Supreme Court E-Library

per centum of his average weekly wage which in this case was ₱55.38 equals ₱33.22 and for 104-2/7 weeks, he is entitled to receive the amount of ₱3,464.32, as compensation benefit and to pay the claimant a weekly compensation of ₱33.22 from March 22, 1973 up to the time his physical incapacity for labor ceases but not to exceed the period of 208 weeks from March 20, 1971 and the compensation benefit not to exceed the maximum compensation of ₱6,000.00 as provided in the Act."[6]

The foregoing computation is correct.

WHEREFORE, the decision of the Workmen's Compensation Commission sought to be reviewed is hereby set aside and the decision of the Chief, Workmen's Compensation Section at Baguio City dated March 22, 1973 is reinstated, the same having become final and executory.

SO ORDERED.

Teehankee (Chairman), Makasiar, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-48315. February 27, 1979]

ATTY. DOMINADOR B. BORJE, *petitioner*, *vs.* **HON. COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL, BRANCH II, VIOLETA GALICINAO; MISAMIS OCCIDENTAL WATER DISTRICT, and THE CHAIRMAN OF THE BOARD**, *respondents*.

---

[6] *Rollo* pp. 17-18.

Supreme Court E-Library

SYLLABUS

1. **REMDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; COMMITTED IN CASE OF DISMISSAL OF ACTION ON GROUND NOT ALLEGED IN MOTION TO DISMISS.** — It is a grave abuse of discretion if not in excess of jurisdiction for a court to dismiss an action on grounds not alleged in the motion to dismiss. Such dismissal is improper for in so doing, a court in effect dismisses an action *motu proprio* without giving the plaintiff a chance to argue the point and without receiving any arguments or evidence on the question. Section 1, Rule 16 of the Rules of Court enumerates the grounds upon which an action may be dismissed and specifically ordains that the motion to this and be filed. In the light of this express requirement the court has no power to dismiss the case without the requisites motion duly presented, hence, dismissal at its own initiative constitutes a grave abuse of its discretion if not in excess of jurisdiction.

3. **ID.; CIVIL PROCEDURE; DISMISSAL UPON COURT'S OWN MOTION; WHEN PROPER.** — The only instance in which, according to said Rules, the Court may dismiss upon the court's own motion an action is, when the "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 the Rules or any order of the court."

4. **ID.; ACTIONS; DISMISSAL OF CASE WITHOUT HEARING, DESPITE EXISTENCE OF CONTROVERTED FACTS, VIOLATIVE OF DUE PROCESS.** — Where the respective allegations of the parties requires presentation of proof, it would be violative of due process for the trial court to make a summary finding, from the controverted facts, of lack of malice or bad faith on the part of defendants and then decree the dismissal of the case. When doubtful question of facts exists, the trial court in the exercise of sound discretion should refuse to consider and decide the case in a summary manner, but should allow the parties to present proof in support of their respective stand. This is because the right to a hearing, which is the right of the parties interested or affected to present their respective cases and submit evidence in support thereof, is one of the primary cardinal rights of litigants. The dismissal of an action

Supreme Court E-Library

upon a motion to dismiss constitutes a denial of due process, if, from a consideration of the pleadings, it appears that there are issues of fact which cannot be decided without a trial of the case on the merits. Summary or outright dismissals of actions are not proper where there are factual matters in dispute which need presentation and appreciation of evidence. The demands of a fair, impartial and wise administration of justice call for a faithful adherence to legal precepts on procedure which ensure to litigants the opportunity to present their evidence and secure a ruling on all the issues presented in their respective pleadings. "Shorts cuts" in judicial processes are to be avoided where they impede rather than promote a judicious dispensation of justice.

APPEARANCES OF COUNSEL

Dominador B. Borje in his own behalf.

D E C I S I O N

GUERRERO, *J.*:

The cause for *certiorari* and/or *mandamus* brought to the attention of this Court in this case is the alleged grave abuse of discretion amounting to lack of jurisdiction of respondent Court of First Instance of Misamis Occidental, Branch II, for dismissing the complaint for damages of petitioner in Civil Case No. OZ 686, entitled "*Atty. Dominador B. Borje vs. Violeta Galicinao, et al.*" without conducting any hearing despite the existence of controverted facts that needed to be proved.

