

## **SPECIAL ELEVENTH DIVISION**

**[ CA-G.R. SP No. 128909, December 11, 2014 ]**

**SPOUSES TITO AND PACITA ARBATIN, PETITIONERS, VS. HON. JOSE S. JACINTO, JR. (IN HIS CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 45, SAN JOSE, OCCIDENTAL MINDORO) AND YOLANDA VALDEZ-PANINGBATAN, RESPONDENTS.**

### **DECISION**

**PAREDES, J.:**

#### **THE CASE**

THIS PETITION<sup>[1]</sup> FOR CERTIORARI, filed under Rule 65, Revised Rules of Court by spouses Tito and Pacita Arbatin (petitioners) seeks to set aside or nullify the Order<sup>[2]</sup> dated August 22, 2012 issued by the Regional Trial Court (RTC), Branch 45, San Jose, Occidental Mindoro, in Civil Case No. R-1581, which directed petitioners to reimburse private respondent Yolanda Valdez-Paningbatan (private respondent) the total amount of P10,000.00 as and for private respondent's travel and food expenses and attorney's fees for the hearings scheduled previously and on that day, where petitioners and counsel failed to appear despite notice and without reason, and the Orders dated October 17, 2012<sup>[3]</sup> and December 14, 2012<sup>[4]</sup>, denying petitioners' first and second motions for reconsideration, respectively.

#### **THE ANTECEDENTS**

On January 22, 2009, private respondent filed a complaint<sup>[5]</sup> with the RTC for recovery of possession and damages against petitioners.

Pre-trial was held on August 27, 2010 and the initial hearing was set<sup>[6]</sup> on November 18-19, 2010. The parties agreed to make earnest efforts at a compromise thus, the initial hearing was reset<sup>[7]</sup>, by agreement of the parties, to July 26, 2011. After an unsuccessful mediation and another resetting prayed for by both parties, the initial presentation of evidence for plaintiff (now, private respondent) was set on November 24, 2011. At the scheduled hearing on November 24, 2011, by agreement of counsels, hearing was reset<sup>[8]</sup>, for the last time, to March 5, 2012. However, due to the illness of petitioners' counsel<sup>[9]</sup>, the initial hearing was again moved to March 27, 2012.

On March 27, 2012, both parties moved<sup>[10]</sup> for resetting to May 9, 2012; however, due to the failure of defendants' counsel (now, petitioners) to appear, hearing was

reset<sup>[11]</sup> to June 7, 2012.

On June 7, 2012, the court *a quo* reset<sup>[12]</sup>, for the last time, the presentation of private respondent's evidence, to August 22, 2012.

On August 22, 2012, after noting the absence of petitioners, the RTC issued the first assailed Order<sup>[13]</sup>, which reads:

WHEREFORE, upon inquiry from the plaintiff her total expenses going all the way from Isabela to San Jose she spent the amount of Three Thousand Pesos (P3,000.00) including food expenses one way, thus, for back and forth travel, she will be spending the total amount of Six Thousand Pesos (P6,000.00) while the attorney's fee shall be in the amount of One Thousand Pesos (P1,000.00). Thus, the Court hereby ORDERS the defendants to reimburse the plaintiff the total amount of Seven Thousand Pesos (P7,000.00) for the latter's expenses today, plus the previous unpaid reimbursement in the reduced amount of Three Thousand Pesos (P3,000.00) in the total amount of TEN THOUSAND PESOS (P10,000.00) payable on or before the next setting.

The defendants are directed to pay the said amount in the next scheduled hearing without fail.

The defendants' counsel, is warned to exercise caution as Officer of the Court that he should file his corresponding pleadings to the Court if he will not be available on any date as scheduled. A repetition of his uninformed absence, the Court shall allow the presentation of the plaintiff's evidence.

Reset the hearing of this case for the presentation of the plaintiff's evidence on October 26, 2012 at 8:30 o'clock in the morning.

Notify anew both the defendants and counsel.

Plaintiff and counsel are notified in open Court.

**SO ORDERED.**

Petitioners' motion to reset the August 22, 2012 hearing, which was filed on August 8, 2012, was resolved by the RTC in its Order<sup>[14]</sup> dated August 30, 2012 stating that the said motion has become moot and academic as the hearing was already reset before the court received the subject motion.

Petitioners filed a motion for reconsideration<sup>[15]</sup> of the first assailed Order dated August 22, 2012 which was denied by the RTC in its second assailed Order<sup>[16]</sup> dated October 17, 2012.

Petitioners filed a second motion for reconsideration<sup>[17]</sup> of the first assailed Order,

which was also denied by the RTC in its third assailed Order<sup>[18]</sup> dated December 14, 2012; hence, this petition.

### **THE ISSUES**

Petitioners raise the following grounds for allowance of this petition:

A. THE HONORABLE PUBLIC RESPONDENT JUDGE, IN ORDERING THE REIMBURSEMENT OF PRIVATE RESPONDENT'S TRAVEL AND FOOD EXPENSES, INCLUDING ATTORNEY'S FEES, MADE A PREMATURE RULING ON THE MERITS OF THE CASE AND CONSEQUENTLY DEPRIVED PETITIONERS OF THEIR DUE PROCESS RIGHTS; AND

B. THE HONORABLE PUBLIC RESPONDENT JUDGE ORDERED THE REIMBURSEMENT OF PRIVATE RESPONDENT'S TRAVEL AND FOOD EXPENSES WITHOUT LEGAL AND FACTUAL BASIS.

In fine, the main issue presented for our consideration is whether or not public respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Orders.

### **THE COURT'S RULING**

#### ***The petition is without merit.***

Petitioners claim that the arbitrary acts of the RTC resulted in the denial of their right to due process as the court *a quo*'s directive for the reimbursement of travel expenses and attorney's fees was a premature ruling on the merits of the case, this being made being without legal and factual basis, thus depriving petitioners of their right to due process.

Petitioners argue that their absence at the August 22, 2012 hearing was justified as petitioners' counsel filed a motion to reset on August 8, 2012 on the ground of conflict of schedule as he was committed to appear before the RTC of Tacloban City and Catbalogan, Samar on August 20-23, 2012.

#### ***We are not persuaded.***

In a special action for *certiorari*, the burden is on petitioners to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent. Grave abuse of discretion means a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law<sup>[19]</sup>.