

MATEO PAGTAKHAN, ET AL., PETITIONERS, VS. THE COURT OF INDUSTRIAL RELATIONS, LA PERLA CIGAR & CIGARETTE FACTORY, INC., AND LORENZO LIM, RESPONDENTS.

G.R. No. L-23867. June 10, 1971

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

On December 10, 1962, the acting prosecutor of the Court of Industrial Relations (hereinafter referred to as CIR, for short) in behalf of some forty three employees of the La Perla Cigar and Cigarette Factory, Inc. — petitioners now before this Court — filed a complaint before the CIR, charging herein respondents La Perla Cigar and Cigarette Factory, Inc. and its manager, one Lorenzo Lim. with unfair labor practice. The case was docketed as Case No. 3377-ULP. On January 7, 1963, the respondents filed their answer, admitting and denying some pertinent allegations of the complaint, setting up special defenses, and praying that the complaint be dismissed.

Issues having been joined, the Honorable Jose Bautista, as trial judge presiding over one of the salas of the CIR, proceeded to hear the case on the merits. On February 21, 1964, after complainants had closed the presentation of their evidence, respondents filed a motion to dismiss the complaint, alleging that on the basis of the evidence presented by complainants the action of the complainants was not within the jurisdiction of the CIR, and that the cause of action of the complainants was barred by laches. The motion to dismiss was denied by the trial judge in his order of March 16, 1964. In view of the denial of the motion to dismiss, the trial judge issued, on March 18, 1964, a notice setting the continuation of the hearing of the case for March 23, 1964 and April 1, 1964. The counsel for respondents was served with the copies of the notice of hearing on March 20, 1964.

When the case was called for hearing on March 23, 1964, respondents and their counsel failed to appear. Whereupon the complainants, through their counsel, manifested that if on April 1, 1964, the day scheduled for next hearing, the respondents would not appear again, then complainants would move for the submission of the case based on the evidence they had already presented.

On March 24, 1964, the respondents filed a motion for reconsideration of the order of the trial judge of March 16, 1964 which denied their motion to dismiss.

On April 1, 1964, when the case was again called for hearing, neither respondents nor their counsel appeared, and so counsel for the complainants moved for the submission of the case on the basis of the evidence already presented.

On April 2, 1964, respondents filed a memorandum in support of their motion for reconsideration of March 24, 1964. Likewise, on the same day counsel for respondents filed an unverified motion wherein he explained that the failure of respondents to appear at the hearings set for March 23, 1964 and April 1, 1964 was due to an excusable neglect because his secretary who received the supposed notice of hearing handed to him only (he notice of order dated March 17, 1964 and the order of March 16, 1964 itself, but no notice of the schedule of hearing.[1] In the same motion counsel for respondents maintained that the motion for reconsideration that he filed on March 24,

1964 had the effect of elevating the case to CIR en banc and the ruling of the CIR en banc should be awaited before the hearing of the case could be resumed.

On April 11, 1964, the complainants filed their opposition to respondents' motion dated April 2, 1964, pointing out the fact that the motion was not verified and was not supported by an affidavit of merit to substantiate the claim of alleged excusable negligence, and that since the motion for reconsideration of the order of March 16, 1964 (denying the motion to dismiss) was filed only on March 24, 1964 the trial judge had properly ordered the continuation of the hearing of the case for March 23 and April 1, 1964. The complainants further contended that the motion for reconsideration was simply pro forma and intended for delay, and that there is no provision in the Rules of the CIR which provides that a motion for reconsideration filed before a trial judge of the CIR must first be resolved before the trial judge can proceed with the hearing of the case.

Under date of April 23, 1964, the respondents filed a rejoinder to complainants' opposition, further arguing therein the grounds stated in their motion of April 2, 1964. This rejoinder was accompanied by an affidavit of one Edna B. Bayhon who stated that she was the secretary of Atty. Fidel F. Corcuera, the legal counsel of La Perla Cigar and Cigarette Factory, Inc., and that on March 20, 1964 she received from a personnel of the Court of Industrial Relations two sheets of paper consisting of notice of order or decision dated March 17, 1964 and the order dated March 16, 1964 — which two sheets of paper she delivered to Attorney Corcuera, although she could not remember how many sheets of paper she signed because she was very busy that day.

