362 Phil. 490

THIRD DIVISION

[G.R. No. 76276, February 15, 1999]

ASIAN TRADING CORPORATION, MIGUEL L. ROMERO AND EDCEL C. LAGMAN, PETITIONERS, VS. HON. COURT OF APPEALS, EIGHT DIVISION AND PHILIPPINE BANKING CORPORATION, RESPONDENTS.

D E C I S I O N

PURISIMA, J.:

Petition for Review on *Certiorari* seeking to reverse the Decision of the Court of Appeals[1] dated September 17, 1986, and the Order, dated October 14, 1986, denying the motion for reconsideration of said Decision, in CA-GR SP No. 06882.

The fact that matter are, as follows:

On November 25, 1983, Philippine Banking Corporation *(Bank)* filed a Complaint against the petitioners, which was later amended, for the collection of the sum of P2,700,000.00 plus interest and attorney's fees. Docketed as Civil Case No. 5775 before Branch 136 of the Regional Trial Court of Makati, the said complaint alleged ***inter alia***, that:

> "That basis of the action is a Promissory note executed by the petitioner on July 9, 1982, which contained the following terms and conditions:
>
> "1. Date of promissory note; July 9, 1982
>
> "2. Due Date: August 9, 1984
>
> "3. Terms of Payment:
>
> Principal payable semi-annually
>
> Interest payable quarterly
>
> "4. Acceleration Clause;
>
> Upon default of payment of any installment when due or in case I/we fail to pay any other obligations which I/we or any of us may now or in the future owe to the Bank or to any other creditor whatsoever, whether as principal(*s*) or as guarantor(*s*) then the entire principal of this note including all other amounts agreed on at the option of the bank and without prior notice or demand shall immediately become due and demandable.

"5. Attorney's fees in the sum equivalent to 25% of the total amount due in case of suit."[2]

The bank theorized that since petitioners failed to pay the first and second installments of their obligation which fell due on January 9, 1983 and July 9, 1983, respectively, the entire amount of P2,700,000.00 became due and demandable under the acceleration clause of the promissory note sued upon.

In their answer, petitioners placed reliance on the affirmative defenses, that:

"xxx

"6. Under the terms of the promissory Note No. 1141-82 the term of payment is as follows: "Principal payable semi-annually and interest payable quarterly". However, defendants and plaintiff agreed that the payments on said loan shall start from the time the said promissory note becomes due, i.e. August 9, 1984.

"7. Since the due date August 9, 1984 has not yet arrived, the complaint in the above-entitled case is clearly premature and without basis."[3]

After the Bank has adduced evidence and rested its case, petitioners interposed a demurrer to evidence on the ground that the obligation in question was not yet due and demandable, as it fell due only on August 9, 1984, after the case was instituted.

On July 25, 1985, the trial court denied the Demurrer to evidence and rendered judgement in favor of the Bank.

What petitioner did next was to bring a petition for *certiorari* and prohibition before the Court of Appeals, assailing the decision of the trial court for being tainted with grave abuse of discretion. According to petitioners, they were not afforded an opportunity to introduce evidence in accordance with Section 1, Rule 35, of the Revised Rules of Court, which provides:

"**Effect of judgment on demurrer to evidence**. After the plaintiff has completed the presentation of his evidence, the defendant without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. However, if the motion is granted and the order of dismissal is reversed on appeal, the movant loses his right to represent evidence in his behalf."

Relying on the ruling *Dizon et al. v. Hon. Bayona, et al.*, 98 Phil 943, respondent court dismissed the Petition, ratiocinating, that:

"The genuineness and due execution of the Promissory Note which is attached to the Amended Complaint is admitted. The non-payment of the obligation despite demands therefor is likewise admitted. The only defense of petitioners is that the obligation is not yet due and demandable. The evidence to support their defense are the terms of the Promissory Note itself which is already before respondent Judge. xxx

There is no pretense by petitioners in their Answer or in the present

Petition that they have evidence to support their only defense other than what appears on the face of the promissory note. It would, therefore, be a useless formality for the respondent Judge to still set the case for reception of Petitioners' evidence, when the evidence to be received is already before the Court and submitted for its consideration in order to arrive at a judgment on the issues set forth in the pleadings.

