

## SECOND DIVISION

**[ G.R. No. 224972, July 09, 2018 ]**

**NG CHING TING, PETITIONER, V. PHILIPPINE BUSINESS BANK,  
INC. RESPONDENT.**

### D E C I S I O N

**REYES, JR., J:**

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Ng Ching Ting (petitioner) assailing the Decision<sup>[1]</sup> dated September 29, 2015 and Resolution<sup>[2]</sup> dated June 1, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 128864.

#### Antecedent Facts

On July 23, 2009, Philippine Business Bank, Inc. (respondent) filed a Complaint<sup>[3]</sup> for Recovery of Sum of Money against Jonathan Lim (Jonathan), Carolina Lim (Carolina) and Ng Ching Ting (petitioner) also known as Richard Ng, which was docketed as Civil Case No. C-22359. It appears that Jonathan, owner of Teen's Wear Fashion, obtained several loans from the respondent, which were all covered by promissory notes, in the following amounts:<sup>[4]</sup>

Promissory Note No.	Date Granted	Amount
001-005-008278-5	May 24, 2006	P900,000.00
001-004-011087-7	Jul. 27, 2006	P517,152.00
001-004-0111087-7	Aug. 03, 2006	P521,800.00
001-004-011127-9	Aug. 09, 2006	P201,573.00
001-004-011193-8	Aug. 16, 2006	P209,582.10
001-004-011265-7	Aug. 28, 2006	P266,428.10
001-004-011364-9	Sept. 06, 2006	P244,321.29
001-004-011456-1	Sept. 13, 2006	P167,935.00
001-004-011530-5	Sept. 25, 2006	P284,820.00
001-004-011633-0	Oct. 04, 2006	P486,588.28
001-004-011723-1	Oct. 18, 2006	P274,995.00
001-004-011866-4	Oct. 23, 2006	P376,753.50

001-004-  
011884-6

As of December 17, 2007, the total outstanding obligation of Jonathan and/or Teen's Wear Fashion amounted to P5,183,416.40. As security thereto, a continuing suretyship agreement was executed by Carolina and the petitioner, both ensuring the prompt payment of the loans contracted by Jonathan from the respondent. To further secure the loans, Jonathan and Carolina executed a real estate mortgage over a parcel of land situated in Dasmariñas, Cavite, covered by Transfer Certificate of Title (TCT) No. 891918, which was registered under their names.<sup>[5]</sup>

Jonathan defaulted in the payment of his monthly amortizations and failed to settle the same despite repeated demands. Thus, on November 6, 2007, the respondent bank filed a petition for extrajudicial foreclosure of the mortgaged property. Subsequently, a public auction was conducted by the Office of the Ex-Officio Sheriff of Imus, Cavite and the subject property was awarded to the highest bidder in the amount of P915,600.00. Since the amount realized from the auction sale was way below the amount of the obligation, the respondent, through counsel, sent a demand letter to Jonathan, Carolina and the petitioner to settle the deficiency in the amount of P4,267,816.40, within five (5) days from receipt thereof, but they refused to heed. By reason of said refusal to pay, the respondent filed a collection suit against Jonathan, Carolina and the petitioner.

On November 23, 2009, the petitioner, through counsel, filed a Motion<sup>[6]</sup> to Dismiss, alleging the following grounds: (1) that the complaint was filed with a defective certification of non-forum shopping;<sup>[7]</sup> (2) that the complaint was based on a falsified continuing suretyship agreement,<sup>[8]</sup> and; (3) that no summons was served upon the principal debtor.<sup>[9]</sup>

On September 20, 2010, the RTC issued an Order,<sup>[10]</sup> denying the motion to dismiss, the dispositive portion of which reads as follows:

WHEREFORE, the instant Motion to Dismiss filed by [herein petitioner] Ng Ching Ting is hereby DENIED for lack of merit.

SO ORDERED.<sup>[11]</sup>

Almost a year thereafter, the RTC issued an Order<sup>[12]</sup> dated August 11, 2011, *motu proprio* dismissing the case by reason of inaction of both parties. It reads, thus:

A cursory examination of the records of this case disclosed that per Order of the Court dated September 20, 2010, the Motion to Dismiss filed by [herein petitioner] Ng Ching Ting was denied for lack of merit.

Reckoned from that time, there was no action on the part of both the plaintiff and the defendants.

WHEREFORE, in view of the foregoing, let this case be as it is hereby ordered dismissed.

SO ORDERED.<sup>[13]</sup>

Subsequently, a Motion for Reconsideration<sup>[14]</sup> dated October 17, 2011 was filed by the respondent bank, asseverating that they are still interested in pursuing the case and explained that the reason for their inaction was due to the resignation of its two (2) in-house counsels.

The petitioner filed an Opposition<sup>[15]</sup> to the motion for reconsideration. Shortly thereafter, he filed an Urgent Manifestation<sup>[16]</sup> and attached thereon two (2) certifications both dated February 24, 2012, which states that the respondent and its counsel received the Order dated August 11, 2011 on September 23, 2011. This being the case, it only had fifteen (15) days from September 23, 2011 or until October 8, 2011 within which to file its motion for reconsideration. Thus, when the motion for reconsideration was filed on October 17, 2011, it was already filed out of time and the order of dismissal had already become final and executory.<sup>[17]</sup>

### **Ruling of the RTC**

In an Order<sup>[18]</sup> dated November 16, 2012, the RTC granted the respondent's motion for reconsideration, pertinently stating thus:

Be that as it may, as mentioned in the plaintiffs instant motion, right after the issuance of the Order dated September 20, 2010 issued by the Court, the previous handling lawyers for the plaintiff, Attys. Dencio Somera and Noel Aperocho, resigned from their position as in-house counsels without informing the plaintiff and its new in-house counsels of the status of the instant case. Hence, the plaintiff and its in-house counsels were surprised to receive the questioned Order dated August 11, 2011.

