

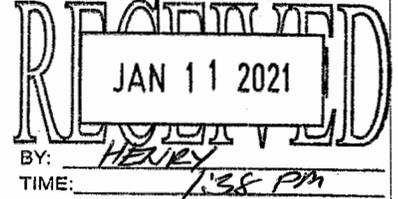


Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated July 8, 2020, which reads as follows:

“G.R. No. 231723 – (KAWAYAN FARMS, INC., petitioner v. BDO UNIBANK, INC., respondent). – The case originated from the complaint for specific performance¹ filed by herein petitioner against herein respondent before Branch 150 of the Regional Trial Court of Makati which was docketed as Civil Case No. 14-529.

After reception of the necessary pleadings, the case was set for the presentation of evidence in chief of the petitioner on March 11, 2015. However, on the said hearing date, the principal witness, Raphael V. Del Rosario, Jr. (Del Rosario), did not appear.² His counsel, presented to the court a medical certificate³ issued by the Center for Health Development-Western Visayas stating that Del Rosario was diagnosed to have Pneumonia-L and Hypertension. The trial court reset the hearing to June 4, 2015 with a stern warning to petitioner that if they still fail to present their evidence on the set hearing then its failure shall be construed as a waiver.⁴

The June 4, 2015 hearing came but petitioner again failed to appear. Neither its authorized representative nor its counsel was present on the scheduled hearing. This prompted the respondent to move for the dismissal of the complaint which the trial court granted. The assailed Order⁵ of the trial court dated June 4, 2015 reads as follows:

When called for presentation of plaintiff’s evidence, Atty. Christopher Mariano and the authorized representative of the plaintiff failed to appear. Records show that Atty. Mariano was duly notified of the trial

¹ Rollo, pp. 16-20.
² Id. at 4.
³ Id. at 49.
⁴ Id. at 102.
⁵ Id. at 52.

this afternoon as shown by his signature appearing in the minutes of the proceeding held on March 11, 2015. Records further show that in the order dated March 11, 2015 Atty. Mariano was already warned that if he fails again to present his evidence this afternoon, then his failure shall be construed as a waiver or abandonment of plaintiff's right to present its evidence to prove its cause of action as alleged in the complaint. Finding the oral motion of the defendant bank's counsel to dismiss the case to be well taken, the same is hereby granted. Accordingly, the above captioned case is hereby ordered dismissed for failure to prosecute.

SO ORDERED.⁶

Upon learning of the assailed order, petitioner, thru his counsel, filed a Motion for Reconsideration⁷ praying that the dismissal be set aside on the ground that their failure to appear was because Atty. Mariano, their counsel, was suffering from Parotitis (mumps or *beke*) as evidenced by the medical certificate⁸ and prescription⁹ issued by the doctor at Alfonso Specialist Hospital on June 4, 2015.

On July 31, 2015, the trial court denied the motion for reconsideration of petitioner. In its Order,¹⁰ the trial court states that dismissal of a case rests on the sound discretion of the court and the circumstances present in this case constitute sufficient reason to justify the dismissal of the complaint.¹¹

Aggrieved with the decisions of the trial court, petitioner appealed its case to the CA. Unfortunately, petitioner did not receive a favorable ruling. The CA found that petitioner's failure to attend the two scheduled hearing, without due regard to the authority of the trial court, shows its lack of interest in prosecuting its case.¹² Petitioner filed a motion for reconsideration,¹³ however, in the Resolution¹⁴ dated March 29, 2017 of the CA, the motion was denied due to lack of merit, to wit:

WHEREFORE, the foregoing premises considered, the Court resolves to DENY, as it hereby DENIES, plaintiff-appellant's Motion for Reconsideration for lack of merit.

SO ORDERED.¹⁵

Hence, the present petition for review under Rule 45 of the Rules of

⁶ Id. at 53-56.

⁷ Id. at 54.

⁸ Id. at 57.

⁹ Id. at 58.

¹⁰ Id. at 59-60.

¹¹ Id. at 60.

¹² Id. at 63-73; penned by Associate Justice Christine Azcarraga-Jacob, with the concurrence of Associate Justices Ricardo R. Rosario and Edwin D. Sorongon.

¹³ Id. at 74-79.

¹⁴ Id. at 80-83.

¹⁵ Id. at 82.

Court, raising the following issues:

- I. Whether or not the illness of the Petitioner's witness and its counsel constitute justifiable causes for failing to attend the hearings last March 11, 2015 and June 4, 2015.
- II. Whether or not Petitioner showed reasonable promptitude in prosecuting this case.
- III. Whether or not Petitioner has a meritorious case, such that the haste dismissal of this case would not serve the ends of justice.¹⁶

Petitioner insists that their complaint should not have been dismissed as they have provided a justifiable cause, the illness of their primary witness their counsel. Petitioner presented medical certificates stating that on the day of the scheduled hearing on March 11, 2015, its witness was diagnosed to have Pneumonia-L and Hypertension, while on June 4, 2015, it was its counsel who was suffering from Parotitis or Mumps, a contagious disease, which prevented them from appearing before the court on the said dates.

After careful review of the records of the case, We find that both the trial court and CA did not err in finding that the dismissal of petitioner's complaint proper.

