teresa Belonio filed a complaint for sum of money and damages with prayer for the issuance of a writ of attachment against Richard Rodriguez and his mother, Theresa C. Reyes, licensed government contractors doing business under the name and style "T.C. Reyes Construction & Supply." [4]

The petitioner made the following allegations in her complaint:

2.2. Defendant Theresa C. Reyes ("T.C. Reyes") is a licensed government contractor, operating under the name and style "T.C. Reyes Construction & Supply."

2.3. Defendant Richard Rodriguez ("Rodriguez") is the son of T.C. Reyes and has been authorized by her mother to represent her and manage and represent T.C. Reyes Construction & Supply ("T.C. Reyes Construction") in all dealings with third parties.

2.4. On or about November of 1996, defendant T.C. Reyes, represented by her son, defendant Rodriguez, entered into a special arrangement with plaintiff Belonio and Engr. Norman Llido.

2.5. The special arrangement was established to assist defendants T.C. Reyes and Rodriguez comply with their contractual commitments to the government on the contracts awarded to them. The internal understanding of the parties regarding the special arrangement was as follows:

(a)

Defendant T.C. Reyes, through defendant Rodriguez, would handle actual bidding and solicitation of contracts, official representation and liaison with the government, actual construction operation, including sourcing of materials and labor, and collection.

(b)

Engr. Llido was to assist defendants T.C. Reyes and Rodriguez in project implementation and supervision.

(c)

Plaintiff's role was to handle general administration and accounting for defendants T.C. Reyes and Rodriguez.

2.6. Initially, defendant T.C. Reyes and defendant Rodriguez were able to bag some juicy contracts for several government infrastructure projects, and implementation of the said projects commenced.

2.7. In the course thereof, defendant Rodriguez found it difficult to source the necessary capital to sustain continued supply of materials and labor.

2.8. Thus, defendant Rodriguez approached and, eventually, was able to convince Engr. Llido to lend his name and credit and guarantee the account of T.C. Reyes Construction with several hardware stores so as to ensure continuous flow of materials for the ongoing government projects.

2.9. Subsequently, defendant Rodriguez was able to convince Engr. Llido to advance various amounts of money to T.C. Reyes Construction to meet the obligations to hardware stores and labor cost requirements. It was specifically agreed between Engr. Llido and defendant Rodriguez that the amounts advanced by the former will earn add-on interest fixed at 3% a month compounded.

2.10. All told, Engr. Llido advanced to defendant Rodriguez a sizable amount of money in excess of 2 million pesos. These advances were evidenced by several postdated checks issued by defendant Rodriguez either payable to Engr. Llido or to hardware stores but discounted and paid by Engr. Llido; which checks were issued to facilitate payment.

2.11. As the implementation of the projects progressed, defendants T.C. Reyes and Rodriguez encountered difficulty in their collections with the government. Consequently, defendant Rodriguez found it quite difficult to sustain payments to Engr. Llido on the amounts that the latter advanced and the 3% add-on interest.

2.12. To prevent their share in the joint venture from being consumed by the 3% add-on interest being paid to Engr. Llido, defendant Rodriguez approached plaintiff Belonio and proposed a scheme which he called "double exposure."

2.13. Under the aforesaid scheme, defendant Rodriguez would get a sizable amount of money from plaintiff and use the money to pay a portion of the advances of Engr. Llido and the 3% add-on interest.

2.14. According to defendant Rodriguez, if the said "double exposure" scheme will materialize, they could buy time and prevent the 3% add-on interest from eating into and consuming their collections from the government. He assured plaintiff that he could easily return the money as collections from the government are up and coming and will soon be released.

2.15. Thus, plaintiff borrowed money from a local financier at 6% interest per month and delivered a total amount of One Million Five Hundred Thousand Pesos (P1,500,000.00) to defendant Rodriguez sometime during the period from April to May of 1997 for the sole purpose of allowing defendant Rodriguez to pay-off a portion of the advances of Engr. Llido and the 3% add-on interest under the so-called "double exposure" scheme of defendant Rodriguez.

2.16. Defendant Rodriguez acknowledged receipt of the One Million Five Hundred Thousand Pesos (P1,500,000.00) by issuing several postdated checks, to wit:

Check No./Bank Amount Date

04348/Inter'l Exch. Bank P500,000.00 May 2, 1997

06773/Inter'l Exch. Bank 300,000.00 June 21, 1997

06772/Inter'l Exch. Bank 400,000.00 June 21, 1997

06778/Inter'l Exch. Bank 300,000.00

July 7, 1997

Total P1,500,000.00 July 7, 1997

Copies of the said postdated checks are attached hereto as Annexes "A" to "D" for easy reference.

