

AUGUSTO C. SOLIMAN, PETITIONER, VS. JUANITO C. FERNANDEZ, IN HIS CAPACITY AS RECEIVER OF SMC PNEUMATICS (PHILS.), INC., RESPONDENT.*G.R. No. 176652. June 04, 2014*

Ponente: PEREZ, J.

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Before this Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court assailing the 27 July 2006 Decision[2] and the 12 February 2007 Resolution of the Sixteenth Division of the Court of Appeals (CA) in CA-G.R. CV No. 84983. The Decision reversed the Orders of the Regional Trial Court (RTC) of Quezon City, Branch 83, dated 31 January 2005[3] and 22 April 2005,[4] which dismissed the complaint filed by Juanito C. Fernandez (respondent) against Augusto C. Soliman (petitioner) in Civil Case No.Q-04-52183 and denied respondent's motion for reconsideration.

Culled from the records are the following antecedent facts:

On 10 March 2003, SMC Pneumatics Philippines, Inc. (SMC Pneumatics) filed a Motion for Appointment of Management Committee before the RTC (Special Commercial Court) of Calamba City, Branch 34, docketed as RTC SEC Case No. 44-2003-C.[5] It was consolidated with SEC Case No. 50-2003-C and SEC No. 49-2003. The latter two cases refer to the involuntary dissolution cases filed by SMC Pneumatics.[6] As a result, the RTC issued an Order[7] appointing respondent as the Receiver pending the hearing on the composition and appointment of the members of the Management Committee.[8]

All the assets, affairs and operations of SMC Pneumatics were placed under receivership. [9] Respondent discovered that two (2) of the vehicles owned by the SMC Pneumatics are still in the possession of the petitioner. Respondent demanded that the petitioner return the vehicles. For failure of petitioner to surrender possession, respondent filed a Complaint for Recovery of Personal Properties with Writ of Replevin[10] before the RTC-QC Branch 83.

The lower court issued a Writ of Replevin and subsequently, a Writ of Seizure[11] was issued. Petitioner filed a Motion for Extension of Time to File Answer.[12] Thereafter, he filed an Urgent Motion to Admit Answer.[13] The Answer was admitted in an Order[14] dated 20 August 2004.

In his Answer, petitioner maintained that the receiver is not entitled to the possession of the subject vehicles. As president of SMC Pneumatics he insisted that he is entitled to the possession and use thereof.

On 31 January 2005, the RTC issued the following Order:

Per Order dated August 20, 2004, [petitioner's] Urgent Motion Admit Answer dated June 10, 2004 was granted and the Answer attached thereto was admitted. Said Order was received by counsel for the [respondent] on September 21, 2004 but to date, said counsel has not taken any step for the further prosecution of this case.

WHEREFORE, for failure to prosecute let this case be, as it is hereby DISMISSED.[15]

Respondent filed a Motion for Reconsideration[16] but it was denied by the trial court in its 22 April 2005 Order. Respondent filed a Notice of Appeal[17] seeking the reversal of the Orders of the RTC.

In his Brief,[18] respondent argued that it is the duty of the Branch Clerk of Court to set a case for pre-trial. Respondent hinged this argument on the Supreme Court Resolution entitled “Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures,”[19] wherein the Court ruled that:

Within five (5) days from the date of filing of reply, the plaintiff must promptly move ex parte that the case be set for pre-trial conference. If the plaintiff fails to file said motion within the given period, the Branch COC shall issue a notice of pre-trial.

Respondent contended that the Guidelines set by the Supreme Court has effectively relaxed Rule 18, Section 1 of the Revised Rules of Court, which states that it shall be the duty of the plaintiff to promptly move ex parte that the case be set for pre-trial.

Finding merit in the contentions advanced by respondent, the appellate court held that the lower court need not immediately dismiss the case for failure of respondent to file a motion to set the case for pre-trial because the Branch Clerk of Court should have issued a Notice of Pre-Trial. The dispositive portion of the assailed Decision of the CA read:

WHEREFORE, premises considered, the appeal is GRANTED. The assailed Orders are hereby REVERSED and SET ASIDE. Let this case be REMANDED to the Regional Trial Court of Quezon City, Branch 83 for further proceedings.[20]

Aggrieved by the Decision, petitioner filed with the CA a Motion for Reconsideration of the 27 July 2006 Decision.[21] Petitioner’s Motion for Reconsideration was denied in a Resolution[22] of the CA dated 12 February 2007. Petitioner elevated the case to this Court by filing the present Petition for Review on Certiorari.

Petitioner raised in issue the CA jurisdiction to entertain respondent’s appeal from the order of dismissal of the RTC. He contends that since the respondent’s appeal from the RTC order of dismissal raised a question purely of law, the same was within the exclusive appellate jurisdiction of the Supreme Court.[23] He maintained that the Decision of the CA should therefore be deemed null and void ab initio.

Respondent, on the other hand, emphasized that petitioner cannot raise the issue of jurisdiction in the present Petition for Review on Certiorari under Rule 45 of the Rules of Court. He argued that petitioner should have filed instead a special civil action under Rule 65. For such error, he insisted that the instant petition should be dismissed outright. Respondent further pointed out that petitioner never questioned the jurisdiction of the CA while the case was pending before the appellate court. He even invoked its jurisdiction when it prayed for the reconsideration of the assailed decision. Petitioner should not be allowed to assail the CA’s jurisdiction after he failed to get what he wanted.

