REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **02 March 2022** *which reads as follows*:

"G.R. No. 255143 (*Adusa Holdings, Inc. v. Agassee Properties and Holdings Corporation*). – The Court resolves to:

1. **NOTE** and **GRANT** the Notice of Change of Address dated May 20, 2021 of Atty. Romano M. Diaz, counsel for petitioner Adusa Holdings, Inc. (petitioner), requesting that all notices, orders, resolutions, pleadings, motions and other papers issued/filed in connection with this case be furnished him at Unit 17-C, Burgundy Corporation Corporate Tower, 252 Sen. Gil J. Puyat Avenue, Makati City; and

2. **NOTE** the Comment dated August 31, 2021 of respondent Agassee Properties and Holding Corporation (respondent) on the Petition for Review on *Certiorari*.[1]

This is a Petition for Review on *Certiorari* assailing the Resolutions dated February 26, 2020[2] and November 24, 2020[3] of the Court of Appeals (CA) in CA-G.R. SP No. 141923.

Background

In 1993, petitioner acquired a parcel of land with improvements (subject property) in Muntinlupa City.[4] The subject property was registered in petitioner's name under Transfer Certificate of Title (TCT) No. 186575.[5]

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1 Dated February 1, 2021. *Rollo*, pp. 13-25.
2 Id. at 26-27. Penned by Associate Justice Ramon M. Bato, Jr. with the concurrence of Associate Justices Manuel M. Barrios and Maria Elisa Sempio Dy.
3 Id. at 29-33.
4 The subject property is located at No. 330, Batangas South, Ayala Alabang Village, Muntinlupa City.
5 Rollo, p. 15.

Petitioner assigned the use and usufruct of the subject property to Mr. Gil Puyat, Jr. (Puyat) – petitioner's former Chairman. In 2006, Puyat died.[6]

Several years after the death of Puyat, petitioner discovered that TCT No. 186575 had already been cancelled and is now superseded by a new title TCT No. 145706[7] in the name of respondent.

As petitioner learned, the subject property fell into delinquency during the years following the death of Puyat. Consequently, and apparently without notice to petitioner, the subject property became the subject of a real estate tax foreclosure sale in which respondent emerged as the successful purchaser. After the lapse of the period of redemption with no redemption having been effected, respondent filed before the Regional Trial Court (RTC) of Muntinlupa City an action for the cancellation of TCT No. 186575. This action was raffled to Branch 203 and was docketed as LRC Case No. 06-003. On October 23, 2007, the RTC rendered a Decision in LRC Case No. 06-003 directing the cancellation of TCT No. 186575 and the issuance of a new title in favor of APHC.[8]

Facts Leading to the Instant Petition

Aggrieved by its discovery, petitioner filed before the CA a Petition for the Annulment of Judgment of the RTC Decision in LRC Case No. 06-003.[9] In the petition, petitioner alleged that it was not properly served summons to the proceedings in LRC Case No. 06-003 and so claimed that the RTC Decision therein was null and void. The petition was docketed in the CA as CA-G.R. SP No. 141923.[10]

On September 19, 2016, respondent filed its Answer to the Petition with Counterclaims.[11] Thereafter, pre-trial proceedings commenced.

On July 14, 2017, petitioner filed its pre-trial brief and the judicial affidavit of one Mr. Raymund Lucas (Lucas) – an employee of petitioner and its only witness in CA-G.R. SP No. 141923.[12]

On January 24, 2020, the CA issued a resolution setting the presentation of Lucas on February 26, 2020.[13]

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6 Id.
7 Id.
8 Id. at pp. 15-16.
9 Under Rule 47 of the Rules of Court.
10 *Rollo*, pp. 43-63.
11 Id at 66-109.
12 Id at 135-154.
13 Id. at 156-160.

During the February 26, 2020 hearing, however, petitioner failed to present Lucas. Petitioner explained that Lucas, who was now resigned from petitioner, refused to attend the hearing and had become disinterested in appearing as a witness in CA-G.R. SP No. 141923. Petitioner claimed that it only learned about Lucas' disinterest to appear as a witness a mere two (2) days before the hearing on February 26, 2020, and as such, it had no time to secure another witness to take Lucas' place. Petitioner, in the same hearing, then moved for the issuance of a *subpoena* to compel Lucas' attendance in a next scheduled hearing or, in the alternative, for leave to allow it to present another witness *vice* Lucas. APHC, on the other hand, moved for the dismissal of the petition due to petitioner's failure to present its witness.[14]

The CA, in a Resolution of even date, sided with APHC and ordered the dismissal of the petition in CA-G.R. SP No. 141923. The dispositive portion of the resolution reads:

> ACCORDINGLY, due to the failure of petitioner to present its evidence, the above-entitled case is DISMISSED and considered CLOSED and TERMINATED.
>
> x x x.
>
> SO ORDERED.[15]

Petitioner filed a Motion for Reconsideration,[16] but the CA remained steadfast. Hence, this petition.