On May 20, 1964, the trial court issued an order finding the respondents guilty of unfair labor practice and ordering the reinstatement of the complainants, with back Wages. The findings of the trial judge mentioned in this order were based on the evidence introduced by the complainants before the respondents filed their motion to dismiss. The findings and conclusions of the trial judge read as follows:

"These complainants were employees of the Dimasalang Branch of respondent company. Some having been in the service for more than five years and for others at least that period.

"There was more or less a pleasant relationship existing between the parties herein. When the complainants, however, became members of the Federacion Obreros de la Industria de Tabacos de Filipinas (FOITAF, for short), a union composed of employees of respondents, there occurred certain incidents which marred the otherwise smooth relationship between them. There were instances where non-union members were allowed to go direct to their machines, while a union member must first fall in line. Certain preferences in the weighing of tobacco leaves, which could mean the difference in producing a lesser or a bigger number of finished tobacco products, were accorded to non-union members which were not extended to union members. Other complainants were told by employees close to the respondent company to desist from joining the FOITAF which was not heeded by the complainants.

"In May of 1956, the Dimasalang Branch of respondents company, where the complainants were working, was burned. The complainants were then assigned for temporary employment for a stipulated period of three months in the main Parañaque Branch of the respondent company. It was the understanding, although no written agreement was shown, that after the reconstruction and rebuilding of the Dimasalang Branch, the complainants would be returned to the latter. The temporary nature of the employment of the complainants in the Parañaque Branch only shows that respondents never regarded the complainants as regular employees of the Parañaque Branch but of the Dimasalang Branch. This also indicates that the complainants who were employees of the Dimasalang Branch were merely laid-off by the cessation of operations due to causes beyond the control of the respondents, and their employment to be resumed upon the resumption of operations.

"Before the three months period, however, ended, the complainants' temporary employment in the Parañaque Branch was discontinued. The record does not contain the reason by respondent for such a step. It would been (sic) pertinent that during the period of the complainants' temporary employment, certain persons holding

supervisory capacities under respondent company were trying to influence the complainants, through the local president of the FOITAF chapter in the Dimasalang Branch likewise a complainant in this case, to switch affiliation to another union which attempt did not succeed. This indeed is significant considering the previous change in relationship between complainants and respondents when the former became members of the FOITAF, before the burning of the Dimasalang Branch.

"Upon the discontinuance of the complainants' employment in the Parañaque Branch before the expiration of the agreed three months, they undertook steps to bring their plight to different government agencies formally and after several negotiations, the Department of Labor was able to settle the question by forging an agreement whereby the complainants were to receive, individually, the amount of P 140.00 for the unexpired portion of the said three months temporary employment. It was further provided that once the Dimasalang Branch would be reopened, the complainants would be given priority in employment in the Lasi Department of the same. This priority of employment must, however, be considered in the light of the fact that the complainants have never severed their employment as regular employees of the Dimasalang Branch and were merely laid-off, as earlier pointed out.

"In April of 1959 the Dimasalang Branch of respondent factory was reopened. Despite the resumption of operations, the complainants were not given any employment in the reopened branch.

"The events narrated disclose a pattern of discriminatory activities on the part of the respondent from the time when the complainants affiliated with the FOITAF when thereafter seemingly minor irritants were created by respondents, then to the failure to continue the three months temporary employment upon failure, likewise, to persuade them (the complainants) to join another union, although the respondents paid for the unexpired term, but only after the complainants had sought the aid of government agencies, and, then finally upon the resumption of the operations of the Dimasalang Branch, none of the complainants were allowed to resume employment. The pervasive character of respondents' interference consisted in a series of seemingly isolated incidents which when viewed in its entirety, unmistakably showed discrimination exercised by respondents against the complainants.

