

**LINDA M. CHAN KENT, REPRESENTED BY ROSITA MANALANG,
PETITIONER, VS. DIONESIO C. MICAREZ, SPOUSES ALVARO E.
MICAREZ & PAZ MICAREZ, AND THE REGISTRY OF DEEDS,
DAVAO DEL NORTE, RES...**

G.R. No. 185758. March 09, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari seeking to reverse and set aside the July 17, 2008 Order[1] of the Regional Trial Court of Panabo City, Branch 34 (RTC), dismissing the complaint for recovery of property filed by petitioner Linda M. Chan Kent (petitioner), docketed as Civil Case No. 13-2007, and its November 21, 2008, Order[2] denying her motion for reconsideration.

The Facts

This petition draws its origin from a complaint for recovery of real property and annulment of title filed by petitioner, through her younger sister and authorized representative, Rosita Micarez-Manalang (Manalang), before the RTC. Petitioner is of Filipino descent who became a naturalized American citizen after marrying an American national in 1981. She is now a permanent resident of the United States of America (USA).

In her complaint, petitioner claimed that the residential lot in Panabo City, which she purchased in 1982, was clandestinely and fraudulently conveyed and transferred by her parents, respondent spouses Alvaro and Paz Micarez (Spouses Micarez), in favor of her youngest brother, respondent Dionesio Micarez (Dionesio), to her prejudice and detriment. She alleged that sometime in 1982, she asked her parents to look for a residential lot somewhere in Poblacion Panabo where the Spouses Micarez would build their new home. Aware that there would be difficulty in registering a real property in her name, she being married to an American citizen, she arranged to pay for the purchase price of the residential lot and register it, in the meantime, in the names of Spouses Micarez under an implied trust. The title thereto shall be transferred in her name in due time.

Thus, on October 20, 1982, a deed of absolute sale was executed between Spouses Micarez and the owner, Abundio Panganiban, for the 328 square meter residential lot covered by Transfer Certificate of Title (TCT) No. T-25833. Petitioner sent the money which was used for the payment of the lot. TCT No. T-25833 was cancelled upon the registration of the deed of sale before the Registry of Deeds of Davao del Norte. In lieu thereof, TCT No. T-38635 was issued in the names of Spouses Micarez on January 31, 1983.

Sometime in 2005, she learned from Manalang that Spouses Micarez sold the subject lot to Dionesio on November 22, 2001 and that consequently, TCT T-172286 was issued in her brother's name on January 21, 2002.

At the end, petitioner prayed that she be declared as the true and real owner of the subject lot; that TCT No. T-172286 be cancelled; and that a new one be issued in her name.[3]

Considering that all the respondents are now also permanent residents of the USA, summons was served upon them by publication per RTC Order[4] dated May 17, 2007. Meanwhile, the respondents executed two special powers of attorney[5] both dated August 3, 2007 before the Consulate General of the Philippines in Los Angeles, California, U.S.A., authorizing their counsel, Atty. Richard C. Miguel (Atty. Miguel), to file their answer in Civil Case No. 13-2007 and to represent them during the pre-trial conference and all subsequent hearings with power to enter into a compromise agreement. By virtue thereof, Atty. Miguel timely filed his principals' answer denying the material allegations in the complaint.

After the parties had filed their respective pre-trial briefs, and the issues in the case had been joined, the RTC explored the possibility of an amicable settlement among the parties by ordering the referral of the case to the Philippine Mediation Center (PMC). On March 1, 2008, Mediator Esmeraldo O. Padao, Sr. (Padao) issued a Mediator's Report[6] and returned Civil Case No. 13-2007 to the RTC allegedly due to the non-appearance of the respondents on the scheduled conferences before him. Acting on said Report, the RTC issued an order on May 29, 2009 allowing petitioner to present her evidence ex parte.[7]

Later, Padao clarified, through a Manifestation,[8] dated July 15, 2008, that it was petitioner, represented by Atty. Benjamin Utulle (Atty. Utulle), who did not attend the mediation proceedings set on March 1, 2008, and not Atty. Miguel, counsel for the respondents and their authorized representative. Padao explained that Atty. Miguel inadvertently affixed his signature for attendance purposes on the column provided for the plaintiff's counsel in the mediator's report. In light of this development, the RTC issued the assailed Order[9] dated July 17, 2008 dismissing Civil Case No. 13-2007. The pertinent portion of said order reads:

Being so, the Order dated May 29, 2008 is hereby corrected. For plaintiff's and her counsel's failure to appear during the mediation proceeding, this instant case is hereby ordered DISMISSED.

SO ORDERED.

