

**HON. GREGORIO G. PINEDA, PRESIDING JUDGE, BRANCH XXI,
COURT OF FIRST INSTANCE OF RIZAL, AND JOSE T. VICTORIA,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS (SPECIAL
SEVENTH DI...**

G.R. No. L-35583. September 30, 1975

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition for certiorari to review and annul a decision of respondent Court of Appeals dated July 28, 1972, granting the petition for certiorari, prohibition and mandamus with preliminary injunction filed by therein petitioners Emmanuel G. Victoria, Irene Victoria, Leocadia G. Victoria and Eleanor G. Victoria, private respondents herein.

On December 22, 1970, private petitioner Jose T. Victoria with the petitioner CFI Presiding Judge (Branch XXI) a complaint dated December 10, 1970 for recovery of possession of two parcels of land situated in the municipality of Taguig, Rizal, against private respondents herein, praying, among other things, that after notice and hearing, private respondents be ordered to vacate the premises in question, to pay private petitioner reasonable rental for occupancy of the same and to pay the costs of the suit (p. 76, rec).

On February 9, 1971, after having been granted an extension to time to file a responsive pleading, private respondents filed their answer to said complaint claiming that they are the true, legal and absolute owners of the property stated in the complaint, and praying among others, for the dismissal of the complaint, and that the plaintiff (herein private petitioner) be condemned to pay compensatory and moral damages and the costs of the proceedings (p. 84, rec.) Private petitioner, after tendering a reply and answer to counterclaim (p. 91, rec), filed a motion to set the case for pre-trial, which was granted.

At that time, the case was still with Branch II of the Court of First Instance of Rizal and not yet with with the sala of the petitioner Honorable Gregorio G. Pineda, who presides over Branch XXI of the same court. The Clerk of Court of Branch II issued on March 5, 1971 a notice of pre-trial to Atty. Artemio Victoria for the plaintiff (herein private petitioner) and to Atty. Neptali Gonzales and Neptali for the defendants (herein private respondents) stating that the pre-trial would be held on May 29, 1971 at 10:00 o'clock in the morning (Annex "E" of the petition, p. 98, rec). On the designated date, the Presiding Judge (Hon. Pedro Navarro) was on leave and the Clerk of Court of Branch II entered the following minutes:

"Minutes

"The presiding Judge of this Court (Branch II) being on leave and as prayer by Atty. Victoria and AUy. Atty. Capistrano, let the pre-trial of this case be transferred to July 3, 1971 at 10:30 o'clock in the morning.

"Atty. Victoria and Atty. Capistrano are notified of this new assignment.

"Pasig, Rizal, May, 29, 1971.

(Sgd.)EMILIANOS. RISOS
Branch Clerk of Court"

On July 3, 1971, it appeared that the presiding judge on leave and the clerk of court entered similar minutes noting therein the notification to Atty. Capistrano as to the new date — October 16, 1971 — for pre-trial.

Thereafter, the exact date still being unknown, the case was transferred to the sala of Branch XXI presided over by the petitioner CFI judge without the knowledge of the private respondents or of their lawyer.

On October 16, 1971, the day set for pre-trial, neither the defendants nor Atty. Melanio Capistrano appeared. The petitioner judge entered an order that "the court herein declares and considers the defendants as in default," and commissioned the deputy clerk to receive the evidence for the plaintiffs and to submit a report (Annex "F" of the petitions, 9, 99, rec.).

On October 21, 1971, an associate in the office of Atty. Neptali Gonzales and Associates, Atty. Hermogenes R. Liwag, while appearing in the sala of Branch X of the same court, stumbled upon the scheduled reception of evidence before the commissioner appointed by the petitioner CFI Judge, and entered his appearance but was denied personally and standing to appear and participate in the said proceedings.

