

TWENTIETH DIVISION

[CA-G.R. CEB SP NO. 07357, November 24, 2014]

**ASIAN SHIPPING CORPORATION AND NICK PEPITO,
PETITIONER, VS. THE PRESIDING JUDGE OF THE REGIONAL
TRIAL COURT OF MANDAUE CITY, CEBU, BRANCH 56, HON.
TERESITA A. GALANIDA AND HOSANNA SHIPPING
CORPORATION, AND/OR GOLDEN LINES, INC., RESPONDENTS.**

D E C I S I O N

QUIJANO-PADILLA, J.:

Before Us is a petition for *certiorari* assailing the Order^[1] dated December 16, 2010, of the Regional Trial Court, 7th Judicial Region, Branch 56, Mandaue City, declaring petitioner in default in Civil Case No. MAN-5192 for Recovery of Damages.

The Antecedent Facts

On July 11, 2005, Hosanna Shipping Corporation [Hosanna] and/or Golden Lines, Inc. filed before the RTC a complaint against Asian Shipping Corporation [Asian] the vessel M/T Stanley, Barge ASC Regine, Nick Pepito, Captain Arturo Villacampa and John Does. In said complaint, Hosanna alleged that it is the owner and operator of two [2] cargo ships M/V Golden Jaguar and M/T Golden Canada,^[2] Asian owned M/T Stanley, a motor vessel, as well as ASC Regine which was a barge towed by M/T Stanley.

M/V Golden Jaguar, M/T Golden Canada and a service boat were docked/moored at Shell Island, Pier, Cebu City. At around 3:30 o'clock in the morning on May 1, 2003, their caretaker Felix Langita [Langita] noticed M/T Stanley, towing ASC Regine full of cargoes and its very close approach and proximity with Hosanna's docked vessels. Due to the unsteady towing of M/T Stanley of ASC Regine and the close proximity thereto to the docked vessels of Hosanna, M/T Stanley rammed M/V Jaguar causing it to totally sink together with the service boat. M/V Golden Canada which was docked alongside M/V Golden Jaguar, likewise sustained damage as the steel forward ramp of Barge Regine made contact with the portside aft steel awning of the M/V Golden Canada causing its collapse including the engine funnel. Thereafter, Langita immediately filed a Marine Protest.

Attempts were made to settle the case amicably taking into consideration that the operators were both businessmen and know each other, however it was rendered futile because the parties could not arrive at a compromise. After two [2] years when Hosanna has not heard from ASC Regine, Hosanna instituted the instant action before the RTC on July 11, 2005.

On July 19, 2005, the RTC issued summons for Asian to answer, which summons was received by Asian on January 25, 2006.

In its answer filed on February 2, 2006, Asian alleged that its vessels were seaworthy in all respects, properly and diligently navigated by their crew and was in fact compliant with maritime rules for navigation particularly the prevention of collision at sea. On the contrary, it was Hosanna which miserably failed to observe the diligence required of them under the circumstance for its failure to obey the rules and regulations on mooring, maintenance and operation of vessels in general which likewise posed hazards to navigation and the public. Due to their negligence, Hosanna therefore assumed the risk of loss and in fact must be liable therefor.^[3]

On February 21, 2006, Hosanna filed its Reply/Answer to Counterclaim.^[4] Both parties filed before the RTC their respective pre-trial briefs.^[5] On April 10, 2006, Hosanna filed a Motion to Set Case for Pre-Trial Conference, asking the RTC for said hearing to be set on April 25, 2006.^[6]

The RTC in its Order dated September 27, 2006, reset the pre-trial conference on January 30, 2007 because the presiding judge was on a forfeitable leave.^[7]

On January 30, 2007, the case was referred for mediation pursuant to the Supreme Court circular. In the meantime, resetting was scheduled on May 25, 2007.^[8]

In a pleading dated May 18, 2007, Asian asked for the postponement of the scheduled May 27, 2005 hearing for the reason that the mediation among the parties was not yet completed.^[9]

In the RTC's Order dated September 26, 2007, only Hosanna's counsel appeared and upon inquiry, he revealed that Asian's counsel was not present during mediation. Upon motion, Hosanna's counsel was allowed to present its evidence ex-parte, which hearing was set on September 26, 2007.^[10]

On November 6, 2007, Asian filed its Motion for Reconsideration asserting that it did not receive the court's order which scheduled the pre-trial conference on September 26, 2007.^[11] Considering that records bear that Asian was indeed not furnished with notice of the scheduled preliminary conference on September 26, 2007, the RTC granted its motion and set the preliminary conference on May 14, 2009, as contained in the Order of the RTC dated November 10, 2008.^[12]