Petitioner alleged that he is the counsel of the water consuming public of Ozamiz City who were indignant against the increase of water rates imposed by respondent Misamis Occidental Water District and who thereby resorted to court action for redress and/or remedy. After acceptance of the retainer as counsel plus the consequent representation of the consumers also in debates and discussions in the air, he allegedly received water

Supreme Court E-Library

bills from the Water District without indication of the meter readings, the number of cubic meters consumed and the amounts to be paid. So he refused to pay the "blank bills." For such failure, petitioner's water service was cut on February 6, 1978.

By reason of these acts of "harassment" of private respondents resulting in his "humiliation" as well as unlawful deprivation of a life's necessity, petitioner brought Special Civil Case No. OZ 686, an action for damages with preliminary mandatory injunction, before respondent Court.

Acting on the prayer incorporated therein for preliminary mandatory injunction, respondent Court issued an order dated February 8, 1978 enjoining respondents from disconnecting the water service of petitioner. Upon learning that the same was already cut, the Court issued another order dated February 9, 1978 requiring private respondents to reconnect it immediately.

On February 15, 1978, private respondents filed a motion to dismiss the complaint on two grounds, namely: (a) lack of jurisdiction of respondent Court allegedly because the "main thrust of the subject and nature of the action or suit appearing in the complaint is clearly within the field of special civil action or suit action or special proceeding"[1] and (b) there is another action pending between the same parties for the same cause, referring to Special Civil Case No. 0390.

On February 27, 1978, petitioner filed an opposition thereto stating that the issues raised are justiciable and a court of general jurisdiction has the authority to try the case. He further contended that Special Civil Case No. 0390, which questioned the increased water rates unilaterally imposed by the Misamis Occidental Water District, the constitutionality of Presidential Decree No. 198 and the selection of the members of the Board of Directors, is entirely different from Civil Case No. OZ-686, which is an action for damages due to the harassment committed by private respondents on petitioner.

---

[1] Annex "B", Petition, p. 15, *Rollo*.

Supreme Court E-Library

Surprisingly though, respondent Court, through Hon. Melecio A. Genato, a temporary judge assigned thereat, issued an order dated March 9, 1978 dismissing the case not on the basis of the grounds alleged by private respondents in their motion to dismiss but on the grounds that there was no malice or bad faith in the severance of the water connection of petitioner and that private respondent had already reconnected the same. The dispositive portion thereof states:

"WHEREFORE, the above entitled case is hereby dismissed for being moot and academic without pronouncement as to costs.

SO ORDERED."[2]

A motion for reconsideration was thus filed by petitioner where he assailed the said order of dismissal for having been rendered in violation of Section 1, Rule 36, Revised Rules of Court and for not being correct because although his water service has been reconnected, he has suffered damages which could be proved by him in an impartial proceeding. He also assailed the said order, denominating it as a "midnight order" because on March 9, 1978, "the Clerk of Court officially showed Hon. Melecio A. Genato the telegram of Hon. Bienvenido A. Ebarle to schedule trials from March 10, 1978 to March 17, 1978 indicating that he has already and previously taken his oath."[3]

An opposition thereto was filed by private respondents disputing only the claim of petitioner that the order dated March 9, 1978 was a midnight order. Petitioner filed a "rejoinder" reiterating that the order of dismissal is a midnight order citing the cases of *Siazon vs. Hon. Judge of CFI of Cotabato, Branch II*, L-29354, January 27, 1969, 26 SCRA 664 and *Li Siu Liat vs. Republic of the Philippines*, L-25356, November 25, 1967, 21 SCRA 1039. By reason of the number of arguments

---

[2] Annex "D", Petition, p. 20, *Rollo*.

[3] Annex "E", Petition, p. 21, *Rollo*.

Supreme Court E-Library

on the issue of whether the order dated March 9, 1978 is a midnight order or not, the respondent Court, through Hon. Bienvenido A. Ebarle, considered the motion for reconsideration as mainly anchored on the lack of authority of Judge Genato. In denying the said motion, the Court held in an order dated April 18, 1978, as follows:

"While it may be true that Judge Genato might not have the authority anymore to issue the said order in view of the pertinent citations made by plaintiff, the more important thing to consider is the intrinsic merit of the complaint in relation to the order of dismissal. The Court has gone over the pleadings of both parties, closely studied the issues involved, and weighed the preponderance of their implication carefully.

