

PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. SANTOS DONASCO, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-18638. February 28, 1963

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from an order of the Court of First Instance of Surigao, the Hon. Teofilo Buslon, presiding, dismissing the complaint in Civil Case No. 514 of the said court, for plaintiff's failure to prosecute.

The facts leading to the present appeal may be stated as follows:

Plaintiff Philippine National Bank, on February 22, 1952, filed a complaint with the Court of First Instance of Surigao, seeking the recovery from the defendants of the sum of P477.74 with interest representing the balance of a loan of P600.00 obtained by the defendants from the plaintiff on April 5, 1949, secured by a real estate mortgage. Defendants, in their answer, admitted the loan but alleged in defense that said sum had practically been paid because of a certain amount, to wit P477.23, representing interest on a pre-war loan which had been liquidated and paid; that said interest should have been applied to the balance of the loan. The answer also includes a counterclaim for damages in the sum of P500.00 as attorney's fees and P100.00 as litigation expenses.,

Upon motion of the plaintiff, the case was included in the calendar of hearing for November, 1952. On March 18, 1955, the court *motu proprio* reset the hearing for May 27, 1955, which scheduled hearing was again reset for September 17, 1958.

When the case was called for hearing on September 17, 1958, there was no appearance for the plaintiff and the attorney for the defendants moved for the dismissal of the case. The motion was granted and the court dismissed the case for plaintiff's lack of interest and failure to prosecute.

On October 16, 1958, plaintiff filed a motion for new trial on the ground of honest mistake or excusable negligence, alleging that on September 2, 1958, counsel for the plaintiff filed a motion for postponement of the trial scheduled for September 17, 1959 to some other date, with a notice of hearing of the motion on September 6, 1958; that in the honest belief that he would receive timely notice of the resolution of the said motion, he did not appear at the trial set for September 17, 1958. Accompanying the motion for new trial is an affidavit of merit.

The motion for new trial was denied in an order of the lower court of November 19, 1958. From the order denying the motion for new trial, plaintiff appealed to the Court of Appeals, alleging that the lower court erred:

1. In denying plaintiff's urgent motion for postponement dated September 2, 1958;
2. In dismissing the case for alleged lack of interest on the part of the plaintiff; and
3. In denying plaintiff's motion for new trial, thus denying the plaintiff of his day in court.

but the Court of Appeals forwarded the said case to us , on the ground that there is no issue of fact raised in the

appeal.

In its memorandum submitted to the Supreme Court on May 21, 1962, plaintiff-appellant admitted that the only legal question raised in the present appeal is "whether the uncontroverted facts and circumstance's narrated in appellant's brief, which prevented plaintiff's counsel to appear at the trial of this case at Tandag, Surigao on September 17, 1958, constitute a valid mistake, accident or excusable negligence in the light of the remedy provided for by Sec 1, Rule 37 of the Rules of Court (RCA p. 81). In its brief the following are the facts being relied upon by plaintiff-appellant as constituting valid mistake, accident, or excusable negligence:

That the corresponding notice of hearing of the case was received by plaintiff at its Head Office in Manila on August 22, 1958, and on the same date of receipt, the Chief of the legal department of the plaintiff, coursed and sent a communication to the Cebu Branch attorneys, advising the latter to represent the plaintiff bank in this case of Tandag, Surigao on September 17, 1958; that the Cebu Branch attorneys received the said communication of August 22, 1958 on September 2, 1958 and forthwith consulted their respective calendars of hearings previously set and verified that on September 16, 17, and 19, 1958, they would have to appear (and did in fact appear) in the hearings of other civil cases in the Court of First Instance of Cebu; that due to this conflict of schedules of hearings in Cebu and in Tandag, Surigao, the Cebu Branch attorneys on the same date of their receipt of the communication from the Manila office, advising them of the hearing of this case at Tandag, Surigao on September 17, 1958, sent via air mail and special delivery an urgent motion for postponement of the hearing and a copy thereof was furnished to the defendants' counsel, Atty. Cipriano Alvizo, also by air mail and special delivery; that weeks before September 17, 1958, the scheduled trial of the case, the Cebu Branch-attorneys did not receive any information about any resolution of the court in the said urgent motion for postponement set for hearing and consideration by the court on September 6, 1968; that in view of that failure to receive any notice of the action of the court in their motion for postponement, the Cebu Branch attorneys believed in good faith that it was favorably acted upon.

An examination of the records shows that no proof of service of the copy of the said motion for postponement upon the defendants was presented. There is at the bottom of the motion, a notice addressed to the attorney for the defendants for the hearing of said motion on September 6, 1958 but aside from that notice there is no evidence whatsoever that copy of said motion was served upon said attorney. Upon this ground the court did not hear said motion on September 6, 1958, and heard the case, as scheduled, on September 17, 1958. On this date the court at the instance of the attorney for the defendant, denied the motion for postponement and dismissed the case for plaintiff's failure to prosecute.

Our Rules provides:

"Sec. 26.—Proof of Service, to be filed with motion.—No motion shall be acted upon by the court without proof of service of the notice thereof." (Rule 26)

and the Supreme Court in certain cases, ruled:

"Notice of motion is necessary and without proof of service thereof, a motion is nothing but a useless piece of paper which the clerk should not receive for filing." (Manakil vs. Revilla, 42 Phil., 81; Roman Catholic Bishop of Lipa vs. Municipality of Unisan, 44 Phil., 866; Director of Lands vs. Sanz, 45 Phil., 117).

As regards the arguments of counsel for plaintiff that it believed in good faith that in view of its failure to receive notice of the action on its motion for postponement, the same was favorably acted upon by the court, the Supreme Court in one case held:

"* * * it is already settled law that the granting for postponement being one directed to the sound discretion of

the court, its resolution on the matter will not be interfered with by a higher court, unless it was rendered with grave abuse of discretion prejudicial to the rights of the movant." (Blue Bar Coconut Co. vs. Hilario, et al., G.R. No. L-12699, May 31, 1961)

Conformably with the observations of the Court of Appeals in its resolution dated June 26, 1961, it is apparent that plaintiff believed that its motion for postponement would be granted, and, acting upon that belief, its attorney did not appear in court at the time of the trial. But it is well settled that the approval of motions for postponement cannot be taken for granted, the same being addressed to the discretion of the court.

"Motions for postponement are addressed to the sound discretion of the court and the movant has no right to assume that his motion would be granted, and must be in court on the day of the hearing so that if his motion is denied, he can proceed "with the trial of the case." (Republic of the Philippines vs. Gumayan, et al., G.R. No. L-16780, May 31, 1961)

Since the attorneys for the plaintiff did not receive notice of the action of the court on their motion for postponement they had no reason to assume that the motion was or would be granted and it was their duty and obligation to appear on the date of the trial. Their failure to appear under the circumstances is wholly inexcusable.

The order appealed from, dismissing the complaint is, therefore, affirmed with costs against the plaintiff-appellant.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Dizon and Makalintal, JJ., concur.

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