



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 25, 2023** which reads as follows:*

“G.R. No. 216896 (*Global Periodicals, Inc., Juanito C. Coronel, Jr., and Juliet D. Coronel v. Metropolitan Bank and Trust Company*). — Before Us is a Petition for Review (Under Rule 45)¹ filed by petitioners Global Periodicals, Inc., and Spouses Juanito C. Coronel, Jr., and Juliet D. Coronel (petitioners, collectively), assailing the Court of Appeals’ (CA) Decision in CA-G.R. CV No. 99814 dated 14 March 2014² and Resolution dated 11 February 2015.³ The CA reversed and set aside the Orders of the Regional Trial Court (RTC), Branch 57, Makati City dismissing the complaint for sum of money filed by respondent Metropolitan Bank and Trust Company (MBTC) docketed as Civil Case No. 09-922, thereby reinstating said complaint.

Antecedents

The incidents before the RTC that sparked the present controversy was summarized by the CA in this manner:

On October 12, 2009, plaintiff-appellant Metropolitan Bank & Trust Company (“appellant”) filed a complaint for a sum of money against defendants-appellees, Juanito C. Coronel and Juliet D. Coronel (“appellees”). The case was docketed as Civil Case No. 09-922 and initially raffled to Branch 143 of the RTC.

After the parties filed their responsive pleadings, appellant moved to set the case for pre-trial, which was granted by the RTC. The pre-trial conference was scheduled on March 10, 2010. Pursuant to the Notice of Pre-Trial Conference, the parties filed their respective pre-trial briefs in due

¹ *Rollo*, pp. 9-25.

² *Id.* at pp. 28-38, penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Stephen C. Cruz and Eduardo B. Peralta, Jr.

³ *Id.* at 39-41.

course. However, the pre-trial conference was reset in view of the fact that the parties had not yet gone through mediation proceedings. After the unsuccessful mediation and consequent Judicial Dispute Resolution proceedings, the case was re-raffled to Branch 57 of the RTC.

Through an Order dated July 15, 2010, the RTC set the pre-trial date on September 6, 2010. On the said date, counsel for appellant Atty. Rey Pulicay ("Atty. Pulicay"), manifested that the previous handling lawyer just resigned from their law firm and that he needed more time to study the case. Hence, the RTC, without objection from counsel for appellees, reset the pre-trial to October 11, 2010.

The pre-trial scheduled on October 11, 2010 was again reset to December 6, 2010 after counsel for appellees Atty. Dante Diaz ("Atty. Diaz"), questioned the authority of Atty. Pulicay to represent appellant. Atty. Pulicay moved for additional time to submit the necessary documents proving the authority of CRC Law Firm and his membership in the said firm. Shortly thereafter, Atty. Pulicay filed a Manifestation dated October 18, 2010 with the following documents attached: (1) Secretary's Certificate of appellant's Board Resolution authorizing its Vice President, Atty. Cynthia Ruiz ("Atty. Ruiz") to sign initiatory pleadings and to execute a special power of attorney in favor of any law office or attorney; (2) Special Power of Attorney executed by Atty. Ruiz appointing CRC Law Firm or any of its lawyers to be its lawful attorney-in-fact in all hearings and proceedings involving the instant case; and (3) Certification issued by Atty. Cecilia Cinco, Managing Partner of the CRC Law Firm certifying that Atty. Pulicay is an associate lawyer of the firm.

During the hearing held on December 6, 2010, counsels for both parties appeared. The issue of whether Atty. Pulicay and CRC Law Firm was authorized to represent appellant was submitted for resolution by the RTC. The trial court reset the pre-trial to February 7, 2011 in order to allow both parties to file their respective manifestations.

On February 7, 2011, without objection from counsel for appellees, pre-trial was reset to March 21, 2011 in order for Atty. Pulicay to secure the original copy of the Secretary's Certificate attached to his Manifestation dated October 18, 2010. The hearing held on March 21, 2011 was likewise canceled and rescheduled to May 9, 2011 to give Atty. Pulicay time to submit a certified true copy of the Board Resolution containing the authority given by appellant to CRC Law Firm. Appellant, through counsel, finally submitted the required documents by attaching the same to its Compliance dated April 6, 2011, which was noted by the trial court in its Order dated April 8, 2011.

