

ANTONIO ESTABAYA, PETITIONER, VS. HON. PRISCILLA C. MIJARES, CITY JUDGE OF MANILA, BRANCH VII AND ROSITA L. GARCIA, RESPONDENTS.

G.R. No. L-56133. September 30, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In this Petition for Certiorari, petitioner Antonio Estabaya seeks to set aside the Orders dated September 30, 1980 and December 3, 1980 of the City Court of Manila, Branch VII, in Civil Case No. 043438 for Ejectment, entitled "Rosita L. Garcia vs. Antonio Estabaya".

During the hearing of July 29, 1980 for continuation of the reception of petitioner's evidence (as defendant in the case below), the latter requested for deferment for the reason that his counsel was ill and confined at the hospital, presenting as proof thereof, a Certificate of Confinement issued by the attending physician of his counsel. The Court denied postponement on the ground that the said certificate was not under oath and forthwith considered the case submitted for decision.

Petitioner moved to lift or set aside said Order on August 7, 1980 explaining that the certificate was unsworn because the attending physician of his counsel became available only in the evening of July 28, 1980 and he (the physician) had no time to appear before a Notary Public. Petitioner then submitted a duly notarized certificate of confinement. Respondent Court in its Order of September 30, 1980 denied the Motion for lack of merit.

Petitioner filed a "Motion for Reconsideration and/or to Set Aside Order Considering Case Submitted for Decision", attaching therewith a notarized Medical Certificate. Opposed by private respondent, the Court again denied the Motion for lack of merit in its Order of December 8, 1980.

Hence, this Petition assailing respondent Court's foregoing Orders of September 30, 1980 and December 8, 1980.

Required to comment, private respondent Rosita L. Garcia alleged that all postponements of the hearing of this case were at the instance of petitioner, who moved for deferment on the date of hearing itself, without his counsel appearing in Court; that petitioner cannot invoke procedural due process as he was notified of all the scheduled hearings; that there is no ground nor justification to set aside the questioned Orders; and that the instant Petition is not the proper remedy. It should be noted that private respondent does not refute the fact of confinement of petitioner's counsel.

We resolved to give due course to the Petition.

The sworn certificate of confinement, the deposit slip showing initial deposit of money upon admission to the hospital of petitioner's counsel, and the medical certificate, also under oath, prove that counsel was still confined at St. Agnes General Hospital until the morning of July 29, 1980, the scheduled date of hearing, which was the reason for his non-attendance in Court on that date. There being a valid ground for petitioner's request for deferment of hearing, respondent Judge committed grave abuse of discretion in denying the same. The previous

postponement of the hearings at the instance of petitioner's counsel should not bar the grant of a subsequent postponement for a valid reason. Justice is better served by a brief continuance with the end in view of an ultimate reckoning between the parties. Speed in judicial administration must yield to the cause of justice. It is in the balancing of these factors that a magistrate must exercise judicious discretion.

"Postponement and continuance are part and parcel of our procedural system of dispensing justice, and when no substantial rights are affected and the intention to delay is not manifest, it is sound judicial discretion to allow them" (Rexwell Corporation vs. Canlas, 3 SCRA 875 [1961]); also cited in Perez vs. Perez, 73 SCRA 517 [1976]).

WHEREFORE, respondent Court is hereby ordered to continue hearing Civil Case No. 045438 until its termination, with no petitions for postponement to be entertained provided ample notice of hearing is given, and to render judgment accordingly.

SO ORDERED.

Makasiar, (Acting Chairman), Fernandez, Guerrero, and De Castro, JJ., concur.

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