

**AGUSTIN PARINA, PETITIONER, VS. RIZALINA COBANGBANG, JOSE COBANGBANG, THE SHERIFF OF THE CITY OF MANILA AND HON. JUDGE BIENVENDIDO TAN OF THE COURT OF FIRST INSTANCE OF MANILA, ...**

*G.R. No. L-8398. March 21, 1956*

Ponente: LABRADOR, J.

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**LABRADOR, J.:**

This is a special civil action of certiorari against an order of Hon. Bienvenido A. Tan, Judge of First Instance of Manila, dissolving a writ of preliminary injunction issued in Civil Case No. 24287 of said court entitled Agustin Parina vs. Rizalina Cobangbang et al. In said case Parina sought to enjoin the execution of the judgment rendered by the Municipal Court of Manila in Civil Case No. 32150, Rizalina Cobangbang, et al., vs. Agustin Parina, ordering Parina to pay the sum of P556.31 (representing rentals, light, water and telephone bills and attorney's fees). The writ of preliminary injunction issued by the Court of First Instance to enjoin the execution of the above decision was issued ex parte upon a verified complaint and the filing of a bond in the amount of P575.00. In another order issued subsequently, also ex parte, the sheriff, one of the parties defendant in the action, was also ordered to return the possession of the properties already levied upon.

Soon after the above orders were issued attorney for the defendants Cobangbang prayed that the writ of preliminary injunction be dissolved upon the defendants filing a bond to be fixed by the court. This motion was served upon the attorney for Agustin Parina on October 15, 1954 and was set for hearing on October 16, 1954. Attorney for Parina objected to the consideration of the motion on the ground that the three days period of notice for motions was not given. On October 15, 1954 the court granted the motion upon defendant giving a bond in the amount of P575.00. Upon being notified of this order of dissolution attorney of Parina moved for its reconsideration, but his motion was denied by the court. Upon its denial the present action was brought.

It is claimed that the order of dissolution of the injunction is not based on any of the grounds, mentioned in Rule 60, Section 6 of the Rules of Court. «We find this contention to be without merit. The motion for dissolution alleges that Parina had been given every opportunity to appear, and that his petition for relief was intended merely for delay. In effect, the above allegations question the sufficiency of Parina's petition. The action instituted by Parina was one for relief against the decision of the Municipal Court on the ground that the defendant Parina failed to appear on the expectation that a motion for postponement presented by his lawyer would be granted. Neither a party nor his lawyer has the right to assume or presume that his motion for postponement would be granted by the court; Parina's absence at the time of the trial can not therefore be said to be excusable. Therefore, the petition which he instituted for relief from the judgment, judging from the affidavit presented as La basis for the petition for relief, is insufficient as under it Parina was not entitled to the relief demanded. The granting of the order for the dissolution of the writ was therefore fully justified.

It is claimed that Judge Tan issued the order because of an incident which had aroused the judge's resentment or

hostility towards petitioner. Upon examining the record, however, we find that attorney for Parina had improperly tried to transfer the record or expediente of the case from the sala of Judge Tan to that of Judge Bayona, without the consent of the former. The resentment of Judge Tan was therefore justified. Anyway, as we have indicated above, the complaint was insufficient and therefore the dissolution of the writ was justified.

It Is also alleged that Parina did not have sufficient notice of the motion to dissolve the injunction. He may not have had a full three days notice of the motion but he had an opportunity to present his objection thereto prior to the granting of the same by the judge. Again opportunity was given him when he presented the motion and had the order granting the dissolution reconsidered. as he had the opportunity to be heard, he can not complain that the original motion was set for hearing without the three days notice required by the Rules (De Borja, et al. vs. Tan, et al., L-6108, promulgated May 25, 1953).

In view of the foregoing, we find that the petition for certiorari is without merit end deny the same, with costs against the petitioner.

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

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