It has long been established and settled that the question of whether a case should be dismissed for failure to prosecute is mainly addressed to the sound discretion of the trial court.¹⁷ Exercise of such discretion, if not capricious or arbitrary is not subject to review of this Court. It is settled that great weight, and even finality, is accorded to the factual conclusions of the CA which affirm those of the trial courts. Only when it is clearly shown that such findings are whimsical, capricious, and arbitrary can they be overturned.¹⁸

Pursuant to Rule 17, Section 3 of the Rules of Court, 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.¹⁹

In the case at bar, petitioner failed to exercise due diligence and to act with reasonable promptitude in order to prevent their case from being dismissed. As culled from the records, when petitioner presented the medical

¹⁶ Id. at 5.

¹⁷ *De Palanca, et al. v. Chua Keng Kian, et al.*, 137 Phil. 1, 7 (1969).

¹⁸ *Tabuso v. Court of Appeals*, 411 Phil. 775, 783 (2001).

¹⁹ *Producers Bank of the Phils. v. Court of Appeals*, 396 Phil. 497, 505-506 (2000).

certificate of the witness during the first scheduled hearing, the court considered the same and neither questioned nor verified its validity. The court then rescheduled the hearing, but gave stern warning to the petitioner that its non-appearance would result in dismissal of the case. Despite this warning, however, petitioner still failed to appear.

Petitioner heavily relied on the medical certificates they submitted before the court as proof of their illnesses, citing the case of *Stellar Industrial Services, Inc. v. NLRC*,²⁰ to justify its absence in the hearings. It alleged that a medical certificate properly signed by the physician bears all the earmarks of regularity in their issuance and thus, is entitled to a full probative weight.²¹

Petitioner's reliance to this this ground is misplaced. To emphasize, the main reason why herein petitioner's complaint was dismissed is not because the court did not consider the medical certificates indicating the illness as a justifiable ground for non-appearance, but because of the failure of the petitioner to exercise due diligence in order to prevent his case from being dismissed. As correctly observed by the CA, at the very least, petitioner should have resorted to other means to inform the court at the earliest that they would not be able to appear in the scheduled hearing. Petitioner may have shown the court that it is physically impossible for their counsel to appear on the last scheduled hearing yet it failed to show that it is impossible to inform the court of their non-appearance prior such hearing. The action of petitioner and its counsel, despite stern warning given, shows utter disregard to the order of the court.

Moreover, the presence or absence of proof to justify non-appearance should be taken on a case to case basis. Thus, it was erroneous for the petitioner to anchor their case on the probative value of the medical certificates when such document may even be dispensed with depending on the circumstances just like in the case of *McEntee v. Manotok*,²² wherein it was held that the court was too strict and demanding for asking for the illness be supported by a medical certificate.²³

Even assuming arguendo, that petitioner's counsel is justified for not appearing on the last scheduled hearing, still both the petitioner's representative and the supposed witness to be presented were also not in attendance. While it is true that there was a valid ground for the petitioner's witness not to be present on the first scheduled hearing, March 11, 2015, as the same was suffering from Pneumonia-L and Hypertension as stated in his medical certificate dated March 9, 2015, petitioner failed to justify their non-appearance on the last hearing date which was on June 4, 2015. If indeed petitioner was keen to prosecute their case, they could have at least sent a

²⁰ 322 Phil. 352 (1996).

²¹ Id. at 364.

²² 113 Phil. 249 (1961).

²³ Id. at 256.

representative as records show that they were sufficiently notified of the hearing. In fact, in the case of *Limon v. Candido*,²⁴ the presence of at least the counsel prevented the case from being dismissed as this shows the clear intent of the litigant to pursue his case.

To reiterate, an action may be dismissed for failure to prosecute in any of the following instances: (1) if the plaintiff fails to appear at the time of trial; (2) if he fails to prosecute the action for an unreasonable length of time; or (3) if he fails to comply with the Rules of Court or any order of the court. Every court has the power to enforce and compel obedience to its orders, judgments, and processes in all proceedings pending before it.²⁵ Petitioner was clearly given the order to appear on the last hearing and it should have exercised the necessary diligence in order to comply with this order. Courts possess the duty and authority to control the proceedings before it. This includes the setting of trial dates and allowing postponement of hearings. Lawyers, in turn, as officers of the court, are duty bound to obey and respect court orders. Hence, when courts set trial dates and a lawyer finds that he or she may not be able to attend the hearing, the proper course of action is to move for the court to set the hearing at another date.²⁶

Thus, it must be emphasized anew that procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only when for the most persuasive of reasons they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. While it is true that a litigation is not a game of technicalities, this does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution.²⁷ In the instant case, the reason advanced by the petitioner fails to persuade this Court.

WHEREFORE, all premises considered, the instant petition is **DENIED** for lack of merit. Accordingly, the Decision dated September 28, 2016 and the Resolution dated March 29, 2017 of the Court of Appeals in CA-G.R. CV No. 105729 is **AFFIRMED**.

²⁴ 137 Phil. 730 (1969).

²⁵ *Vicoy v. People*, 433 Phil. 226, 230 (2002).

²⁶ *Dy Teban Trading, Inc. v. Dy, et al.*, 814 Phil. 564, 582 (2017).

²⁷ *Sps. Sibay, et al v. Sps. Bermudez*, 813 Phil. 807, 818 (2017) citing *Limpot v. Court of Appeals*, 252 Phil. 377, 388 (1989).

SO ORDERED.”

By authority of the Court:

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Division Clerk of Court
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7/5/21

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