Petitioner, through her counsel, filed a motion for reconsideration[10] to set aside the order of dismissal, invoking the relaxation of the rule on non-appearance in the mediation proceedings in the interest of justice and equity. Petitioner urged the trial court not to dismiss the case based merely on technicalities contending that litigations should as much as possible be decided on the merits. Resolving the motion in its second assailed Order[11] dated November 21, 2008, the RTC ruled that it was not proper for the petitioner to invoke liberality inasmuch as the dismissal of the civil action was due to her own fault. The dispositive portion of said order reads:

WHEREFORE, there being no cogent reason to depart from our earlier Order, this instant motion for reconsideration is hereby ordered DENIED.

SO ORDERED.[12]

The denial prompted the petitioner to file this petition directly with this Court claiming that the dismissal of the case was not in accordance with applicable law and jurisprudence.

ISSUES

- WITH ALL DUE RESPECT, THE HONORABLE COURT A QUO GRAVELY ERRED IN DISMISSING THE CASE SIMPLY ON THE REASON THAT PLAINTIFF FAILED TO APPEAR DURING THE MEDIATION PROCEEDING, ALTHOUGH PRESENT FOR TWO (2) TIMES.
- IS THE EXCUSABLE AND EXPLAINED FAILURE TO ATTEND THE MEDIATION PROCEEDING FOR TWO (2) TIMES OR SETTINGS, OUT OF THE FOUR (4) SCHEDULED SETTINGS, BY THE PLAINTIFF A GROUND TO DISMISS THE CASE UNDER THE SUPREME COURT'S ADMINISTRATIVE CIRCULAR NO. 20-2002?

The pivotal issue in this case is whether the RTC erred in dismissing Civil Case No. 13-2007 due to the failure of petitioner's duly authorized representative, Manalang, and her counsel to attend the mediation proceedings under the provisions of A.M. No. 01-10-5-SC-PHILJA and 1997 Rules on Civil Procedure.

Petitioner claims that the dismissal of the case was unjust because her representative, Manalang, and her counsel, Atty. Etulle, did not deliberately snub the mediation proceedings. In fact, Manalang and Atty. Etulle twice attended the mediation conferences on January 19, 2008 and on February 9, 2008. On both occasions, Manalang was present but was not made to sign the attendance sheet and was merely at the lobby waiting to be called by Atty. Etulle upon arrival of Atty. Miguel. Manalang and Atty. Etulle only left PMC at 11:00 o'clock in the morning when Atty. Miguel had not yet arrived.[13]

Petitioner, however, admits that her representative and counsel indeed failed to attend the last scheduled conference on March 1, 2008, when they had to attend some urgent matters caused by the sudden increase in prices of commodities.[14]

In the interest of justice, the Court grants the petition.

A.M. No. 01-10-5-SC-PHILJA dated October 16, 2001, otherwise known as the Second Revised Guidelines for the Implementation of Mediation Proceedings, was issued pursuant to par. (5), Section 5, Article VII of the 1987 Constitution mandating this Court to promulgate rules providing for a simplified and inexpensive procedure for the speedy disposition of cases. Also, Section 2(a), Rule 18 of the 1997 Rules of Civil Procedure, as amended, requires the courts to consider the possibility of an amicable settlement or of submission to alternative modes of resolution for the early settlement of disputes so as to put an end to litigations. The provisions of A.M. No. 01-10-5-SC-PHILJA pertinent to the case at bench are as follows:

9. Personal appearance/Proper authorizations

Individual parties are encouraged to personally appear for mediation. In the event they cannot attend, their representatives must be fully authorized to appear, negotiate and enter into a compromise by a Special Power of Attorney. A corporation shall, by board resolution, fully authorize its representative to appear, negotiate and enter into a compromise agreement.

12. Sanctions

Since mediation is part of Pre-Trial, the trial court shall impose the appropriate sanction including but not limited to censure, reprimand, contempt and such other sanctions as are provided under the Rules of Court for failure to appear for pre-trial, in case any or both of the parties absent himself/themselves, or for abusive conduct during mediation proceedings. [Underscoring supplied]

To reiterate, A.M. No. 01-10-5-SC-PHILJA regards mediation as part of pre-trial where parties are encouraged to personally attend the proceedings. The personal non-appearance, however, of a party may be excused only when the representative, who appears in his behalf, has been duly authorized to enter into possible amicable settlement or to submit to alternative modes of dispute resolution. To ensure the attendance of the parties, A.M. No. 01-10-5-SC-PHILJA specifically enumerates the sanctions that the court can impose upon a party who fails to appear in the proceedings which includes censure, reprimand, contempt, and even dismissal of the action in relation to Section 5, Rule 18 of the Rules of Court.[15] The respective lawyers of the parties may attend the proceedings and, if they do so, they are enjoined to cooperate with the mediator for the successful amicable settlement of disputes[16] so as to effectively reduce docket congestion.