The argument of the oppositor [herein petitioner] Ng Ching Ting that the Order dated August 11, 2011 was received by the plaintiff and its in-house counsels on September 23, 2011 could not be given credence because the person who received the said Order was not an employee of the plaintiff.

WHEREFORE, the instant Motion for Reconsideration of the plaintiff is hereby GRANTED and the questioned Order dated August 11, 2011 is hereby RECONSIDERED and SET ASIDE.

SO ORDERED.<sup>[19]</sup>

Unyielding, the petitioner filed a petition for *certiorari* with the CA, alleging that the RTC committed grave abuse of discretion in granting the motion for reconsideration despite being filed out of time.<sup>[20]</sup>

### **Ruling of the CA**

In a Decision dated September 29, 2015,<sup>[21]</sup> the CA affirmed the Order dated November 16, 2012 of the RTC, disposing thus:

WHEREFORE, the petition for *certiorari* is DENIED for lack of merit. The Order dated November 16, 2012 issued by the Regional Trial Court of Caloocan City, Branch 125 is hereby SUSTAINED.

SO ORDERED.[22]

The petitioner filed a motion for reconsideration but in a Resolution dated June 1, 2016, the CA denied the same. Hence, this petition.

### **Ruling of the Court**

The petitioner contends that the CA acted in a manner not in accordance with the law and jurisprudence when it failed to consider that the respondent's motion for reconsideration was filed out of time. He further argues that the respondent's case does not fall under the exceptions to the general rule that a dismissal based on failure to prosecute amounts to a dismissal with prejudice.[23]

The petition is meritorious.

In *Fortich vs. Corona*, [24] the Court elaborated on the significance of the of the rules of procedure, viz.:

Procedural rules, we must stress, should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and **administrative bodies**, the adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules.[25]

Corolarilly, "rules prescribing the time for doing specific acts or for taking certain proceedings are considered **absolutely indispensable** to prevent needless delays and to orderly and promptly discharge judicial business. By their very nature, these rules are regarded as mandatory." [26]

In the instant case, the petitioner questions the CA's affirmance of the Order dated November 16, 2012 of the RTC, setting aside the dismissal of Civil Case No. C-22359 on the ground of failure to prosecute, since there was no excusable neglect on the part of the respondent and the motion for reconsideration was filed out of time. The CA, however, justified the setting aside of the order of dismissal on the ground that substantial justice must take precedence over technical rules of procedure. It likewise ratiocinated that the dismissal of a case based on failure to prosecute is a matter addressed to the sound discretion of the trial court.[27]

Indeed, in some cases, the Court relaxed the application of procedural rules for the greater interest of substantial justice. It must be pointed out, however, that "resort to a liberal application, or suspension of the application of procedural rules remains the exception to the well-settled principle that rules must be complied with for the orderly administration of justice." [28] It can only be upheld "in proper cases and under justifiable causes and circumstances." [29]

Apparently, in the present case, the respondent overlooked procedural rules more than once. *First*, it reneged on its duty to prosecute its case diligently and, *second*, it failed to file its motion for reconsideration on time.

The records bear out that the respondent went into unexplained inaction for almost a year from the time the motion to dismiss filed by the petitioner was denied by the RTC in its Order dated September 20, 2010. Despite receipt of the copy of the order, it failed to actively pursue its case or take the proper steps until the case reaches conclusion. This prompted the RTC to dismiss the complaint in its Order dated August 11, 2011, on the basis of Section 3, Rule 17 of the Rules of Court, which reads as follows:

**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 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.

In *BPI vs. Court of Appeals*,<sup>[30]</sup> the Court noted that dismissal based on failure to prosecute is a matter addressed to the sound discretion of the court. It was held, thus:

Indeed the dismissal of a case whether for failure to appear during trial or prosecute an action for an unreasonable length of time rests on the sound discretion of the trial court. But this discretion must not be abused, nay gravely abused, and must be exercised soundly. Deferment of proceedings may be tolerated so that cases may be adjudged only after a full and free presentation of all the evidence by both parties. The propriety of dismissing a case must be determined by the circumstances surrounding each particular case.<sup>[31]</sup>

The Court can no less agree that the full presentation of the parties' case should be favored over termination of the proceedings on technical grounds. Ideally, "technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. Where the ends of substantial justice would be better served, the application of technical rules of procedure may be relaxed."<sup>[32]</sup>

It must be emphasized, however, that the "invocation of substantial justice is not a magical incantation that will automatically compel this Court to suspend procedural rules. Rules of procedure are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights."<sup>[33]</sup>

In *Daikoku Electronics Phils., Inc vs. Raza*,<sup>[34]</sup> it was stressed, thus:

To merit liberality, petitioner must show **reasonable cause** justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantive justice. x x x The desired leniency cannot be accorded absent **valid and compelling reasons** for such a procedural lapse.<sup>[35]</sup> (Emphasis supplied)

It is in the abovementioned occasion that the exercise of sound discretion is required of the judge. In doing so, he must weigh the circumstances, the merits of