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FIRST DIVISION

[G.R. No. L-49472. March 30, 1979]

CITY OF OLONGAPO, *petitioner, vs.* **COURT OF APPEALS AND OLONGAPO ICE & COLD STORAGE, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; DISMISSAL; NON-SUIT NOT PRESENT WHEN THE DELAY WAS CAUSED BY ARRANGEMENTS BETWEEN PARTIES LOOKING TO A SETTLEMENT** . — An action should not be dismissed on a non-suit, granted for want of prosecution, when the delay was caused by arrangements between parties looking to a settlement.

2. **ID.; ID.; DELAY IN THE PROSECUTION, NOT A CASE OF.** — The fact that plaintiff requested permission to take the deposition upon written interrogatories of its witnesses who were abroad, instead of merely asking for an indefinite postponement of the hearing until such time as its witnesses could have returned to the Philippines, showed its intention not to delay the termination of the case.

3. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; COMMITTED IN CASE OF DISMISSAL OF ACTION WHEN THERE IS AN ATTEMPT FOR AMICABLE SETTLEMENT.** — Where it appears that the case at bar has remained in the calendar for almost fifteen years in view of the agreement of the parties to await the outcome of a related case, and it appears furthermore that after the related case was decided, the scheduled hearings were cancelled in view of the attempts of the parties to arrive at an amicable settlement, it is a grave abuse of discretion for the trial court to dismiss the case for failure to prosecute.

APPEARANCES OF COUNSEL

Nestor F. Dantes, City Legal Officer for petitioner.
Rosendo J. Tansinsin for private respondents.

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DECISION

MELENCIO HERRERA, *J.*:

The City of Olongapo (petitioner herein), since its turnover by the United States Government to the Philippine Government on December 7, 1959, has been operating an electric plant and/or supplying electricity to its residents. Olongapo Ice & Cold Storage, Inc. (private respondent in this case), on the other hand, is engaged in the business of manufacturing and selling ice to the public and one of those being supplied electricity by the City.

This Petition for *Certiorari*, Prohibition and *Mandamus* originated from a Complaint filed in Civil Case No. 2547 before the Court of First Instance of Zambales in 1962 by private respondent, questioning the validity of the rates being charged by the City. Because the trial Court dismissed the Complaint on February 9, 1978, private respondent appealed to the Court of Appeals. While the appeal was pending, that appellate Court, upon private respondent's Motion, issued a Writ of Preliminary Injunction enjoining the City from stopping electric power service to private respondent. Contending that the Court of Appeals is not acting in aid of its appellate jurisdiction and, therefore, cannot issue a Writ of Preliminary Injunction, the City filed this Petition seeking the nullification of all proceedings before respondent Court.

Proceedings in the trial court

On December 3, 1962, private respondent filed a Complaint against the City with the Court of First Instance of Zambales, docketed as Civil Case No. 2547, alleging that for its supply of electric fluid since it began operation in May, 1962, the City, which is operating an electric plant without a certificate of public convenience or franchise, had been demanding payment on the basis of the residential rate, instead of on the industrial rate; that it offered to pay its electric consumption on the basis of the industrial rate and not on the residential rate, but the City unjustifiably refused to accept the same advising it that it

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(the City) would further study the matter of whether payment should be based on the residential or industrial rate; that sometime in November, 1962, the City again demanded payment of its electric consumption on the basis of the residential rate, which it refused to pay on the ground that the residential rate is exhorbitant and insisted on payment on the basis of the industrial rate, as it is the rate applicable to it under the law and prevailing rules and regulations of the Public Service Commission; that it was agreed that before any further action or step would be taken by the city on its demand for payment, it (private respondent) would be duly notified by the City; that on November 28, 1962, at about 8:00 o'clock in the morning, without any warning or notice, the City arbitrarily cut off its electrical connection resulting in the cessation of its operation and consequent damage to it in the amount of ₱100.00 a day, which is the value of its actual daily sale of ice; that, if charged on the basis of the industrial rate, it would be liable only for its electric consumption since May, 1962, in the amount of not more than ₱6,000.00, as compared with the exhorbitant demand of ₱15,000.00, based on the residential rate; and that unless a writ of preliminary mandatory injunction is issued requiring the City to reconnect its electric service and enjoining it, its agents, representatives or employees from thereafter disconnecting its electric service thereby causing it serious and irreparable damage. It then prayed for the issuance of a writ of preliminary mandatory injunction pending trial of the case, and after due hearing, that it be declared liable for its electric consumption based on the industrial rate; that the City be ordered to pay it the amount of ₱100.00 a day from November 28, 1962 until the reconnection of its electric service, the amount of ₱2,000.00 as attorney's fees, and costs of the suit.