On October 23, 1971, private respondents filed a verified motion to reconsider and/or re-set the order of October 16, 1971 (Annex "H" of the petition, p. 105, rec), but the same was denied on November 13, 1971 on the grounds that a decision had already been rendered on the merits, the motion was not accompanied by an affidavit of merit, and the sudden resignation of Atty. Capistrano was not an excuse as Atty. Capistrano was to all legal intents, the counsel for the defendants when the default order was issued . . ." (Annex "I" of the petition, p. 109, 110, rec.) to reconsider the order and to set aside the decision was likewise denied (Annex "O" of the petition, p. 143, rec).

In view thereof, private respondents elevated the matter to the respondent Court of Appeals which rendered a decision, the dispositive portion of which reads:

"WHEREFORE, the Order of October 16, 1971, November 13, 1971, the decision dated October 23, 1971 and the Order of January 7, 1972 granting execution pending appeal are hereby set aside and the respondent Judge is hereby ordered to proceed with pre-trial with notice served not only to the lawyers but also to the parties. With costs against the respondents" (p. 27, rec.)

Dissatisfied with the same, petitioners brought the instant petition.

The thrust of private petitioner's assignment of error is that since the counsel for private respondents was personally notified in open court of the transfer of the pre-trial proceedings from July 3, 1971 to October 16, 1971, as evidenced by the minutes of July 3, the respondent Court of Appeals erred in holding that because the private respondents were not notified of said transfer, the order of the Honorable Court a quo declaring the private respondents in default was null and void.

It is, however, undisputed that at the pre-trial conference of the case presided over by the Branch Clerk of Court due to the absence of the Presiding Judge, the minutes prepared by said clerk of court merely singles out the counsel for the private respondents as having been notified of the transfer of the pre-trial from July 3, 1971 to October 16, 1971. The most careful scrutiny of said minutes fails to reveal any indication as to whether the parties to the case, particularly the private respondents herein, had been informed of said transfer. Hence, private respondents now contend that since no notice of the pre-trial was sent to them but only to their lawyer, the who proceedings before the court a quo cannot stand the test of validity.

WE find respondents' position tenable.

There is no denying the discretion of a Judge of a court of first instance to declare a party in default or to dismiss a case for failure of said party to appear at the pre-trial. Such dismissal of the suit or declaration of default for non-appearance of any of the parties is sanctioned by the Rules (*American Insurance Co. vs. Manila Port Service, et al.*, L-27776, January 31, 1968, 22 SCRA 482, 485; *Home Insurance Co. vs. United States Lines Co., et al.*, L-25593, November 15, 1967, 21 SCRA 863, 866).

In the case at bar, however, the private respondents' failure to appear at the pre-trial conference of October 16, 1971 cannot be attributed to them. No notice of said pre-trial was ever sent to respondents. Their absence therefore was justified. Thus, the order of default issued by the respondent Judge clearly ignored the doctrine of procedural due process which demands that a party affected must be given notice and an opportunity to be heard. The lack of notice would mean the nullity of the decision rendered in ordinary civil cases, since they "suffer from a fatal infirmity for want of due process" (*Tiglao vs. COMELEC, et al.*, L-31566 and L-31847, August 31, 1970, 34 SCRA 456, 470; *Macabingkil vs. Yatco*, L-23174, September 18, 1967, 21 SCRA 150, 159).

Sections 1 and 2 of Rule 20 of the Rules of Court, which inter alia, state:

"Section 1— Pre-trial Mandatory. — In any action after the last pleading has been filed, the court shall direct the parties and their attorneys to appear before it for conference to consider: (a) the possibility of an amicable settlement or of submission to arbitration. xxx (Italics supplied).

"Section 2. Failure to appear at the pre-trial conference — A party who fails to appear at the pre-trial may be non-suited or considered as in default."

This COURT, interpreting these provisions, uniformly emphasized that pre-trial is mandatory, that the parties as well as their counsel, who are required to appear thereat, must be notified of the same (*Lim vs. Animas*, L-39094, April 18, 1975, 63 SCRA 408, 410-411; *International Harvester Macleod, Inc. vs. Co Ban Ling & Sons Co.*, L-26863, October 26, 1968, 25 SCRA, 612, 615).

