

ADRIAN S. DE LA PAZ, PETITIONER, VS. DIRECTOR OF PATENTS AND PETROPHIL CORPORATION, RESPONDENTS.

G.R. No. 82513. July 13, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a simple case of a denial of a motion to dismiss a petition to cancel patent by the Director of Patents after petitioner had adduced evidence.[1]

On February 9, 1982 respondent Petrophil Corporation (Petron for short) filed with the Philippine Patent Office a petition for cancellation of letters of patent with respect to Invention No. 14132 issued on February 27, 1981 "for the processing of the manufacture of fuel for diesel engines" on the ground that the same is not an invention, new or patentable within the meaning and contemplation of the patent law.

After petitioner filed his answer and the parties failed to arrive at a settlement the trial on the merits ensued. Respondent Petron adduced its evidence until it rested its case. Petitioner then filed a motion to dismiss which in effect is a demurrer to the evidence alleging that no sufficient evidence had been adduced to support the petition. After respondent Petron filed an opposition to the same, on June 23, 1987 respondent Director of Patents issued Resolution No. 87-07 denying the motion to dismiss and its supplement thereto and setting the case for hearing for the reception of evidence of petitioner. A motion for reconsideration of said resolution filed by petitioner was denied by respondent Director of Patents in a resolution dated January 27, 1988.

Hence this petition wherein it is alleged that respondent Director of Patents committed a grave abuse of discretion in denying the motion to dismiss merely on a procedural ground when it had been clearly shown that there is no cause of action.

The petition is devoid of merit.

Rule 184-C(d) of the Rules of Practice on Patent Cases provides as follows:

"Rule 184-C(d) - No Motion To Dismiss: - No motion to dismiss on any of the grounds enumerated in the Rules of Court shall be entertained. Instead such grounds shall be pleaded as Affirmative Defenses, the resolution of which shall be made in the decision on the merits. The Hearing Officer, may, for good cause shown, conduct a hearing on any of the Affirmative Defenses if this will promote expediency in the resolution of the pending case." (Underscoring ours).

Petitioner claims that respondent Petron has no cause of action. This is one of the grounds for a motion to dismiss under Rule 16 of the Rules of Court which is referred to under the aforementioned Rule 184-C(d) of the Rules of Practice on Patent Cases which may not be entertained but instead shall be pleaded as an affirmative defense, the resolution of which shall be made in a decision on the merits.

Similarly, Rule 184-G of the Rules of Practice on Patent Cases aforesated provides as follows:

"Rule 184-G - Demurrer to Evidence not Allowed: - No demurrer to evidence shall be entertained after the presentation of Petitioner's evidence. Respondent shall forthwith be required to present evidence in its behalf."

The motion to dismiss submitted by petitioner is admittedly in the nature of a demurrer to the evidence which under the foregoing rule may not be entertained and respondent shall be required to present evidence in its behalf.

Said rules were promulgated by the Bureau of Patents pursuant to Section 78 of R.A. No. 165 as amended which have the force of law and control the procedure in that Office. The provision of the Rules of Court which applies to patent cases in a suppletory character cannot prevail over the provisions of the said Rules of Practice in Patent Cases.

Obviously, said rules were established to allow liberality in the reception of evidence and to resolve the merit of the case only after all parties have presented their evidence.

Moreover, in the resolution of the respondent Director of Patents dated June 23, 1987 denying the motion to dismiss the observation was made to the effect "that this case is nearing its termination, (and) it is the stand of this office that inasmuch as there are still matters that should be threshed out and determined in the course of the trial, the resolution of the subject motion to dismiss shall be incorporated in the decision on the merits in accordance with existing provision of the Rules of Practice in Patent Cases." [2]

The matter of grant or denial of the motion to dismiss is addressed to the sound discretion of the respondent Director of Patents and unless there is a showing that there is grave abuse of discretion in the exercise of the same his action shall not be disturbed by the appellate court and that the appellate court should not substitute its judgment thereby. Petitioner failed to discharge his burden in this case.

WHEREFORE, the petition is DISMISSED for lack of merit with costs against petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] This case was erroneously consolidated with G. R. No. 76119 entitled "Philippine Shell Petroleum Corporation, et al vs. Court of Appeals" wherein the issue was the correct payment of filing fees. Said case has been resolved in a decision rendered on April 10, 1989 which decision is now final and executory.

[2] Page 64, Rollo.

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