On December 6, 1962, the trial Court issued an Order directing the City to reconnect private respondent's electric service pending the termination of the litigation, upon the latter's filing of a bond in the amount of ₱15,000.00 to answer for whatever damages the City might suffer by reason of the issuance of the writ of preliminary mandatory injunction.

Answering the Complaint, the City averred that it has been operating its electric plant since 1946 and is not required to

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secure a certificate of public convenience, pursuant to Sect. 13(a) of Commonwealth Act No. 146, as amended by Republic Act No. 2677; that its demand upon private respondent for the payment of its electric fluid consumption is lawful, just and reasonable on the basis of Ordinance No. 4, S.1960, a valid and subsisting municipal ordinance, known to private respondent and under which it obligated itself to pay its electric bills "promptly not later than the 5th of each month"; that private respondent never offered to pay its electric consumption so that there was no reason for it to study the matter of whether to insist on, or agree to, certain rates and to notify private respondent of its decision; that its act of disconnecting private respondent's electric service on November 28, 1962 was lawful and just by reason of its refusal to make any payment of its electric fluid consumption; that private respondent is not entitled to recover damages and has no right to a continued supply of electric fluid unless the same is promptly and duly paid for; and that the Court has no jurisdiction to determine, fix or classify the rates or charges on electric consumption with respect to public services. As counterclaim, the City contends that private respondent's electric fluid consumption from May, 1962 up to date of demand on November 22, 1962 amounts to ₱14,924.42, of which the sum of ₱6,000.00 was paid by private respondent on December 6, 1962, thereby leaving a balance of ₱8,924.42 still unpaid; that as a consequence of private respondent's unlawful acts, it suffered damages in the amount of no less than ₱5,000.00 and that it is entitled to nominal damages in the amount of no less than ₱2,000.00 by reason of private respondent's violation of its contractual obligation. It then prayed for the dismissal of the Complaint and the payment of its counterclaim.

On December 11, 1964, the City and private respondent entered into a Tentative Agreement as to Schedule of Rates, which reads as follows:

"COME NOW the parties, assisted by their respective counsel and to this Honorable Court respectfully state and manifest that they have agreed that the defendant should charge the plaintiff for its monthly electric consumption in the following manners:

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1. For the first 100 kilowatt hours at the rate of ₱0.15 per kilowatt hour;

2. For the next 100 kilowatt hours at the rate of ₱0.10 per kilowatt hour;

3. All over the above figures at the rate of ₱0.05 per kilowatt hour.

That this agreement is tentative and effective only during the pendency of this case, and without prejudice as to the final result that may be reached by this Honorable Court or the appellate court."[1]

In an Order dated December 11, 1964, the trial Court approved the above Agreement of the parties and enjoined them to comply strictly with the same pending final determination of the case.

On November 29, 1968, the trial Court issued an Order dismissing the case on the ground that the same had been pending since December 3, 1962, without the parties having taken any step to have it terminated.

A Motion for Reconsideration was filed by private respondent claiming that the reason why the case was never set for hearing was because the Court ordered its postponement pending the outcome of Civil Case No. 9-0, a related case, which was decided on November 27, 1968 and subject of an appeal; that the parties have entered into some stipulations which should be decided by the Court; that it has a just and valid cause of action against the City; and that it is very much interested in a judicial determination of the rates that should be charged for its electric consumption.

In an Order dated January 18, 1969, the trial Court held in abeyance consideration of the Motion for Reconsideration until entry of judgment in Civil Case No. 9-0.

On August 12, 1977, the City filed a Motion for the setting of the case for hearing as the decision in Civil Case No. 9-0, which was affirmed by the Court of Appeals, had already become final.

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[1] p. 24, Record on Appeal.

