

CECILIA RAPADAZ VDA. DE RAPISURA, PETITIONER, VS. HON. NICANOR NICOLAS AND FR. JACINTO RAPADAZ, RESPONDENTS.*G. R. No. L-22594. April 29, 1966*

Ponente: CONCEPCION, J.

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This is an original action for certiorari to set aside an order of the Court of First Instance of Ilocos Sur, Branch II, presided over by respondent, Hon. Nicanor Nicolas, Judge, dated February 4, 1965.

Petitioner, Cecilia Rapadaz Vda. de Rapisura is the defendant in Civil Case No. 2141 of said court, which was instituted by the main respondent herein, Fr. Jacinto Rapadaz. It would appear that, after the introduction of some evidence for the latter, the hearing was postponed to another date, on which Fr. Rapadaz failed to appear, in view of which the case was, on motion of Mrs. Rapisura, dismissed by respondent Judge in an order dated November 26, 1963, copy of which was received by Fr. Rapadaz on November 30, 1963. On motion for reconsideration of Fr. Rapadaz, which was objected by Mrs. Rapisura, said order of November 26, 1963, was, on February 4, 1964, reconsidered by respondent Judge, who refused to reconsider his last order. Thereupon, Mrs. Rapisura commenced the present action for certiorari, against respondent Judge and Fr. Rapadaz, to annul said order of February 4, 1964, upon the ground: (1) that the motion for reconsideration of Fr. Rapadaz was not accompanied by proof of service of copy thereof to Mrs. Rapisura, and consequently— she maintains—"is nothing but a piece of paper" which respondent Judge had "no right to consider"; and (2) that at the time of the filing of said motion for reconsideration, the order of dismissal of November 26, 1963, was already final and executory.

With respect to the first ground, Fr. Rapadaz alleges, and petitioner does not deny, that copy of said motion for reconsideration was actually received by the petitioner on January 13, 1964 and that petitioner was in fact present in Court when said motion was heard before respondent Judge. Under the circumstances, we are satisfied that the latter did not exceed his jurisdiction or commit a grave abuse of discretion in overlooking respondent's failure to attach to his motion the requisite proof of service of copy thereof to petitioner herein, the demands of substantial justice having been satisfied by the actual receipt of said copy under the conditions adverted to above.

With reference to the second ground, the record shows that copy of the order of dismissal of November 26, 1963, was received by Fr. Rapadaz on November 30, 1963; that his motion for reconsideration, dated December 26, 1963, was filed with the office of the Clerk of Court of the Court of First Instance of Ilocos Sur, at Vigan, Ilocos Sur, on December 27, 1963, and received by the Clerk of Branch II of said court, at Narvacan, Ilocos Sur, to which the case belonged, on January 7, 1964. Mrs. Rapisura maintains that said motion should be deemed filed on the date last mentioned, or beyond the reglementary period to appeal, but the lower court held that the date to be reckoned with is December 27, 1963—which is admittedly within said period—when the motion was filed with the office of the Clerk of Court in Vigan. In this connection, it is important to note that the order of dismissal of November 26, 1963, was without prejudice; so that, even if it had become final and executory, Fr. Rapadaz could have reproduced his complaint against petitioner herein in a separate action. In other words, petitioner has not suffered a substantial injury in consequence of the order of respondent Judge of February 4, 1964. At best, it

deprived the petitioner of a purely technical victory. A writ of certiorari is, however, an equitable relief, which the courts of justice may withhold when the ends of justice and equity would not be served thereby (*Hyde vs. Shine*, 199 U.S. 62, 50 L. ed. 90, 25 S. Ct. 760'; *Re Tempa Suburban R. Co.* 168 U.S. 583, 42 L. ed. 589, 18 S. Ct. 177; *Ex parte Hitz*, 111 U.S. 766, 28 L. ed. 592, 4 S. Ct. 698; *Light vs. Self*, 138 Ark. 221, 211 S.W. 369, 214 S.W. 746, citing *R.C.L.*; *Howe vs. Superior Ct.* 96 Cal. App. 769, 274 P. 992, citing *R.C.L.*). Such is the situation obtaining in the case at bar.

Indeed, prior to November 26, 1963, Fr. Rapadaz had already began presenting evidence in support of his complaint in Civil Case No. 2141. His failure to appear on said date, implied, at most, a waiver of the right to introduce additional evidence. If petitioner, as defendant in said case, wanted to introduce her evidence, she could have done so. But, instead of doing so, she moved to dismiss the case. What respondent Judge should have done, and so he stated in his order complained of, was to render judgment upon the evidence theretofore introduced by Fr. Rapadaz. And this is one of the main reasons that impelled said Judge—and, we think, wisely—to issue said order.

Wherefore, the petition is dismissed and the writ hereby denied, with costs against petitioner herein. It is so ordered.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Barrera, Regala, Makalintal, Bengzon, J. P., Zaldivar and Sanchez JJ., concur.

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