

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. DOMINGO R. DANDO, RESPONDENT.*G.R. No. 177456. September 04, 2009*

Ponente: CHICO-NAZARIO, J.

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Before this Court is a Petition for Review under Rule 45 of the Rules of Court, filed by petitioner Bank of the Philippine Islands (BPI), assailing (1) the Decision[1] dated 20 November 2006 of the Court of Appeals in CA-G.R. SP No. 82881, which granted the Petition for Certiorari under Rule 65 of the Rules of Court filed by herein respondent Domingo R. Dando (Dando); and (2) the Resolution dated 4 April 2007 of the appellate court in the same case denying the Motion for Reconsideration of BPI. The Court of Appeals, in its assailed Decision, annulled the Orders dated 13 January 2004 and 3 March 2004 of the Regional Trial Court (RTC) of Makati City, Branch 149, setting Civil Case No. 03-281 for pre-trial conference; and reinstated the earlier Order dated 10 October 2003 of the RTC dismissing Civil Case No. 03-281 for failure of BPI to file its pre-trial brief.

The instant Petition stemmed from a Complaint for Sum of Money and Damages[2] filed on 13 March 2003 by BPI against Dando before the RTC, docketed as Civil Case No. 03-281. The Complaint alleged that on or about 12 August 1994, Dando availed of a loan in the amount of P750,000.00 from Far East Bank and Trust Company (FEBTC), under a Privilege Cheque Credit Line Agreement.[3] The parties agreed that Dando would pay FEBTC the principal amount of the loan, in lump sum, at the end of 90 days; and interest thereon every 30 days, the periods reckoned from the time of availment of the loan. Dando defaulted in the payment of the principal amount of the loan, as well as the interest and penalties thereon. Despite repeated demands, Dando refused and/or failed to pay his just and valid obligation.[4] In 2000, BPI and FEBTC merged, with the former as the surviving entity,[5] thus, absorbing the rights and obligations of the latter.[6]

After Dando filed with the RTC his Answer with Counterclaim,[7] BPI filed its Motion to Set Case for Pre-Trial. Acting on the said Motion, the RTC, through Acting Presiding Judge Oscar B. Pimentel (Judge Pimentel), issued an Order[8] on 11 June 2003 setting Civil Case No. 03-281 for pre-trial conference on 18 August 2003. Judge Pimentel subsequently issued, on 16 June 2003, a Notice of Pre-Trial Conference,[9] which directed the parties to submit their respective pre-trial briefs at least three days before the scheduled date of pre-trial. Dando submitted his Pre-trial Brief[10] to the RTC on 11 August 2003. BPI, on the other hand, filed its Pre-trial Brief[11] with the RTC, and furnished Dando with a copy thereof, only on 18 August 2003, the very day of the scheduled Pre-Trial Conference.

When the parties appeared before the RTC on 18 August 2003 for the scheduled Pre-Trial Conference, Dando orally moved for the dismissal of Civil Case No. 03-281, citing Sections 5 and 6, Rule 18 of the Rules of Court. The RTC, through an Order issued on the same day, required Dando to file a written motion within five days from the receipt of the said Order and BPI to file its comment and/or opposition thereto. The RTC order reads:

On calling this case for the pre-trial conference, counsel for both parties appeared and even [respondent]

Domingo R. Dando appeared. The attention of the Court was called by the counsel for the [respondent Dando] that the counsel for the [petitioner BPI] only filed her Pre-Trial Brief today at 9:00 o'clock in the morning instead of at least three days before the pre-trial conference, as required by the Rules. This prompted the counsel for the [respondent Dando] to ask for the dismissal of the case for violation of Rule 18 of the Rules of Civil Procedure.

Counsel for the [respondent Dando] even claims that he has not received a copy of the pre-trial brief, but then according to the counsel for the [petitioner BPI], a copy thereof was sent by registered mail to counsel for the [respondent Dando] since (sic) August 18, 2003, and considering the nature of the motion of the counsel for the [respondent Dando], it is best that the [respondent Dando's] counsel reduce the same in writing within five days from today, furnishing personally a copy thereof the counsel for the [petitioner BPI] who is hereby given five days from receipt thereof within which to file her comment and/or opposition thereto, thereafter, the incident shall be considered submitted for Resolution.