Finally, counsel for appellees interposed no more objections to the documents submitted by Atty. Pulicay. Hence, on May 9, 2011, counsels for both parties appeared for the scheduled pre-trial conference. The RTC directed the parties to pre-mark their evidence during the preliminary conference to be scheduled on June 7, 2011. Marking of exhibits for both parties was made on the said date, with the parties reserving their right to present additional evidence during trial.

The next pre-trial hearings scheduled on June 20, 2011 and August 8, 2011 were rescheduled by the RTC to October 17, 2011 in view of the declaration of June 20, 2011 as a non-working holiday and the fact that August 8, 2011 apparently fell within the period for records disposal.

During the hearings held on October 17, 2011 and January 16, 2012, the parties manifested to the trial court that they were exploring the possibility of amicable settlement of the case. The RTC accordingly rescheduled the pre-trial to February 27, 2012 on which date both parties appeared by counsel. After the conclusion of the pre-trial, the RTC scheduled the initial presentation of appellant's evidence on May 7 and 14, 2012.

On May 4, 2012 or three days before the day scheduled for the presentation of its evidence in chief, appellant filed a motion for postponement, citing as its ground, the difficulty of locating its first witness who had already resigned at that time.⁴

This last postponement requested by MBTC's counsel prompted petitioners' lawyer to file a motion to dismiss the complaint. The RTC granted the motion through its Order dated 07 May 2012. Thus:

When this case was called for hearing, only Atty. Dante Diaz, counsel for defendant is present. Notably, the counsel for the plaintiff is not present by instead filed a Motion for Postponement citing that his intended witness cannot be located. Considering that today is the time allotted for the first witness Ms. Pamela Jhoanna Gamilla to testify and in view of the allegations in the motion for postponement that she is no longer connected with the plaintiff, the counsel is duty bound as agreed in the pre-trial, to present the alternative witness. Since no witness is present and counsel himself is not present, finding the motion of Atty. Diaz to be well-taken, the same is hereby GRANTED and this case is hereby ordered DISMISSED.

SO ORDERED.⁵

The RTC also denied MBTC's motion for consideration through its Order dated 07 August 2012.⁶ Aggrieved, MBTC appealed before the CA.

Ruling of the CA

On 14 March 2014, the CA promulgated the herein assailed Decision granting MBTC's appeal and reinstating their complaint against petitioners. The dispositive portion of the decision reads:

WHEREFORE, the appeal is GRANTED. The Orders dated May 7, 2012 and August 28, 2012 of the Regional Trial Court, Branch 57, Makati City are REVERSED and SET ASIDE. Civil Case No. 09-922 is hereby REINSTATED.

SO ORDERED.⁷

⁴ Id. at 28-31.

⁵ Id. at 84-85.

⁶ Id. at 32.

⁷ Id. at 37.

The CA explained that before a complaint may be dismissed for failure to attend the presentation of the evidence in chief on the complaint, the trial court should first apply the “real test” of whether the plaintiff can be faulted with want of due diligence or indifferent, irresponsible, contumacious or slothful conduct; and in the absence of a pattern or scheme to delay the prosecution of the case, the court should consider lesser sanctions and should dispense with, rather than exercise, their authority to dismiss.⁸

Here, the CA held that the RTC failed to apply the “real test” because it made no mention of any act of MBTC marked by lack of due diligence or indifferent, irresponsible, contumacious or slothful conduct. The RTC merely cited its counsel’s absence and his duty to present an alternative witness as agreed in the pre-trial.⁹

The appellate court also found no merit in petitioners’ contention that it lacked jurisdiction over the appeal considering that MBTC only raised issues of law. It ruled that the resolution of the issue brought on appeal necessitates the examination of the records to answer the question of whether there exists factual basis for the dismissal of the complaint.¹⁰

Petitioners filed the present petition after their motion for reconsideration was denied by the CA.

Issues

Petitioners insist that the CA had no jurisdiction over MBTC’s appeal because it only involved pure questions of law, *i.e.*, whether the RTC erred in dismissing the complaint for sum of money. They argue that the order of dismissal is an exercise of the RTC’s discretion that is not susceptible of being proven by evidence. Petitioners also claim that MBTC displayed lack of due diligence and indifference when it moved for the postponement of the 12 May 2012 hearing. Moreover, MBTC’s counsel cannot feign ignorance of the unavailability of their witness even prior to the scheduled hearing; and that said lawyer took an indifferent stance when it disregarded the rule requiring the attachment of an affidavit supporting the allegations contained in the motion for postponement.¹¹

⁸ Id. at 35.