2.17. However, after receiving the One Million Five Hundred Thousand Pesos (P1,500,000.00) from plaintiff, defendant Rodriguez misappropriated the same and instead of paying Engr. Llido as he had committed, defendant Rodriguez diverted it to his personal use and could no longer account for the same. Worse, defendant T.C. Reyes disavowed any knowledge or participation in the transactions and dealings of her son, defendant Rodriguez with plaintiff.

2.18. Worse, the postdated checks issued by defendant Rodriguez were all dishonored as his account with the drawee bank is already closed. (c.f. Annexes "A" to "D" hereof).

2.19. Last Saturday, 5 July 1997, defendant Rodriguez left General Santos City for Davao City allegedly for psychiatric rehabilitation.

2.20. Recently, defendant T.C. Reyes received several checks from the government, and contrary to a standing agreement with plaintiff and Engr. Llido, she encashed the said checks and withheld a substantial portion of the proceeds thereof from them.

...

3.2. Defendant Rodriguez, despite repeated demands, have failed to account for the One Million Five Hundred Thousand Pesos (P1,500,000.00) that he has received from plaintiff.

3.3. He has not paid Engr. Llido from the amount that he has received from plaintiff contrary to the purpose for which the amount was released by plaintiff. Worse, defendant T.C. Reyes has denied participation or involvement in the transactions and business relationship of plaintiff and her son, defendant Rodriguez, with plaintiff.

3.4. However, it is very clear from the start that defendant Rodriguez was only acting for and in behalf of defendant T.C. Reyes and T.C. Reyes Construction in all his dealings with Engr. Llido and plaintiff, as well as third parties.

3.5. Thus, both defendants should be made to pay, jointly and severally, the amount of One Million Five Hundred Thousand Pesos (P1,500,000.00), including legal interest thereon.

3.6. In addition, defendant should be made to pay the amount of at least Ninety Thousand Pesos (P90,000.00) a month as actual damages corresponding to the interest that plaintiff is paying to the financier who provided the amount of One Million Five Hundred Thousand Pesos (P1,500,000.00), until the latter amount is fully paid.

...

4.2. In view of the misappropriation and conversion of the amount of One Million Five Hundred Thousand Pesos (P1,500,000.00), and the failure of defendants to account for the same, plaintiff suffered moral damages in the form of sleepless nights, serious mental anguish and anxiety, wounded feelings and similar injury in the aggregate amount of One Hundred Fifty Thousand Pesos (P150,000.00).[5]

The petitioner made the following prayer:

WHEREFORE, it is respectfully prayed that this Honorable Court:

1)

Upon the filing by plaintiff of a bond in an amount to be fixed by the Honorable Court, order the issuance of a writ of attachment directing the attachment of all properties of defendants sufficient to satisfy plaintiff's claim, and after trial on the merits.

2)

Order defendants, jointly and severally, to pay the principal amount of One Million Five Hundred Thousand Pesos (P1,500,000.00), Philippine currency, including legal interest thereon until fully paid.

3)

Order defendants to pay, jointly and severally, actual damages in the amount of at least Ninety Thousand (P90,000.00), Philippine currency, a month corresponding to interest paid to a local financier who is the source of the amount delivered and misappropriated by defendants, until the principal amount is fully paid.

4)

Order defendants, jointly and severally, to pay Fifty Thousand Pesos (P50,000.00) as exemplary damages, and One Hundred Fifty Thousand Pesos (P150,000.00) as moral damages and 25% of the total amount due as Attorney's Fees and expenses of litigation.

Other reliefs just and equitable under the premises are, likewise, prayed for.[6]

Respondent Reyes made the following special/affirmative defenses in her answer to the complaint:

10.- The complaint states no cause of action as against the defendant Teresa C. Reyes;

11.- The defendant Teresa C. Reyes had no transaction with either the plaintiff or Engr. Norman Llido for the period covering November 1996 or at the time that her son, allegedly obtained the sum of P1,500,000.00 from the plaintiff, which she knew nothing of, much less consented or authorized;

12.- In the same manner, she never received a centavo from the said amount or availed of any fraction thereof for her own construction projects, a fact all the while known to the plaintiff whose transactions with Richard Rodriguez was completely unknown to the herein defendant and independent of that of her mother, hence, the lack of privity or contractual relations between herein defendant and the plaintiff;

13.- It was only on 31 May 1997 that upon earnest representations of the plaintiff, Engr. Llido, and her son, Richard Rodriguez that the herein defendant agreed to assign some of the projects to the threesome which projects are still an on-going concern as of the filing of this answer;

