

**TROPICAL HOMES, INC., PETITIONER, VS. HON. ONOFRE VILLALUZ,
ACTING PRESIDING JUDGE, BRANCH XVII, SEVENTH JUDICIAL
DISTRICT, QUEZON CITY, AND PEOPLE'S HOMESITE AND
HOUSING CORPOR...**

G.R. No. L-40628. February 24, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for certiorari and prohibition, with a prayer for the issuance of a writ of preliminary injunction, to annul and set aside the order issued by the respondent judge on 8 May 1975 in Civil Case No. Q-19633 of the Court of First Instance of Rizal, Quezon City Branch, entitled: "People's Homesite and Housing Corporation, plaintiff, versus Tropical Homes, Inc., defendant," which declared the defendant, Tropical Homes, Inc., in default for failure to appear at the pre-trial of the case.

Records show that a complaint for the collection of certain sums of money was filed by the People's Homesite and Housing Corporation, PHHC, for short, a government-owned and controlled corporation, against the petitioner, Tropical Homes, Inc., before the Court of First Instance of Rizal, Quezon City Branch, which was docketed therein as Civil Case No. Q-19633.[1] The defendant, in due time, filed its answer with counterclaim.[2] The PHHC filed an answer to the counterclaim.[3] The last pleading having been filed, the court set the case for pre-trial on 8 May 1975, at 11:30 o'clock in the morning.[4]

The necessary notices were served upon the parties, and on the scheduled day for the pre-trial conference, Atty. Rene Diokno, counsel for the petitioner, arrived at the courtroom at about 11:00 o'clock in the morning. The respondent judge was then hearing a criminal case so that he (Diokno) waited for his turn. When the hearing of the criminal case was terminated at about 11:50 o'clock in the morning, the pre-trial calendar was read. The case of the petitioner, namely, PHHC vs. Tropical Homes, Inc., was fourth on said calendar.[5]

At about 12:25 o'clock in the afternoon, while the respondent judge was conducting the pre-trial in the case of Patriarca vs. PHHC - which was the second case on the pre-trial calendar - counsel for the petitioner, feeling the pangs of hunger and believing that the pre-trial conference then being conducted would take about thirty (30) minutes more, and that there was still another case to be heard before that of the petitioner, asked the court if he could approach the Bench. When it was granted, said counsel asked the respondent judge for the postponement of the pre-trial conference in his case. Here is what transpired in the court below.

"ATTY. DIOKNO:

Your Honor, may I approach the bench?

COURT:

Yes, what is it?

ATTY. DIOKNO:

Your Honor, I am one of those whose case is scheduled for pre-trial at 11:30 a.m. this morning, but since it is now past 12:00 o'clock and there is still another case being heard, and since I am just an ordinary mortal who gets hungry at twelve o'clock -- I am sorry to say I have not taken any survival course -- I don't think I -- Up to what time will the court be hearing cases, your honor?

COURT:

Until we finish the calendar. We always finish the calendar for the day.

ATTY. DIOKNO:

In that case, your honor, I don't think I can wait that long, not having taken my lunch yet, may I request that our case be postponed?

COURT:

Just a minute, where are the parties here?

ATTY. ALDANA:

I am appearing as counsel for the plaintiff, your honor. The assistant general manager, Jose Alinea, is here as representative of the plaintiff.

COURT:

How about the defendant, Tropical Homes, Inc.?

ATTY. DIOKNO:

I am representing the defendant, your honor, as counsel and representative. I have here a special power of attorney --

COURT:

Let me see that special power of attorney.

x x x."[6]

A copy of the special power of attorney,[7] was given to the respondent judge who, after reading the same, then and there dictated in open court the questioned order of 8 May 1975, declaring the herein petitioner in default for failure to appear at the pre-trial since the power of attorney the petitioner had executed in favor of its counsel did not satisfy the requirements of Sec. 1, Rule 20 of the Rules of Court in that no mention is made therein of the attorney's authority to bind his client during the pre-trial, and ordering the plaintiff therein to present its evidence ex parte on 19 May 1975 at 8:00 o'clock in the morning.

Counsel for the petitioner then asked for a period of five (5) days within which to raise the legality of the order in question, but the respondent judge gave him three (3) days only. The respondent judge, however, subsequently relented and gave counsel for the petitioner a period of five (5) days, as prayed for.[8]

Within the five-days period, or on 13 May 1975, the instant petition for certiorari and prohibition was filed before this Court, to annul and set aside said order of 8 May 1975. On 6 May 1975, the Court issued a temporary restraining order, prohibiting the respondents from enforcing the questioned order of 8 May 1975, until further orders from the Court.[9]

The petitioner's submission is that the respondent judge acted with grave abuse of discretion in declaring the

petitioner in default for non-appearance at the pre-trial conference of the case set on 8 May 1975, despite the special power of attorney authorizing its counsel to appear on its behalf in all circumstances where its appearance is required and to bind petitioner in all said instances.

