SPS. DAN T. PAGUIRIGAN AND MARY JANE PAGUIRIGAN, PETITIONERS, VS. PILHINO SALES CORPORATION, RESPONDENT.

G.R. NO. 169177. June 30, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari with motion for contempt,[1] assails the April 8, 2005 Decision[2] and the August 3, 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 85876 which set aside the December 16, 2003 Order[4] of the Regional Trial Court of Mandaluyong City, Branch 210 dismissing Civil Case No. MC00-1260, for failure of respondent Pilhino Sales Corporation to prosecute.

Petitioners are spouses Dan Paguirigan and Mary Jane Paguirigan, doing business under the name and style of Danny Boy Liner and/or Dalmatian Lines. A controversy arose between petitioners and respondent Pilhino Sales Corporation in connection with an alleged transaction involving three buses.

It appears from the records that there are two civil cases involving petitioners and respondent corporation, namely: (1) Civil Case No. MC98-214 before the Regional Trial Court of Mandaluyong City, Branch 214; and (2) Civil Case No. MC00-1260, before the Regional Trial Court of Mandaluyong City, Branch 210, both entitled Pilhino Sales Corporation vs. Spouses Dan Paguirigan and Mary Jane Paguirigan, and Jose T. Paguirigan, doing business under the name and style of Danny Boy Liner and/or Dalmatian Lines.

Civil Case No. MC98-214 raffled to Branch 214 is a complaint for sum of money filed by respondent corporation against petitioners but was dismissed on March 26, 1999 for respondent's failure to submit its pre-trial brief and to appear in the scheduled pre-trial conference despite proper notice.[5] On June 2, 2000, the court denied respondent's motion for reconsideration on the ground that the March 26, 1999 Order had attained finality. Nevertheless, the court stated that respondent corporation is not precluded from re-filing the complaint against petitioners.[6]

On September 19, 2000,[7] respondent corporation re-filed its complaint for sum of money against petitioner before the Regional Trial Court of Mandaluyong City. The case was docketed as Civil Case No. MC00-1260 and was raffled to Branch 210. In an Order dated June 6, 2002,[8] the trial court brushed aside petitioners' allegations of res judicata and want of jurisdiction holding that the March 26, 1999 Order of Branch 214 dismissing Civil Case No. MC98-214 was not on the merits as it was not rendered after a consideration of the evidence or stipulations submitted by the parties. The trial court found that no trial was conducted in that case. Thus, Civil Case No. MC00-1260 was set for further proceedings and pre-trial was set on July 2, 2002.

Petitioners moved for reconsideration of the June 6, 2002 Order which the trial court granted in its Order dated January 29, 2003.[9] This time, the trial court held that March 26, 1999 Order dismissing the first complaint was a dismissal with prejudice and an adjudication on the merits. Consequently, the trial court recalled and set aside its Order dated June 6, 2002 and entered a new one dismissing Civil Case No. MC00-1260 on ground of res judicata.

However, on November 18, 2003, the trial court reversed its Order of January 29, 2003. It held that the dismissal of Civil Case No. MC98-214 was meant to be without prejudice; that the dismissal did not have the effect of an adjudication upon the merits for the failure of respondent to comply with the Rules was not due to unjustifiable cause. The trial court thus required petitioners to file their pre-trial brief and scheduled the pre-trial conference on December 16, 2003.[10]

During the scheduled pre-trial conference on December 16, 2003, respondent and counsel failed to appear hence Civil Case No. MC00-1260 was dismissed for failure to prosecute. With the denial of its motion for reconsideration,[11] respondent appealed to the Court of Appeals which granted its petition, set aside the December 16, 2003 Order of the trial court and directed the presiding judge to conduct further proceedings in the case.[12] Petitioners' motion for reconsideration was denied,[13] hence this petition on the following grounds:

