

SECOND DIVISION

[G.R. No. 163515, October 31, 2008]

**ISIDRO T. PAJARILLAGA, PETITIONER, VS. COURT OF APPEALS
AND THOMAS T. KALANGEG, RESPONDENTS.**

DECISION

QUISUMBING, J.:

This is a petition for review on certiorari of the Decision^[1] dated January 26, 2004 and the Resolution^[2] dated May 14, 2004 of the Court of Appeals in CA-G.R. SP No. 47526. The appellate court affirmed the Orders^[3] dated January 29, 1998 and March 26, 1998 of the Regional Trial Court (RTC) of Bontoc, Mt. Province, Branch 36, which had denied petitioner's Motion for Leave of Court to Take the Deposition of the Defendant Upon Written Interrogatories.

The antecedent facts are as follows:

On November 24, 1995, private respondent Thomas T. Kalangeg filed with the RTC of Bontoc, Mt. Province, Branch 36, a complaint^[4] for a sum of money with damages against petitioner Isidro T. Pajarillaga.

Since the parties failed to reach an amicable settlement, trial on the merits ensued. On March 10, 1997, private respondent presented his first witness. At the next scheduled hearing on August 8, 1997, neither petitioner nor his counsel appeared despite notice. Upon private respondent's motion, the trial court allowed him to present his remaining two witnesses subject to petitioner's cross-examination on the next scheduled hearing on September 2, 1997. But when the case was called on that date, petitioner and his counsel were again absent. Upon private respondent's motion, the trial court declared petitioner to have waived his right of cross-examination and allowed private respondent to make a formal offer of evidence.

In an Order dated October 8, 1997, the trial court admitted all the exhibits formally offered by private respondent. It also scheduled petitioner's presentation of evidence on October 28, 29 and 30, 1997.

Petitioner moved to reset the hearing to November 17, 1997. The trial court granted his motion and reset the hearing to December 15, 1997.

On December 10, 1997, however, petitioner filed a Motion for Leave of Court to Take the Deposition of the Defendant Upon Written Interrogatories^[5] on the grounds that: (1) petitioner resides in Manila which is more than four hundred (400) kilometers from Bontoc, Mt. Province; and (2) petitioner is suffering from an illness which prohibits him from doing strenuous activities.

Private respondent opposed the motion. On December 15, 1997, neither petitioner nor his counsel again appeared. Nonetheless, the trial court reset the case to January 12, 1998 for the presentation of petitioner's evidence. What transpired on said date, however, is not disclosed by the records before this Court.

In an Order^[6] dated January 29, 1998, the trial court denied petitioner's motion, in this wise:

Considering that the above-entitled case has been pending since November 24, 1995, and hearings thereof have been delayed almost always at the instance of the defendant, the latter's motion for leave of Court to take said defendant's deposition upon written interrogatories at this late stage of the proceedings is hereby denied.

Wherefore, in the interest of justice defendant is granted one more chance to adduce his evidence on February 18, 1998, at 8:30 o'clock in the morning. Otherwise, he shall be deemed to have waived his right thereto.

SO ORDERED.

Petitioner moved for reconsideration which the trial court denied. It also reset the hearing to April 20, 1998.^[7]

Petitioner elevated the case to the Court of Appeals *via* a petition for certiorari under Rule 65 of the 1997 Rules of Court. In affirming the trial court's orders, the appellate court ruled that: *First*, the denial of petitioner's motion was not tainted with grave abuse of discretion since the trial court gave petitioner full opportunity to present his evidence. *Second*, petitioner's motion came much too late in the proceedings since private respondent has already rested his case. *Third*, the medical certificate which petitioner submitted to validate his allegation of illness merely contained a remark that the "patient is advised to avoid strenuous activity." It did not state that the travel from Manila to Mt. Province for the scheduled hearings was too strenuous to endanger petitioner's health. *Fourth*, the threats to petitioner's life by private respondent's relatives were belatedly alleged only in his motion for reconsideration.

Dissatisfied, petitioner appealed to this Court on the ground that the Court of Appeals erred in:

... DENYING PETITIONER'S PRAYER THAT HIS DEPOSITION BE TAKEN THROUGH WRITTEN INTERROGATORIES IN CONNECTION WITH A CASE WHICH IS BEING HEARD BY THE REGIONAL TRIAL COURT OF BONTOC, MT. PROVINCE THAT CAN BE REACHED AFTER A GRUELLING SEVEN (7) HOUR RIDE TRAVERSING VERY ROUGH AND RUGGED ROADS.^[8]

Simply stated, the issue is whether the taking of petitioner's deposition by written interrogatories is proper under the circumstances obtaining in this case.

Petitioner asserts that the trial court should have allowed the taking of his deposition through written interrogatories since: (1) this discovery measure may be availed of by a party as a matter of right; (2) he has good reasons for invoking his

right to this discovery measure, *i.e.*, he resides in Manila which is more than four hundred (400) kilometers from Bontoc, Mt. Province and he is suffering from an illness which prohibits him from doing strenuous activities. Petitioner adds that there are serious threats to his life by private respondent's relatives.

Private respondent counters that petitioner could no longer avail of this discovery measure since the trial court has already given him sufficient time to present his evidence and yet he failed to do so. Private respondent adds that petitioner's motion was made purposely to further delay the resolution of the case as it was invoked during the late stage of the proceedings. Private respondent also avers that the medical certificate submitted to show petitioner's illness does not contain any statement that he could not travel from Manila to Mt. Province for the scheduled hearings. In fact, the medical certificate was not even notarized.

After considering the contentions and submissions of the parties, we are in agreement that the petition lacks merit.

Deposition is chiefly a mode of discovery, the primary function of which is to supplement the pleadings for the purpose of disclosing the real points of dispute between the parties and affording an adequate factual basis during the preparation for trial.^[9] It should be allowed absent any showing that taking it would prejudice any party. It is accorded a broad and liberal treatment and the liberty of a party to make discovery is well-nigh unrestricted if the matters inquired into are otherwise relevant and not privileged, and the inquiry is made in good faith and within the bounds of law. It is allowed as a departure from the accepted and usual judicial proceedings of examining witnesses in open court where their demeanor could be observed by the trial judge, consistent with the principle of promoting just, speedy and inexpensive disposition of every action and proceeding; and provided it is taken in accordance with the provisions of the Rules of Court, *i.e.*, with leave of court if summons have been served, and without such leave if an answer has been submitted; and provided further that a circumstance for its admissibility exists.^[10]

There is nothing in the Rules of Court or in jurisprudence which restricts a deposition to the sole function of being a mode of discovery before trial. Under certain conditions and for certain limited purposes, it may be taken even after trial has commenced and may be used without the deponent being actually called to the witness stand.^[11] There is no rule that limits deposition-taking only to the period of pre-trial or before it; no prohibition exists against the taking of depositions after pre-trial. There can be no valid objection to allowing them during the process of executing final and executory judgments, when the material issues of fact have become numerous or complicated.^[12]

Such being the case, there is really nothing objectionable, *per se*, with petitioner availing of this discovery measure after private respondent has rested his case and prior to petitioner's presentation of evidence. To reiterate, depositions may be taken at any time after the institution of any action, whenever necessary or convenient.

But when viewed *vis* the several postponements made by petitioner for the initial presentation of his evidence, we are of the view that his timing is, in fact, suspect. The records before us show that petitioner stopped attending the hearings after private respondent presented his first witness. Petitioner offered no excuse for his