14.- Regrettably, prior to the commencement of the assigned projects hereto adverted, the triumvirate encountered internal problems allegedly relative to the P1,500,000.00 priorly obtained by Richard Rodriguez for their own business adventures/partnership totally foreign to the projects then undertaken by the herein defendant;

15.- The inability of the threesome, to resolved (sic) their differences, propelled the plaintiff to drag the herein defendant into their internal problem, obviously speculating that the herein defendant might be coerced into giving succor to her son whom the plaintiff, likewise, harassed with a criminal case, allegedly for estafa;

16.- Clearly, the institution of the instant complaint against the herein defendant was attended with gross and evident bad faith, with no honest intent of prevailing but merely to subject the mother to hardship, embarrassment and inconvenience so that the latter will assume the liability of her son; and by way of ...[7]

For his part, respondent Rodriguez alleged the following in his answer to the complaint:

20.- The complaint fails to state a cause of action or that the institution of the instant complaint is premature as

the partnership of the defendant Rodriguez, the plaintiff, and Engr. Norman Llido is still [an] on-going with their respective liabilities still subject to reconciliation and/or liquidation;

21.- Sometime in November 1996, defendant Rodriguez beg (sic) of his mother Teresa Reyes, a licensed contractor that he be assigned solely for himself, some projects to which proposal the latter acceded as eventually, upon her retirement, the construction outfit will be assumed by her son;

22.- It was the express understanding between mother and son that the former will have nothing to share at all in the assigned works except, lending her license;

23.- Unknown to defendant Teresa Reyes, herein Richard Rodriguez was joined in the assigned projects by the plaintiff and Engr. Norman Llido, who formed an informal partnership which turned out to be grossly disadvantageous to the defendant Rodriguez as will be elucidated in the succeeding paragraphs;

24.- The defendant Rodriguez, in that informal arrangements was simply tasked to procure contracts from his mother, to be jointly supervised by him and Engr. Norman Llido with the plaintiff as a sort of financial administrator;

25.- As part of the pre-conceived design of Llido and the plaintiff, the duo imposed on defendant Rodriguez, interest payments for whatever amounts spent in the construction, an arrangement which was never agreed upon them, as defendant Rodriguez was only charged with collections and procurement of projects, with the duo as capitalist partners;

26.- The inequity became unconscionable when defendant Rodriguez was made liable for interest payments resultant to the inordinate delay in fund releases from the government for the accomplished works, which had attained the level of the exorbitant thus, to be able to cope up with the interest payments to the duo, the plaintiff advanced to the defendant Rodriguez the sum of P1,320,000.00;

27.- Obviously absurd if not downright mercenary the amount so advanced were substantially devoured by the excessive interest paid to the plaintiff and a major portion of the principal as evidenced by Annexes "1" to "10," hereto attached to form integral part hereof;

28.- While the rest of the amount was used to paid (sic) for the materials used in the project, and related or miscellaneous expenses which were partnership and project connected the records of which are under the control of the plaintiff and being withheld from the defendant without justifiable reason as she knew very well that the receipts/documents are material to the answer of defendant Rodriguez;

29.- The claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

30.- He adopts the answer of his co-defendant Teresa Reyes to form part of his answer in so far as the latter is consistent with the foregoing allegations.[8]

On July 17, 1997, the RTC issued an Order, granting the petitioner's plea for a writ of preliminary attachment on a bond of P750,000.00.[9] However, the RTC lifted the writ of attachment upon the respondents' filing of a counter bond of P1,000,000.00.[10]

In view of his strained relations and irreconcilable difference with the petitioner, Atty. Gerard A. Mosquera filed his withdrawal of appearance on October 24, 1997[11] which the trial court granted on January 5, 1998.[12] Before the pre-trial conference set on February 19, 1998,[13] respondent Reyes filed her pre-trial brief on February 10, 1998.[14] On February 13, 1998, Atty. Thomas T. Jacobo entered his appearance as new counsel for the petitioner with urgent motion to reset the scheduled pre-trial by reason of his urgent professional commitment in Manila.[15] On February 19, 1998, only respondent Reyes, her counsel, Atty. Eliseo P. Vencer II, and the petitioner appeared. Nonetheless, the trial court granted the written motion for postponement previously filed by

Atty. Jacobo and reset the hearing to March 25, 1998.[16]

