

RODOLFO T. ALLARDE, COMPLAINANT, VS. JUDGE PEDRO N. LAGGUI, RTC, BRANCH 60, MAKATI, METRO MANILA, RESPONDENT.

A.M. No. RTJ-89-329. March 17, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

A sworn complaint, dated 18 May 1989, was filed by Atty. Rodolfo T. Allarde against respondent Judge Pedro N. Laggui, Regional Trial Court, Branch 60, Makati, for ignorance of the law, gross and manifest partiality amounting to graft, and knowingly rendering an unjust judgment/order.

The complaint, as summarized by then Acting Court Administrator, Atty. Juanito C. Ranjo, alleges substantially as follows:

"Complainant alleged the pre-trial proceedings in the case were conducted by the Hon. Job B. Madayag, Branch 145, same court. When no settlement was reached by the parties, they proceeded to present their respective evidence. Upon orders of the court, herein complainant's counsel submitted the Memorandum for the Plaintiff while the defendants' counsel failed to comply with the said order.

Complainant averred that in his Order dated June 22, 1987, the herein respondent Judge set the case for pre-trial, apparently setting aside the pre-trial proceedings already conducted by the Hon. Job B. Madayag. For failure of complainant and his counsel to appear at the scheduled continuation of the pre-trial on September 30, 1987, the respondent Judge, in open court, ordered the dismissal of Civil Case No. 15244. Correspondingly, herein complainant's counsel seasonably filed on October 2, 1987, a Motion to Lift Order of Dismissal which was, however, denied by the respondent Judge in his Order dated March 29, 1988, notwithstanding the justifications submitted for such failure.

Complainant contended that in denying the aforementioned motion, the respondent Judge put an end to a justiciable controversy without resolving the merit of the case."^[1]

In the Court's resolution, dated 7 June 1990, respondent Judge was required to submit his comment on the complaint within ten (10) days from notice thereof.

In his Comment, dated 24 July 1990, respondent Judge refuted the allegations of the complaint as follows:

He did not issue an Order dated 22 June 1987. The Order setting the pre-trial for 23 June 1987 was issued on 21 May 1987.

There had been no pre-trial conducted in Branch 145 before Judge Job Madayag as the records of Civil Case No. 15244 (Rodolfo T. Allarde vs. Spouses Romeo Laus and Marcelina Laus) transmitted to Branch 60 from Branch 145, Regional Trial Court, Makati, show that the Answer dated 20 November 1986 (Annex 3 of Comment) was filed only on 21 November 1986, while complainant's Motion to Admit Reply and the Reply were filed on 6 January 1987 (Annexes 4 and 5). The Order granting the Motion and admitting the Reply was issued only on 9 January 1987 (Annex 6).

The proceeding which complainant erroneously claims to be the pre-trial was actually a hearing on complainant's prayer in his complaint for the issuance of a writ of preli-minary injunction. The hearings were held on 21 November and 16 December 1986 and 30 January 1987 before Branch 145.

In fact, after one of the defendants, Marcelina Laus, testified on 30 January 1987, counsels for the parties were given thirty (30) days within which to file their simultaneous memoranda. Complainant filed his memorandum dated 15 February 1987 on 17 February 1987. (Annex B to B-8 of complaint). On the other hand, the defendants filed theirs on 5 March 1987 in support of their opposition to plain-tiff's application for the issuance of a writ of preliminary injunction. The evidence adduced by the plaintiff and the defendants before Branch 145 on 21 November, 16 December 1986 and 30 January 1987 were not on the merits of the case. Between 31 January 1987 and up to the time the case was transferred to Branch 60 on 13 May 1987, no proceeding of any kind was held in Branch 145.

Complainant never informed the court, Branch 60, that pre-trial was already terminated in Branch 145. As a matter of fact, he was notified and he knew that all the proceed-ings before Branch 60 were for pre-trial and trial proper. The Order dated 21 May 1987 clearly stated that the hearing for 23 June 1987 was in connection with the pre- trial conference (Annex 23). The said conference was cancelled and re-set for 22 July 1987 for non-appearance of the plaintiff who appeared not to have received the notice.

At the pre-trial on 22 July 1987, a question of procedure was raised - the motion of plaintiff's counsel to declare Romeo Laus as in default for his failure to appear, to which counsel for defendants objected because he (Laus) was not properly summoned as he was in Saudi Arabia on the date summons was allegedly served upon him - so that the court ordered that the pre-trial set for said date be cancelled and tentatively re-set for 30 September 1987, and granted defendants fifteen (15) days from 22 July 1987 within which to file their memorandum in support of their opposition to the motion that defendant Romeo Laus be declared as in default and fifteen (15) days from his receipt of a copy of the memorandum within which plaintiff could file his Reply thereto.

The complainant and his counsel did not appear for the hearing on 30 September 1987 despite their receipt of the notice dated 17 September 1987 setting the pre-trial on 30 September 1987 and the fact that they also signed on 22 July 1987 the notice given in open court re-setting the hearing to 30 September 1987 (Annex 33). For the non-appearance of plaintiff and his counsel, on 30 September 1987, the complaint was dismissed without prejudice in open court.

From the above comment/explanation of the respondent judge, we are satisfied that his dismissal of Civil Case No. 15244 did not merit or warrant the charges filed against him by the complainant.

A reading and study of the documents attached to the Comment (Annexes 1 to 36) convince us that complainant was in fact confused as to the nature of the proceedings held before Judge Job Madayag of Branch 145, RTC of Makati. The alleged pre-trial conference in Branch 145, as claimed by complainant, was actually a hearing on his prayer for the issuance of a writ of preliminary injunction pending termination of the action.

The record of said hearing is found in the Order of the court dated 29 October 1986, which states:

"Acting on the application for issuance of a writ of preliminary injunction and finding the same to be sufficient in form and substance, the Court hereby sets the same for hearing on November 10, 1986 at 9:00 A.M., at which time the defendants are hereby ordered to show cause why the writ prayed for should not be granted."

As to the dismissal of Civil Case No. 15244, we likewise do not believe that respondent judge rendered an unjust judgment/order. Section 2, Rule 20 of the Revised Rules of Court provides as follows:

"Sec. 2. Failure to appear at pre-trial confe-rence. - A party who fails to appear at a pre-trial conference may

be non-suited or considered as in default."

Unquestionably, the trial court has the discretion to declare a party non-suited. Such exercise of discretion will not be interfered with by the appellate courts, absent a showing of grave abuse thereof. At the pre-trial of the aforesaid civil case, both complainant and his counsel did not appear despite notice to both of them in open court and a subsequent written notice sent to them which they also received. We find said dismissal to be in order.

WHEREFORE, the administrative complaint against respondent judge is DISMISSED for lack of merit.
SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Bidin, Grino-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Campos, Jr., and Quiason, JJ., concur.
Gutierrez, Jr., J., on terminal leave.

[1] Rollo, p. 29

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