> - THE COURT OF APPEALS SERIOUSLY ERRED IN DISREGARDING SECTION 3, RULE 17 OF THE RULES OF CIVIL PROCEDURE AND THE LEGAL EFFECTS OF THE ORDERS OF DISMISSAL DATED 26 MARCH 1999 AND 02 JUNE 2000 OF BRANCH 214, RTC MANDALUYONG OUSTING BRANCH 210, RTC-MANDALUYONG AND THE COURT OF APPEALS TO TRY THE RE-FILED CASE.[14]
>
> - THE COURT OF APPEALS SERIOUSLY ERRED IN GRANTING RESPONDENT'S PETITION FOR CERTIORARI UNDER RULE 65 IN LIEU OF LOST APPEAL ON THE ORDER OF DISMISSAL OF THE RE-FILED CASE WHERE RESPONDENT AND COUNSEL ARE ADMITTEDLY AGAIN ABSENT IN THE PRE-TRIAL.[15]
>
> - THE COURT OF APPEALS SERIOUSLY ERRED IN ALLOWING THE RE-FILED CASE TO PROCEED AS IT UNDERMINES THE RULE PROHIBITING FORUM SHOPPING AND ALLOWS INTERFERENCE WITH A JUDGMENT OF A CO-EQUAL COURT.[16]

Petitioners contend that the orders dated March 26, 1999 and June 2, 2000 of Branch 214 in Civil Case No. MC98-214 had the effect of adjudication on the merits. They argue that respondent's failure to appeal the foregoing orders resulted in the same having become final, thus Branch 210 and the Court of Appeals are without jurisdiction to entertain the re-filed case or Civil Case No. MC00-1260.[17] In taking cognizance of the re-filed case, petitioners claim that Branch 210 interfered with the judgment of a co-equal court and accuse respondent of trifling with legal processes and forum shopping.

In its comment, respondent admits that the orders of dismissal of Branch 214 have become final but claims that the dismissal was without prejudice and not an adjudication on the merits.

The issues for resolution in this case are as follows: (1) whether Branch 210 and the Court of Appeals have jurisdiction to entertain Civil Case No. MC00-1260; and (2) whether respondent's absence during the pre-trial conference on December 16, 2003 warranted the dismissal of Civil Case No. MC00-1260 for failure to prosecute.

The petition lacks merit.

Section 3, Rule 17 of the Rules of Court provides:

> Sec. 3. Dismissal due to 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. (Emphasis added)

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As correctly observed by respondent, the June 2, 2000 Order clearly stated that the dismissal was without prejudice and that respondent is not precluded from re-filing the complaint should it desire to pursue its claim against the petitioners. Further, petitioners actively participated in the proceedings before Branch 210 and even sought positive relief during the pre-trial on December 16, 2003 when it moved for the dismissal of the case. Petitioners cannot invoke the jurisdiction of Branch 210 when it suits them and then argue before the Court of Appeals and before this Court that it does not have jurisdiction to entertain the re-filed case. Petitioners' belated attempt at raising the issue of want of jurisdiction after having taken part in the proceedings before Branch 210 cannot be allowed.

Anent the second issue, it must be emphasized that a pre-trial is mandatory and plaintiff's absence therein can result to the dismissal of the case. Section 5, Rule 18 of the Rules of Court provides:

> Sec. 5. Effect of failure to appear. – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. x x x.

However, the rule is not absolute; it admits of certain exceptions. We agree with the observation of the Court of Appeals that –