"In view of the foregoing, this court hereby finds the respondents, La Perla Cigar and Cigarette Factory, Inc. guilty of unfair labor practice as charged and, accordingly, orders the reinstatement to their former positions without loss of seniority and other privileges of the complainants, namely, Mateo Pagtakhan, Feliciano Pagtakhan, Julian Pagtakhan, Amado Pagtakhan, Avelino Pagtakhan. Cresencio Pagtakhan, Zenaida Reyes, Carmen Reyes, Rosalina Napiza, Laura Napiza, Adoracion Vasquez, Meliton ArciUa, Ulpiano Tabilog, Melchor Tendencia, Tomas Ongpico, Bromeo Chacon, Pastor Lisabo, Ramon Sus, Juanito Jumenez, Ricardo Magcalas, Eduardo Serrano, Pacita Manansala, Natividad Manansala. Jose Robledo, Rodolfo Alcantara, Trinidad Esguerra, Serapia Filomena, Lazara Sesista, Eladia de la Cruz, Lydia de Guzman, Felix Letan, Juan Antonio, Francisca de Mayo, Jovita Adarne, Carmen Monico, Jose Bonales, Crisanta Taniegra, Purificacion Corpuz, Gregoria Unal, Paula Silvestre, Ernesto David, Remigia Pantig and Antonio Dizon with backwages granted to each from April, 1959, when the Dimasalang Branch of respondent company resumed its operations up to the time they actually resume active employments."

On May 30, 1964, respondents filed a motion for reconsideration of the above-mentioned order of the trial judge of May 20, 1964, followed by a memorandum dated June 9, 1964. On June 18, 1964, the complainants filed their opposition to the motion for reconsideration, and, in turn, on July 7, 1964, respondents filed their reply to complainants' opposition. The motion for reconsideration was heard on oral argument before the CIR en banc on September 24, 1964.

Under date of October 14, 1964, the CIR en banc issued a resolution, setting aside the order of the trial judge of May 20, 1964 and ordering the return of the said case to the trial court for further proceedings "principally for the reception of the evidence for the respondents and such other aspects as will fully terminate the same." Although

the notice of hearing on oral argument mentioned only the motion for reconsideration of the order of the trial court of May 20, 1964, the CIR en banc, in its resolution of October 14, 1964, stated that the respondents' motion of March 24, 1964 for reconsideration of the trial court's order of March 16, 1964 denying respondents' motion to dismiss was also before it for consideration. However, regarding that motion for reconsideration of March 24, 1964 the CIR en banc simply said: "Respondents having been given herein the opportunity to have their day in court, there appears no further necessity for the Court en banc to resolve their motion for reconsideration, dated March 24, 1964."

The complainants moved for the reconsideration of this resolution of October 14, 1964 of the CIR en banc, but the CIR en banc denied said motion for reconsideration in its resolution of November 5, 1964.

Thereupon, complainants filed with this Court the present petition for certiorari to review the resolution of respondent CIR of October 14, 1964. In a resolution dated December 14, 1964, this Court gave due course to the petition.

The question to be resolved in the present case is whether or not a proceeding before one of the judges of the CIR, sitting as a trial judge, should be considered suspended once a motion is filed for the reconsideration of an interlocutory order of the trial judge. Or, stated differently, whether or not the filing of a motion to reconsider an interlocutory order of a trial judge has the effect of automatically elevating the case from the sala of the trial judge to the CIR en banc, thereby suspending the proceedings before the trial judge until the CIR en banc will have resolved the motion for reconsideration.

