

DAVAO LIGHT & POWER CO., INC., PETITIONER, VS. JUDGE PACITA CAÑIZARES-NYE AND JESUS PACQUING, RESPONDENTS.*G.R. No. 59548. August 30, 1982*

Ponente: TEEHANKEE, J.

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The Court holds that respondent judge gravely abused her discretion in violation of due process requirements in issuing her two challenged orders of October 20, 1981 denying the first postponement requested and ordering the premature dismissal of petitioner's claim as defendant in the lower court for damages arising from the mandatory injunction bond filed by private respondent for reconnection of electric services, enforcement of which preliminary mandatory writ as annulled by the Court of Appeals was permanently enjoined by said appellate court,[1] and of December 11, 1981, denying reconsideration.

The pleadings of record show that after the remand of the case to respondent court, private respondent made no move for trial of the main action it had filed against petitioner. Petitioner had earlier prematurely filed on February 7, 1980 (before entry of final judgment on November 26, 1980 of the Court of Appeals decision) a motion for hearing on its claim for damages against the mandatory injunction bond wrongfully obtained by private respondent. No action was taken thereon by respondent court. A year later, petitioner filed its motion dated March 17, 1981 to set the case for trial on the merits as well as on its counterclaim and respondent court sent out its notice of hearing dated July 17, 1981 setting the case for hearing on October 20, 1981. The surety on the mandatory injunction bond was not served with notice, thus indicating that petitioner's application for damages on the bond was not yet being set for hearing.

On October 10, 1981, petitioner through counsel seasonably filed an urgent motion for postponement - the first - of the scheduled October 20th hearing on the ground that counsel had to be in Manila to attend the hearing set by the Supreme Court the next day, October 21st, in the case of Pastor vs. Court of Appeals (G. R. No. 56340), but respondent judge per her questioned October 20, 1981 order denied postponement at respondent's instance and peremptorily "dismissed [petitioner's] claim for damages."

The Court finds that respondent judge failed to exercise sound judicial discretion in dismissing petitioner's claim for damages and denying reconsideration notwithstanding the fully justifiable grounds for the postponement stressed by petitioner in its motion for reconsideration, as follows: 1) the postponement was the first ever requested by petitioner and no substantial right of respondent would be affected by the granting of the postponement of the hearing which had been set at petitioner-defendant's motion while respondent had failed for over 4 years to prosecute its action since its filing of the complaint in January, 1977; 2) the postponement was manifestly not intended for delay, since the distance from Cebu (where petitioner's counsel resides) to Davao City (site of the hearing) made it impossible for petitioner's counsel to attend the Davao case's October 20th hearing, as he had to be in Manila by that day to attend the Supreme Court case hearing set for the morning of the next day, October 21st, not to mention that the health of said counsel (who had been undergoing hemodialysis twice a week) did not permit such physical exertion; 3) petitioner's application for damages on the mandatory

injunction bond found to have been wrongfully issued could be heard at any time before final judgment in the main case as expressly provided in Rule 58, section 9 of the Rules of Court; and 4) petitioner's claim for damages was not even ready nor set for hearing on October 20th since notice of hearing was for the trial of the main case on the merits and the mandatory notice of hearing to be served on the surety had not been given, so that the most that respondent judge could have done was to hear the main case and receive ex-parte the evidence of respondent in the absence of defendant.

Respondent judge thus failed to heed the Court's admonitions in *Tandoc vs. Court of Appeals*[2] that "(A)s the Court has stressed time and again, while it is true that the allowance or denial of motions for postponement or for extensions of time rests principally upon the sound discretion of the court to which they are addressed, a receptive attitude and circumspect consideration by the court of the merits of the motion for extension (or postponement) and of a subsequent motion for reconsideration and for giving due course to the appeal [or trial of the case] with due regard for the higher interest of justice and a sense of fairness and due process are called for rather than an attitude of arbitrary and inflexible denial," and in *Cucio vs. Court of Appeals*[3] that "such discretion should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case the ends of justice and fairness would be served thereby and it is sound judicial discretion to allow a reasonable transfer of hearing or re-request for extension timely filed when no substantial rights are affected and the intention to delay is not manifest," in the light of "the established rule that the discretion of trial courts (and all courts for that matter) 'must be exercised wisely and prudently, never capriciously, with a view to substantial justice.'"

ACCORDINGLY, the questioned orders are set aside and respondent judge is directed to hear and resolve in due course and in accordance with the provisions of Rule 58, section 9 petitioner's application for damages on respondent's injunction bond in the case pending before her court. With costs against private respondent.

Makasiar, Melencio-Herrera, Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

[1] Resolution of November 5, 1979 of the Court of Appeals in Case CA-G.R. No. SP-06413 entitled "*Davao Light & Power Co., Inc. vs. Hon. Dominador Zuño, et al.*". Review was denied by the Supreme Court on October 6, 1980 in G.R. No. 52498, and the Court of Appeals entered final judgment on November 26, 1980.

[2] 61 SCRA 129 (1974); note in brackets supplied.

[3] 57 SCRA 64 (1974).

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