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In an Order dated August 15, 1977, the trial Court set the case for hearing on September 15, 1977.

On February 9, 1978, the trial Court issued the following Order:

"When this case was called for continuation of hearing, Atty. Braulio Tansinsin asked that the plaintiff be allowed to send written interrogatories to witnesses Ruben Valero and an expert engineer whom plaintiff will present in connection with this case. Said motion was vigorously opposed by the defendant represented by City Legal Officer Atty. Nestor F. Dantes who instead moved for the dismissal of the above-entitled case.

"It is the observation of this Court that the above-entitled case was filed on December 3, 1962 even before Olongapo became a city and as early as December 11, 1964, the then Presiding Judge Lucas Lacson who has since retired issued an Order allowing a tentative agreement of the scheduled rates which has been agreed by the parties. The agreed rates had become unrealistic upon the lapse of time and on November 29, 1968 this Court dismissed the case for lack of interest on the part of the plaintiff. The dismissal of the case did not become final and for more than ten years, no steps has been taken by the parties to have this case terminated. It is the suspicion of the Court that the continued delay of the disposition of the case work to the plaintiff's advantage as the old rates had become impractical and unrealistic by soaring prices and the oil crisis as plaintiff apparently has no intention of terminating the proceedings.

"*WHEREFORE*, upon motion of defendant City of Olongapo, represented by City Legal Officer Nestor F. Dantes, the motion for reconsideration is hereby denied, and let this case be DISMISSED with prejudice and without special pronouncement as to costs.

"SO ORDERED."

A Motion for Reconsideration thereof was filed by private respondent on the ground that said Order has no legal and factual basis for the following reasons: (1) the case has not yet been set for pre-trial and unless a pre-trial order terminating the pre-trial has been issued, the Court may not dismiss the case on the suspicion that it has no intention of terminating the proceedings; (2) that Ruben Valero, its President and one of its two principal witnesses, is presently ill in the United States

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and that its other witness, an engineer, has likewise gone to the United States, so that the proceedings could have continued by means of deposition upon written interrogatories; (3) that on October 29, 1976, the parties entered into a second Tentative Agreement as to Schedule of Rates during the pendency of the case and without prejudice to its final outcome, by virtue of which it was charged by petitioner for its electric consumption at the rate of ₱0.20 per kilowatt hour for the first 100 kilowatt hours and ₱0.15 per kilowatt hour for the next kilowatt hours, which thus attempted to make the rates as realistic as possible; and (4) that the parties are trying to arrive at an amicable settlement of the case.

An Opposition thereto was filed by the City alleging that after it had asked that the case be set for hearing, private respondent failed to take any action to proceed with the case; that private respondent has not filed any motion or manifestation of its intention to resort to the taking of deposition or sending of written interrogatories; and that private respondent's Motion for Reconsideration was not accompanied by affidavit of merits nor was it under oath.

On March 21, 1978, the trial Court issued an Order denying the Motion for Reconsideration of the Order dated February 9, 1978 dismissing the case because of the lack of initiative on the part of private respondent to terminate the same.

Proceedings in the Court of Appeals

Thereafter, private respondent appealed to the Court of Appeals, docketed as CA-G.R. No. 64200-R.

On November 17, 1978, private respondent filed with the Court of Appeals an Urgent Motion/Petition for Issuance of a Writ of Preliminary Injunction enjoining the City to desist from stopping electric power service to it, alleging that during the pendency of the appeal, or on October 26, 1978, petitioner sent it a letter demanding payment of its electric consumption in the total amount of ₱1,123,650.92, within fifteen days from receipt, otherwise, its electric service would be disconnected; that its Motion before the lower Court for an Order restraining the

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City from disconnecting its electric service pending appeal was denied by said Court in an Order dated November 9, 1978 for lack of jurisdiction as a result of the perfection of the appeal; and that while Republic Act No. 4645 or the Charter of Olongapo City expressly commends that rates charged for the use of power by its customers be in accordance with the law and prescribed rules and regulations of the Public Service Commission, the City Council abused its prerogative and passed Ordinance No. 57 (Series of 1977) without regard to the law and rules and regulations of the Public Service Commission by (1) not providing for industrial rates for industries in the city but only for residential, commercial and government rates; and (2) that the commercial rates imposed by Ordinance No. 57 is almost one hundred fifty (150%) percent higher than the rates prescribed by the National Power Corporation.