Meanwhile, no pre-trial conference shall be held until the motion is resolved.[12]

On 25 August 2003, Dando filed with the RTC his written Motion to Dismiss Civil Case No. 03-281, for violation of the mandatory rule on filing of pre-trial briefs.[13] BPI filed an Opposition[14] to Dando's Motion, arguing that its filing with the RTC of the Pre-Trial Brief on 18 August 2003 should be considered as compliance with the rules of procedure given that the Pre-Trial Conference did not proceed as scheduled on said date.

In an Order dated 10 October 2003, the RTC granted Dando's Motion to Dismiss Civil Case No. 03-281, for the following reasons:

In resolving this motion, this Court should be guided by the mandatory character of Section 6, Rule 18 of the Revised Rules of Court which: strictly mandates the parties to the case to file with the Court and serve on the adverse party and SHALL ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs but likewise imposed upon the parties the mandatory duty to seasonably file and serve on the adverse party their respective pre-trial briefs. The aforesaid rule does not merely sanction the non-filing thereof of the parties' respective pre-trial briefs but likewise imposed upon the parties the mandatory duty to seasonably file and serve on the adverse party their respective pre-trial briefs. Pre-trial briefs are meant to serve as a device to clarify and narrow down the basic issues between the parties so that at pre-trial, the proper parties may be able to obtain the fullest possible knowledge of the issues and the facts before civil trials and this prevent said trials from being carried in the dark.[15]

Consequently, the RTC decreed:

WHEREFORE, premises considered, finding the [herein respondent Dando's] motion to dismiss to be impressed with merit the same is hereby GRANTED. Accordingly, the instant case is hereby dismissed with prejudice.[16]

BPI filed a Motion for Reconsideration[17] of the 10 October 2003 Order of the RTC, praying for the liberal interpretation of the rules. Expectedly, Dando filed his Comment/Opposition thereto.[18]

On 13 January 2004, the RTC, now presided by Judge Cesar O. Untalan (Judge Untalan), issued an Order resolving the Motion for Reconsideration of BPI as follows:

The Court finds merit in plaintiff's motion.

Considering that although reglementary periods under the Rules of Court are to be strictly observed to prevent needless delays, jurisprudence nevertheless allows the relaxation of procedural rules. Since technicalities are not ends in themselves but exist to protect and promote substantive rights of litigants [Sy vs. CA, et al., G.R. No. 127263, April 12, 2000; Adamo vs. IAC, 191 SCRA 195 (1990); Far East Marble (Phils.), Inc. vs. CA,

225 SCRA 249, 258 (1993)], in the interest of substantial justice, and without giving premium to technicalities, the motion for reconsideration is hereby granted.[19]

At the end of its 13 January 2004 Order, the RTC disposed:

Wherefore, the Order dated October 10, 2003 is hereby reconsidered and set aside.

Let this case be set for pre-trial anew on February 13, 2004 at 8:30 in the morning. Notify both parties and their respective counsel of this setting.[20]

It was then Dando's turn to file a Motion for Reconsideration,[21] which the RTC addressed in its Order dated 3 March 2004, thus:

Finding no new issue raised in defendant's motion, as to warrant a reconsideration of the assailed Order dated January 13, 2004, the instant motion is hereby denied.

The Pre-trial set on March 19, 2004 at 8:30 in the morning shall proceed accordingly.[22]

Dando sought recourse from the Court of Appeals by filing a Petition for Certiorari under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 82881.[23] Dando averred that RTC Judge Untalan committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in issuing its Order dated 13 January 2004. The Court of Appeals rendered a Decision on 20 November 2006 where it held that:

In this case, the BPI stated in its motion for reconsideration of the order dismissing its action that the delay in the filing of the pre-trial brief was solely due to the heavy load of paper work of its counsel, not to mention the daily hearings the latter had to attend. We find this excuse too flimsy to justify the reversal of an earlier order dismissing the action. The BPI did not come forward with the most convincing reason for the relaxation of the rules, or has not shown any persuasive reason why it should be exempt from abiding by the rules. We therefore find the public respondent to have gravely abused his discretion in considering and granting the BPI's motion for reconsideration. The BPI failed to even try to come up with a good reason for its failure to file its pre-trial brief on time in order to relax the application of the procedural rules. Heavy work load and court hearings cannot even be considered an excuse. The trial court cannot just set aside the rules of procedure and simply rely on the liberal interpretation of the rules. Clearly, public respondent ignored the mandatory wordings of Sections 5 and 6 of Rule 18. Under Section 6, the plaintiff's failure to file the pre-trial brief at least three days before the pre-trial shall have the same effect as failure to appear at the pre-trial. Under Section 5 of the same Rule, failure by plaintiff to appear at the pre-trial shall be cause for dismissal of the action. There is grave abuse of discretion when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence.[24]