On May 14, 2009, in order to give the parties an opportunity to settle the case amicably, the court reset the hearing on June 16, 2009.^[13] On June 16, 2009, since the parties could not still come up with a compromise, the parties gave it one last chance to settle and reset pre-trial on January 28, 2010.^[14]

On January 18, 2010, due to the triple bypass of Hosanna's counsel of record, a motion for postponement on the January 28, 2010 pre-trial was filed.^[15] The RTC granted the motion and reset the case on August 11, 2010.^[16]

On August 11, 2010, the RTC reset the case on December 16, 2010 due to the forfeitable leave of the presiding judge.^[17]

On December 13, 2010, Asian filed a motion for postponement because its counsel had a previous commitment to attend the meeting of the National Board of Governors and Officers of the Integrated Bar of the Philippines and the Christmas party.^[18] On December 16, 2010, only counsel for Hosanna was present and when asked to comment on the motion for postponement filed by the counsel of Asian, the former vehemently tendered his objection stating that the sole reason for postponement was to attend a Christmas party which do not deserve merit. The motion for postponement of Asian was denied and it was likewise declared in default. Hosanna was able to present the testimony of their witness but due to the time constraints, it was set for continuation on May 19, 2011.^[19]

On August 26, 2011, Asian filed a Motion to Lift Order of Default^[20] stating that they had neither manifested their lack of interest to defend their position nor had they needlessly delay the proceedings. It added that the issuance of orders of default should be the exception rather than the rule, to be allowed only in clear cases of obstinate refusal by the defendant to comply with the orders of the trial court.^[21] On February 2, 2012, the RTC denied Asian's Motion to Lift Order of Default.^[22]

Subsequently, on March 13, 2012, Asian filed its Motion for Reconsideration, For Voluntary Inhibition and to Set the Case for Mediation.^[23] On December 13, 2010, he notified Hosanna's counsel of the intended postponement to which the latter tendered no objection to the resetting. So that he was surprised to have been declared in default. Considering that he had a valid cause of his non-attendance, then his non-appearance to the scheduled hearing is excused pursuant to Section 4, Rule 18^[24] of the Rules of Court. Asian subsequently filed a Supplement to the Motion for Reconsideration^[25] attaching therein the Minutes of the IBP Meeting.^[26]

In its motion to set the case for mediation, Asian averred that on January 30, 2007, the RTC directed that the instant case be referred for mediation. On March 7, 2007, both parties failed to attend the mandatory mediation. The Mediator's Report dated July 20, 2007 reflected such fact and thus it referred the case back to court. As there was no actual mediation pursuant to A.M. No. 11-1-6-SC-PHILJA, the parties have not been able to exhaust the remedy of mediation for the purpose of exploring the possibility of amicable settlement, therefore, the case should be set for mediation.^[27]

On the motion for voluntary inhibition. The following grounds as appearing on Asian's motion is hereby partially, quoted, thus:

"23. Noteworthy is plaintiff's [Hosanna] prayer in its Complaint, wherein the alleged actual damages is P6,654,032.76. The strong desire of the Honorable Judge to settle the case at P6,000,000.00 is tantamount to saying that defendants (Asian) had already been defeated. Indeed to settle at that amount is extremely unreasonable and prejudicial to the defendants as the alleged actual damages is close to Php 6,000,000.00. Hence, the Honorable Judge had already pre-judged the present case.

24. Because of the manifest strong interest of the Honorable Judge to settle the case at Php 6,000,000.00 and even COMMISSIONING the

undersigned and the defendant Nick Pepito to settle at the said amount, the impartiality of the Honorable Judge is now doubted. This undue interest of the Honorable Judge to settle the case beyond reasonable terms have rendered defendants uneasy and uncertain as to whether they shall secure an impartial and honest judgment granting that defendants were also inconsiderably declared in default for failure to appear in the continuation of the preliminary conference despite the fact the defendants moved for postponement and despite the fact that mediation has not yet [been] exhausted.