In the case now before Us a complaint for unfair labor practice was filed before the CIR against herein private respondents. Said respondents filed their answer, and the issues were thereby joined. The case was assigned to one of the judges of the CIR for trial. The trial judge set the case for the hearing of the evidence of the parties. The complainants adduced their evidence, testimonial and documentary, then closed the presentation of their direct evidence. After the complainants had presented their evidence, counsel for private respondents filed a motion to dismiss the case upon the ground that on the basis of the evidence presented by the complainants the case does not fall within the jurisdiction of the CIR, and that even if the CIR had jurisdiction over the case the action of the complainants was barred by laches. In other words, what the respondents did was to present a demurrer to the evidence in accordance with Section 1, Rule 35, of the Rules of Court, which provides as follows:

"Section 1. Effect of judgment on demurrer to evidence. — After the plaintiff has completed the presentation of his evidence, the defendant without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. However, if the motion is granted and the order of dismissal was reversed on appeal, the movant loses his right to present evidence in his behalf."

The CIR en banc in its resolution of October 14, 1964, now in question, recognizes that the order of the trial judge of March 16, 1964 denying the motion to dismiss dwelt on the demurrer to evidence made by the respondents after complainants rested their case. The order of October 14 proceeds to state:

"The Court en banc is of the view that, pending its determination of a motion for reconsideration of a trial court's order denying a motion to dismiss based on insufficiency of complainants' evidence, the trial court should have suspended the hearing of the case for the reception of respondents' (sic) evidence. Such a motion for reconsideration has the prejudicial effect of temporarily withdrawing the case from the competency of the trial court. Also, until the same is resolved by the Court en banc, it is untimely for respondents to prove their defense. The trial court should have properly united (sic) for an en banc resolution and thereafter act in accordance with the disposition thereof x x x ."

We are of the considered view that the CER en banc erred in holding that the trial judge should have suspended the hearing of the case upon the filing by the respondents of a motion for the reconsideration of the trial court's order denying respondents' motion to dismiss. It is the settled rule that an order denying a motion to dismiss an action, or a complaint,[2] is an interlocutory order, and that an interlocutory order is not appealable.[3]

This Court, in the case of *Sitchon vs. Sheriff of Occidental Negros*,[4] said:

"The reason of the law in permitting appeal only from a final order or judgment, and not from interlocutory or incidental one, is to avoid multiplicity of appeals in a single action, which must necessarily suspend the hearing and decision on the merits of the case during the pendency of the appeal. If such appeal were allowed the trial on the merits of the case should necessarily be delayed for a considerable length of time, and compel the adverse party to incur unnecessary expenses; for one of the parties may interpose as many appeals as incidental questions may be raised by him and interlocutory orders rendered or issued by the lower court."

This Court had occasions to apply the aforequoted ruling in the *Sitchon* case in labor cases. In the case of *PLDT Employees Union vs. PLDT Co. Free Tel. Workers Union*,[5] this Court, speaking through former Chief Justice Cesar Bengzon, said:

"We are aware, of course, that the law permitting appeals to this Court from 'any order' of the Court of Industrial Relations does not in any line employ the word final.' But it is reasonable to suppose that Congress did not intend to disregard such well-known rule of orderly procedure, which is based partly upon the convenience of the appealing party itself, in the sense of forestalling useless appeals. In this case for example, if instead of appealing, the intervenor allowed the investigation to continue, and later it is declared to be the proper bargaining agency, then this appeal would have been useless.. . "

In the case of *Philippine Refining Co., Inc.*

vs. *Ponce, et al.*,[6] in the proceedings before trial judge Arsenio C. Roldan the respondent (*Phil. Refining Co., Inc.*) filed a motion to dismiss the petition upon the ground that the CIR had no jurisdiction to take cognizance of the case and the petition therein failed to state any cause of action. This motion was denied by the trial judge, and the order of denial was affirmed by the CIR sitting en banc. The respondent company filed a petition for certiorari before this Court, questioning the correctness of the resolution of the CIR en banc upholding the order of the trial judge denying the motion to dismiss. This Court, speaking through then Associate Justice (now Chief Justice) Concepcion, said: "What is the nature of the proceedings before this Court?

