3A APPAREL CORPORATION AND RAY SHU, PETITIONERS, VS. METROPOLITAN BANK AND TRUST CO., JAIME T. DEE, ENRIQUETO MAGPANTAY, REGISTER OF DEEDS FOR SAN JUAN, METRO MANILA, SHERIFF VI...

G.R. No. 186175. August 25, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The present petition for review on certiorari dwells on what remedy a litigant, whose complaint was dismissed by the trial court for failure to prosecute, has to challenge the same.

Petitioner 3A Apparel Corporation (the corporation) mortgaged its condominium unit to respondent Metropolitan Bank and Trust Company (MBTC) to secure a loan. For failure to settle its obligation, MBTC extrajudicially foreclosed the mortgage, drawing the corporation, represented by its president Ray Shu, to file a complaint for petition for annulment of real estate mortgage, promissory note, foreclosure of sale, and related documents[1] before the Regional Trial Court (RTC) of Pasig against MBTC and its officers.

After almost two years from the time the case was scheduled for presentation of the corporation's evidence, without it having presented any evidence, Branch 264 of the Pasig, RTC, upon motion of MBTC, dismissed[2] the corporation's complaint for failure to prosecute.

The corporation's motion for reconsideration[3] having been denied[4] by the trial court, it filed a petition for certiorari before the Court of Appeals, positing that substantial justice must prevail over mere technicalities. By Decision[5] of July 18, 2008, the appellate court dismissed the petition, it holding that dismissal on the ground of failure to prosecute has, citing Section 3 of Rule 17, the effect of an adjudication on the merits, unless otherwise declared by the court.

The appellate court went on to hold:

> The Order of September 29, 2003 is couched in such a way as to show that the dismissal of herein petitioners' complaint was an adjudication upon the merits. The dismissal of the complaint is appealable. The remedy of appeal being available to petitioners, resort to . . . petition [for certiorari] is precluded. (emphasis and underscoring supplied)

Petitioners' Motion for Reconsideration[6] having been denied,[7] the present petition for review on certiorari was filed, the corporation raising the following issues:

> - Whether the appellate court erred when it dismissed the petition for certiorari for being the wrong remedy; and
>
> - Whether the appellate court erred when it upheld the trial court's dismissal of Civil Case No. 67416 for failure to prosecute under Section 3, Rule 17 of the Rules of Court.

The petition fails.

Section 3 of Rule 17 of the Rules of Court[8] is indeed clear that a dismissal for failure to prosecute is an adjudication upon the merits, unless otherwise declared by the court. No such declaration was made by the trial court, hence, its dismissal of the corporation's petition should be challenged by appeal within the reglementary period.[9]

The invocation of "justice and fair play" by the corporation does not impress.

> . . . In order to perfect an appeal all that is required is a pro forma notice of appeal. Perhaps due to failure to file a notice of appeal within the remaining two days of the appeal period, petitioner's counsel instead filed the instant petition. The rules of procedure, however, do not exist for the convenience of the litigants. These rules are established to provide order to and enhance the efficiency of our judicial system. They are not to be trifled with lightly or overlooked by mere expedience of invoking "substantial justice."[10] (underscoring supplied)

Even on the merits, the petition just the same fails.

To justify the delay in the presentation of its evidence, the corporation recites the following schedules of hearings and what transpired therein before the trial court:

> 10 October 2001 - both parties were not ready for hearing and agreed for a resetting;
>
> 25 October 2001 - witness, Ray Shu was not available to testify because of "Acute Viral Gastroentiritis;
>
> 22 November 2001 - hearing was reset by agreement of both parties;
>
> 17 January 2002 - petitioners' witness, Ray Shu was present but Atty. Caraan was not present as he had an emergency at home according to his representative Jaime Fellicen;
>
> 11 April 2002 - petitioners were ready to present their evidence, but the hearing was reset as the presiding Judge was on official leave;
>
> 20 June 2002 - petitioners were ready, however, the court reset all hearings due to semestral docket inventory and also because the presiding judge was busy due to his application as Justice to the Court of Appeals;
>
> 7 August 2002 - no petitioners' witness was available at that time since most of them are from the National Bureau of Investigation (NBI) and they had conflict in their schedule;
>
> 3 October & 11 December 2002 - Atty. Caraan sent Jaime Felicen to inform the court of his emergency leave of absence due to his father's unstable condition.
>
> 26 March and 30 April 2003 - Ray Shu attended without Atty. Caraan;
>
> 9 July 2003 - Atty. Caraan sent Oliver Bautista to inform the court of his father's serious and unstable condition. (underscoring supplied)

This Court finds the foregoing "justifications" insufficient to warrant a finding that the trial court gravely abused its discretion when it dismissed Civil Case No. 67416. For the dismissal of a case for failure to prosecute is addressed to the sound discretion of the trial court and where, as here, the plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude[11] in the prosecution of its case, and absent grave abuse on the part of the trial court, the dismissal must be upheld.

Indeed, a plaintiff is duty-bound to prosecute its action with utmost diligence and with reasonable dispatch in order to obtain the relief prayed for and, at the same time, minimize the clogging of court dockets. The expeditious disposition of cases is as much the duty of the plaintiff as the court's.[12]

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The corporation's attempt to attribute part of the blame to the trial court which cancelled the hearing on April 15, 2002 when the presiding judge was on official leave, and that on June 20, 2002 during the semestral docket inventory of cases, at which times the corporation claims to have been ready to present evidence does not impress too. If indeed that were the case, it could have presented its evidence during the succeeding scheduled hearings. Yet, it did not. Instead, it caused the postponement of the subsequent six scheduled hearings from August 7, 2002 to July 9, 2003 inclusive for unjustifiable reasons.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and Sereno, JJ., concur.

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[1] Records, p. 1.

[2] Id. at 203.

[3] CA rollo, pp. 311-343.

[4] Id. at 344-346.

[5] Id. at 301-304.

[6] Supra note 3.

[7] Supra note 4.

[8] Section 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.

[9] Ko v. Philippine National Bank, 479 SCRA 298, 303, January 20, 2006.

[10] Ibid.

[11] Producers Bank of the Philippines v. Cotton (Phil.) Corpo., Lan Shing Chin, Shin May Wan and Nelson Kho, G.R. No. 125468, October 9, 2000, 342 SCRA 327, 334.

[12] Ko v. PNB, supra note 9.

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