In a Resolution, dated November 21, 1978, the Court of Appeals required the City to comment on private respondent's Motion.

On November 22, 1978, private respondent filed an *ex-parte* Motion for a Restraining Order pending submission of petitioner's Comment.

In a Resolution dated November 23, 1978, the Court of Appeals granted the issuance of a Writ of Preliminary Injunction, pending the submission of the City's Comment, upon private respondent's filing of a bond of ₱1,000.00. The Writ of Preliminary Injunction was issued on November 24, 1978, enjoining the City and any person acting in its behalf to refrain or desist from stopping electric power service to private respondent.

On November 29, 1978, private respondent filed an *Ex-Parte* Very Urgent Motion (1) To Declare Petitioner's Officials in Contempt of Court and To Order Their Arrest, and (2) To Order Zambales P.C. Command To Enforce/Implement Writ of Preliminary Injunction alleging that the City officials are defying the Writ of Preliminary Injunction officially received by them on November 27, 1978.

In a Resolution dated November 29, 1978, the Court of Appeals (1) required the City to comment on the Motion to declare its

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officials in contempt of Court and to order their arrest within ten days from receipt thereof, and (2) ordered the Zambales P.C. Commander or any of his authorized subordinates to cause the immediate enforcement and/or implementation of the Writ of Preliminary Injunction.

On December 5, 1978, private respondent filed another *Ex-Parte* Very Urgent Motion (1) To Declare Petitioner's Officials in Contempt of Court and To Order Their Detention and (2) To Order Zambales P.C. Command to Re-enforce/Re-implement Writ of Preliminary Injunction alleging that on November 29, 1978, the Zambales P.C. Command caused the implementation of the Writ of Preliminary Injunction alleging that on November 29, 1978, the Zambales P.C. Command caused the implementation of the writ of Preliminary Injunction by advising it (private respondent) to secure the services of a licensed electrician, in view of the refusal of petitioner's officials to implement said Writ, to connect the transmission lines to the power transformer and it was only then that electric power flowed again; but that on December 4, 1978, at 4:00 o'clock in the afternoon, the crew of petitioner's Public Utilities Department disconnected from the street post fronting the premises the transmission lines serving the power transformers.

In a Resolution dated December 6, 1978, the Court of Appeals (1) ordered the Provincial Commander of Zambales to cause the immediate re-enforcement/re-implementation of the Writ of Preliminary Injunction and to make a report on the action taken thereon within ten days from notice; and (2) required petitioner's officials to explain, within ten days from notice, why they should not be held in contempt of Court.

On December 6, 1978, the City filed its "Compliance and Comments" contending that the Court of Appeals has no appellate jurisdiction to review the Orders of the trial Court on the ground that no factual issue is being raised in the appeal as no evidence, documentary or testimonial, was adduced by either party in the trial Court, but only a question of law, *i.e.*, whether the trial Court abused its discretion in dismissing the Complaint and in refusing to set aside the order of dismissal; that the

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appeal should have been certified by the Court of Appeals to the Supreme Court, conformably with Section 31 of the Judiciary Act and Section 3, Rule 50 of the Rules of Court; that for want of appellate jurisdiction over the appeal, the Court of Appeals cannot issue the auxiliary Writ of Preliminary Injunction as its jurisdiction to issue such Writs is only in aid of its appellate jurisdiction; that the Writ of Preliminary Injunction issued by the Court of Appeals on November 24, 1978 is null and void for want of jurisdiction over the appeal and, therefore, the City's officials cannot be declared in contempt for defying said Writ; and that the Writ of Preliminary Injunction issued on November 24, 1978 was received by it only on December 1, 1978, on which date the act sought to be restrained, *i.e.*, stopping electric power service to private respondent, had already been done, as the power connection to private respondent was cut-off at 2:00 o'clock in the afternoon of November 23, 1978 for failure of the latter to comply with its letter of demand dated October 26, 1978.