The fallo of the Decision of the Court of Appeals reads:

WHEREFORE, premises considered, the petition is GRANTED. The Orders dated January 13, 2004 and March 3, 2004, of the Regional Trial Court of Makati City, Branch 149, in Civil Case No. 03-281 are hereby ANNULLED and SET ASIDE. The October 10, 2003 Order is hereby REINSTATED.[25]

The Court of Appeals, in a Resolution dated 4 April 2007,[26] denied the Motion for Reconsideration of BPI for lack of merit.

Hence, this Petition where BPI raises the following issues:

- IS THE HONORABLE COURT OF APPEALS, IN ISSUING THE DECISION AND RESOLUTION, CORRECT WHEN IT STRICTLY APPLIED THE RULES OF PROCEDURE.
- IS THE HONORABLE COURT OF APPEALS CORRECT WHEN IT DECLARED THAT THE HONORABLE TRIAL COURT COMMITTED A GRAVE ABUSE OF DISCRETION WHEN THE

LATTER RECONSIDERED AND SET ASIDE THE ORDER (ANNEX "H" TO THE PETITION) DISMISSING THE CASE, DESPITE THE HONORABLE TRIAL COURT'S DISCRETION OR POWER TO RELAX COMPLIANCE WITH THE RULES OF PROCEDURE.[27]

Relevant herein are the following provisions of the Rules of Court on pre-trial:

Rule 18
PRE-TRIAL

SEC. 6. Pre-trial brief. - The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

x x x x

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

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. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof. (Emphases ours.)

It is a basic legal construction that where words of command such as "shall," "must," or "ought" are employed, they are generally and ordinarily regarded as mandatory. Thus, where, as in Rule 18, Sections 5 and 6 of the Rules of Court, the word "shall" is used, a mandatory duty is imposed, which the courts ought to enforce.[28]

The Court is fully aware that procedural rules are not to be belittled or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.[29]

This is not to say that adherence to the Rules could be dispensed with. However, exigencies and situations might occasionally demand flexibility in their application.[30] In not a few instances, the Court relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merit. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should, thus, not serve as basis of decisions. In that way, the ends of justice would be better served. For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.[31]

In *Sanchez v. Court of Appeals*,[32] the Court restated the reasons that may provide justification for a court to suspend a strict adherence to procedural rules, such as: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the fact that the other party will not be unjustly prejudiced thereby.[33]

Herein, BPI instituted Civil Case No. 03-281 before the RTC to recover the amount it had lent to Dando, plus interest and penalties thereon, clearly, a matter of property. The substantive right of BPI to recover a due and demandable obligation cannot be denied or diminished by a rule of procedure,[34] more so, since Dando admits

that he did avail himself of the credit line extended by FEBTC, the predecessor-in-interest of BPI, and disputes only the amount of his outstanding liability to BPI.[35] To dismiss Civil Case No. 03-281 with prejudice and, thus, bar BPI from recovering the amount it had lent to Dando would be to unjustly enrich Dando at the expense of BPI.

The counsel of BPI invokes "heavy pressures of work" to explain his failure to file the Pre-Trial Brief with the RTC and to serve a copy thereof to Dando at least three days prior to the scheduled Pre-Trial Conference.[36] True, in *Olave v. Mistas*,[37] we did not find "heavy pressures of work" as sufficient justification for the failure of therein respondents' counsel to timely move for pre-trial. However, unlike the respondents in *Olave*,[38] the failure of BPI to file its Pre-Trial Brief with the RTC and provide Dando with a copy thereof within the prescribed period under Section 1, Rule 18 of the Rules of Court, was the first and, so far, only procedural lapse committed by the bank in Civil Case No. 03-281. BPI did not manifest an evident pattern or scheme to delay the disposition of the case or a wanton failure to observe a mandatory requirement of the Rules. In fact, BPI, for the most part, exhibited diligence and reasonable dispatch in prosecuting its claim against Dando by immediately moving to set Civil Case No. 03-281 for Pre-Trial Conference after its receipt of Dando's Answer to the Complaint; and in instantaneously filing a Motion for Reconsideration of the 10 October 2003 Order of the RTC dismissing Civil Case No. 03-281.