As heretofore stated, only the counsel for the private respondents was deemed notified of the transfer of the pre-trial. But such notification to counsel is neither adequate nor sufficient for purposes of a pre-trial.

It may be true that normally, notice to counsel is notice to parties (*Palanca vs. American Food Manufacturing Co.*, L-22822, August 30, 1968, 24 SCRA 819, 824; *People's Homesite and Housing Corp. vs. Tiongco*, L-18891, Nov. 28, 1964, 12 SCRA 471, 476; *Vda. de Potenciano vs. Gruenberg*, L-16956, January 30, 1962, 4 SCRA 127, 130). And while this doctrine has "beneficent effects upon the prompt dispensation of justice, its application in a given case, however, should be looked into and adopted, according to the surrounding circumstances; otherwise, in the court's desire to make a short cut of the proceedings, it might foster wittingly or unwittingly, dangerous collusions to the detriment of justice. It would be easy for one's lawyer to sell one right down the river, by just alleging that he forgot every process of the court affecting his clients, because he was busy. Under this circumstance, one should not insist that a notice to such irresponsible lawyer is also notice to his clients" (*People's Homesite and Housing Corp. vs. Tiongco*, supra).

Considering, therefore, the mandatory character of the pre-trial conference and the disastrous result of the failure of a party to appear thereat, WE believe that when the Rule says "shall direct the parties and their attorneys," as WE ruled in *Lim versus Animas*, supra, it means that "notice of the pre-trial must be served separately upon the party affected thereby and his counsel of record, stating therein the purpose, time and place of the pre-trial conference and requiring said party and his counsel to appear thereat. The service to the party may be made directly to him or through his counsel who shall be required to serve the notice upon the party" (Vol. 63, pp. 408,

411) And this is so because while the presence of the parties at the trial and other proceedings is not necessary, their presence is a must at the pre-trial because one of the purposes of the pretrial is to explore the possibility of an amicable settlement, and counsel cannot compromise the interests of his client without the latter's expressed and special authority (*Jacinto vs. Montesa, et al*, L-23098, February 28, 1967, 19 SCRA 513, 518).

Reason and justice ordain that the court a quo should have notified the parties in the case at bar. Otherwise, said parties without such notice would not know when to proceed or resume proceedings. With due notice of the proceedings, the fate of a party adversely affected would not be adjudged ex parte and without due process, and he would have the opportunity of confronting the opposing party, and the paramount public interest which calls for a proper examination of the issues in any justiciable case would be subserved. The absence, therefore, of the requisite notice of pre-trial to private respondents through no fault or negligence on their part, nullifies the order of default issued by the petitioner Judge for denying them their day in court — a constitutional right. In such case, the order suffers from an inherent procedural defect and is null and void. Under such circumstance, the granting of relief to private respondent becomes a matter of right; and the court proceedings starting from the order of default to the default judgment itself should be considered null and void and of no effect (*Insurance Co. of North America vs. Philippine Ports Terminal, Inc.*, L-14133, April 18, 1960, 107 Phil. 626, 631-632; *Valerio vs. Tan, etc., et al*, L-8446, September 19, 1955, 97 Phil. 558, 561).

In this regard, WE maintain fealty to the principle that courts should be liberal in setting aside orders of default for default judgment is frowned upon, and unless it clearly appears that the reopening of the case is intended for delay, it is best that the trial courts give both parties every chance to fight their case fairly and in the open, without resort to technicality (*Tecson vs. Tecson*, L-5233, September 30, 1953, 93 Phil. 903, 909). The very allegations in the complaint and in the answer as well as in the other pleadings filed by the parties herein justify the return of the case to the court of origin so that, in the interest of justice, the parties may be given the chance to prove their respective allegations.

WHEREFORE, THE DECISION APPEALED FROM IS AFFIRMED WITH DOUBLE COSTS AGAINST PETITIONERS.

Teehankee (Actg. Chairman), Muñoz Palma, Aquilino, and Martin, JJ., concur.

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