The private respondent, PHHC, upon the other hand, contends that the power of attorney executed by the petitioner is not sufficient since said power of attorney does not include the authority of the attorney to bind his client at the pre-trial conference.

The petition is impressed with merit. We find that the respondent judge gravely abused his discretion in declaring the herein petitioner in default for its alleged failure to appear at the pre-trial of the case. It would appear that the petitioner had authorized its counsel to appear for and on its behalf where the petitioner's appearance is required and to bind the petitioner in all said instances. The pertinent portion of the special power of attorney executed by the petitioner expressly authorized its counsel -

"To appear for and in its behalf in the above-entitled civil case in all circumstances where its appearance is required and to bind it in all said instances."

Although the power of attorney in question does not specifically mention the authority of petitioner's counsel to appear and bind the petitioner at the pre-trial conference, the terms of said power of attorney are comprehensive enough as to include the authority to appear for the petitioner at the pre-trial conference.

Once more, the Court admonishes trial judges against issuing precipitate orders of default as these have the effect of denying a litigant the chance to be heard, and in order to prevent needless litigations in the appellate courts where time is needed for more important or complicated cases. While there are instances when a party may be properly defaulted, these should be the exception rather than the rule, and should be allowed only in clear cases of obstinate refusal or inordinate neglect to comply with the orders of the court. Absent such a showing, a party must be given every reasonable opportunity to present his side and to refute the evidence of the adverse party in deference to due process of law.[10]

However, we find no merit in the claim of the petitioner that the respondent judge gravely abused his discretion in denying petitioner's motion for the postponement of the pre-trial conference. It may be true that the pre-trial conference was to be held, in effect at about 12:25 o'clock in the afternoon, whereas, Section 58 of Republic Act No. 296, otherwise known as the Judiciary Act of 1948, provides that the hours for the daily sessions of the Court of First Instance are from 9:00 o'clock to 12:00 o'clock in the morning and from 3:00 o'clock to 5:00 o'clock in the afternoon. But said section also provides that the trial judge may extend the hours of session whenever in his judgment it is proper to do so. A period of 25 minutes past the regulation time cannot be considered abusive, since the respondent judge merely wanted to dispose of controversies as soon as possible. In *Cortes vs. Co Bun Kim*, [11] the Court said:

"The contention that the trial was illegal and void because it was held at 8:00 a.m. need not detain us long.

"Although Section 58 of Republic Act No. 296 provides that 'the hours for the daily session of Courts of First Instance shall be from nine to twelve in the morning, and from three to five in the afternoon,' the same section, in the following sentence, also provides that 'the judge holding any court may also, in his discretion, order that but one session per day shall be held instead of two, at such hours as he may deem expedient for the convenience both of the Court and the public. The first clause is directory. It has for its sole object the fixing of the minimum number of hours which judges should devote to the transaction of business. This is implied from the last clause of the same section, which enjoins that the court shall be in session not less than five hours a day. The good of the service demands more toil and less idleness, and the limitations imposed by the above enactment are aimed at indolence and not the other way around."

Besides, it would appear that when counsel for the petitioner complained of hunger and moved for the postponement of the pre-trial conference, the respondent judge suspended the pre-trial conference then being conducted to give way to the case of the petitioner.

WHEREFORE, the petition is GRANTED. The order issued on 8 May 1975 in Civil Case No. Q-19633 of the Court of First Instance of Rizal, Quezon City Branch, is hereby ANNULLED and SET ASIDE. Another pre-trial conference should be conducted in the case after due notice to the parties and their attorneys. The temporary restraining order heretofore issued is made permanent. Without costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[1] Rollo, p. 12

[2] Id., p. 17

[3] Id., p. 20

[4] Id., p. 22

[5] Id., p. 34

[6] t.s.n. of May 8, 1975, pp. 1-2, Rollo, pp. 23-24

[7] Rollo, p. 29

[8] Id., pp. 26-27

[9] Id., p. 38

[10] Leyte vs. Cusi, Jr., G.R. No. L-31974, July 31, 1987, 152 SCRA 496

[11] 90 Phil. 167, 171 (1951)

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