In the rescheduled pre-trial conference, Atty. Vencer manifested that the Answer he filed on behalf of respondent Rodriguez was only to accommodate the latter who was still in the hospital and that the services of another lawyer, Atty. Joseph Arnold K. Calonzo, had already been engaged, but was yet to enter his appearance. Since the petitioner interposed no objection, the pre-trial was reset to June 4, 1998.[17] It was further moved to January 15, 1999 since Atty. Calonzo had just entered his appearance, and to give respondent Rodriguez the opportunity to file his pre-trial brief.[18] On January 15, 1999, the trial court again reset the pre-trial conference to March 11, 1999 since respondent Rodriguez had filed his brief a day before the scheduled hearing,[19] and the plaintiff was yet to receive a copy thereof.[20]

Later, two Notices of Cancellation and Resetting were issued by the Clerk of Court on February 24, 1999[21] and April 7, 1999[22] rescheduling the pre-trial conference set on March 11, 1999 to April 21, 1999 and June 22, 1999, respectively, as the acting presiding judge would be hearing cases at Branch 7 of the RTC in Baganga, Davao Oriental during the said dates.

With the attendance of the parties and their counsel, the pre-trial was finally held on June 22, 1999. The trial court issued the pre-trial order on September 13, 1999.[23] Thereafter, it set the date of the initial trial to May 8, 2001.[24] The Notice of Hearing Initial Trial dated February 12, 2001 was then served on the parties and their counsel.[25]

On the scheduled initial trial, Atty. Jacobo manifested that the petitioner had not been seeing him lately. He thus moved for a resetting, as he might file an appropriate pleading should such situation continue. There being no objection, the trial was reset to June 22, 2001.[26] However, a day before the scheduled date, Atty. Jacobo filed a Very Urgent Manifestation, stating that he would be attending a clarificatory hearing in a criminal case in Davao City.[27] Again, when the respondents interposed no objection thereto, the trial court granted the motion for postponement and reset the trial to October 22, 2001.[28]

During the rescheduled trial date, Atty. Jacobo moved for a resetting, on the ground that he was withdrawing as counsel for the petitioner. There was no objection from the respondents. The October 22, 2001 Order not only instructed Atty. Jacobo to submit the motion to withdraw with the conformity of the petitioner; it also directed that the petitioner be furnished copy of the order so that she could secure the services of a new counsel as early as possible. The court also stressed that no motion for postponement would further be entertained. The initial trial was then reset to December 3, 2001.[29]

The Notice of Withdrawal dated November 19, 2001[30] was filed before the court on November 22, 2001,[31] the trial court granted the same on November 27, 2001.[32]

When the case was called on December 3, 2001, the petitioner failed to appear, but Atty. Cornelio Baliao entered his special appearance in her behalf. After manifesting that their office had not yet accepted the petitioner's case and that the matter was still under their consideration, Atty. Baliao moved for the resetting of the initial trial. Noting the observation and vehement objection of the respondents, the trial court issued an order dismissing the case on the following premise:

Atty. Cornelio Baliao moved for the resetting of the initial trial but this was vigorously opposed by the defendants who expressed their frustrations over the developments in this case. This case was filed since July 14, 1997 and until now no initial trial has been conducted.

Atty. Eliseo Vencer observed that a pattern is unfolding in this case where the plaintiff's counsel would withdraw as what happened to Atty. Mosquera and Atty. Jacobo, all to the disadvantage of the defendants. This

observation is joined by Atty. Calonzo.

Under the said circumstances, the court has to do something if only to show that justice is still working.

In view of the foregoing, the motion for the resetting of the plaintiff is hereby denied. The plaintiff's action is dismissed for failure to prosecute.

Defendants are directed to present their evidence ex-parte on their counterclaims before a commissioner, Atty. Rene L. Valencia, who is hereby commissioned to do the same. After a report thereon shall have been made, then this case shall be considered submitted for decision. The date for the reception of evidence will be done upon agreement of the defendants and Atty. Valencia.

SO ORDERED.[33]

On December 19, 2001, the Law Firm of Miguel Baliao and Lopez entered its appearance as the new counsel for the petitioner[34] and simultaneously filed a motion for reconsideration on the assailed order.[35] The trial court denied the motion in its Order[36] dated October 21, 2002.

The petitioner then filed a petition for certiorari with the CA, assailing the Orders of the RTC. The appellate court denied the petition for lack of merit; it, likewise, denied the petitioner's motion for reconsideration of the said decision.

The petitioner now comes to this Court, alleging that the appellate court erred as follows:

I.

THE COURT OF APPEALS ERRED IN RULING THAT THE TRIAL COURT DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DISMISSING THE CASE.

II.

THE COURT OF APPEALS ERRED IN FINDING THAT "NOWHERE CAN THERE BE FOUND IN THE RECORDS ANY EXPLANATION OR MANIFESTATION FROM THE PETITIONER-APPELLANT FOR HER FAILURE TO ATTEND THE SCHEDULED PRESENTATION OF HER EVIDENCE."

