

**JAIME T. MALANYAON, PETITIONER, VS. HON. DELFIN VIR. SUÑGA,  
IN HIS CAPACITY AS PRESIDING JUDGE, BRANCH I, CFI OF  
CAMARINES SUR, GENEROSO BONA, VICENTE GARCHITORENA,  
RODOLFO ALFE...**

*G.R. No. L-49463. May 07, 1992*

Ponente: NOCON, J.

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**NOCON, J.:**

This is a petition far certiorari and prohibition with preliminary injunction to set aside the order of the respondent judge declaring petitioner Jaime Malanyaon in default for the latter's failure to appear on October 9, 1978 before the trial court for the pre-trial and the contempt hearing in Civil Case No. 164 on the ground that said judge had already excused petitioner's absence from said hearing by lifting the order of arrest against him in an order issued on November 23, 1978.

It appears from the records that on March 15, 1977, private respondents, who are members of the Camarines Sur I Teachers Association (CASTEA I) and Camarines Sur II Public School Teachers Association (CASTEA II), filed a Petition for Annulment of Proceedings, Injunction with Application for Preliminary Injunctions and Restraining Order with the Court of First Instance of Camarines Sur, Branch I in Civil Case No. 164 against petitioner Jaime Malanyaon and Emma Perfecto.[1]

On that same afternoon or about 35 minutes after filing said petition, respondent judge issued a corresponding restraining order against petitioner which led the latter to file on July 25, 1977, an urgent motion to disqualify respondent judge from further sitting in judgment over Civil Case No. 164 alleging that there is a client-lawyer relationship between said judge and private respondent's counsel Atty. Vicente de Lima as shown by the latter's appearances in Special Proceedings No. 438 before the Court of First Instance of Camarines Norte.[2]

On September 20, 1977, respondent judge denied the motion to disqualify for lack of merit.[3] Likewise, petitioner's Motion for Reconsideration was denied on November 15, 1977.[4]

On October 5, 1978, petitioner was personally served in his office a notice of hearing on the pre-trial and contempt proceedings set on October 9, 1978 at 8:30 A.M.

However, at around 8:10 A.M. of October 9, 1978, petitioner felt chilly and went to see his doctor who ordered him to stay in bed for a couple of days as he had just been released from Mother Seton Hospital where he was confined from September 30, 1978 to October 3, 1978. Thereafter, petitioner immediately sent a letter to the respondent judge requesting for the deferment of his appearance on the scheduled hearing[5] but said letter was only filed at 10:05 A.M. of that same morning due to the stormy weather.

Consequently, upon petitioner's failure to appear at the hearing of October 9, 1978, he was declared in default and ordered arrested.

In the afternoon of the same day, petitioner's counsel filed a motion to lift the Order of Arrest against his client[6] which was denied in an order dated October 19, 1978.[7]

On October 18, 1978, petitioner was airlifted and confined at the Veterans Memorial Medical Center at Quezon City where he was operated for a gall bladder dysfunction on November 13, 1978.[8]

On November 17, 1978, petitioner filed an Omnibus Motion to Lift his Order of Arrest, to set aside the order of default and to reset the hearing of November 27, 1978 and December 1, 1978 on account of his illness and subsequent surgical operation.

Acting on the motion, respondent judge in an Order dated November 23, 1978 lifted the Order of Arrest of the petitioner but denied his motion to set aside the order of default and the resetting of the scheduled hearing.[9]

On November 27, 1978, petitioner filed a motion for reconsideration of said Order of November 23, 1978 but the same was denied on December 1, 1978.[10]

Hence, this petition alleging grave abuse of discretion on the part of the respondent judge in denying his motion to lift the order of default in spite of the fact that the latter had already lifted the order of arrest against petitioner after finding petitioner's absence in the October 9, 1978 hearing excusable due to the latter's illness as supported by the affidavit of the petitioner's physician stating the severity of petitioner's illness which caused the latter not to attend the scheduled hearing.

To begin with, the respondent court's act of ordering petitioner's arrest is patently illegal. There is nothing in the Rules which authorizes the trial court to order the arrest of the party in default. A party declared in default merely loses the right to be notified of subsequent proceedings and the right to take part in the trial,[11] until the order of default is lifted.

With regard to the lifting of the order of default, Section 3, Rule 18 of the Revised Rules of Court provides that:

"A party declared in default may at any time after discovery thereof and before judgement filed a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable neglect and that he has a meritorious defense. In such case the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice."

Where the failure to appear at the pre-trial hearing was uncontrovertedly due to illness, the default order may be set aside on the ground of accident over which petitioner had no control as in the case at bar. Inasmuch as the respondent judge had already lifted the order of arrest after finding petitioner's absence excusable, it therefore follows that said judge should have also set aside the order of default. Thus, the basis for lifting petitioner's order of arrest should also apply to the order of default since both orders were issued on petitioner's non-appearance on October 9, 1978.

On the matter of the petition for prohibition, the same is dismissed in view of the separation of the respondent judge from the judiciary as stated in the petitioner's Manifestation dated October 3, 1988.[12]

WHEREFORE, the petition for certiorari is hereby GRANTED and the order of default dated October 9, 1978 is hereby annulled and lifted. The respondent court is ordered to set Civil Case No. 164 for pre-trial and trial with notice to petitioner. The petition for prohibition is DISMISSED and the issuance of a preliminary injunction restraining respondent judge from proceeding over Civil Case No. 164 is DENIED.

**SO ORDERED.**

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

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[1] Annex “A”; Petition, p. 9, Rollo.

[2] Annexes “C”, “D”, “E” and “F”, Rejoinder.

[3] p. 75, Rollo.

[4] p. 77, Id.

[5] p. 38, Id.

[6] p. 39, Rollo.

[7] p. 47, Rollo.

[8] p. 52, Id.

[9] p. 57, Id.

[10] p. 60, Id.

[11] Sec. 2, Rule 18, Rules of Court.

[12] Rollo, p. 110.

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