⁹ Id.

¹⁰ Id. at 35-36.

¹¹ Id. at 16-24.

Ruling of the Court

The Petition lacks merit.

Indeed, Section 2, Rule 50 of the Rules of Court that an appeal to the CA under Rule 41 but only raises questions of law shall be dismissed outright. Thus:

Sec. 2. Dismissal of improper appeal to the Court of Appeals.

An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

Nevertheless, in more recent cases than that invoked by petitioners, the Court had already ruled that the issue of whether a dismissal of a complaint has basis pursuant to Sec. 3, Rule 17¹² of the Rules of Court, then in force, necessarily involves a review of the records of the case. This issue, therefore, is factual nature and could be the subject of an appeal under Rule 41 of the Rules of Court.¹³

In *Shimizu Philippines Contractors, Inc. v. Magsalin*,¹⁴ the original complaint was dismissed for plaintiff's failure to prosecute pursuant to Sec. 3, Rule 17 of the Rules of Court. The CA dismissed the ordinary appeal filed by the petitioner therein, ruling that the issue involved is only legal and, therefore, should have been raised before the Supreme Court in a petition for review on *certiorari* under Rule 45 of the Rules of Court. The Court, however, rejected the CA's stance and ruled that **the grounds for dismissal under Section 3, Rule 17 are factual matters** and could be corrected by an appeal under Rule 41 of the Rules of Court. Citing *Olave v. Mistas*, the Court explained in this case:

An authority material to this case is the case of *Olave v. Mistas*. Directly addressed in *Olave* was the CA's jurisdiction over an ordinary appeal supported by *undisputed* facts and seeking the review of a prejudicial order of dismissal. In this case, a complaint was filed before the RTC in Lipa City to nullify an instrument titled "Affidavit of Adjudication by The Heirs of the

¹² SEC. 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 evidence in chief on the complaint, or to prosecute his 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 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.

¹³ *Olave v. Mistas*, 486 Phil. 709, 719-720 (2004).

¹⁴ 688 Phil. 384 (2012).

Estate of Deceased Persons with Sale.” The RTC dismissed the complaint, with prejudice, after the plaintiffs had moved to set the case for pre-trial only after more than three (3) months had lapsed from the service and filing of the last pleading in the case. The plaintiffs thereafter went to the CA on a Rule 41 petition, contending, among others, that the trial court had erred and abused its discretion. As in the present case, the defendants moved to dismiss the appeal on the ground that the issues therein were legal; they pointed out that the circumstances on record were admitted. They argued that the proper remedy was a petition for review on *certiorari* under Rule 45 of the Rules of Court.

The CA denied the motion and entertained the appeal. It rendered a decision reinstating the complaint on the ground that there was no evidence on record that the plaintiffs had deliberately failed to prosecute their complaint.

When the case was elevated to this court on a Rule 45 petition, we squarely addressed the propriety of the plaintiffs’ appeal. **Though mindful that the circumstances pleaded in the appeal were all admitted, we categorically held in *Olave* that the appeal was correctly filed. We observed that despite undisputed records, the CA, in its review, still had to respond to factual questions such as the length of time between the plaintiffs’ receipt of the last pleading filed up to the time they moved to set the case for pre-trial, whether there had been any manifest intention on the plaintiffs’ part not to comply with the Rules of Court, and whether the plaintiffs’ counsel was negligent.**

Significantly, in *Olave*, we agreed with the plaintiffs that **among the critical factual questions was whether, based on the records, there had been factual basis for the dismissal of the subject complaint.** x x x¹⁵

It is also worth noting that in *Belonio v. Rodriguez*,¹⁶ the Court categorically stated that proper remedy to assail a final order of the RTC dismissing a complaint based on Section 3, Rule 17 of the Rules of Court, is to appeal the same *via* a writ of error under Rule 41 of the Rules of Court.