We deem it unnecessary to pass upon these questions thoroughly because, whether we deal with the proceedings before us as one for review on certiorari of the Decision of the CA, or as a direct appeal from the order of dismissal of the RTC, the result is the same.[24]

We find it proper to delve into the more important issue to be resolved, that is, whether the trial court was correct in dismissing the complaint of the plaintiff for failure to prosecute. We do so to avoid the invocation of procedural rules for observance of yet another rule on technicality.

It has long been established and settled that the question of whether a case should be dismissed for failure to prosecute is mainly addressed to the sound discretion of the trial court.[25] Pursuant to Rule 17, Section 3 of the Rules of Court, 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.[26] As to what constitutes “unreasonable length of time,” this Court has ruled that it depends on the circumstances of each particular case and that “the sound discretion of the court” in the determination of the said question will not be disturbed, in the absence of patent abuse.[27] The Court, however, in the case of *Belonio v. Rodriguez*,[28] held that:

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.

Petitioner argued that the appellate court mistakenly concluded that the trial court need not immediately dismiss the case for failure of the respondent to file a motion to set the case for pre-trial. He alleged that a closer reading of the Regional Trial Court Order[29] would reveal that the Order simply stated that respondent did not take any step for the further prosecution of the case. He noted that “any step for the further prosecution of the case” is not necessarily limited to the setting of the case for pre-trial. The phrase may include an equally significant, available remedy and course of action such as a motion for a judgment on the pleadings or for summary judgment. He maintained that the failure to take any of the three (3) available courses of action prompted the trial court to conclude that the respondent has not taken any step for the further prosecution of the case and to dismiss the same for failure to prosecute.

Such contention is speculative. We cannot presume that the respondent had the intention of availing of the remedies of motion for judgment on the pleadings or summary judgment but failed to file the same. The fact remains that the respondent had the option to move for pre-trial and if he fails to do so as he did, the branch clerk of court had the duty to have the case set for pre-trial. Moreover, the period of more than four (4) months or from 21 September 2004 up to 31 January 2005 may not be considered an unreasonable length of time to warrant the terminal consequence of dismissal of the case.

To be sure, the dismissal of the case cannot be for respondent’s “failing to take any step for further prosecution of this case” because the further step is not his, but for the clerk of court, to take.

In *Malayan Insurance Co, Inc. v. Ipil International, Inc.*,[30] this Court held that the failure of a plaintiff to prosecute the action without any justifiable cause within a reasonable period of time will give rise to the presumption that he is no longer interested to obtain from the court the relief prayed for in the complaint. The presumption is not, by any means, conclusive because the plaintiff, on a motion for reconsideration of the order of dismissal, may allege and establish a justifiable cause for such failure.

We also note that in the trial court, petitioner as defendant was in delay in filing his answer yet the court showed some leniency in admitting his answer despite of the delay. We find no reason why respondent as plaintiff should not be granted the same leniency for his failure to move for pre-trial. For after all, and to underscore the point, the

resolution of the Court in A.M. No. 03-1-09-SC[31] provides that: “Within five (5) days from date of filing of the reply, the plaintiff must move ex parte that the case be set for pre-trial conference. If the plaintiff fails to file said motion within the given period, the Branch Clerk of Court shall issue a notice of pre-trial.” Dismissal of the case for failure to prosecute is not the result stated in the rule. The trial court is required to proceed to pre-trial through the notice of pre-trial and setting the case for pre-trial by the Branch Clerk of Court.

On a final note, we emphasize that 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.[32] This is in line with the time-honoured principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfections should thus not serve as basis of decisions.[33]

WHEREFORE, in light of the foregoing, the instant Petition for Review on Certiorari is DENIED. The 27 July 2006 Decision of the Court of Appeals in CA-G.R. CV No. 84983 and its 12 February 2007 Resolution denying petitioner’s Motion for Reconsideration are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 9-29; Penned by Associate Justice Eliezer R. De Los Santos, with Associate Justices Fernanda Lampas-Peralta and Myrna Dimaranan Vidal, concurring.

[2] Id. at 30-34.

[3] Records, p. 111 .

[4] Id. at 162.

[5] Id. at 8.

[6] Id.

[7] Id. at 8-11.

[8] Id. at 9.

[9] Id. at 2.

[10] Id. at 1-7.

[11] Id. at 86-87.

[12] Id. at 96.

[13] Id. at 97-103.

[14] Id. at 110 .

[15] Id. at 111.

[16] Id. at 112-129.

[17] Id. at 166.

[18] CA rollo, pp. 10-31.

[19] A.M. No. 03-1-09-SC.

[20] Rollo, p. 34.

[21] Id. at 35-37.

[22] Id. at 38.

[23] Id. at 15.

[24] De Palanca, et al. v. Chua Keng Kian, et al., 137 Phil. 1, 7 (1969).

[25] Id.

[26] Producers Bank of the Philippines v. Court of Appeals, 396 Phil. 497, 505-506 (2000).

[27] Regner v. Logarta, 562 Phil. 883 (2007).

[28] 504 Phil. 126, 149 (2005).

[29] Records, pp. 8-11.

[30] 532 Phil. 70, 81-82 (2006).

[31] Guidelines To Be observed By Trial Court Judges And Clerks Of Court In The Conduct Of Pre-Trial And Use Of Deposition-Discovery Measures, 16 August 2004.

[32] Marahay v. Judge Melicor, 261 Phil. 33, 40 (1990).

[33] Crystal Shipping, Inc. v. Natividad, 510 Phil. 332, 339 (2005).

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