III.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE RESPONDENT-APPELLEE COURT CANNOT BE FAULTED FOR SHARING THE VIEW OF PRIVATE RESPONDENT-APPELLEES AND COUNSEL THAT INDEED, A PATTERN WAS EMERGING WHEREBY THE PETITIONER-APPELLANT WAS UNDULY DELAYING THE HOLDING OF THE TRIAL PROPER BY CHANGING COUNSEL AT THE LAST MINUTE JUST BEFORE THE SCHEDULED DATE OF TRIAL AND ASKING FOR POSTPONEMENT, NOT TO MENTION THE FAILURE OF PETITIONER-APPELLANT HERSELF TO ATTEND THE HEARINGS.

IV.

THE COURT OF APPEALS ERRED IN RULING THAT THE CONTENTION OF PETITIONER-APPELLANT THAT HER COUNSEL NEEDED TIME TO PREPARE FOR TRIAL AND STUDY THE CASE DESERVES SCANT CONSIDERATION.[37]

The petitioner avers that the trial court failed to furnish her a copy of the October 22, 2001 Order which could have apprised her of Atty. Jacobo's intention to withdraw from the case, the date of the initial trial (December 3, 2001), as well as the order to secure a substitute counsel. She thus contends that her presence in the scheduled initial trial was neither necessary nor required, and that the special appearance of Atty. Baliao on her behalf was a mere formality to show respect to the trial court and to inform it that the petitioner's case had been referred to him

for consideration. Absent the requisite proper notice, the petitioner asserts that the trial court should have reset *motu proprio* the initial hearing, as it could not be validly conducted on the ground of prematurity. Citing *People v. Pamittal*[38] and *Gosiengfiao v. Hon. Nicasio Yatco*,[39] the petitioner claims that it was clearly beyond the power of the trial court to punish her for refusing to follow an order of dismissal. She further asserts that the said order of dismissal is null and void, since it was issued at a time when the case was not ready for trial and adjudication.

The petitioner further argues that she should not bear the effects of her former counsels' withdrawal from the case. As regards Atty. Mosquera, the petitioner notes that his withdrawal only caused delay during the pre-trial stage, as such was made before the scheduled hearing on February 19, 1998. On the other hand, the withdrawal of Atty. Jacobo was but necessary and proper in order to avert a possible conflict of interest. The petitioner narrated that his law office appeared as counsel for the Bank of the Philippines Islands in Civil Case No. 6950 pending before the RTC, Branch 35, where her parents, the spouses Carlos and Elvira Belonio, are the plaintiffs. According to the petitioner, Atty. Jacobo's manifestation on May 8, 2001 that she (petitioner) had not been seeing him lately should not be taken against her; the fact that she was not furnished a copy of the court order issued on even date gave her no opportunity to refute her counsel's manifestation.

Finally, the petitioner contests the conclusion that there is a pattern emerging whereby she was unduly delaying the conduct of the trial proper through change of counsel at the last minute just before the scheduled trial date. The petitioner counters that the motion for the resetting of the trial date was reasonable and justified, since her new counsel needed time to verify court records and to study and discuss the case with his law partner before its acceptance.

For their part, the respondents allege that the petitioner's claim that there was lack of notice of the initial trial cannot be sustained for two reasons: first, the argument was presented only before this Court and never in the courts below; second, the records of the case, including the very documents submitted by the petitioner, would belie her allegation that there was no prior notice. The respondents cite the doctrine laid down in *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals*,[40] where the Court ruled that no question, issue or argument will be entertained on appeal unless it was raised in the court *a quo*. According to the respondents, the notice of withdrawal filed by Atty. Jacobo is dated November 19, 2001, fifteen (15) days before December 3, 2001, thus, it is preposterous for the petitioner, who had affixed her conformity thereon, to say that she had no notice of the scheduled initial trial. The respondents assume that in the natural course of things, the petitioner was already informed by Atty. Jacobo as to the date of the next hearing when she signed the notice of withdrawal. Considering that she had actual knowledge of the resetting, the cited cases of *People v. Pamittal* and *Gosiengfiao v. Hon. Nicasio Yatco* are not in point. And even if such was not the case, the respondents insist that it was still incumbent upon the petitioner to update herself of the status of her case. The respondents point to the court records to prove the petitioner's laxity in the prosecution of her claims, stressing that the petitioner twice changed her counsels, who apparently withdrew their services due to her own fault.