OUR RULING

We grant the petition.

The CA's abrupt dismissal of the petition in CA-G.R. SP No. 141923 leaves much to be desired. The failure of petitioner to present Lucas during the February 26, 2020 hearing – which had been the sole basis of the dismissal – was the first and only time that petitioner was not able to comply with the order of the CA in the proceedings *a quo*. Moreover, the reasons proffered by petitioner to explain such failure were not amply discredited either by the CA or the respondent. Hence, given such considerations, it cannot be said that petitioner's failure to present Lucas during the hearing date had been motivated by any malice or intent to delay the proceedings before the appellate court.

The authority of a court to dismiss a case for failure of the plaintiff '*to prosecute his action* or *to comply with any order of the court*,' as sanctioned

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[14] Id. at 26-27.
[15] Id. at 27.
[16] Id. at 34-41.

under Section 3, Rule 17 of the Rules of Court,[17] is one that is meant to be exercised judiciously and with circumspection. In *Gomez v. Alcantara*,[18] We held that wielding such authority ought to be limited to instances where the plaintiff's breach of procedure reveals '*a pattern or scheme to delay the disposition of the case*' or '*a wanton failure to observe the mandatory requirement of the rules*,' to wit:

> **This Court is not unaware that, although the dismissal of a case for failure to prosecute is a matter addressed to the sound discretion of the court, that judgment, however, must not be abused. The availability of this recourse must be determined according to the procedural history of each case, the situation at the time of the dismissal, and the diligence of the plaintiff to proceed therein**. Stress must also be laid upon the official directive that courts must endeavor to convince parties in a civil case to consummate a fair settlement and to mitigate damages to be paid by the losing party who has shown a sincere desire for such give-and-take.
>
> **Truly, the Court has held in the past that a court may dismiss a case on the ground of *non prosequitur*, but the real test of the judicious exercise of such power is whether, under the circumstances, plaintiff is chargeable with want of fitting assiduousness in not acting on his complaint with reasonable promptitude**. Unless a party's conduct is so indifferent, irresponsible, contumacious or slothful as to provide substantial grounds for dismissal, *i.e.*, equivalent to default or non-appearance in the case, the courts should consider lesser sanctions which would still amount to achieving the desired end. **In the absence of a pattern or scheme to delay the disposition of the case or of a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss.**[19] (emphases supplied, citations omitted)

Thus, in *Polanco v. Cruz*,[20] We held that the therein plaintiff's failure to file a motion to set the case for pre-trial – considering that the same was her first and only technical mishap in the case – should not have led to an immediate dismissal of her complaint:

> Section 1, Rule 18 of the 1997 Rules of Civil Procedure imposes upon the plaintiff the duty to promptly move *ex parte* to have the case set for pre-trial after the last pleading has been served and filed. Moreover, Section 3, Rule 17 provides that failure on the part of the plaintiff to comply with said duty without any justifiable cause may result to the dismissal of the complaint for

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[17] 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 or her evidence in chief on the complaint, or to prosecute his or her 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 or her 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.(3a)

[18] 598 Phil. 935 (2009).

[19] Id. at 947-948.

[20] 598 Phil. 952 (2009).

failure to prosecute his action for an unreasonable length of time or failure to comply with the rules of procedure.

It must be stressed that even if the plaintiff fails to promptly move for pre-trial without any justifiable cause for such delay, the extreme sanction of dismissal of the complaint might not be warranted if no substantial prejudice would be caused to the defendant, and there are special and compelling reasons which would make the strict application of the rule clearly unjustified.

In the instant case, the Court of Appeals correctly held that the dismissal of respondent's complaint is too severe a sanction for her failure to file a motion to set the case for pre-trial. It must be pointed out that respondent prosecuted her action with utmost diligence and with reasonable dispatch since filing the complaint — she filed an opposition to petitioners' motion to dismiss the complaint; a comment to petitioners' motion for reconsideration of the December 4, 2000 Order of the trial court; and an Answer to Counterclaim of petitioners. When the trial court issued an order dismissing the case, respondent filed without delay a motion for reconsideration; and upon its denial, she immediately filed a Notice of Appeal. Moreover, contrary to petitioners' claim that respondent was silent for one year since she filed her Answer to Counterclaim until the trial court's dismissal order, records show that between said period, both parties and the trial court were threshing out petitioners' motion for reconsideration of the December 4, 2000 Order.

While 'heavy pressures of work' was not considered a persuasive reason to justify the failure to set the case for pre-trial in *Olave v. Mistas*, however, unlike the respondents in the said case, herein respondent never failed to comply with the Rules of Court or any order of the trial court at any other time. **Failing to file a motion to set the case for pre-trial was her first and only technical lapse during the entire proceedings. Neither has she manifested an evident pattern or a scheme to delay the disposition of the case nor a wanton failure to observe the mandatory requirement of the rules.** Accordingly, the ends of justice and fairness would best be served if the parties are given the full opportunity to litigate their claims and the real issues involved in the case are threshed out in a full-blown trial. Besides, petitioners would not be prejudiced should the case proceed as they are not stripped of any affirmative defenses nor deprived of due process of law.

