

FRANCISCO SANCHEZ, PETITIONER, VS. PEDRO SERRANO AND SOTERO RODAS, JUDGE OF COURT OF FIRST INSTANCE OF MANILA, RESPONDENTS.*G.R. No. L-2130. May 30, 1949*

Ponente: MORAN, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/10ce076c469b/>**MORAN, C.J.:**

Civil case No. 1709 of the Court of First Instance of Manila was set for trial on November 5, 1947, but on October 31 attorney for defendant, petitioner herein, asked for postponement and without awaiting for the resolution of the court therein he left for Mindoro to campaign for his candidacy. The court postponed the trial to November 13, but notice thereof was not received by defendant's attorney who left no clerk in his law office and limited himself to asking an employee of a physician to make visits to that office. Trial was held on November 13, and a decision was rendered against defendant which he received on January 14, 1948. On January 23, 1948, he filed a motion to set aside the decision, under rule 38, but the motion was denied. On March 16, 1948, petitioner filed another motion to the same effect which was also denied. In the order of denial execution of the judgment was ordered. Petitioner filed his notice of appeal and appeal bond and at the same time filed a motion to suspend the execution of the judgment during the pendency of the appeal, but the motion was denied. Hence, the present petition for certiorari wherein it is prayed that the judgment rendered, and its execution issued, by the respondent judge, as well as his order denying the motion for relief filed under Rule 38, be set aside because of a grave abuse of discretion therein committed.

Without considering the merits or demerits of the motion to set aside filed under Rule 38, we believe the present petition is improper, the remedy being an appeal which has already been interposed. As to the suspension of the execution of the judgment, the remedy is provided in section 5, of said rule. In other words, when the petition for relief under Rule 38 was filed, motion for suspension of the execution of judgment could have been presented then or hereafter under section 5, of said rule, by offering the bond therein provided and if denied it may be renewed on appeal. Such suspension cannot properly be examined in certiorari proceedings separately from the motion to set aside which shall be reviewed on appeal, for it depends in great part from the circumstances constituting the background of the principal relief to be considered on appeal. Under the circumstances disclosed in the record before us, it is not clear that the refusal to suspend execution is a grave abuse of discretion, it being apparent that petitioner's failure to receive notice of the trial held on November 13 was due to his negligence in leaving Manila without awaiting for the resolution of the court on his motion for continuance, and also to his failure to provide his law office with some responsible clerk to receive notices, and his first motion for relief was filed only on January 22, 1948.

Ozaeta, Paras, Feria, Pablo, Perfecto, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.