"The cause of action as admitted by plaintiff is the alleged arbitrary disconnection by defendants of plaintiff's water pipes. However, it appears that plaintiff was not singled out in the matter of water pipes disconnection, for aside from him, there were three other consumers whose connections were ordered cut and in fact disconnected about the same time and/or occasion, an official act of defendants indicating absence of malice."[4]

In assailing the order of dismissal dated March 9, 1978 which was affirmed in the order dated April 18, 1978, petitioner contends in this instant petition for *certiorari* and/or mandamus with this Court that said dismissal cannot be on lack of cause of action because the complaint alleged sufficient facts to show that his rights have been seriously violated by private respondents. He also argues that it cannot be a judgment on the pleadings because the facts are controverted. He thereby concludes that respondent Court has gravely abused its discretion amounting to lack or excess of jurisdiction when it dismissed the case without any evidence presented by both parties in support of their respective positions considering that the allegations of the pleadings controvert each other. He likewise contends that he has no appeal nor any plain, speedy and adequate remedy in the ordinary course of law, except this present petition.

---

[4] Annex "H", Petition, pp. 27-28, *Rollo*.

Supreme Court E-Library

Indeed, respondent Court acted with grave abuse of discretion if not in excess of its jurisdiction in dismissing the case. Firstly, the said order of dismissal dated March 9, 1978 is not premised on lack of jurisdiction or on the pendency of another case between the same parties for the same cause — the grounds alleged by private respondents in their motion to dismiss. On this score, it has been held in the case of *Malig, et al. vs. Bush*,[5] that dismissal of actions on grounds not alleged in the motion to dismiss is improper for in so doing, a court in effect dismisses an action *motu proprio* without giving the plaintiffs a chance to argue the point and without receiving any arguments or evidence on the question.

But while in the aforecited *Malig* case, the order of dismissal is based on one of the grounds enumerated in Section 1 of Rule 16, Revised Rules of Court, namely: prescription, the order herein brought to Us for review is not based on any of them. In a rather summary fashion, respondent Court made a finding on the basis merely of the pleadings filed and without conducting any hearing, that there is no malice or bad faith on the part of private respondents in their act of severing petitioner's water supply. Respondent court also noted the fact that private respondents had reconnected the water pipes or water service of petitioner and erroneously concluded that the case has become moot and academic.

To all intents and purposes, respondent Court decreed the dismissal on its own initiative as in the case of *Manila Herald Publishing Co., Inc. vs. Ramos, et al.*[6] where neither a motion to dismiss nor an answer had been made when the decision was handed down. In granting the writ of *certiorari*, this Court ruled therein that: "Section 1 of Rule 8 (now Section 1 of Rule 16) enumerates the grounds upon which an action may be dismissed, and it specifically ordains that a motion to this end be filed. In the light of this express requirement we do not believe that the court had power to dismiss the case without

---

[5] G.R. No. L-22761, May 31, 1969, 28 SCRA 449.

[6] 88 Phil. 94.

Supreme Court E-Library

the requisite motion duly presented. x x x The only instance in which, according to said Rules, the court may dismiss upon the court's own motion an action is, when the "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 the Rules or any order of the court.'"

The real cause for concern, though, is not so much the dismissal of the case for lack of presentation of the requisite motion but rather the dismissal thereof without affording petitioner an opportunity to be heard despite the presence of factual issues that needed to be proved.

In the case at bar, respondents premised their right to cut off the water service connection on the violation of petitioner's water service contract[7] which is the contract signed by petitioner with the National Waterworks and Sewerage Authority on September 16, 1958 to which private respondent Misamis Occidental Water District claims it has been subrogated. The said contract provides the following:

"3. To pay monthly the NWSA for the water service furnished upon presentation of the bill or within thirty (30) days from its presentation."

"6. That the NWSA may disconnect the service upon violation of the term of the contract."

In addition to the said contract, private respondents also presented their "Notice to the Public"[8] where the water consumers were likewise informed that upon failure to settle their bills within the connection period, their water service will be shut off. Thirdly, they annexed to their comment on this petition a facsimile copy of the monthly bill[9] furnished each water consumer wherein it is stated that "service may be disconnected immediately if payment of the bill is not made to the field collector after due date."

---

[7] Annex "4-a", Respondents' Comment, p. 57, *Rollo*.

[8] Annex "4-k", Respondents' Comment, p. 67, *Rollo*.

[9] Annex "4-l", Respondents' Comment, p. 69, *Rollo*.