Prefatorily, the remedy of the petitioner from the assailed final order of the RTC was to appeal the same via a writ of error under Section 1, Rule 41 of the Rules of Civil Procedure. A petition for certiorari under Rule 65 of the Rules of Court is proper only if the aggrieved party has no plain, adequate and speedy remedy in the ordinary course of law. However, the CA, in the broader interest of justice, resolved the petition on its merits instead of dismissing it outright, and cannot be faulted for so doing. Indeed, in *Marahay v. Melicor*,[41] this Court held that:

Before resolving said issue, it would be judicious to first clear the air of any misconception as to the procedural propriety of giving due course to this petition. An order of dismissal, whether right or wrong, is a final order. If it is erroneous, ordinarily the remedy of the aggrieved party is appeal; hence, the same cannot be assailed by

certiorari.

Nevertheless, in the broader interests of justice, this Court has given due course to the present petition in consideration of the fact that this is not the first time we have passed upon a petition for certiorari, although the proper remedy is appeal, where the equities warrant such extraordinary recourse. This is especially true where, as in the case, petitioner's affidavit of merits shows that she has a good cause of action, that her counsel's affidavit of merits avers justifiable reasons for his non-appearance at said hearing, and the trial court is faulted with gravely abusing its discretion to the extent of denying due process to therein plaintiff. Significantly, it was respondent judge himself who advised petitioner to avail of said remedy in his order dismissing petitioner's second motion for reconsideration, obviously because appeal would not be a speedy and adequate remedy under the circumstances and considering that dismissals on technicalities are viewed with disapproval.[42]

Resolving now the petition at bar, the Court holds that the same is meritorious.

Section 3, Rule 17 of the 1997 Rules of Civil Procedure, states -

SEC. 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.

As can be gleaned from the rule, there are three instances where the complaint may be dismissed due to the plaintiff's fault: (1) if he fails to appear during a scheduled trial, especially on the date for the presentation of his evidence in chief; (2) if he fails to prosecute his action for an unreasonable length of time; and (3) if he fails to comply with the rules or any order of the court.[43]

Considering the circumstances of the case, it cannot be concluded that the petitioner failed to prosecute the case for an unreasonable length of time. There is failure to prosecute when the plaintiff, being present, is not ready or is unwilling to proceed with the scheduled trial[44] or when postponements in the past are due to the plaintiff's own making, intended to be dilatory or cause substantial prejudice on the part of the defendant.[45] In this case, the dismissal of the petitioner's complaint was mainly attributed to her non-appearance during the presentation for evidence-in-chief. However, while there were delays in the proceedings in the RTC caused by the petitioner, there were also delays caused by the respondents as well as the trial court itself.

The trial court granted the withdrawal of appearance filed by Atty. Mosquera on October 24, 1997 after the lapse of almost three (3) months on January 5, 1998. Thereafter, it cancelled the March 11, 1999 pre-trial conference to April 21, 1999, and later to June 22, 1999, or after more than three (3) months had passed. It then issued the pre-trial order on September 13, 1999 after the pre-trial conference on June 22, 1999 or after less than three (3) months. The initial trial was then set on February 12, 2001, after the conduct of the pre-trial on June 22, 1999, or after about one (1) year and eight (8) months had elapsed.

As for the respondents Reyes and Rodriguez, they filed their answer on August 29, 1997 and September 9, 1997, respectively, despite the receipt of the summons and the copy of the complaint on July 18, 1997 or after more than a month. The pre-trial conference scheduled on March 25, 1998 was then moved to June 4, 1998, again to January 15, 1999, and finally to March 11, 1999, or after almost a year.

In contrast, the petitioner only caused an eleven (11) month-delay: first, when the trial court reset the pre-trial on February 19, 1998 to March 25, 1998; and second, when the initial trial scheduled on February 12, 2001 was moved to June 22, 2001, then to October 22, 2001 and finally, to December 3, 2001. Thus, by just looking

cautiously as to the material dates involved which resulted to the delay, it cannot be gainsaid that the dismissal of the petitioner's action by the trial court is precipitate and too severe a sanction.