This is not to say that adherence to the Rules could be dispensed with. However, exigencies and situations might occasionally demand flexibility in their application. Indeed, on several occasions, the Court relaxed the rigid application of the rules of procedure to afford the parties opportunity to fully ventilate the merits of their cases. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should thus not serve as basis of decisions.[21] (emphases supplied, citations omitted)

The *Polanco* ruling squarely applies here. Not being malicious or dilatory, petitioner's solitary instance of non-compliance should have been met with a more tempered approach. Moreover, respondent stands to suffer no

[21] *Polanco v. Cruz*, supra note 20, at 959-960.

undue prejudice should the case be allowed to proceed as it will not be stripped of any affirmative defenses nor be deprived of due process of law. Hence, rather than immediately dismissing the case, We believe that the most prudent course of action under the circumstances would have been to just issue the *subpoena* requested by petitioner.

Yet, in its Comment,[22] respondent tried to defend the CA's actuation by arguing that the issuance of a *subpoena* against Lucas would not have been feasible in view of Section 5 of A.M. No. 12-8-8-SC[23] or the Judicial Affidavit Rule (Affidavit Rule). As respondent argued:

> 67. Under Section 5 of the Judicial Affidavit Rule, the only circumstance under which a party may request that the court issue a subpoena and require the appearance of the witness - who must neither be the witness of the adverse party nor a hostile witness - is where such witness either (1) 'unjustifiably declines to execute a judicial affidavit' or (2) 'refuses without just cause to make the relevant books, documents, or other things under his control available for copying, authentication, and eventual production in court.'
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> 68. It is clear from Section 5 as above-cited that the issuance of a subpoena is not available or applicable to Mr. Lucas, who had already executed a judicial affidavit. Under the Judicial Affidavit Rule, said judicial affidavit constituted the direct testimony of Mr. Lucas and merely lacked his affirmation before the court *a quo*.[24]

We disagree. Section 5 of the Affidavit Rule is not an exclusive enumeration of all instances where a subpoena may be issued by a court. The provision reads:

> Section 5. *Subpoena.* – If the government employee or official, or the requested witness, who is neither the witness of the adverse party nor a hostile witness, unjustifiably declines to execute a judicial affidavit or refuses without just cause to make the relevant books, documents, or other things under his control available for copying, authentication, and eventual production in court, the requesting party may avail himself of the issuance of a subpoena ad testificandum or duces tecum under Rule 21 of the Rules of Court. The rules governing the issuance of a subpoena to the witness in this case shall be the same as when taking his deposition except that the taking of a judicial affidavit shall be understood to be *ex parte*.

As plainly read, Section 5 of the Affidavit Rule merely makes the process of subpoena accessible to parties whose intended witness either unjustifiably declines to execute a judicial affidavit or refuses without just cause to make the relevant books, documents, or other things under his control

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[22] *Rollo*, pp. 356-389.
[23] Dated September 4, 2012.
[24] *Rollo*, p. 379.

available for copying, authentication, and eventual production in court. It does not prohibit the issuance of subpoenas in instances outside of those mentioned.

It may well be remembered that the power of a court to issue subpoena or '*to compel the attendance of persons to testify in a case pending before it*' is recognized as an inherent power of all courts.[25] Hence, unless there is a law or rule which explicitly says otherwise, We find that there is nothing which could prevent the CA from issuing a subpoena to compel Lucas to testify before it in the annulment case.

In fine, We believe that a more considerate application of our procedural rules would have served the ends of justice better than a rigid enforcement of technicalities. It is unfortunate that the CA opted for the latter recourse. Thus, We rule –

WHEREFORE, premises considered, the instant petition is **GRANTED**. We hereby resolve to:

1. **REVERSE** and **SET ASIDE** the Resolutions dated February 26, 2020 and November 24, 2020 of the Court of Appeals in CA-G.R. SP No. 141923;

2. **REINSTATE** the Petition in CA-G.R. SP No. 141923; and

3. **DIRECT** the Court of Appeals to:

    a. **RESCHEDULE** a hearing date for petitioner's presentation of witness;

    b. **ISSUE** the appropriate **SUBPOENA** against Mr. Raymund Lucas, requiring the latter to attend and to testify at such rescheduled hearing date; and

    c. **CONTINUE with DISPATCH** the proceedings in CA-G.R. SP No.141923 in accordance with the Rules of Court.

SO ORDERED."

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[25] Section 5(e) of Rule 135 of the Rules of Court.

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:

MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court
14 JUL 2022

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HON. PRESIDING JUDGE (reg)
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(LRC Case No. 06-003)

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