> In this case, We find that the dismissal of the cased (sic) based on the failure of petitioner's counsel to appear during the 16 December 2003 was done in erroneous haste, to the extreme prejudice of the petitioner.
>
> For one, there is nothing in the record to demonstrate that petitioner had manifested lack of interest to prosecute. It neither abandoned the suit nor needlessly delayed the proceedings. Rather, what is self-evident is that in all the six (6) previously scheduled pre-trial conference, petitioner's counsel was in attendance and had demonstrated his vigorous resolve to prosecute the case with reasonable promptitude. In fact, the cancellation of all the previously scheduled pre-trial was the result of either the court's inability to conduct the pre-trial or respondent's motion to the same effect. It was only in the seventh (7[th]) scheduled pre-trial conference when petitioner's counsel was absent, and for good reasons, i.e. petitioner counsel's medical condition (allergic dermatitis with infection of left scrotum) that even necessitated his confinement on the day immediately following the scheduled pre-trial conference.
>
> If such absence had upset the court a quo's schedule or its intention to promptly prosecute the case, a mere admonition for petitioner's counsel, instead of outright dismissal, would have been sufficient for the parties to be informed of the public respondent judge's intolerance of any display of tardiness and laxity in the observance of his orders from the part of the contending parties.
>
> The pronouncement of the Supreme Court in the case of Calalang vs. Court of Appeals, applies strongly in this case, viz:
> "x x x though it is within the discretion of the trial court to declare a party non-suited for non appearance in the pre-trial conference, such discretion must not be abused. The precipitate haste of the lower court in declaring the respondent bank non-suited was uncalled for and deserved a second look.
>
> x x x x x x x x x
>
> Unless a party's conduct is so negligent, irresponsible, contumacious, or dilatory as to provide substantial grounds for dismissal for non-appearance, the courts should consider lesser sanctions which would still amount into achieving the desired end. "Inconsiderate dismissals, even if without prejudice, do not constitute a panacea nor a solution to the congestion of court dockets, while they lend a deceptive aura of efficiency to records of the individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court." (Ruiz vs. Estenzo, 186 SCRA 8 [1990] citing Macasa vs. Herrera,

> 101 Phil. 44 [1957]). And there is authority that an order dismissing a plaintiff's complaint without prejudice for failure of his counsel to appear at a pre-trial conference must be reversed as too severe a sanction to visit on a litigant where the record is devoid of evidence reflecting the litigant's willful or flagrant disregard for the Court's authority."

In this case, the dismissal was based solely on respondent's absence during the pre-trial conference on December 16, 2003. A single instance of non-appearance at the pre-trial due to medical reasons does not amount to willful disregard of the orders of the lower court and will not justify the dismissal of the complaint. That respondent vigorously prosecuted the case before Branch 210 was not contested by petitioners. Likewise, the Court of Appeals noted that respondent had not manifested a lack of interest to prosecute. In fact, respondent's counsel was present at all the previously scheduled pre-trial conferences. Moreover, the cancellations, re-settings and delays were not caused by respondent's inordinate refusal or laxity in prosecuting the case. In Marahay v. Melicor,[18] we ruled that:

> While a court can dismiss a case on the ground of non prosequitur, the real test for the exercise of such power is whether, under the circumstances, plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. In the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss.

So it is with the case at bar. Respondent has not shown culpable negligence warranting the dismissal of its complaint. The ends of justice and fairness would best be served if the issues involved in the case are threshed out in a full-blown trial.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 85876 dated April 8, 2005 which set aside the December 16, 2003 Order of the Regional Trial Court of Mandaluyong City, Branch 210 dismissing Civil Case No. MC00-1260 for respondent's failure to prosecute, and directing the Regional Trial Court of Mandaluyong City, Branch 210 to conduct further proceedings, and its Resolution dated August 3, 2005, denying petitioners' motion for reconsideration are AFFIRMED.

SO ORDERED.

Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.
Panganiban, C.J., (Chairperson), on official leave.

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[1] Rollo, pp. 9-47.

[2] Id. at 69-78. Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo.

[3] Id. at 80.

[4] Id. at 60. Penned by Judge Maria A. Cancino-Erum.

[5] Id. at 50. Penned by Judge Edwin D. Sorongon.

[6] Id. at 51.

[7] Id. at 15.

[8] Id. at 52-54. Penned by Judge Maria A. Cancino-Erum.

[9] Id. at 55-57.

[10] Id. at 58-59.

[11] Id. at 61-63.

[12] Id. at 78.

[13] Id. at 80.

[14] Id. at 28.

[15] Id. at 34.

[16] Id. at 41.

[17] Id. at 36.

[18] G.R. No. 44980, February 6, 1990, 181 SCRA 811, 817.

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