The fact that the petitioner seemingly did not have harmonious relationships with her former counsels cannot justify an inference that she had lost her interest to prosecute her cause. Like its stance towards the welfare of the respondents, the trial court should have extended compassion at the petitioner's predicament. The respondents did not dispute that when the trial court issued the November 27, 2001 Order granting the withdrawal of Atty. Jacobo, the petitioner served as the military's contact to her father's kidnappers.[46] During those times, despite receiving death threats from unknown personalities, the petitioner struggled to engage the services of a new counsel. On November 30, 2001, she went to the Law Offices of Miguel Baliao and Associates, which was then closed because it was a non-working holiday. Having no other option, she then went to the house of Atty. Baliao to refer the matter. But since the succeeding days were Saturday and Sunday, the latter had no ample time to study the case; he could not very well interview the petitioner and her witnesses, discuss the matter with his law partners, verify court records and prepare for trial during that same weekend. With the attendant circumstances, the trial court should have been more circumspect and indulgent at the petitioner's plight, by giving her new counsel reasonable opportunity to competently defend his client. When a party, without malice, fault, or inexcusable negligence, is not really prepared for trial, the court would be abusing its discretion if a reasonable opportunity is denied her for preparing therefor and for obtaining due process of law.[47]

While a court can dismiss a case on the ground of failure to prosecute, the true test for the exercise of such power is whether, under the prevailing circumstances, the plaintiff is culpable for want of due diligence in failing to proceed with reasonable promptitude.[48] As to what constitutes an "unreasonable length of time," within the purview of the above-quoted provision, the Court has ruled that it "depends upon the circumstances of each particular case" and that "the sound discretion of the court" in the determination of said question "will not be disturbed, in the absence of patent abuse;" and that "the burden of showing abuse of judicial discretion is upon the appellant since every presumption is in favor of the correctness of the court's action." [49] Likewise, the concept of promptness is a relative term and must not unnecessarily be an inflexible one. It connotes an action without hesitation and loss of time. As to what constitutes the term is addressed to the consideration of the trial court, bearing in mind that while actions must be disposed of with dispatch, the essential ingredient is the administration of justice and not mere speed.[50]

It is well to quote the doctrine laid in *Padua v. Ericta*[51] as accentuated in the subsequent case of *Marahay v. Melicor*:[52]

Courts should not brook undue delays in the ventilation and determination of causes. It should be their constant effort to assure that litigations are prosecuted and resolved with dispatch. Postponements of trials and hearings should not be allowed except on meritorious grounds; and the grant or refusal thereof rests entirely in the sound discretion of the Judge. It goes without saying, however, that discretion must be reasonably and wisely exercised, in the light of the attendant circumstances. Some reasonable deferment of the proceedings may be allowed or tolerated to the end that cases may be adjudged only after full and free presentation of evidence by all the parties, especially where the deferment would cause no substantial prejudice to any part. The desideratum of a speedy disposition of cases should not, if at all possible, result in the precipitate loss of a party's right to present evidence and either in plaintiff's being non-suited or of the defendant's being pronounced liable under an *ex parte* judgment.

"... (T)rial courts have ... the duty to dispose of controversies after trial on the merits whenever possible. It is deemed an abuse of discretion for them, on their own motion, 'to enter a dismissal which is not warranted by the circumstances of the case' (*Municipality of Dingras v. Bonoan*, 85 Phil. 458-59 [1950]). While it is true that the dismissal of an action on grounds specified under Section 3, Rule 17 of the Revised Rules of Court is

addressed to their discretion (*Flores v. Phil. Alien Property Administrator*, 107 Phil. 778 [1960]; *Montelibano v. Benares*, 103 Phil. 110 [1958]; *Adorable v. Bonifacio*, 105 Phil. 1269 [1959]; *Inter-Island Gas Service, Inc. v. De la Gerna*, L-17631, October 19, 1966, 18 SCRA 390), such discretion must be exercised soundly with a view to the circumstances surrounding each particular case (*Vernus-Sanciangco v. Sanciangco*, L-12619, April 28, 1962, 4 SCRA 1209). If facts obtain that serve as mitigating circumstances for the delay, the same should be considered and dismissal denied or set aside (*Rudd v. Rogerson*, 15 ALR 2d 672; *Cervi v. Greenwood*, 147 Colo. 190, 362 P.2d 1050 [1961]), especially where the suit appears to be meritorious and the plaintiff was not culpably negligent and no injury results to defendant (27 C.J.S. 235-36; 15 ALR 3rd 680)." (*Abinales vs. Court of First Instance of Zamboanga City*, Br. I, 70 SCRA 590, 595).

"It is true that the allowance or denial of petitions for postponement and the setting aside of orders previously issued, rest principally upon the sound discretion of the judge to whom they are addressed, but always predicated on the consideration that more than the mere convenience of the courts or of the parties of the case, the ends of justice and fairness would be served thereby (*Camara Vda. de Zubiri v. Zubiri, et al.*, L-16745, December 17, 1966). When no substantial rights are affected and the intention to delay is not manifest, the corresponding motion to transfer the hearing having been filed accordingly, it is sound judicial discretion to allow them (*Rexwell Corp. v. Canlas*, L-16746, December 30, 1961)."