Supreme Court E-Library

Indeed, all these empower the private respondents to disconnect the water service of the consumers upon failure to pay. But the question posed by petitioner is whether or not there is really failure to pay on his part. It is his contention that there is no failure as he was sent water bills that did not indicate the meter readings, the number of cubic meters consumed and the amount to be paid.

Inasmuch as private respondents deny these allegations of petitioner, an issue of fact exists that requires presentation of proof. If the allegations of petitioner are true, private respondents are not at all authorized to cut off his water service as the collection period as to him would not have even started yet. For an obligation to become due, there must be a demand.[10] Default generally begins from the moment the creditor demands the performance of the obligation. Without such demand, judicial or extra-judicial, the effects of default will not arise.

It is to be noted that private respondents attached to their comment on this petition only a facsimile copy of the water bill issued to consumers while they presented to this Court a xerox copy of the contract between NWSA and the petitioner, and a xerox copy of the final notice, not just facsimiles thereof. Although the issue of the effectivity of the denial of private respondents as to the alleged sending of blank bills is not for this Court to determine, it would not be amiss to state that private respondents could have easily annexed also a xerox copy of the water bill sent to petitioner, if only to belie the latter's claims.

At any rate, private respondents also argue that petitioner could have paid his account when the final notice[11] to pay was sent to him since he was then already certain of the amount of the bill. This final notice is the notice of disconnection, served on the day the service was cut off.

---

[10] Art. 1169, New Civil Code.

[11] Annex "4-N", Respondents' Comment, p. 72, *Rollo*.

Supreme Court E-Library

Petitioner, however, contends that this was the first time he ever came to know of the sum due from him and besides, he claims that only the total amount due for the months of November and December, 1977 was stated. There is no specification of the amount due for each month, the meter readings and the number of cubic meters consumed, thus, leaving him uncertain as to how the amount was arrived at. Assuming the truth of these allegations, private respondents would not have been entitled still to cut off petitioner's water supply at the time they cut it off as the demand did not contain the requisite details and hence, improper. And even if the sufficiency of the demand is conceded, petitioner has still thirty days from date of such knowledge within which to pay the same in accordance with the contract and the avowed policy of the water district.

Verily, the above discussion shows the need of presentation of proof for the respective allegations of the parties. For the respondent Court to make a summary finding of lack of malice or bad faith on the part of private respondents from those controverted facts and then decree the dismissal of the case is, therefore, violative of due process. In view of the doubtful question of facts presented herein, respondent court, in the exercise of sound discretion, should have refused to consider and decide in a summary manner and should have allowed the parties to present proof in support of their respective stand. This is because the right to a hearing, which is the right of the parties interested or affected to present their respective cases and submit evidence in support thereof, is one of the primary cardinal rights of litigants.

The importance of this right has been underscored in several cases of this nature decided by this Court. In one of such cases, *De Leon vs. Henson*,[12] this Court ruled that the dismissal of an action upon a motion to dismiss constitutes a denial of due process, if, from a consideration of the pleadings, it appears that there are issues of fact which cannot be decided without a trial of the case on the merits. Similarly, in *Constantino vs.*

---

[12] L-11639, April 29, 1961, 1 SCRA 1171.

Supreme Court E-Library

Estenzo,[13] citing *Garanciang, et al. vs. Garanciang, et al.*[14] and *Boñaga vs. Soler*,[15] this Court held as follows:

"x x x Summary or outright dismissals of actions are not proper where there are factual matters in dispute which need presentation and appreciation of evidence. The demands of a fair, impartial and wise administration of justice call for faithful adherence to legal precepts on procedure which ensure to litigants the opportunity to present their evidence and secure a ruling on all the issues presented in their respective pleadings. 'Short cuts' in judicial processes are to be avoided where they impede rather than promote a judicious dispensation of justice."

WHEREFORE, the petition for *certiorari* and/or *mandamus* is hereby GRANTED, the Orders dated March 9, 1978 and April 18, 1978 dismissing the complaint of petitioner for damages and denying the motion for reconsideration thereof, respectively, are set aside for being null and void, and respondent Court of First Instance of Misamis Occidental, Branch II is hereby ordered to try the case on the merits after conducting a pre-trial conference.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, De Castro, and *Melencio-Herrera, JJ.*, concur.

---

[13] L-40403, July 31, 1975, 65 SCRA 675.

[14] L-22351, May 21, 1969, 28 SCRA 229.

[15] L-15717, June 30, 1961, 2 SCRA 755.