

JESUS B. PACQUING, PETITIONER, VS. THE COURT OF APPEALS AND DAVAO LIGHT AND POWER COMPANY, INC., RESPONDENTS.

G.R. No. 52498. July 19, 1982

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition filed on November 3, 1980 to cite Carmen B. Pacquing, as petitioner's representative in the above-entitled case, and her lawyer, Atty. Samuel Occeña, for contempt of court.

The petition for contempt filed by private respondent alleges that:

"SPECIFICATION AND CHARGE

"Carmen B. Pacquing has filed or engaged Davao Light & Power Co., Inc. in litigation in four cases before the inferior courts (three in Davao; one in Cebu); four before the Court of Appeals and twice before this Supreme Court, practically on the same basic issue and involving the same subject matters, since July, 1972 up to the present. As of today, despite final decisions, the accounts as of April, 1972 upon which practically the cases filed revolved, have not been paid.

"We need not here recite the facts upon which the charge and specification for contempt are based, suffice it to say these facts are all set forth in the decision of respondent Court of Appeals in CA-G.R. No. Sp-06413 and SP-07891-R, as well as CA-G.R. No. 52844-R. Let this Honorable Court however be reminded of the following incidents:

"1. On July 14, 1976, this Honorable Court in a resolution in G.R. No. L-41355 refused to enjoin disconnection of the temporary reconnection ordered by the Court of Appeals, even if Carmen B. Pacquing (under oath) proposed to pay the accounts as of April, 1972 under protest and subject to the outcome of the case in Cebu. The resolution reads:

'x x The prayers in the motion of the petitioner that it be allowed to pay private respondent the sum of P10,849.81 under protest and without prejudice to the outcome of the case pending before the Court of First Instance of Cebu, Branch VIII, Civil Case No. R-127989-B444 and to direct private respondent to desist from disconnecting the light service of the petitioner, are DENIED.'

"2. An July 16, 1976, without paying said accounts, Carmen Pacquing through counsel filed a complaint for injunction against disconnection, and obtained a restraining order, without disclosing the final decision of the Court of Appeals and resolution of July 14, 1976;

"3. When the Davao court came to know of the final decision in CA-G.R. No. 52844 and said resolution of July 14th., the complaint was dismissed; the restraining order lifted and the application for injunction against disconnection, denied;

"4. Disconnection was made, Carmen Pacquing through the same counsel, filed a suit for reconnection with another branch of the Davao court, alleging that the issue of whether the accounts of April, 1972 have been paid or not is pending in the Cebu court and obtained a mandatory writ for reconnection;

"5. Even as the Cebu court reaffirmed finality of the decision on said accounts and even as the Court of Appeals (for the second time) confirmed the fact that said issue is *res judicata*, Carmen Pacquing and counsel, kept on insisting the contrary, before another division of the Court of Appeals, in CA-G.R. No. 6200-R;

"6. To this Supreme Court, for the second time, Carmen Pacquing and counsel went, relitigating what been with judicial finality, resolved;

"The basic intent of the framers of the Rules of Court is to ensure justice is done. The result, however, in the hands of litigants like Carmen Pacquing and lawyers like Atty. Samuel Occeña, procedural rules have degenerated into instruments of delay, harassment and abuse . . ." (pp. 332-334, rec.).

Accordingly, in a resolution (p. 340, rec.) dated November 28, 1980, this Court resolved to require the petitioner's representative, Mrs. Carmen B. Pacquing, and counsel Atty. Samuel Occeña to comment on the petition for contempt within ten (10) days from notice thereof.

On February 21, 1981, private respondent filed a supplemental petition (pp. 316-317, rec.) inviting the attention of this Court to the failure of petitioner's representative and her counsel to file their comment within ten (10) days from notice as required by the Court's resolution dated November 28, 1980.

Acting on the supplemental petition filed by herein private respondent, this Court, in its resolution dated March 6, 1981 (p. 349, rec.), further resolved to require petitioner's representative and Atty. Samuel Occeña to "(a) SHOW CAUSE why they should not be disciplinarily dealt with or held in contempt for such failure; and (b) COMPLY with the resolution of November 28, 1980 requiring them to file the aforesaid comment, both within ten (10) days from notice . . ."

