

## SECOND DIVISION

[ G.R. No. 117385, February 11, 1999 ]

**BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. COURT OF APPEALS CITIWIDE MOTORS INC., RESPONDENTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

We are perturbed that this rather trivial issue still has to clog the dockets of the courts *a quo* and be elevated to this Court. Whether a civil case should be dismissed for supposed lack of interest to pursue it after the complainant failed to attend a conference, is a matter which should be resolved by the trial court, and should not even be brought to the Court of Appeals. But this seemingly inconsequential case has literally hibernated in the court dockets for more than fifteen (15) years now and the parties have yet to go through the pre-trial conference.

On 6 October 1983 respondent Citiwide Motors, Inc., (CMI from hereon) filed a Complaint for Nullification of Foreclosure and Auction Sale with Injunction against petitioner Bank of the Philippine Islands (BPI from hereon) before the RTC of Quezon City, Br. 97, docketed as Civil Case No. Q-39581. After almost five (5) years of resolving the issue of preliminary injunction, the trial court set the case for pre-trial on 21 June 1988.

On 11 June 1988 the entire records of the case were burned in a fire which gutted several floors of the Quezon City Hall. On 6 October 1989 respondent CMI filed a petition for reconstitution of the burned records attaching thereto pertinent documents which its counsel was able to gather. On 11 January 1990 the trial court directed both parties to examine each and every page of the annexes to the petition and to initial them before they could be considered part of the reconstituted records of the case.

On 2 February 1990 petitioner's counsel manifested that he could not comply with the order of the trial court because the attending counsel, Atty. Alberto F. Serrano, resigned from the law firm and went abroad and the substituting counsel still had to locate the records for comparison with the courts records. Thereupon, on 26 March 1992, petitioner moved to dismiss the complaint for failure of respondent CMI to reconstitute the records. On 29 April 1992 the trial court denied the motion for lack of merit and directed the parties and their counsel to attend a conference on 28 May 1992 "to discover ways and means of expediting disposition, including submission of this case for mediation."

The scheduled conference on 28 May 1992 was reset to 4 August 1992 and then to 10 September 1992. On 10 September 1992 the trial court dismissed the complaint "upon failure of (private respondent's counsel) to appear in Court x x x evidencing lack of interest to pursue this case." Petitioner's counsel then moved to reconsider

the dismissal of the case alleging that she failed to attend the conference on 10 September 1992 because she was physically indisposed due to her monthly period. On 3 December 1992 the motion was denied. On 15 December 1992 private respondent elevated the case to the Court of Appeals.

On 27 September 1994 the appellate court<sup>[1]</sup> reversed and set aside the Order of the court *a quo* and remanded the case for further proceedings. Respondent Court of Appeals held that unless a party's conduct is so negligent, irresponsible, contumacious, or dilatory as to provide substantial grounds for dismissal for non-appearance, the courts should consider lesser sanctions which would still achieve the desired end. In the absence of clear lack of merit or intent to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court.

Petitioner is now before this Court contending that the dismissal of the complaint by the trial court was in accordance with the rules, and that respondent Court of Appeals should not have disturbed the discretion of the trial court in determining what constituted an "unreasonable length of time" in the absence of patent abuse.

Not quite. The Revised Rules of Court, particularly Sec. 3, Rule 17, provides -

SEC. 3. *Failure to prosecute.* If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. The dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court.

Similarly, Sec. 3, Rule 17, 1997 Rules of Civil Procedure, states -

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 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.

The rules contemplate certain instances where the complaint may be dismissed due to the plaintiff's fault: (1) if he fails to appear during a scheduled trial, especially on the date for the presentation of his evidence in chief; (2) if he fails to prosecute his action for an unreasonable length of time; (3) if he fails to comply with the rules or any order of the court; or, (4) where the plaintiff fails to appear when so required at the pre-trial.<sup>[2]</sup> None of these is applicable to the instant case.

Here, the complaint was dismissed by the trial court after lengthy proceedings, "upon failure of the latter (counsel for private respondent) to appear in Court today, evidencing lack of interest to pursue this case." But the conference which counsel for private respondent failed to attend was not a regular trial or trial where she would be presenting her evidence. Neither was it a pre-trial conference under Rule 18 of the 1997 Rules of Civil Procedure. What counsel failed to attend was simply a