On December 8, 1978, private respondent filed an Urgent *Ex-Parte* Motion for Issuance of an Order of Reconnection of its electric service alleging that the City Legal Officer is questioning the validity of the Writ of Preliminary Injunction alleging that the same is academic considering that private respondent's electric service had already been disconnected on November 23, 1978 and that the same could not be reconnected without a specific order to that effect. Another Motion for Issuance of a Writ of Mandatory Injunction for the reconnection of its electric service, utilizing the same bond previously posted by it, was likewise filed by private respondent on the same date.

On the same date, the Court of Appeals issued a Writ of Mandatory Injunction, utilizing the same bond previously posted by private respondent, ordering petitioner to reconnect private respondent's electric service.

Proceedings before the Supreme Court

On December 15, 1978, the City filed the instant Petition for *Certiorari*, Prohibition and *Mandamus* with this Court seeking

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the nullity of all the proceedings had in the Court of Appeals in CA-G.R. No. 64200-R for lack of jurisdiction and for certification to this Court of the appeal from the Order of the trial Court in Civil Case No. 2547. It likewise prayed for the issuance of a restraining order enjoining the execution or implementation of the Writ of Preliminary Mandatory Injunction issued by the Court of Appeals on December 8, 1978 and from further proceeding with the appeal.

On December 19, 1978, We issued a Resolution requiring respondents to comment on the Petition within ten days from notice and granting the issuance of a temporary restraining order enjoining respondent Court of Appeals from further proceeding with CA-G.R. No. 64200-R and from implementing the Writ of Preliminary Injunction.

Commenting thereon, private respondent maintains that the Order of the trial Court dated February 9, 1978 is appealable to the Court of Appeals as it involves questions of fact as the Order of dismissal was premised not only on failure to prosecute but also on the alleged facts that: (1) the rates charged private respondent for its electric consumption based on the tentative agreement between the parties had become unrealistic; (2) it had not taken steps to have the case terminated; and (3) the continued delay in the disposition of the case worked to its advantage and that it had no intention of terminating the proceeding before the trial Court; and that the City filed the instant Petition without even giving the Court of Appeals a chance to rule on the question of jurisdiction raised before it. Private respondent further alleged that the three Ordinances passed by the City, namely Ordinance No. 126 in 1975, No. 29 in 1976 and No. 57 in 1977, regarding the rates for electric consumption, are contrary to Section 105 of Republic Act No. 4645 (Charter of Olongapo City) and Section 13(a) of the Public Service Act. It then prayed for the dismissal of the Petition or, in the alternative, for the elevation of the records of the case to this Court and the lifting of the temporary restraining order.

In a Resolution dated January 26, 1979, We gave due course to the Petition and required the parties to submit simultaneous

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memoranda. We also required the Court of Appeals to elevate the records of CA-G.R. No. 64200-R.

On February 22, 1979, private respondent filed a Motion for the issuance of a Writ of Preliminary (Mandatory) Injunction ordering petitioner to reconnect its electric service, which had been cut-off again, allegedly causing it damage in the sum of not less than ₱5,000.00 a day. In a Resolution dated February 23, 1979, We resolved to hold in abeyance action on said Motion until the decision on the merits.

A Motion for Reconsideration of our Resolution of February 23, 1979 was filed by private respondent contending that it has been religiously paying petitioner its electric consumption based on their First and Second Tentative Agreements, effective during the pendency of the case without prejudice to its final outcome; that the records show that it has paid the City ₱547,076.59 out of a total billing of ₱1,313,910.80; that the act of the City in cutting off its electric power has caused it tremendous adverse effects, irreparable injuries and losses; and that the City has been imposing unauthorized rates for power and electrical consumption. On March 14, 1979, We reconsidered our previous Resolution of February 23, 1979 and issued a Writ of Preliminary Mandatory Injunction ordering the City to reconnect or restore electric service to private respondent upon the latter's 1) filing of a bond in the amount of ₱400,000.00; 2) updating of its account in arrears, if any, with petitioner, based on their tentative agreement of October 29, 1976; and 3) regular payment of its monthly electrical consumption to petitioner after reconnection, based on the same tentative agreement.