25. The Honorable Judge cannot compel upon the defendants to settle the case. Compromise Agreement is a matter left to the discretion of the parties to come up with a reasonable terms and not a matter imposed or compelled upon the parties. With all due respect, the Honorable Judge has no authority in law to commission the defendants to settle the case.
[28]

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29. While the order of default is interlocutory in nature, the Honorable Judge should have given explanation and legal basis why the motion to lift order of default was denied. The denial was given in open court only on 2 February 2012 during the continuance of the reception of plaintiff's evidence. Because of the delay in resolving the said motion and because the same was denied only in open court without clear basis under the law, defendants are incited to believe that the Honorable Judge had not diligently ascertain whether the order of default should be lifted or not and that the Honorable Judge is partial to the cause of plaintiff.”[29]

On November 16, 2012 the RTC in its Order denied the foregoing motion of Asian adding that the Court merely suggested that the case be settled at P6,000,000.00 and does not in anyway impose upon the parties the exact amount that they would agree on to eventually settle the case.[30]

Aggrieved, Asian comes to Us via petition for *certiorari* with the following assignment of errors, to wit:

“I. RESPONDENT JUDGE'S ORDERS DATED 16 DECEMBER 2010, 2 FEBRUARY 2012 AND 16 NOVEMBER 2012 RESPECTIVELY DECLARING HEREIN PETITIONERS IN DEFAULT, DENYING THE MOTION TO LIFT ORDER OF DEFAULT AND DENYING THE MOTION FOR RECONSIDERATION WERE ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION;

II. RESPONDENT JUDGE HAS PREJUDGED THE CASE AND DEMONSTRATED UNDUE INTEREST ON ITS SETTLEMENT; AND

III. THE SETTING OF THE CASE FOR PRE-TRIAL CONFERENCE IS PREMATURE CONSIDERING THAT MEDIATION PROCEEDINGS, PURSUANT TO SECTION 2A, RULE 18, 1997 RULES OF CIVIL PROCEDURE AND THE SECOND REVISED GUIDELINES FOR THE IMPLEMENTATION OF

Our Ruling

Asian asserts that the continuation of the preliminary conference was set on December 16, 2010 however, on December 14, 2010, a motion for postponement was filed by Asian's counsel, Atty. Jaime M. Vibar [Atty. Vibar] for the scheduled hearing so that he could attend the meeting of the National Board of Governors and Officers of the Integrated Bar of the Philippines [IBP] as well as the Christmas Party. He notified Hosanna's counsel, Atty. Ivan P. Herrero [Atty. Herrero] of the intended postponement on December 13, 2010 through facsimile transmittal and through the telephone on the same day and the latter did not tender any objection.

Taking into consideration that the other counsel did not object to the postponement, Atty. Vibar believed in good faith that the scheduled hearing on December 16, 2010 will be canceled and be reset to another date. Later on, he received the assailed Order dated December 16, 2010 of the RTC declaring them in default.

Atty. Vibar argues that the RTC should not have declared his client in default for the reason that he did not have in his mind any malicious and deliberate intent to delay the proceedings of the trial court. The RTC should have considered that he was still the National Executive Director of the IBP and he needs to attend the meeting because important agenda were discussed pertaining to legal aid and disciplinary actions against erring lawyers. Atty. Vibar went on to stress that he and his clients had actively participated in the proceedings of this case from its inception which is indicative of its vigorous resolve to defend the case with promptitude. Thus, in the absence of a pattern to delay the proceedings and disposition of the case, the non-appearance of the counsel in one instance should be excused.

A word of caution, the Supreme Court in the case of *Heirs of Gayares v. Pacific Overseas Shipping Corporation, et al.*^[32] has this to say on postponements “lawyers should never presume that their motions for extension or postponement will be granted or that they will be granted for the length of time they pray for.” A motion for postponement is a privilege and not a right. A movant for postponement should not assume beforehand that his motion will be granted. The grant or denial of a motion for postponement is a matter that is addressed to the sound discretion of the trial court. In deciding whether to grant or deny a motion for postponement of pre-trial, the court must take into account the following factors: (a) the reason for the postponement, and (b) the merits of the case of movant.^[33]

Following the foregoing jurisprudential barometer, We find that the motion for postponement of Atty. Vibar for the scheduled hearing on December 16, 2010 should have been granted by the RTC.

The reason for postponement of the December 16, 2010 hearing filed by Atty. Vibar was not solely grounded on the fact that he would be joining a Christmas party but primarily because he will be attending the governor's meeting which will be held on that same day as the scheduled pre-trial. As such, Minutes No. XIX-22-2010 of the Integrated Bar of the Philippines^[34] was appended by Atty. Vibar in its Supplement to the Motion for Reconsideration^[35] to show that he was at IBP Office in Pasig,