

PENINSULA CONSTRUCTION, INC., PETITIONER, VS. HON. CARLITO EISMA (PRESIDING JUDGE, RTC-ZAMBOANGA CITY, BRANCH 13, 9TH JUDICIAL REGION) AND JOSE MIGUEL AND GEORGINA MIGUEL, RESPO...

G.R. No. 84098. March 05, 1991

Ponente: PARAS, J.

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PARAS, J.:

This petition for certiorari with preliminary injunction and/or restraining order seeks to annul and set aside the order of Hon. Carlito Eisma, Presiding Judge, RTC-Zamboanga City, Branch 13, 9th Judicial Region, in granting the Motion for Reconsideration, filed by private respondents, and to restrain said judge from proceeding with the case.

The uncontroverted facts of the case are:

In the civil case for damages entitled "Jose Miguel, et al v. Peninsula Construction Corporation, represented by July E. Ledesma, the Manager" docketed as Civil Case 481 (2108), Respondent Judge in connection with the scheduled continuation of the case, issued an order which reads:

"When this case was set for hearing, counsel for the defendant manifested his readiness. However, the plaintiffs, and their counsel are not in court.

"WHEREFORE, let the continuation of the hearing of this case be reset to October 6, 1987 at 8:30 o'clock in the morning with the warning to plaintiffs that should they fail to appear on said dates, this court will be constrained to dismiss this case for failure to prosecute.

"SO ORDERED." (Annex A of Petition, Rollo, p. 8)

On the scheduled date of hearing, the plaintiffs and their counsel did not appear. Another order was issued by Respondent Judge resetting the date of hearing with similar warning. (Annex B of Petition, Rollo, p. 9)

For the third time plaintiffs and counsel did not appear in court; the Respondent Judge was constrained to issue an order dismissing the case in the following tenor:

"WHEREFORE, considering that no motion to postpone today's hearing has been filed by plaintiff and in view of his continuous absence, this case filed by plaintiff against defendant is hereby DISMISSED and considering that defendant has waived his counter-claim, the same is hereby ordered dismissed. No pronouncement as to costs.

"SO ORDERED." (Annex C of Petition, Rollo, p. 10)

Copy of the Order was received by both parties on November 9, 1987; and twenty-two days thereafter, plaintiffs filed a Motion for Reconsideration based on the following excuses: (a) his non-appearance on September 4, 1987,

was due to oversight, their counsel's clerk did not post the above hearing on their counsel's calendar; (b) as far as the hearing on October 6, 1987, their counsel was then suffering from LBM (Loose Bowel Movement); (c) regarding their hearing on November 4, 1987, the said day was a Wednesday and, therefore, a session day of the Sangguniang Panlungsod of Zamboanga City of which their counsel is a member. Their counsel allegedly sent his clerk to inform the court of his non-appearance. (Annex A of Comment, Rollo, p. 44-45)

On March 28, 1988, Respondent Judge issued an order granting the motion for reconsideration of plaintiffs rationalizing that procedural rules "are to be construed liberally so as to arrive at a just determination of every case." (Annex E of Petition, Rollo, p. 14). Respondent Judge denied the motion for reconsideration by herein petitioner. Hence, this petition.

Petition is impressed with merit.

Section 3, Rule 17 of the Rules of Court provides that "if plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court."

The records show that plaintiffs and counsel thrice failed to attend the scheduled hearings, without even bothering to file the necessary motion for postponement. The trial court twice gave proper orders commanding the plaintiffs to appear for trial, warning them that similar absences meant dismissal of the action. In spite of such caveat, plaintiffs and counsel failed to appear. The trial court was constrained to dismiss the action for failure of the plaintiffs to prosecute their case with zeal. "If the plaintiff fails to appear on the date set for hearing, the trial court may dismiss the complaint for failure to prosecute as provided for by Sec. 3, Rule 17, Rules of Court. Plaintiff bears the burden of showing abuse of discretion since the court's action is presumed correct." (Leabres v. CA, 146 SCRA 158)

Private respondents' contention that "the trial court erred in dismissing the complaint, because at that point in time, the plaintiffs-private respondents had already terminated presenting their evidence and the only remaining thing left to be done was the formal offer of evidence" (Comment, pp. 1-2; Rollo, pp. 24-25) is devoid of merit. There was no formal offering of evidence. The trial court was left without evidence to decide on. It could not act on an evidence which had not been formally presented. Having no facts at hand, the trial court had necessitated to dismiss the complaint. The courts should not be burdened by undue delays in the ventilation and determination of cases. Litigations must be prosecuted and resolved with dispatch. (Padua v. Ericta, 161 SCRA 458)

Private respondents further stress that the trial court should have applied the case of Carleto v. Arro, 99 SCRA 121, by punishing the plaintiffs and counsel with contempt of court for non-obedience of order and should have reset the case for hearing instead of dismissing the case outright. The above case has no bearing in the case at bar. The plaintiff in the above-mentioned case had formally presented his evidence, but failed to attend the hearing of defendant's witnesses, which we construed as a waiver of his right to cross-examine defendant's witnesses. Unlike in the case at bar, plaintiffs had not formally offered any evidence. The trial court could not admit the evidence presented to it without formal offer; such act would prejudice the right of the opposing party to object to its admission.

Private respondents clearly failed to comply with the order of the trial court to attend the hearing which was extended twice because of their absences. Pursuant to Section 1(c) of Rule 12, therefore, the court could make "such order as it deems just." The judge deemed it just to dismiss the complaint for failure of the respondents to prosecute their case diligently under Section 3, Rule 17 of the Rules of Court. It did not exceed the bounds of judicial discretion. It acted well within its prerogatives to dismiss the case even with prejudice, a matter addressed

to its sound discretion. If plaintiffs had a meritorious case and their claim was indefeasible, they should have prosecuted their case promptly and expeditiously. (*Lirag, et al v. Galano*, 164 SCRA 471).

Procedurally speaking, when a complaint is dismissed for failure to prosecute and the dismissal is unqualified, said dismissal has the effect of an adjudication on the merits. (*Olivares v. Gonzales, et al.*, G.R. 34500, March 18, 1988; *Denoso, et al. v. Court of Appeals*, G.R. No. 32141, July 29, 1988; *Vallangca v. Court of Appeals*, G.R. No. 55336, May 4, 1989). The dismissal, in case at bar, was silent as to whether the same was with prejudice or not; applying the rules, the dismissal order must be considered a judgment on the merits.

Under Section 1, Rule 37, "within the period for perfecting appeal, the aggrieved party may move the trial court to set aside the judgment and grant a new trial." (*Lim v. Jabalde*, G.R. No. 36786, April 17, 1989). And under the Interim Rules and Guidelines, Section 19, "all appeal, except in habeas corpus cases and in the cases referred to in paragraph (b) hereof, must be taken within fifteen (15) days from notice of the judgment, order, resolution or award appealed from." The motion for reconsideration must be filed within the reglementary period of 15 days after receipt of judgment or order. We take note of the fact that the Order dismissing the case was received by both parties on November 9, 1987. Private respondents took no steps to have this Order set aside within the period to appeal. They slept on their rights - if they had any. They had a chance to have their day in court but they passed it off. Only when the Order became final and executory did they realize the futility of their case. This actuation vividly manifested their lack of interest to prosecute their case. We abhor tardiness on the part of private respondents.

ACCORDINGLY, the petition is hereby GRANTED, the order of the trial court granting plaintiffs' motion for reconsideration is hereby SET ASIDE, and its former order dismissing the complaint for plaintiffs' failure to prosecute is hereby REINSTATED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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