Pursuant the doctrines set by these cases, respondents correctly challenged the RTC’s orders through an appeal under Rule 41 of the Rules of Court. The CA did not err in ruling that the appeal presented questions of facts that requires it to delve into the records of the case. We uphold the jurisdiction of the CA.

The CA also did not err in ruling that based on the records, the dismissal of respondents’ complaint was not warranted. While dismissal of actions based on any of the grounds under Section 3, Rule 17 of the Rules of Court is left to the discretion of the trial court and, generally, will not be disturbed,¹⁷ said discretion must be exercised with caution and with the court bearing in mind that the while dispatch in disposing cases is desired, the essential ingredient is the administration of justice and not mere speed.¹⁸

¹⁵ Id. at 396-397.

¹⁶ 504 Phil. 126 (2005).

¹⁷ See *Goldloop Properties, Inc. v. Court of Appeals*, 287 Phil. 557, 568 (1992).

¹⁸ *Olave v. Mistas*, supra note 13.

On this point, Our ruling in *Belonio v. Rodriguez*¹⁹ is instructive. Like the present case, the original complaint in *Belonio* was dismissed because of the plaintiff's non-appearance during the presentation for evidence-in-chief. In directing the reinstatement of the complaint, the Court held:

While a court can dismiss a case on the ground of failure to prosecute, the true test for the exercise of such power is whether, under the prevailing circumstances, the plaintiff is culpable for want of due diligence in failing to proceed with reasonable promptitude. As to what constitutes an "unreasonable length of time," within the purview of the above-quoted provision, the Court has ruled that it "depends upon the circumstances of each particular case" and that "the sound discretion of the court" in the determination of said question "will not be disturbed, in the absence of patent abuse;" and that "the burden of showing abuse of judicial discretion is upon the appellant since every presumption is in favor of the correctness of the court's action." Likewise, the concept of promptness is a relative term and must not unnecessarily be an inflexible one. It connotes an action without hesitation and loss of time. As to what constitutes the term is addressed to the consideration of the trial court, bearing in mind that while actions must be disposed of with dispatch, the essential ingredient is the administration of justice and not mere speed.

X X X

The power of the trial court to dismiss an action for *non prosecutur* is not without its limits. **If a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff is not present, as in this case, courts should not wield their authority to dismiss.** Indeed, while the dismissal rests on the prerogative of the trial court, it must soundly be exercised and not be abused, as there must be sufficient reason to justify its extinctive effect on the plaintiff's cause of action. **Deferment of proceedings may be tolerated so that the court, aimed at a just and inexpensive determination of the action, may adjudge cases only after a full and free presentation of all the evidence by both parties.** In this regard, courts are reminded to exert earnest efforts to resolve the matters before them on the merits, and adjudicate the case in accord with the relief sought by the parties so that appeals may be discouraged; otherwise, in hastening the proceedings, they further delay the final settlement of the case. [Emphasis supplied]

Belonio applies here. Respondent's absence during the hearing scheduled for the presentation of its evidence-in-chief, by itself, is not enough to dismiss the complaint. It must be shown that respondent was guilty of wanton lack of due diligence or was employing obvious schemes to delay the case. The presentation of the facts of the case showed no indication of any scheme employed by the respondents to delay the disposition of the case. The delays in the proceedings, starting from pre-trial up to the hearing on 12 May 2012, were either: (1) fully explained by respondent and were approved without any objection on petitioners' par; or (2) could be attributed to some

¹⁹ *Supra*.

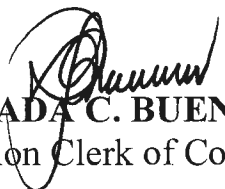
lawful or legitimate reasons, such as legal holidays or because the parties expressed their willingness to enter an amicable settlement. Moreover, respondent, through its counsel, was actively participating in the proceedings and was attending the hearings despite the postponements. Respondent was even able to seasonably move to set the case for pre-trial and was present during the preliminary conference.

All told, We agree with the CA that the ends of justice would be best served if both parties are given the opportunity to present their respective evidence and have their claims and resolved after a full-blown trial.

WHEREFORE, the petition is hereby **DENIED**. The Decision in CA-G.R. CV No. 99814 dated 14 March 2014 and Resolution dated 11 February 2015 rendered by the Court of Appeals are **AFFIRMED**.

SO ORDERED.” *Rosario, J., on official leave.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court⁴¹³

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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