On April 14, 1981, herein petitioner's representative and her counsel, Atty. Samuel Occeña, filed their comments and explanations (pp. 350-352, rec.).

On May 4, 1981, herein private respondent filed a reply to the comment and explanation filed by petitioner's representative and her counsel.

In their comment, petitioner's representative and her counsel interposed, *inter alia*, the following defenses:

"II

COMMENTS

"II-1. The petitions are, unfortunately, motivated by PERSONAL RESENTMENT of Private Respondent's counsel against Petitioner's mother -- Mrs. CARMEN B. PACQUING -- and Petitioner's counsel, both of whom are NOT PARTIES to this case.

"II-2. Private Respondent's counsel seeks to have 'petitioner's representative Carmen B. Pacquing and her lawyer, Atty. Samuel Occeña cited for contempt of court' for allegedly 're-litigating what had been with judicial finality, resolved' and thus allegedly abusing 'the right of access to the courts.'

"II-3. While vehemently denying the claims of Private Respondent's counsel, Petitioner and his counsel and his representative -- Mrs. Carmen B. Pacquing -- respectfully submit that this case, which had already been terminated by minute resolutions and not by a hearing on the merits, IS NOT THE PROPER FORUM to litigate the claims of Private Respondent's counsel.

"II-4. There are two PENDING civil cases against Private Respondent -- Civil Case No. 9617 of the Court of First Instance of Davao City, Branch II, and Civil Case No. 9968 of the Court of First Instance of Davao City, Branch III -- where the issue of whether or not Petitioner has been 'relitigating what had been with judicial finality resolved' could be treated in relation to the Private Respondent's defenses and counterclaims.

"II-5. To allow Private Respondent's counsel to litigate the issue raised by him, in this Honorable Court, would convert the Honorable Court into a trial court and would result in premature resolution of the issues raised in Civil Cases 9617 and 9968 before these issues have been properly elevated to the Honorable Court and even before the trial courts concerned have resolved the matter" (pp. 351- 352, rec.).

The foregoing defenses interposed by petitioner's representative and her counsel are totally devoid of merit.

It is an important fundamental principle in Our judicial system that every litigation must come to an end.

"Access to the courts is guaranteed. But there must be a limit thereto. Once a litigant's rights have been adjudicated in a valid final judgment of a competent court, he should not be granted an unbridled license to come back for another try. The prevailing party should not be harassed by subsequent suits. For, if endless litigations were to be encouraged, then unscrupulous litigants will multiply in number to the detriment of the administration of justice . . . (*Ferinion vs. Romana, et al.*, 16 SCRA 370, 374-375).

Equally important is the duty of lawyers who, as officers of the court, must see to it that the orderly administration of justice must not be unduly impeded.

"It is the duty of a counsel to advise his client, ordinarily a layman on the intricacies and vagaries of the law, on the merit or lack of merit of his case. If he finds that his client's cause is defenseless, then it is his bounden duty to advise the latter to acquiesce and submit, rather than traverse the incontrovertible. A lawyer must resist the whims and caprices of his client, and temper his client's propensity to litigate. A lawyer's oath to uphold the cause of justice is superior to his duty to his client; its primacy is indisputable" (*Cobb-Perez vs. Lantin*, 24 SCRA 291, 298).

In the case at bar, the records show that from a simple case of unpaid electric bills, which resulted in the disconnection of electrical services to petitioner's radio station, several suits were filed in different courts, including this petition (*Jesus B. Pacquing vs. The Court of Appeals and Davao Light and Power Co., Inc.*, G.R. No. 52498) for review on certiorari of the decision of the Court of Appeals, which was denied on September 12, 1980 (pp. 309, 341, rec.) for lack of merit -- on the same subject matter, the same issues, the same parties and the same reliefs prayed for. The present petition for contempt is merely an incident in this case.

The attendant circumstances obtaining in the case at bar definitely prove that petitioner's representative and her counsel were engaged in a concerted but futile efforts to delay payment of their obligation to private respondent herein and to unnecessarily delay or prolong litigation to the detriment of the orderly administration of justice.