"In applying for certiorari, does the company seek from us a review of the order and the resolution of the Court of Industrial Relations, dated January 4 and February 12, 1954, respectively, in the exercise of our appellate jurisdiction, as provided for in Rule 44 of the Rules of Court?

"Seemingly, such was the purpose of the company when—in the language of paragraph (13) of its petition for certiorari—it filed, with the Court of Industrial Relations, on March 1, 1954, 'notice of its intention to appeal by certiorari.' Evidently, however, there had been a change of plan by the time it filed the petition for certiorari. The allegations in paragraph 15 and 16 thereof — to the effect that, in promulgating the resolution of February 12, 1954 (affirming the order of Presiding Judge Roldan of January 4, 1954) the respondent judges of the Court of Industrial Relations 'had acted in excess of jurisdiction and with grave abuse of discretion,' and that 'there is no appeal nor any plain, speedy or adequate remedy in the ordinary course of law' from said order of January 4, 1954. and from the aforementioned resolution, confirmatory thereof. February 12, 1954 — as well as the tenor of the prayer in the petition for certiorari and the verification at the foot thereof, clearly indicate that the company invokes our original jurisdiction, with a view to securing a declaration of nullity of the order and the resolution in question, by writ of certiorari, under the provisions of Rule 67 of the Rules of Court.

"In either case, however, the petition is legally untenable. Viewed as an appeal from the order and the

resolution of January 4 and February 12, 1954, respectively, the petition cannot be entertained, for said order and resolution are interlocutory in nature, involving, as they do, a mere denial of the motion to dismiss the petition of the main respondents herein in case No. 774-V of the Court of Industrial Relations. Said order and resolution did not dispose, in a definite manner, of either the issue raised by said motion to dismiss, or the merits of said petition of respondents herein. The company may still answer this petition, and, after due hearing, the Court of Industrial Relations shall render a decision or award, passing upon the merits of said petition and of the answer thereto and settling the issue or issues raised by the pleadings. In disposing thereof, the Court of Industrial Relations might even reconsider the view taken in the order and the resolution complained of, in which event a review of either by this Court would become unnecessary. If no such reconsideration were made in said decision or award, and the same were unfavorable to the company, the latter could then appeal to this Court by certiorari, and, in the course of the proceedings thereon, it could seek, not only a reversal or modification of said decision or award, but, also, a determination of the soundness or propriety of the order and the resolution in question (Rule 41, Section 2, Rules of Courts)."

In the case of *Harrison Foundry & Machinery vs. Harrison Foundry Workers Association*,^[7] another labor case, in resolving the question relating to an appeal from an order denying a motion to dismiss, this Court, speaking through Mr. Justice J.B.L. Reyes said:

"It is an elementary rule of procedure (Rule 41, Sec. 2) that an order denying or rejecting a motion to dismiss is interlocutory and non-appealable, because the order does not terminate the proceedings, nor finally dispose of the contentions of the parties. And it is equally well established that a writ of certiorari can not be made to substitute for an appeal where the latter dies (lies) at the proper time.

"Since *res judicata* does not touch the lower court's jurisdiction, the obvious remedy for the appellants was to interpose, as defenses in their answer, the objections raised by them in the motion to dismiss, then proceed to trial, and, in case of an unfavorable decision, bring the case to us by appeal in due time, so that this Court may rule on all the issues once and for all. The piecemeal resort to higher courts, unless absolutely indispensable, is a practice that has always been discouraged, because it delays the speedy disposition of cases, and is often resorted to as a means of draining the resources of the poorer party and of compelling it to submit out of sheer exhaustion, even if its demands should be conformable to reason and justice.

