

MOISES SACDALAN, PETITIONER VS. HON. CRISPIN V. BAUTISTA, IN HIS CAPACITY AS JUDGE OF THE CFI-BULACAN, PRESIDING OVER BRANCH III OF SAID COURT, JOSE GALVEZ AND ARSENIA SANTOS-GA...*G.R. NO. L-38014. March 27, 1974*

Ponente: BARREDO, J.

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Petition for certiorari, prohibition and injunction, with preliminary injunction against (1) the order of respondent judge of November 15, 1973, issued without any previous hearing, granting private respondents' motion for reconsideration, dated November 9, 1973, of the order of the court dismissing private respondents' petition for relief filed on June 9, 1973 from the earlier judgment by default against them, copy of which they received on April 10, 1973, which motion for reconsideration was not accompanied by any notice addressed to the adverse party stating the time and place of the hearing thereof and instead there was a notice at the foot to the Clerk of Court to "please submit the foregoing motion for the consideration and resolution of the Honorable Court immediately upon your receipt hereof", and (2) the other order dated December 11, 1973 denying petitioner's motion for reconsideration of the order of November 15, 1973 above-referred to. Notwithstanding that the Court granted private respondents' counsel's motion for an extension of ten (10) days from February 9, 1973 to file their answer herein, no such answer has been filed to date, for which reason, the Court has considered the case submitted for decision.

We do not hesitate to grant the petition. The manifestly unpardonable negligence of private respondents, displayed in the record, throughout all stages of these proceedings, is matched only by the inexplicable liberality extended by respondent judge to them. The Court cannot but express its annoyance in the premises. Under the circumstances extant in the petition and its annexes, the disposition of respondent judge to further give private respondents another chance to repeat their inattention and disrespect to the court is simply unwarranted and constitutes, to say the least, grave abuse of discretion. The resulting injury to the administration of justice in consequence of the tactics of private respondents and/or their counsel and the indifferent attitude of the court towards them are so deplorable, specially in these times when it is imperative that the people need to be convinced that the courts will not brook any unnecessary delay in the conduct of its judicial business, that a repetition by any of those concerned will certainly merit drastic action on the part of this Court.[1]

For failure of private respondents to file their answer to the petition herein, notwithstanding the extension granted to them by the Court, the following allegations of the petition may be deemed more or less a safe basis for judgment, supported as they are by the contents of the annexes thereof which are copies of petitioner's pleadings and court orders.

The petitioner's case is a simple complaint for the collection of a sum of money (P9,983.33 with interest at 12% per annum) evidenced by a promissory note. Private respondents, as defendants, failed to answer, so the court

declared them in default, subsequently received the evidence of the petitioner and, on the basis thereof, rendered judgment by default for the full amount prayed for. This judgment was served on private respondents on April 10, 1973 and after it became final, upon motion of petitioner, the court ordered its execution. Without appealing, said respondents filed instead a petition for relief on June 9, 1973. The court promptly issued a restraining order against the execution it had itself ordered and the motion of petitioner to dismiss said petition upon the ground that the remedy should have been by appeal, was denied. Petitioner had to file his answer, but again, the hearings of the petition set for September 4, 1973, October 1, 1973, October 8, 1973, October 22, 1973 and October 29, 1973 were all postponed generally upon motion of respondents. And at the hearing set for November 5, 1973, respondents just failed to appear, whereupon the court dismissed the petition and lifted its restraining order.

Against this order of dismissal, respondents filed another motion for reconsideration characterized by its being unverified and by the omission of a request that the same be set for hearing on a particular date and hour. And without the court itself calling for a hearing of said motion, on November 15, 1973, respondent judge issued the impugned order granting the petition for relief. In his order of December 11, 1973, respondent judge denied petitioner's motion for reconsideration of said order of November 15, 1973.

In the light of these circumstances, there can be no doubt that respondent judge gravely abused his discretion in issuing the questioned orders. Without considering anymore that the appropriate remedy should have been appeal, and that anyway, there is no proper showing that private respondents have any valid defense, by granting the motion of said respondents of November 9, 1973 signed by Atty. Luciano S. Borja, without holding any hearing and in spite of the fact that respondents had not complied with the requirement of the rules to the effect that all motions must be accompanied by a "notice - directed to the parties concerned, and shall state the time and place for the hearing of the motion," together with proof of service thereof. (Sections 4 and 5, Rule 15). In *Philippine Advertising Counselors, Inc. vs. Revilla*, 52 SCRA 246, the Court held:

"Finally, Section 4, Rule 15 of the Rules of Court provides that notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it; and Section 5 of the same Rule requires the notice to be directed to the parties concerned and to state the time and place for the hearing of the motion. A motion which fails to comply with these requirements is nothing but a useless piece of paper. (*Manila Surety and Fidelity Co., Inc. vs. Bath Construction Company, et al.*, L-16636, June 24, 1965, 14 SCRA 435, 437, citing *PNB vs. Donasco*, L-18638, February 28, 1963; *Manakil vs. Revilla*, 42 Phil. 81; *Roman Catholic Bishop of Lipa vs. Municipality of Unisan*, 44 Phil. 866; and *Director of Lands vs. Sanz*, 45 Phil., 117. *Sebastian vs. Cabal, etc., et al.*, L-25699, April 30, 1970, 32 SCRA 453, 454-55. *Cledera, etc., et al., vs. Sarmiento, etc., et al.*, L-32450-51, June 10, 1971, 39 SCRA 552, 562-576.) In the instant case, there was, according to the trial court in its Order of April 7, 1969, 'no proof that plaintiff was duly served with a copy of the motion for reconsideration.' Moreover, the motion did not contain a notice of hearing directed to petitioner stating the time and place of the hearing. The notice was addressed to the Clerk of Court requesting the latter to 'set the foregoing motion for the consideration and approval of this Honorable Court immediately upon receipt hereof.' The notice of hearing caused to be issued by the trial court did not cure the defect of lack of notice, for the duty to give such notice devolves upon the movant, not upon the court. (*Magno vs. Ortiz, etc., et al.*, L--22670, January 31, 1969, 26 SCRA 692, 695, citing *Fulton Insurance Company vs. Manila Railroad Co., et al.*, L-24263, Nov. 18, 1967, 21 SCRA 974. *Cledera, etc., et al. vs. Sarmiento, etc., et al., ibid.*)."

Independently of the procedural transgression just discussed, We cannot perceive any plausible reason why, after the series of failures of respondents to attend properly to their case, the trial court had to grant the last motion for reconsideration of respondents which had all the earmarks of another dilatory move on their part.

To be sure, We could have referred this case to the Court of Appeals, considering that what is involved here is an

interlocutory order of the trial court, but We have opted to act Ourselves, if only to make up for the time lost because of the oft-iterated antics of private respondents and the inexplicable complacency of their co-respondent judge, patently prejudicial to the interests of justice.

WHEREFORE, the questioned orders of November 15, 1973 and December 11, 1973 are set aside; and respondent judge would be well advised to resume further proceedings without further delay, in accordance with the foregoing opinion. Costs against private respondents.

Zaldivar, (Chairman), Fernando, Antonio and Fernandez, JJ., concur.

Aquino, J., concurs in the result.

[1] Private respondents are so unconcerned about their obligation to the Court that after asking for extension to file their answer they did not file any and have not had the courtesy to explain why.

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