Accordingly, the ends of justice and fairness would be best served if the parties to Civil Case No. 03-281 are given the full opportunity to thresh out the real issues and litigate their claims in a full-blown trial. Besides, Dando would not be prejudiced should the RTC proceed with the hearing of Civil Case No. 03-281, as he is not stripped of any affirmative defenses nor deprived of due process of law.[39]

Wherefore, premises considered, the instant Petition is GRANTED. The Decision dated 20 November 2006 and Resolution dated 4 April 2007 of the Court of Appeals in CA-G.R. SP No. 82881 are REVERSED and SET ASIDE. The Orders dated 13 January 2004 and 3 March 2004 in Civil Case No. 03-281, insofar as they set aside the prior Order dated 10 October 2003 of the same trial court dismissing the Complaint of petitioner Bank of the Philippine Islands for failure of the latter to timely file its Pre-Trial Brief, is REINSTATED. The Regional Trial Court of Makati City, Branch 149, is DIRECTED to continue with the hearing of Civil Case No. 03-281 with utmost dispatch, until its termination. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid, concurring; rollo, pp. 6-13.

[2] Rollo, p. 45.

[3] Id at 59

[4] Id. at 63-64.

[5] http://www.mybpimag.com/index.php?option=com_content&view=article&id=279&Itemid=320

[6] Rollo, p. 52.

[7] Id. at 66.

[8] Records, p. 36.

[9] Annex I, Rollo, p. 180.

[10] Annex H, id. at 82.

[11] Id. at 71.

[12] Records, p. 50.

[13] Id. at 51-54.

[14] Id. at 55-56.

[15] Id. at 62.

[16] Id.

[17] Id. at 63-66.

[18] Id.

[19] Id. at 93.

[20] Id.

[21] Id. at 98-99.

[22] Id. at 105.

[23] In view of the petition filed by Dando before the Court of Appeals, Regional Trial Court, Branch 149 issued an Order dated 19 March 2004 (records, p. 162), indefinitely suspending the proceedings in Civil Case No. 03-281 pending resolution before the Court of Appeals of CA-G.R. SP No. 82881.

[24] Rollo, pp. 11-12.

[25] Id. at 13.

[26] Id. at 14.

[27] Id. at 235.

[28] *Mirasol v. Court of Appeals*, 403 Phil. 760, 772 (2001).

[29] *Barranco v. Commission on the Settlement of Land Problems*, G.R. No. 168990, 16 June 2006, 491 SCRA 222, 232, citing *Reyes v. Torres*, 429 Phil. 95, 101 (2002).

[30] *Polanco v. Cruz*, G.R. No. 182426, 13 February 2009.

[31] *Asian Spirit Airlines (Airline Employees Cooperative) v. Bautista*, 491 Phil. 476, 484 (2005).

[32] 452 Phil. 665, 674 (2003); *Macasasa v. Sicad*, G.R. No. 146547, 20 June 2006, 491 SCRA 368, 383, citing *Barnes v. Padilla*, 482 Phil. 903, 915 (2004).

[33] *Barranco v. Commission on the Settlement of Land Problems*, supra note 29.

[34] *Gosiaco v. Ching*, G.R. No. 173807, 16 April 2009.

[35] Dando claims in his Answer that he was not able to avail himself of the indicated full credit line amount of P750,000.00, and agrees with the allegation in the complaint, specifically paragraph no. 6 thereof, that he has drawn no more than P375,000.00, but again denies that he has agreed to pay 19% interest per annum and late

payment charges thereon at the rate of 3% x x x. (Rollo, p. 67.)

[36] Rollo, p. 84.

[37] G.R. No. 155193, November 26, 2004, 444 SCRA 479, 495.

[38] The respondents in Olave repeatedly failed to comply with the Rules, to wit: (a) the respondents' failure to implead all the indispensable parties in the original complaint, which impelled the petitioners to move that they (the respondents) be ordered to amend their complaint; and b) while the respondents amended their complaint, they still failed to submit the required special power of attorney evidencing the authority of the respondent Antonina Mistas to execute the required certificate against forum shopping in behalf of her sister, respondent Pacita Mistas.

[39] Zenaida Polanco v. Carmen Cruz, G.R. No. 182426, 13 February 2009.

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