Although the RTC has legal basis to order the dismissal of Civil Case No. 13-2007, the Court finds this sanction too severe to be imposed on the petitioner where the records of the case is devoid of evidence of willful or

flagrant disregard of the rules on mediation proceedings. There is no clear demonstration that the absence of petitioner's representative during mediation proceedings on March 1, 2008 was intended to perpetuate delay in the litigation of the case. Neither is it indicative of lack of interest on the part of petitioner to enter into a possible amicable settlement of the case.

The Court notes that Manalang was not entirely at fault for the cancellation and resettings of the conferences. Let it be underscored that respondents' representative and counsel, Atty. Miguel, came late during the January 19 and February 9, 2008 conferences which resulted in their cancellation and the final resetting of the mediation proceedings to March 1, 2008. Considering the circumstances, it would be most unfair to penalize petitioner for the neglect of her lawyer.

Assuming *arguendo* that the trial court correctly construed the absence of Manalang on March 1, 2008 as a deliberate refusal to comply with its Order or to be dilatory, it cannot be said that the court was powerless and virtually without recourse. Indeed, there are other available remedies to the court *a quo* under A.M. No. 01-10-5-SC-PHILJA, apart from immediately ordering the dismissal of the case. If Manalang's absence upset the intention of the court *a quo* to promptly dispose the case, a mere censure or reprimand would have been sufficient for petitioner's representative and her counsel so as to be informed of the court's intolerance of tardiness and laxity in the observation of its order. By failing to do so and refusing to resuscitate the case, the RTC impetuously deprived petitioner of the opportunity to recover the land which she allegedly paid for.

Unless the conduct of the party is so negligent, irresponsible, contumacious, or dilatory as for non-appearance to provide substantial grounds for dismissal, the courts should consider lesser sanctions which would still achieve the desired end. The Court has written "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.[17]

It bears emphasis that the subject matter of the complaint is a valuable parcel of land measuring 328 square meters and that petitioner had allegedly spent a lot of money not only for the payment of the docket and other filing fees but also for the extra-territorial service of the summons to the respondents who are now permanent residents of the U.S.A. Certainly, petitioner stands to lose heavily on account of technicality. Even if the dismissal is without prejudice, the refile of the case would still be injurious to petitioner because she would have to pay again all the litigation expenses which she previously paid for. The Court should afford party-litigants the amplest opportunity to enable them to have their cases justly determined, free from constraints of technicalities.[18] Technicalities should take a backseat against substantive rights and should give way to the realities of the situation. Besides, the petitioner has manifested her interest to pursue the case through the present petition. At any rate, it has not been shown that a remand of the case for trial would cause undue prejudice to respondents.

In the light of the foregoing, the Court finds it just and proper that petitioner be allowed to present her cause of action during trial on the merits to obviate jeopardizing substantive justice. Verily, the better and more prudent course of action in a judicial proceeding is to hear both sides and decide the case on the merits instead of disposing the case by technicalities. What should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty or property on technicalities.[19] 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. Trial courts are reminded to exert efforts to resolve the matters before them on the merits and to adjudge them accordingly to the satisfaction of the parties, lest in hastening the proceedings, they further delay the resolution of the cases.

WHEREFORE, the petition is GRANTED. Civil Case No. 13-2007 is hereby REINSTATED and REMANDED to the Regional Trial Court of Panobo City, Branch 34 for referral back to the Philippine Mediation Center for possible amicable settlement or for other proceedings.

SO ORDERED.

Carpio, J., Chairperson, Velasco, Jr.,[*] Peralta, and Abad, JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 933 dated January 24, 2011.

[1] Rollo, p. 34. Penned by Judge Rowena Apao-Adlawan.

[2] Id. at 38-39.

[3] Id. at 41-47.

[4] Id. at 48.

[5] Id. at 59-60.

[6] Id. at 50.

[7] Id. at 26.

[8] Id. at 49.

[9] Id. at 34.

[10] Id. at 35-37.

[11] Id. at 3.

[12] Id. at 14.

[13] Id. at 28.

[14] Id. at 29.

[15] Rule 18, 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.xxxxx.

[16] Rule 5, A.M. No. 01-10-5-SC-PHILJA.

[17] *Paguirigan v. Pilhino Sales Corporation*, G.R. No. 169177, June 30, 2006, 494 SCRA 384, 391, citing *Ruiz v. Judge Estenzo*, 264 Phil. 396 (1990).

[18] *Leyba v. Rural Bank of Cabuyao, Inc.*, G.R. No. 172910, November 14, 2008, 571 SCRA 160, 163.

[19] *Paredes v. Verano*, G.R. No. 164375, October 12, 2006, 504 SCRA 278-279.

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