"The practice adopted by the appellants is, therefore, a plain abuse of legal processes, tending as it does to block the speedy administration of justice to the prejudice of unemployed strikers.

x

x

x

"It thus appearing that the petitioners-appellants have managed to delay the speedy settlement on the merits of these cases to the prejudice of the strikers, and has compelled them to litigate a totally improper appeal, equity demands that the right of the laborers to recover damages and attorney's fees therefor should be reserved to them. We are the more inclined to do so because public policy demands an effective cure upon the abusive delays obtained through appeals from interlocutory orders of trial courts."^[8]

We are aware that the rulings of this Court in the three cases that We have cited in the preceding paragraphs^[9] refer to interlocutory orders of the CIR en banc. The case now before this Court relates to an interlocutory order issued by one of the judges of the CIR acting as a trial judge. It is Our considered view, however, that the settled rule that no appeal should be allowed from an interlocutory order should apply to an interlocutory order issued by the CIR en banc as well as to an interlocutory order issued by a trial judge of the CIR — the common objective

being "to avoid multiplicity of appeals in a single action, which must necessarily suspend the hearing and decision on the merits of the case during the pendency of the appeal,"[10] thereby discouraging piecemeal appeals which delay the speedy disposition of cases. The proceeding before one judge of the CIR, acting as a trial judge, may end in a judgment by the trial judge which disposes of completely the case and gives an end to the litigation, unless the judgment or order of the trial judge is appealed to the CIR en banc upon a timely filing of a motion for reconsideration by the dissatisfied party. But the appeal to the CIR en banc should refer only to a decision or order that is final — which means a decision or order that has finally disposed of the pending action and nothing more can be done with it in the trial court.[11]

It is provided in Section 1 of C.A. 103 that:

"The Judges (of the CIR) shall act on such matters as the presiding Judge may designate and each of them shall have power to preside over hearing of cases assigned to him and to render decisions thereon."[12]

Under the aforequoted provision of C.A. 103, when a judge of the CIR is designated by the presiding judge to hear a case,

"Should any party, aggrieved by a ruling or decision of any of the Judges, request a reconsideration thereof, or at the request of any of them, the Judges shall sit together, and the concurrence of at least three of the five judges shall be necessary for the pronouncement of a decision or order or award."

Again, under the aforequoted provision of C.A. 103, the CIR performs the function of a collegiate appellate court, in the sense that it passes upon and decides appeals from the order or decision of the trial judge. But, as We have adverted to, only a final order or decision of the trial judge should be appealed to the CIR en banc. The rule, therefore, must be that no motion for reconsideration, by way of an appeal to the CIR en banc from an interlocutory order of a trial judge, should be entertained by the CIR en banc and given the effect of suspending the proceeding before the trial judge; otherwise a party in the case can arrest, without the necessary adequate court action, the proceeding before the trial judge by interposing frivolous appeals to the CIR en banc from all rulings of the trial judge. It is Our view that what is contemplated in the aforequoted provision of Section 1 of C.A. 103 is a motion for reconsideration, which serves as an appeal, of an order or decision of the trial judge which is final in nature. To allow an appeal from all kinds of order or ruling of the trial judge, regardless of whether or not the order or ruling is interlocutory, is to open the door to the expedient of appealing from any order or ruling of the trial judge in order to delay the proceedings in a case. We hold, therefore, that only an order or ruling of the trial judge that is final in nature can be appealed to the CIR en banc, and it is that appeal that can have the effect of suspending the proceedings before the trial judge.

In the case now before Us the order of the trial judge, Jose S. Bautista, of March 16, 1964, in case No. 3377-ULP of the Court of Industrial Relations, denying respondents' motion to dismiss upon the ground of insufficiency of evidence is clearly interlocutory. As We have adverted to, that motion to dismiss was in accordance

with Section 1, Rule 35 of the Rules of Court. Under that rule the respondents had a chance to present their evidence after their motion to dismiss, or their demurrer to the evidence, had been denied by the trial judge. The respondents could very well have presented their evidence after the denial of their demurrer to the evidence, and if the subsequent decision of the trial judge would be adverse to them they could raise on appeal from the decision of the trial judge to the CIR en banc the very same ground stated in their demurrer to the evidence. In that way the CIR en banc can pass upon the merits of the case based on the evidence and at the same time determine the legal sufficiency of the motion to dismiss. It appears to this Court that the respondents had resorted to the recourse of an improper appeal for the purpose of delaying the speedy settlement and adjudication of this case by the trial judge. This practice of the respondents cannot be sanctioned because, as We have said, "public policy demands an

effective cure upon the abusive delays obtained through appeals from interlocutory orders of trial courts." [13] In resorting to improper appeal for the purpose of delay the respondents did so at their own risk and should suffer by the consequences of their act.

