

BENJAMIN SIA, PLAINTIFF AND APPELLANT, VS. JAVIER BUENA Y TOTANES, DEFENDANT AND APPELLEE.*G.R. No. L-18836. August 31, 1962*

Ponente: DIZON, J.

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Appeal from an Order of the Court of First Instance of Manila in Civil Case No. 42221 denying appellant's "Motion for Reconsideration and/or Relief" from its order dismissing the complaint and discharging the writ of preliminary attachment theretofore issued.

Appellant commenced the action in the Municipal Court of Manila on September 1, 1959, for the collection of an alleged P1,000.00 loan payable on or before August 15 of the same year. In his answer, appellee alleged that he had never borrowed any money from appellant who, in fact, he did not even know. He also interposed a counterclaim of P5,000.00 as damages suffered due to the malicious filing of the action. On December 2, 1959, after due trial, the court dismissed the complaint as well as the counterclaim.<

Appellant appealed to the Court of First Instance where the case was first set for trial on February 26, 1960. On appellant's motion, the trial was postponed to March 24 of the same year, but on that date, appellant appeared without counsel and again moved for postponement for the last time to April 29, 1960, 8:30 a.m. His motion was granted, but when the case was called for trial on April 29, 1960, Atty. Herminio T. Sugay appeared for appellant and moved for another postponement on the ground that his services were engaged only the previous day. With the consent of appellee's counsel—reluctantly given—the court postponed the trial anew for the last time to July 1, 1960 at 8:30 a.m. The corresponding order was given in open court and was expressly to the effect that "both parties are deemed notified of this order".

On July 1, 1960, the case was called for trial, but neither appellant nor his counsel appeared. For this reason, on appellee's motion, the court dismissed the case, without costs.

On July 8, 1960, appellant filed a Motion for Reconsideration and/or Relief from the order of dismissal, alleging that Atty. Sugay's failure to appear was due to his belief that he would be notified in writing of the order of April 29, 1960 granting, in open court, the last motion for postponement, and because he did not receive such written notice, he failed to note down on his calendar the date of the trial. The motion was accompanied with appellant's affidavit in which he stated that he had a good and meritorious cause of action as shown by the fact that an eye witness saw the delivery of the money borrowed by appellee, but without giving the name of such alleged witness. After due hearing, the motion was denied by the lower court. Appellant now contends that:

"I.

"The trial court erred in not considering that the grounds adduced by plaintiff-appellant for his and counsel's failure to appear for hearing on July 1, 1960 constitute excusable negligence as defined under Rule 37 of the Rules of Court, and consequently,

"II.

"The trial court erred in denying plaintiff-appellant's motion for reconsideration and/or relief and thus depriving plaintiff-appellant his opportunity to have his complaint heard and decided on the merits."

The facts stated above make it abundantly clear that the trial court committed no error in dismissing the complaint and in subsequently denying appellant's motion for reconsideration and/or relief from the order of dismissal. Said facts are more than sufficient to show that appellant had not shown sufficient interest in the prosecution of his case and that his and his counsel's failure to appear on the last date set for the trial thereof was completely inexcusable. His counsel was notified in open court of the date of the trial and it was his duty to immediately take note thereof.

Wherefore, the Order of the lower court denying appellant's Motion for Reconsideration and/or Relief from the Order of Dismissal mentioned above is affirmed, with double costs against appellant.

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

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