> xxx the due date is August 9, 1984 while the present complaint was filed on November 22, 1983. The dependant is in error. The due date of August 9, 1984 appearing on the face of the Promissory Note encompasses the period within which to fully settle the obligation. xxx

To persist in presenting evidence already before the Court and considered by the latter in its decision is to insist on an empty formality and indulge in an exercise in futility."[4]

Undaunted, petitioners found their way to this Court ***via*** the present petition for review on *certiorari*, anchored on the assigned errors, that:

I

WITH RESPECT TO THE PROCEDURAL MATTERS INVOLVED. - RESPONDENT COURT ERRONEOUSLY HELD THAT APPEAL WAS THE PROPER REMEDY OF THE PETITIONERS AND NOT CERTIORARI NOTWITHSTANDING ITS CLEAR FINDING THAT "IF A DEMURRER TO THE EVIDENCE IS DENIED BY THE TRIAL COURT, THE DEFENDANT SHOULD BE GRANTED AN OPPORTUNITY TO PRESENT ITS EVIDENCE.

II

WITH RESPECT TO THE SUBSTANTIVE ISSUE INVOLVED. - RESPONDENT COURT COMMITTED GRAVE ERROR IN DEMEANING THE RIGHT OF THE PETITIONERS TO PRESENT EVIDENCE WHEN IT CONSIDERED THE SAME AS AN EMPTY FORMALITY AND AN EXERCISE IN FUTILITY.[5]

On February 4, 1988, the Bank, citing Section 9, Rule 130 of the Revised Rules of Court in its Brief, contended that the lower court merely exercised its adjudicatory power most judiciously and wisely, taking into account the facts and circumstances surrounding the case.[6]

On August 27, 1990, petitioners sent in a Manifestation that the parties had an initial conference for the amicable settlement of the case. Then, on September 10, 1990, the parties filed a joint Manifestation that within two *(2)* months, they would come up with an amicable settlement.

On August 3, 1992, Atty. Orlando C. Salvador, former counsel of the Bank, presented a motion to submit the compromise agreement for the consideration of the trial Court subject to the Manifestation that the attorney's fees due from their client equivalent to twenty five *(25%)* percent of the amount actually collected by the Bank shall be remitted, in the following manner: ***75% shall be remitted to***

the Bank and 25%, directly to the lawyers who signed the said agreement, of every payment tendered. The pertinent portion of the compromise agreement states, thus:

> "2. In consideration of the foregoing admission of liability by the private respondents and of their faithful compliance of their commitment *(sic)* as set forth in this Compromise Agreement, Philippine Banking Corporation hereby agrees to reduce the sum payable in the amount of P8,000,000.00 which shall be paid by the private respondents in the following manner:
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> a) P250,000.00 on or before July 1, 1992;
>
> b) P500,000.00 on or before October 1, 1992;
>
> c) P250,000.00 on or before December 1, 1992; and
>
> d) The balance of P7,000,000.00 to be paid in five *(5)* annual installment, at P1.4 Million for each installment, the first to commence on or before December 31, 1993 and the rest of the installment to be paid on or before December 31, of each subsequent year of the last four *(4)* years;
>
> 3. Interest at the rate of 12% p.a. shall be paid based on diminishing principal balance payable together with the principal payments herein established; xxx"[7]

On September 18, 1992, the Bank, represented by a new counsel, filed a Manifestation and Motion to expunge the proposed compromise agreement for the reasons, that:

> "3. In truth and in fact, the proposed agreement was sent to Atty. Salvador for his signature to be filed in Court only if his fees shall have been settled;
>
> 4. To set the records straight, private respondent accepted a settlement of P8.0 million and at that, payable on installment basis, on the ground that the said amount is the net amount that would be paid by the respondents;
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> 5. The submission of the proposed compromise is therefore premature and unauthorized and should therefore be expunged from the records." [8]

But on September 23, 1992, Atty. Salvador, relying on the case of *Aro v. Nanawa*, 27 SCRA 1090, presented a Supplemental Manifestation, claiming, that:

> "xxx it having been understood by the parties thereto that the P8,000,000 compromise settlement from an original amount of P18,000,000, was the net amount due to the Bank private respondent. It will be noted from this letter that there is no mention of an alleged "failure of agreement" which later will be seen as the ground being posited by the Bank private respondent to expunge the Compromise