It is Our view that the trial judge violated no law nor rule when it disregarded the motion for reconsideration filed by the respondents and proceeded to the continuation of the hearing of the case — after denying respondents' motion to dismiss — and finally deciding the case on the basis of the evidence presented by the petitioners. We read the following from the order of the trial judge of May 20, 1964:

"On February 21, 1964 after complainants have rested their evidence respondents filed a motion to dismiss. The same was denied in the court's order of March 16, 1964.

"On March 18, 1964 this Court issued a notice of hearing, in view of the denial of respondents' motion; setting the case for trial on March 23, and April 1, 1964.

"During the scheduled hearing of March 23, respondents and their counsel failed to appear. Whereupon the complainants manifested through counsel that if at the next scheduled hearing, no appearance will again be made, they (the complainants) will move for the submission of the case based on the evidence already presented.

"On March 24, 1964 a motion for reconsideration was filed by respondents seeking a review of the order of March 16, 1964.

"On April 1, 1964 the above-entitled case was again called for hearing based on the notice as previously stated of March 18, 1964. For the second time none of the respondents nor counsel in their behalf appeared. Whereupon complainants, through counsel, moved for the submission of the case on basis of the evidence already presented. This latter motion was submitted.

"It must be noted that respondents, after denial of their motion to dismiss, were notified of subsequent hearings for them to present their evidence. In both scheduled hearings no explanation was made of their non-appearance. The Rules of Court are silent as to whether a motion for reconsideration to such an order of one Sala will suspend further hearing in this case, more so if we are to take into consideration the interlocutoriness of the said order. To so suspend will cause interminable delay brought about by the necessity of securing the concurrence of other judges of the court, when the same might be avoided, the order, as stated, being interlocutory in nature and no prejudice will ensue if respondents continued with the trial and present their evidence. Further, to hold that a motion for reconsideration will suspend hearings will result in an incongruity where this court could possibly be at the mercy of any party to a case. Take the specific example of a mere denial for the postponement of a scheduled hearing. The party movant whose request has been denied, could achieve indirectly his desired postponement by the simple expedient of filing a motion for reconsideration to the order denying the postponement. Thereby upon suspension of the hearing, pending resolution of the motion, the desired postponement has been attained.

"Neither do the Rules of Court provide that a judge may, at his discretion, suspend or not the hearing of a certain case upon a filing of a motion for reconsideration."

We thus find that the trial judge acted properly when it issued the order of May 20, 1964 finding the private respondents herein guilty of unfair labor practice as charged and ordering

the reinstatement of the petitioners to their former positions, under the conditions mentioned in the order. The trial judge had given the parties, particularly the respondents, the opportunity to present evidence; the trial judge considered the evidence presented by the petitioners; the trial judge had enough basis in law and in fact to support its decision; and that the findings and conclusion of the trial judge are supported by substantial evidence. [14] In deciding the case without hearing the evidence of the respondents, the trial judge had acted in accordance with the

provisions of Section 7, of C.A. 103, which partly reads as follows:

"SEC. 7. Where hearings may be held; and how.- The Court shall have power to conduct hearing in any place for the determination of a question, matter or controversy within its jurisdiction, proceed to hear and determine the dispute in the absence of any party thereto who has been summoned or served with notice to appear. . ."

We, therefore, hold that the CIR en banc erred when in its resolution of October 14, 1964 it set aside the order of the trial judge, Judge Jose S. Bautista, of May 20, 1964, and ordered the case returned to the trial court for further hearings, principally for the reception of evidence for the respondents.

