

EMPRESS TELEVISION, INC., PETITIONER, VS. HON. CONCEPCION B. BUENCAMINO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH LII AND MANILA BANKING CORPORATION, RESPONDENTS.

G.R. No. L-55753. January 30, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In this petition for certiorari filed pursuant to the provisions of R. A. No. 5440, We are asked to set aside the order of the respondent judge which dismissed the petitioner's complaint with prejudice.

The antecedent facts are:

Empress Television, Inc., the petitioner herein, filed on March 13, 1979, in the Court of First Instance of Rizal a complaint for restitution and damages against the Manila Banking Corporation, the private respondent herein. The case was docketed as Civil Case No. Q-27172. In the course of the trial, the following events occurred:

On January 15, 1980, Atty. Ricardo C. Valmonte, counsel for the plaintiff, filed a Motion for Postponement worded as follows:

"THE UNDERSIGNED counsel for the plaintiff respectfully states that:

1. The undersigned counsel's mother who had been confined for quite a time at the Chinese General Hospital has just died.
2. As a consequence, shock and anxiety engulfed him and it will take time that he be relieved therefrom.
3. The above notwithstanding, it will take time for the undersigned to make necessary adjustments, the making of preparations entailing his mother's death at the time thereof and even thereafter.

WHEREFORE, it is respectfully prayed that the hearing scheduled for January 21, 1980 be cancelled and the same be transferred to some other dates preferably on any day in March, 1980."

Reacting to the motion, the respondent judge issued an Order on January 16, 1980, as follows:

"The Motion for Postponement is hereby set for hearing on January 21, 1980 at 8:30 o'clock in the morning as the defendant did not conform to the said motion."

On January 21, 1980, the respondent judge issued another order as follows:

"In the absence of the movants, and the counsel for the defendant is not also present, the Court grants the petition of plaintiff for the postponement of this case, and this case is reset again for pre-trial on March 13, 1980, at 2:00 o'clock in the afternoon."

It should be mentioned that contrary to the statement in the above-quoted order, the case was no longer in the

pre-trial stage for in fact on September 26, 1979, plaintiff petitioner had terminated the direct examination of its first witness, as shown in the minutes of the hearing on that day. (Expediente, p. 27.)

The minutes for March 13, 1980 (Expediente, p. 36) show that the respondent judge issued an order which was formalized in writing on March 18, 1980, as follows:

"On January 15, 1980 there was filed with this Court a motion for postponement from the plaintiff praying that the scheduled hearing for January 21, 1980 be cancelled and the same be transferred to another date preferably on any day in March, 1980, Because the motion did not bear the conformity of the defendant the Court issued an order on January 16, 1980 to the effect that the motion be heard on the very date the case was set for trial. On January 21, 1980 the movant was not present but as a matter of liberality the Court granted the movant's petition for postponement and reset the trial of the case to this date March 13, 1980 at 2:00 o'clock in the afternoon and from the records of the case it appears that the copy of the order sent by registered mail to counsel for the plaintiff was returned unclaimed. Counsel for the defendant is now asking for the striking out of the testimony of Esperanza T. Vivas and for the dismissal of the case grounded on the fact that since counsel for the plaintiff did not even come to court to find out what happened to his motion dated January 15, 1980 said plaintiff should not be allowed another postponement today for lack of interest of said party and this case be dismissed.

"The Court noted that the motion for postponement dated January 15, 1980 was not set for hearing which under the provision of Rule 15 Section 4 should have been set for hearing because it does not contain the conformity of counsel for the other party. It is likewise true that said movant should not have taken the liberality of the Court for granted by not coming at all to Court to find out what happened to his motion, and finally, since he asked that this case be set for hearing preferably on any date in March, 1980 with the incoming of the month of March he should have come to Court to find out what was the date set by the Court for the next hearing of this case. This counsel for the plaintiff never did so. For this negligence or lack of interest of the plaintiff this case is hereby ordered dismissed without findings as to costs. Defendant also manifested that he has not reserved his right to present evidence on his counterclaim and will not pursue the same and therefore the Court will consider it dismissed without prejudice."

