

SOLEDAD O. SAN AGUSTIN, APPELLANT, VS. CAROLINA OROZCO, APPELLEE.

G.R. No. L-28581. January 27, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

This is an appeal from the order, dated July 22, 1967, issued in Civil Case No. 63686, Court of First Instance of Manila, Branch XI, dismissing upon motion of herein appellee (defendant in the court below), the complaint for annulment of contracts brought by the herein appellant (plaintiff in the court below) Soledad O. San Agustin, against appellee Carolina Orozco, on the ground that appellant (who had submitted a written offer of compromise to appellee's counsel) is not sincere in the settlement of the case but secured postponement as a dilatory recourse, and from the order, dated August 19, 1967, reiterating the dismissal of the case insofar as appellee Carolina Orozco is concerned. It appearing that the manifestation filed in the court below by appellee Orozco asking that the case be dismissed on the ground that neither appellant nor counsel ever approached appellee to have the case settled and that the postponement by the appellant of the hearing of June 30, 1967 was only to delay the hearing of the case, is in fact a motion to dismiss which was not served upon the appellee and is, therefore, nothing but a piece of paper (*Mankil vs. Revilla*, 42 Phil. 81; *Sunga, et al. vs. Hon. Lacson, et al.*, 23 SCRA 393) which the Court has no right to consider but was acted upon by the lower court by dismissing the case without setting the same for hearing to give appellant a chance to comment on the allegation that she was just delaying the hearing so that the criminal cases filed earlier against her would be held likewise in abeyance, and that assuming the appellant did not comply with the instructions from the court to exert efforts towards amicable settlement, the trial court should not have dismissed the case against appellee Orozco but should have set the case for hearing to give the appellant an opportunity to prove her defense, the Court Resolved: (1) to REVERSE and SET ASIDE the order of dismissal of the case as far as appellee is concerned; and (2) to ORDER the lower court to continue with the trial of the case against appellee Carolina Orozco.

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