Aside from the reasonable delay and manifest lack of intent to employ any dilatory tactic prejudicial to the respondents and trifling court processes, the substantial merit of the case should also be taken into consideration. It must be underscored that had it not been for the counter bond filed by the respondents, the writ of preliminary attachment previously issued would not have been discharged by the trial court.[53] Furthermore, certain admissions made by the respondents in their respective answers as to the petitioner's P1,500,000.00 claim gives the latter the correlative right to demand that they present proof to support their affirmative defenses.[54] Indeed, after the issues had been duly joined, a plaintiff is entitled to present his case. Seldom does departure from orderly procedure bring satisfactory results.[55]

The power of the trial court to dismiss an action for non-prosequitur is not without its limits. If a pattern or 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 is not present, as in this case, courts should not wield their authority to dismiss. Indeed, while the dismissal rests on the prerogative of the trial court, it must soundly be exercised and not be abused, as there must be sufficient reason to justify its extinctive effect on the plaintiff's cause of action. Deferment of proceedings may be tolerated so that the court, aimed at a just and inexpensive determination of the action, may adjudge cases only after a full and free presentation of all the evidence by both parties. In this regard, courts are reminded to exert earnest efforts to resolve the matters before them on the merits, and adjudicate the case in accord with the relief sought by the parties so that appeals may be discouraged; otherwise, in hastening the proceedings, they further delay the final settlement of the case.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Decision and Resolution of the Court of Appeals are ANNULLED. The Regional Trial Court of General Santos City, Branch 36, is DIRECTED to reinstate Civil Case No. 6092, to continue with the proceedings, and to terminate the same with reasonable dispatch. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Cancio C. Garcia (now an Associate Justice of the Supreme Court) and Mario L. Guariña III, concurring.

[2] Penned by Acting Presiding Judge Monico G. Gabales.

[3] Penned by Acting Presiding Judge Antonio C. Lubao.

[4] Rollo, pp. 48-64.

[5] Records, pp. 2-6.

[6] Id. at 8-9.

[7] Records, pp. 104-105.

[8] Records, pp. 115-117.

[9] Id. at 42.

[10] Id. at 96.

[11] Rollo, pp. 97-98.

[12] Records, p. 138.

[13] Id. at 139.

[14] Rollo, pp. 99-102.

[15] Records, pp. 144-145.

[16] Id. at 146.

[17] Rollo, p. 103.

[18] Id. at 104.

[19] Id. at 105.

[20] Id. at 108.

[21] Id. at 109.

[22] Id. at 110.

[23] Records, pp. 162-168.

[24] Rollo, p. 111.

[25] Id. at 112.

[26] Id. at 113.

[27] Records, pp. 173-176.

[28] Rollo, p. 114.

[29] Id. at 115.

[30] Rollo, p. 116.

[31] Id. at 117.

[32] Id. at 120.

- [33] Records, pp. 184-185.
- [34] Rollo, pp. 132-133.
- [35] Id. at 134-145.
- [36] Id. at 146.
- [37] Rollo, pp. 9-10.
- [38] No. L-25033, 31 October 1969, 30 SCRA 98.
- [39] No. L-16676, 28 January 1961, 1 SCRA 358.
- [40] G.R. No. 129459, 29 September 1998, 296 SCRA 631.
- [41] G.R. No. 44980, 6 February 1990, 181 SCRA 811.
- [42] Id. at 814-815.
- [43] Olave v. Mistas, G.R. No. 155193, 26 November 2004, 444 SCRA 479 and Bank of the Philippine Islands v. Court of Appeals, G.R. No. 117385, 11 February 1999, 303 SCRA 19.
- [44] Marahay v. Melicor, supra, citing Moran, Comments on the Rules of Court, 1979 ed., Vol. 1, p. 521.
- [45] Ibid.
- [46] CA Rollo, p. 180.
- [47] Marahay v. Melicor, supra, citing Valerio v. Secretary of Agriculture and Natural Resources, et al., supra, 104 Phil. 572 (1958).
- [48] Id. at 817; Bank of the Philippine Islands v. Court of Appeals, supra.
- [49] Goldloop Properties, Inc. v. Court of Appeals, G.R. No. 99431, 11 August 1992, 212 SCRA 498, citing Montejo v. Urotia, 40 SCRA 41 (1971).
- [50] Olave v. Mistas, supra.
- [51] No. L- 38570, 24 May 1988, 161 SCRA 458, 459-460.
- [52] Supra.
- [53] Records, pp. 42, 96.
- [54] Rollo, pp. 143, 161.
- [55] Marahay v. Melicor, supra, citing Tagaruma v. Guzman, et al., 60 Phil 622 (1934).

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