The contention of petitioner's representative that there are two pending cases -- Civil Case No. 9617 and Civil Case No. 9968 in the Court of First Instance of Davao City - where the issue of whether or not petitioner has been " relitigating what had been with judicial finality resolved" could be properly determined, does not merit even Our scantiest consideration. Such contention of petitioner's representative and her counsel only bespeaks more of their stubbornness to abide by and accord due respect for and adherence to decision of courts of justice.

Thus, as aptly found by the Court of Appeals in its resolution in CA-G.R. No. SP-06413 entitled *Davao Light and Power Company, Inc., vs. Honorable Dominador Zuño Sr., Presiding Judge of the Court of First Instance of Davao City, Branch III, and Jesus Pacquing, doing business under the name and style, 'SOUTHERN BROADCASTING NETWORK,'* through his General Manager, CARMEN B. PACQUING, dated November 5, 1979:

"On the other hand, after a careful study of the private respondent's motion for deletion of a certain portion of the questioned decision and the opposition thereto, we find that the same is devoid of merit and must perforce be denied, Truly, no error was committed in reciting the facts and incidents of Civil Case Nos. 9968, 9617, and 12798 in the questioned decision. These cases are intimately connected with the instant petition. They bear on

the same subject matter, the same issues, the same principal relief, and the same parties. They arose from a single cause of action which was deliberately split by the private respondents into several parts by filing suits one after the other, as each is terminated adversely against it. While it may be true that the forms of the actions have been varied, the aim of the private respondents is the same, that is to prevent the disconnection of its lines despite its contractual infidelities to the petitioner.

"Besides, the private respondents' right to due process was not violated when this Court took note of and denounced its (sic) deceptions and playful attitude towards the courts. These actuations are matters of judicial record. They are so obvious that to ignore them is to countenance deceptions by litigants, with the able assist of their counsels, thereby allowing them to make a mockery of the judicial system and to erode the people's faith therein.

"Finally, the time is about ripe for the courts to reprimand litigants who frustrate the speedy administration of justice by resorting to all available means to get from one court what is denied them by another, or by using deceptive and dilatory tactics in the payment of their due and demandable debts, as well as their counsels who assist them in such undesirable conduct in grave violation of the ethics of the legal profession and of the lawyer's oath of office" (pp. 194--196, rec.).

The act of Mrs. Carmen B. Pacquing and her counsel, Atty. Samuel Occeña, in filing several cases against the same party over the same issue, after the appellate court had decided adversely against them, constitutes contumacious defiance of the authority of and a flagrant imposition on the courts and impeded the speedy administration of justice.

Finally, this Court takes notice of the fact that petitioner's representative, Carmen B. Pacquing, was previously found guilty of contempt of court in a decision rendered by this Court in a related case entitled "SOUTHERN BROADCASTING NETWORK, represented by its President and General Manager, CARMEN B. PACQUING, vs. DAVAO LIGHT AND POWER CO., INC. and JOSE L. SIAN, Resident Manager," G.R. No. L-41355, and was severely reprimanded and warned that a repetition of the same or analogous act will be dealt with severely.

In the case at bar, We find Mrs. Carmen B. Pacquing, as petitioner's representative, and her counsel, Atty. Samuel Occeña, guilty of contempt of court.

Counsel Atty. Samuel Occeña should merit the same penalty that Mrs. Carmen B. Pacquing deserves; because as such counsel he should have advised her, as petitioner's representative, against instituting several cases involving the same parties and issues, especially after the same had been decided with finality adversely against petitioner by the appellate courts.

WHEREFORE, RESPONDENTS CARMEN B. PACQUING AND ATTY. SAMUEL OCCEÑA ARE HEREBY SENTENCED EACH TO PAY A FINE OF FIVE HUNDRED (P500.00) PESOS, PAYABLE DIRECTLY TO THE CLERK OF COURT OF THIS COURT WITHIN TEN (10) DAYS FROM NOTICE OR TO SUFFER IMPRISONMENT FOR TWENTY (20) DAYS IF THE FINE IS NOT PAID WITHIN THE SAID TEN-DAY PERIOD.

LET A COPY OF THIS RESOLUTION BE ENTERED IN THE PERSONAL RECORD OF ATTY. SAMUEL OCCEÑA.

SO ORDERED.

Teehankee, Acting C.J., Melencio-Herrera, Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

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