IN VIEW OF THE FOREGOING, the resolution of the Court of Industrial Relations en banc, dated October 14, 1964 should be, as it is hereby reversed and set aside, and the judgment of the trial judge, Jose S. Bautista, embodied in his order of May 20, 1964 in Case No. 3377-ULP of the Court of Industrial Relations, is declared final and executory, with costs against the private respondents.

IT IS SO ORDERED.

Concepcion, CJ., Reyes, J.B.L., Dizon, Makalintal, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Ruiz Castro, J., took no part;

[1] The record, however, shows the bailiff of the CIR certified that the notice of hearing was served to Atty. Fidel Corcuera, counsel for respondents, through Miss Bayhon, his secretary, on March 20, 1964. See back of Annex "W" of petition, p. 148 of the record.

[2] Section 2, Rule 41, Rules of Court; *People vs. Doriques*, L-24444, July 29, 1968, 24 SCRA 167; *Ramos vs. Ardant Trading Corporation*, L-21975, June 13, 1968, 23 SCRA 947; *Sy vs. Dalmart*, L-19200, Feb. 28, 1968, 22 SCRA 834; *Chuatoco vs. Aragon*, L-20396, Jan. 30, 1968, 22 SCRA 346; *People vs. Macandog*, L-18601, January 31, 1963, 7 SCRA 195; *Bautista, et al. vs. De la Cruz*, L-21107, Dec. 24, 1963, 9 SCRA 725; *Harrison Foundry and Machinery, et al. vs. Harrison Foundry Workers Association, et al.*, L-18432, June 29, 1963, 8 SCRA 430; *Phil. Refining Co., tic. vs. Ponce, et al.*, 99 Phil. 269; *PLDT Employees Union vs. PLDT Co. Free Tel. Workers Union*, 97 Phil. 424; *Sitchon vs. Sheriff of Occidental Negros*, 80 Phil. 397.

[3] The term "motion to dismiss" may include a motion to dismiss under Section 1 of Rule 16 of the Rules of Court; a motion to dismiss under Section 1 of Rule 35 of the Rules of Court (demurrer to the evidence); and motion to quash under Section 2 of Rule 117 of the Rules of Court.

[4] 80 Phil. 397, 399.

[5] 97 Phil. 424. The law referred to in the portion of the decision quoted is C.A. 103, the act creating the CIR (as amended).

[6] 99 Phil. 269.

[7] G.R. No. L-18432, June 29, 1963. 8 SCRA 430.

[8] Underscoring, supplied.

[9] *PLDT Employees Union vs. PLDT Co. Free Telephone Workers Union*, supra; *Philippine Refining Company, Inc. vs. Ponce*, supra; and *Harrison Foundry and Machinery vs. Harrison Foundry Union Association*, supra.

[10] Sitchon vs. Sheriff of Occidental Negros, *supra*.

[11] "An order or a judgment is deemed final which (sic) it finally disposes of the pending action so that nothing more can be done with it in the trial court. In other words, a final order or judgment is that which gives an end to the litigation. And, consequently, when the order or judgment does not dispose of the case completely but leaves something to be done upon the merits, it is merely interlocutory. . . (Comments on the Rules of Court, by Moran, Vol. I, pp. 894-895)" - cited in *Philippine Refining Co., Inc. vs. Ponce, et al.*, *supra*. *Pagtakhan, et al. vs. CIR, et al.* that judge acts as a trial judge and can decide the case with finality, unless his order or decision is appealed to the CIR en banc. In the same Section 1 of C.A. 103, it is provided that:

[12] Words in parenthesis, supplied.

[13] *Harrison Foundry and Machinery, et al. vs. Harrison Foundry Workers Association, et al.*, *supra*.

[14] *Ang Tibay, etc., et al. vs. The Court of Industrial Relations, et al.*, 69 Phil. 635; *Luzon Stevedoring Co., Inc. vs. CIR*, L-16682, July 26, 1963, 8 SCRA 447, 445.

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