JOSEPH ARCACHE, PLAINTIFF AND APPELLEE, VS. B. S. CHAINANI, DEFENDANT AND APPELLANT.

G.R. No. L-8041. May 23, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On September 16, 1949, plaintiff filed with the Municipal Court of the City of Manila an action for ejectment and collection of the rentals due for the occupation of a property situated in the City of Manila against defendant, plus attorney's fees and costs. On March 9, 1951, after due hearing, the court rendered judgment ordering defendant to pay plaintiff the amount prayed for in the complaint but dismissing the counterclaim put up by defendant. Defendant appealed from this decision to the Court of First Instance of Manila

On April 30, 1951, defendant filed his answer which is a virtual reproduction of the answer he filed in the municipal court. The most important affirmative defense set up by defendant, aside from two counterclaims, is that plaintiff was indebted to defendant in the sum of P25,000, plus interest, as evidenced by a promissory note, a photostatic copy of which was attached to the answer. To this answer, plaintiff filed a reply.

Issues having been joined, the case was set for hearing on July 26, 1951 but, for some reason or another, the hearing set for that date was cancelled and on April 26, 1953 the parties were notified that it was postponed to May 7, 1953 at 1 o'clock in the afternoon. When this date and time came, the trial judge called the case for hearing, but neither defendant nor his counsel showed up, where upon, the trial judge allowed plaintiff to present his evidence. When the first wtiness was about to testify, Atty. Manuel Pineda, who represented himself as an assistant in the law office of defendant's counsel, appeared and informed the court that he had filed with the clerk of court at 12:20 o'clock that afternoon a motion for post-ponement of the hearing. The trial judge, after going over the motion and. hearing the explanation given by Atty. Pineda, declared the same to be without merit and proceeded with the hearing until it was finished. Thereafter, he rendered judgment ordering defendant to pay to plaintiff the amount of P25,125,, plus P100 as attorneys' fees, and the cost of action.

On June 10, 1953, defendant filed a motion for new trial seeking to set aside the decision alleging as reason that his counsel's failure to appear at the trial of the case was due to excusable negligence which ordinary prudence could hot have guarded against by reason of which he has not been given his day in court, supporting his motion with the necessary affidavit of merit. To this motion, plaintiff filed a written opposition and on June 23, 1953, the court issued an order denying the motion for lack of merit The case was taken to the Court of Appeals but it was later certified to this Court because it involves purely a question of law.

It appears that this case was set for hearing on May 7, 1953 at 1 o'clock in the afternoon, and .that notice of said hearing was received by counsel for appellant sometime on April 26, 1953. But on May 6, 1953, said counsel received by registered mail an order of the Court of First Instance of Batangas enjoining him to appear at the trial of a criminal case, also set for hearing on May 7, 1953, (Criminal Case No. 431, People vs. Arguelles, et al.) and further requiring him to show cause why he should not be punished for contempt as a consequence of his failure

to appear at the hearing of the case on April 15, 1953. So, in the afternoon of May 6, 1953, he requested his assistant, Atty. Manuel B,. Pineda, to prepare an urgent motion for postponement based on the facts above-stated with specific instruction to file it as soon as possible. However, due to a misunderstanding between Atty. Pineda and the secretary of counsel, the motion was filed only on May 7, 1953, at about 12:20 o'clock in the afternoon. But notwithstanding said motion and the appearance of Atty. Pineda at the hearing reiterating the request for postponement even if the trial had just begun, the court denied the motion. Do these facts constitute excusable negligence which may justify the reopening of the case?

As a general rule, "The matter of adjournments and postponements of trials lies generally within the discretion of courts and such discretion will not be interfered with either by mandamus, or by appeal, unless a grave abuse thereof is shown." (Moran, Comments on the Rules of Court, Vol. I, 1952 ed., p. 650, and cases cited therein). But it has also been held that "Whether a trial may be continued because a party's attorney is engaged in another trial on the same date, is a question to be determined in the discretion of the court according to the peculiar circumstances of each case. Continuance may be granted if the attorney is without fault, or it causes no undue prejudice either to the adverse party or to the interest of a prompt administration of justice. A practitioner may have two cases in two different courts set for trial on the same date without his previous knowledge and consent, and under this circumstance it is but fair to grant him postponement of one of the trials if. petition to that effect is presented at such time as is practicable to prevent the adverse party from coming to court with his witnesses on the day set for trial thus incurring unnecessary expenses; otherwise, he may be made to pay for such expenses as a pre-requisite to continuance." (Moran, Comments on the Eules of Court, Vol. I, 1952 ed., p. '651-652, and cases cited.)

We believe that the facts of this case come squarely within the purview of the second rule above-mentioned for it appears that the failure of counsel to appear at the hearing set for May 7, 1953 was due to an order he received from the Court of First Instance of Batangas enjoining him to appear before said court on the same date to proceed with the. trial of a criminal case which, by the' way involved'a detention prisoner. It further appears that the order required counsel to show cause why he should not be punished! for contempt of court as a consequence of his failure to appear on the hearing of said case on April 15, 1953 and, as counsel states, his failure was due to illness and so he was not able to be present at the trial.

It is true that counsel was notified of the hearing ten days before, or on April 26, 1953, but it should be noted that he received the order of the Court of First Instance of Batangas only in the afternoon of May 6, 1953, and immediately took steps to file a motion for postponement. It is however unfortunate that, due to a misunderstanding, the motion was filed in court by his secretary only in the afternoon of the following, day. These facts are undisputed. Considering that this is the first postponement that was asked by counsel and his client, the appellant, has a valid and meritorious defense which consists in a promissory note signed by appellee in the amount of P25,000, we believe that the failure of counsel to appear is due to excusable negligence and it is but fair that his client be given another opportunity to present his evidence to prevent a miscarriage of justice. Anyway, if a new trial is granted, no undue prejudice would be caused to the adverse party.

Wherefore, the decision appealed from is set aside. The case is remanded to the lower court for new trial on the merits. No pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Labrador, Concepcion, Reyes, J. B. L., and Endencia JJ. Concur.

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