Findings and Conclusions

As matters now stand, we deem it unnecessary to resolve the question of whether or not the Writs of Injunction issued by respondent Court of Appeals were in aid of its appellate jurisdiction. Of more crucial significance, considering the pendency of this case for almost seventeen years since its inception in 1962, is the determination of the question of whether the trial Court had gravely abused its discretion in issuing its Order dated February 9, 1978 dismissing the Complaint and

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that of March 21, 1978 denying reconsideration thereof. For this purpose, we are treating this Petition also as one for review on *certiorari* of said Orders. In fact, in its Memorandum submitted on February 22, 1979, private respondent prayed for a remand of the case to the trial Court upon a finding that it had abused its discretion in dismissing the case.

Private respondent filed its Comment against the City, questioning the validity of the rates charged by the latter for its electric consumption, on December 3, 1962. On November 29, 1968, the trial Court issued its first Order dismissing the case. A Motion for Reconsideration was filed by private respondent alleging that the reason why the case was never set for hearing was because the parties agreed to await the decision in a related case, Civil Case No. 9-0, which was decided on November 27, 1968 and was still pending appeal. In an Order dated January 18, 1969, the trial Court held in abeyance consideration of the Motion for Reconsideration until the judgment *in Civil Case No. 9-0 had become final.*

On August 12, 1977, the City filed a Manifestation stating that the decision in Civil Case No. 9-0 was affirmed by the Court of Appeals and had already become final and moved that the case be set for hearing. In an Order dated August 15, 1977, the trial Court set the case for hearing on September 15, 1977.

At the continuation of the hearing on February 9, 1978, private respondent asked for leave to send written interrogatories to its witnesses who were abroad. This was opposed by the City which, instead, moved for the dismissal of the case. On the same date, the trial Court issued the questioned Order denying private respondent's Motion and dismissing the case on the ground that private respondent had apparently no intention of terminating the case.

In its Motion for Reconsideration, private respondent contended that the Order of dismissal had no legal and factual basis for the reasons that the case had not yet been set for pre-trial; that its principal witnesses, its President, Mr. Ruben Valero, was taken ill in the United States and its other witness was likewise abroad, hence its request for deposition upon written

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interrogatories; that the parties had agreed to await the outcome of Civil Case No. 9-0; that the parties had been trying to arrive at an amicable settlement of the case; and that the parties had entered into another agreement regarding the rates to be charged to it pending litigation, to reflect the increased rates of the National Power Corporation. The same was denied by the trial Court in an Order dated March 21, 1978, with the observation that the case had been dragging for more than ten years mainly because of the lack of initiative on the part of private respondent to have the case terminated.

In its Urgent Motion/Petition for Issuance of a Writ of Preliminary Injunction filed on November 17, 1978 before the Court of Appeals (Annex J, Petition), private respondent alleged that the hearing of the case set on September 15, 1977, by virtue of the Order dated August 15, 1977, was cancelled and reset on October 20, 1977, which was again cancelled to give the parties time to amicably settle the case and reset on November 24, December 15 and 22, 1977; that the scheduled hearings were again cancelled, upon motion of both parties, because of the possibility of an amicable settlement, which was, however, hindered by the absence of its President, who was then in the United States; that the hearing on January 10, 1978 was cancelled at its request as its witnesses, its President, Mr. Ruben Valero, and an expert engineer, were in the United States; that at the hearing on February 9, 1978, it informed the Court that Mr. Valero was suddenly taken ill in the United States and was not able to return to the Philippines and requested that depositions upon written interrogatories be sent its witnesses who were still abroad.

Upon those circumstances, We find that the trial Court gravely abused its discretion in dismissing the Complaint by reason of the apparent lack of interest or intention of private respondent to have the case terminated.

It should be noted that as early as November 29, 1968, the trial Court had already ordered the dismissal of the case for failure of the parties to have the case terminated. In its Motion for Reconsideration, private respondent pointed out that the

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reason why the case was never set for hearing was the agreement of the parties to await the outcome of a related case, Civil Case No. 9-0. Consequently, resolution of the Motion for Reconsideration was held in abeyance until such time that final judgment shall have been rendered in Civil Case No. 9-0.