It is to be noted that the order which is poorly composed does not categorically dismiss the plaintiff's claim with prejudice. However, on a motion for reconsideration filed by the plaintiff, the respondent judge issued another order, also badly composed, dated May 27, 1980, as follows:

"The order of the Court of March 18, 1980, dismissing this case with prejudice, but what was dismissed without prejudice was the counterclaim as the said order reveals. However, the plaintiff alleges that the order of March 18, 1980 was received on April 1, 1980, and the motion for reconsideration was filed on April 17, 1980, then the Court has the obligation to pass upon the motion for reconsideration even though the movants did not appear in Court today.

"For lack of merit, the motion for reconsideration is ordered denied."

With the above as factual background, the issue is whether or not the respondent judge committed a grave abuse of discretion when she dismissed the petitioner's complaint with prejudice upon its failure to appear for trial on March 13, 1980, as stipulated in the order of January 21, 1980.

The petition is impressed with merit; the respondent judge committed a grave abuse of discretion when she dismissed the petitioner's complaint with prejudice.

Petitioner's counsel was not aware of the order dated January 21, 1980, which re-set the case for trial on March 13, 1980. He could not have been aware of the order precisely because he was not present on January 21, 1980, having asked for postponement of the hearing on that day in view of the recent death of his mother. And then

again, although a copy of the order dated January 21, 1980, was sent to him by registered mail, the same was returned unclaimed. The record is bereft of any indication that petitioner's counsel was at fault in this respect.

The respondent judge asserts that petitioner's counsel took the court for granted; that he should at least had gone to court "to find out what happened to his motion." Suffice it to state a lawyer has a right to be notified of a court order unless it is issued in open court in his presence. In the case at bar there was lack of notice.

While We commend the spirit of the respondent judge to get the case moving speedily, the speed must be deliberate, not hasty. The following quotations from *Abinales vs. Court of First Instance of Zamboanga City, Branch I, et al.*, G.R. No. L-41530, April 30, 1976, 70 SCRA 590, 595-597, are worth bearing in mind:

"The reconsideration of the dismissal order becomes more proper when it is considered that trial courts have, after all, the duty to dispose of controversies after trial on the merits whenever possible. It is deemed an abuse of discretion for them, on their own motion, 'to enter a dismissal which is not warranted by the circumstances of the case.' While it is true that the dismissal of an action on grounds specified under Section 3, Rule 17 of the Revised Rules of Court is addressed to their discretion, such discretion must be exercised soundly with a view to the circumstances surrounding each particular case. If facts obtain that serve as mitigating circumstances for the delay, the same should be considered and dismissal denied or set aside, especially where the suit appears to be meritorious and the plaintiff was not culpably negligent and no injury results to defendant."

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"The policy of the courts to expedite disposal of cases and prevent clogging of dockets is well-nigh desirable. Nonetheless, inconsiderate dismissals, even if without prejudice, do not constitute 'a panacea nor a solution to the congestion of court dockets; while they lend a deceptive aura of efficiency to records of individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court.' The desire to reduce docket congestion should not be allowed to justify the sacrifice of the substantial rights of the litigants. Speed in judicial administration should not be promoted at the expense of justice, which is indispensable to any court system worthy of its name. Any attempt to cut down on court congestion by dismissal of meritorious lawsuits 'is doomed to fail even in its misguided purpose of promoting speed in judicial administration,' because litigants with meritorious lawsuits are not likely to accept such rulings without exhausting all available appellate remedies. As a result, any reduction of trial court dockets accomplished by such dismissals will be more than offset by the increased burden on appellate remedies. As a result, any reduction of trial court dockets accomplished by such dismissals will be more than offset by the increased burden on appellate courts."

WHEREFORE, the petition is granted; the orders of the court a quo, dated March 18 and May 27, 1980, are hereby set aside and the petitioner's complaint is reinstated. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., De Castro, Ericta, and Escolin, JJ., concur. Aquino, J., no part.

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