

PAULINA BAUTISTA, ASSISTED BY HUSBAND, DEOGRACIAS BAUTISTA, PLAINTIFFS AND APPELLEES, VS. LEONCIO DACANAY AND CIPRIANO S. ALLAS, DEFENDANTS AND APPELLANTS.

G.R. No. L-13801. August 31, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from an order of the Court of First Instance of Rizal (Branch V, Quezon City), Hon. Nicasio Yatco, presiding, denying a motion of defendants-appellants to set aside an order reinstating a previous decision of the court, as against defendant Cipriano S. Allas. The appeal was taken directly to this Court as it involves a question of law.

The action in which the order appealed from was issued was filed in the Court of First Instance of Rizal by plaintiff Paulina Bautista to secure the payment of the sum of P2,000 due and owing to her from Leoncio Dacanay and Cipriano S. Allas, covered by a promissory note dated October 11, 1956. Summons having been served on defendants, Cipriano S. Allas filed his answer, alleging that he had paid the sum of P700.00 through one Mrs. Jose Biagtan, and that his co-defendant Leoncio Dacanay had assigned various credits amounting to P2,000 to plaintiff in payment of the indebtedness in question. As defendant Dacanay did not file an answer, he was declared in default. At the time of the hearing, defendant Allas failed to appear so judgment was rendered against defendants to pay jointly and severally, the full amount of P2,000, with legal interest from the date of filing of the complaint, plus attorney's fees in the amount of P300.00. This judgment is dated September 2, 1957. On September 9, 1957, attorney for defendant Allas, presented a motion to set aside the decision with respect to his client, alleging that Allas has a good and substantial defense and that his failure to appear was due to the fact that he received the notice of the hearing set for September 2, 1957 only the day after, i. e., on September 3, 1957. This motion was granted by the court in an order dated October 22, 1957.

The case was again set for hearing on November 18, 1957, at which hearing neither the defendant Allas nor his counsel appeared. Thereupon the court ordered the reinstatement of the previous judgment dated September 2, 1957. On December 9, 1957, counsel for Allas filed a motion to set aside this last order of the court dated November 18, 1957, alleging that he (counsel) did not receive copy of the order of the court setting the case for hearing on November 18, 1957, stating further that the order or notice of hearing was still with the Quezon City Post Office; that the Quezon City Post Office failed to forward the said letter to the San Francisco Del Monte Post Office, as a result of which the said letter or notice of hearing was not received by him. Attached to his motion to set aside the order is a certificate issued by the Acting Postmaster of Quezon City to the effect that the registered letter sent by the Court of First Instance, Branch V, Quezon City, addressed to Atty. Lino M. Patajo, 4 Road 3, West Avenue, Sub., Quezon City, posted at the Quezon City Post Office, dated October 31, 1957, is still in his office undelivered. The motion was opposed by counsel for plaintiff, who argued that counsel for defendant was negligent in not making inquiries from the court about the case; that said counsel was negligent in his actuations in the case as shown by his failure to follow up proceedings of the court; that granting that counsel for defendant

did not receive copy of the order of the court setting the case for hearing, he should have obtained knowledge of the hearing because of the notice to produce certain documents that counsel for the plaintiff had sent him (counsel for defendant).

At the hearing of the above motion and the opposition thereto, the court denied the motion to set aside the order reinstating the previous decision; hence, this appeal.

There is no question that counsel for defendant Allas did not receive copy of the order of the court setting the case for hearing on November 18, 1957. This fact is conclusively shown by the certificate of the postmaster to the effect that the letter coming from the court was still in the Quezon City Post Office undelivered. The reason for non-delivery, and even of absence of notice, is because the letter was never transferred to the San Francisco del Monte Post Office, to which addressee belonged. Counsel for appellees in this Court argue that similar notices in another case from the clerk of the Supreme Court had reached the same counsel. This fact of receipt of other letters by mail does not prove that the order in question, sent through registered mail, was also received by said counsel. The certificate of failure to deliver the notice of the letter containing the order fixing the date of hearing is conclusive evidence that counsel for defendant did not receive the order of the court setting the case for hearing on November 18, 1957.

The failure of the counsel for defendant to receive the notice cannot be attributed to any negligence on the part of said counsel. If other notifications had been received by him, argues counsel for plaintiff-appellee, there is no reason why he should not expect the notice of hearing to reach him. We believe that the court below erred in refusing to set aside its order reinstating his previous decision, as such refusal amounts to a denial of the right of the defendant to be heard. The post office was chosen by the court as the agency through which defendant's counsel was to be notified. Responsibility for failure of such agent to make delivery of the letter containing the order setting the case for hearing may not be imputed to defendant's counsel.

Wherefore, the order of the court reinstating the decision is hereby set aside, and the case is hereby remanded to the court below for further proceedings. Without costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

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