It was only on August 12, 1977 that a Manifestation was filed in the trial Court by the City stating that the decision in Civil Case No. 9-0 was affirmed by the Court of Appeals and that the same had already become final. The City then moved that the case be set for hearing. Thus, in an Order dated August 15, 1977, the trial Court set the case for hearing on September 15, 1977. However, as pointed out by private respondent and which is not disputed by petitioner, the scheduled hearings were cancelled in view of the attempts of the parties to arrive at an amicable settlement. However, attempts at an amicable settlement failed and the case was set for hearing on January 10, 1978 for the reception of private respondent's evidence. Said scheduled hearing was cancelled upon the request of private respondent because its principal witnesses were in the United States. At the subsequent hearing on February 9, 1978 for the reception of the evidence for private respondent, the latter informed the trial Court that its witness, Ruben Valero, was taken ill in the United States and was not able to return to the Philippines and thus sought leave to take the deposition upon written interrogatories of its witnesses who were abroad.

The fact that the case remained in the calendar of the trial Court for almost fifteen years, *i.e.*, from 1962 to 1977, without any action having been taken thereon, cannot be faulted on private respondent in view of the agreement of the parties to await the outcome of a related case, Civil Case No. 9-0. In other words, it was only after said Civil Case No. 9-0 was finally decided that the case below could have proceeded to trial. Thus, the said period of fifteen years during which the case had been pending should not have been taken into account by the trial Court in concluding that private respondent had no intention of having the case terminated. From September 15, 1977, when the case was set for hearing, to February 9, 1978, when the case was ordered dismissed for lack of interest on

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the part of private respondent, is a period of only five months. And the reasons why private respondent was not able to presents its evidence within said period of five months were the parties' attempts at an amicable settlement of the case, the subsequent departure of its two principal witnesses for the United States and the inability of Mr. Ruben Valero to return to the Philippines in time for the hearing on February 9, 1978 because of illness. As held in *Brandt vs. Behn, Meyer & Co.*, (38 Phil. 351 [1918]), an action should not be dismissed on a non-suit, granted for want of prosecution, when the delay was caused by arrangements between the parties looking to a settlement. On the other hand, private respondent's request for permission to take its witnesses' deposition upon written interrogatories, instead of merely asking for an indefinite postponement of the hearing until such time as its witnesses could have returned to the Philippines, showed its intention not to unduly delay the termination of the case.

WHEREFORE, 1) the proceedings in the Court of Appeals in CA-G.R. No. 64200-R are hereby set aside; 2) the Order of the trial Court in Civil Case No. 2547 dated February 9, 1978 dismissing the case for lack of interest, as well as the Order dated March 21, 1978 denying the Motion for Reconsideration, are also hereby set aside, and the case remanded to the trial Court for continuation of proceedings.

During the pendency of the case below, petitioner City of Olongapo shall continue to supply electricity to private respondent charging the rates stipulated in their tentative agreement of October 29, 1976, and private respondent shall pay its monthly bills promptly upon their presentation by the City. This is without prejudice to such new temporary rates as may be determined by the trial Court to reflect increased costs.

The bond of ₱400,000.00 required under the Writ of Preliminary Mandatory Injunction ordered issued on March 14, 1979 shall be transmitted to the trial Court and shall remain in full force and effect until final determination of the controversy between the parties.

No pronouncement as to costs.

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SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero, and *De Castro, JJ.*, concur.

FIRST DIVISION

[G.R. Nos. L-50127-28. March 30, 1979]

VICTOR JUANIZA, Heirs of Josefa P. Leus, etc., et al., *plaintiffs and appellees, vs.* **EUGENIO JOSE, THE ECONOMIC INSURANCE COMPANY, INC., and ROSALIA ARROYO,** *defendants and appellants.*

SYLLABUS

1. **CIVIL LAW; MARRIAGE; PROPERTY RELATIONS; IN CASE OF COMMON LAW SPOUSES, IT IS GOVERNED BY THE RULES ON CO-OWNERSHIP.** — When a man and woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership (Article 144, New Civil Code). The co-ownership contemplated, however, requires that both parties are not in anyway incapacitated to contract marriage.

2. **ID.; TORTS AND DAMAGES; REGISTERED OWNER OF PUBLIC SERVICE VEHICLE, SOLELY LIABLE.** — It is settled in our jurisprudence that only the registered owner of a public service is responsible for damages that may arise from consequences incident to its operation, or may be caused to any of the passengers therein.