

RUFINO TAROMA AND CAYETANA GASIDAN, PETITIONERS, VS. HON. MARCELINO N. SAYO, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH IV (BATAAC) OF THE COURT OF FIRST INSTANCE OF ILOCOS NOR...*G.R. No. L-37296. October 30, 1975*

Ponente: TEEHANKEE, J.

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The Court herein reaffirms its recent rulings that notice of pre-trial should be served separately upon the party and his counsel of record. The Court further restates for the guidance of the bench and bar that rather than the option of the trial court's serving the notice to party of pre-trial directly to the party, the trial courts should best uniformly serve such notice to party through or care of his counsel at counsel's address with the express imposition upon counsel of the obligation of notifying the party of the date, time and place of the pre-trial conference and assuring that the party either appear thereat or deliver to counsel a written authority to represent the party with power to compromise the case, with the warning that the party who fails to do so may be non-suited or declared in default.

Petitioners as plaintiffs had filed an action to quiet title to land and recover the same with damages in the court of first instance of Ilocos Norte against respondent Inocencio Crisostomo. For failure of said respondent-defendant and his counsel to appear at the pre-trial set on March 2, 1972, notwithstanding that his counsel, Atty. Venancio Albano, had been served with notice thereof by registered mail, the lower court then presided by Judge Jose A. Madarang per his order of March 2, 1971 declared respondent in default, received ex parte petitioners' evidence and handed down a year later his decision of March 13, 1972 granting petitioners' suit as prayed for.

On April 12, 1972, (or four days after service of the decision on Atty. Albano), respondent through new counsel, Atty. Castor Raval, filed a motion to set aside the default order and decision with his affidavit of merit on the ground that he had been denied due process and his day in court, since he had not been notified of the pre-trial set for March 2, 1972 and his former counsel disclaimed having received notice thereof. After hearing the parties, respondent Judge Marcelino N. Sayo presiding the lower court (vice Judge Madarang who had since retired) per his Order of February 26, 1973 set aside the default order and ex parte decision on the principal ground that respondent "was not duly notified of the pre-trial" and reset the case for a new pre-trial.

Reconsideration having been denied, petitioners brought the present action for certiorari and prohibition against the challenged Order of respondent judge and sought determination of the thorny issue of whether notice of pre-trial must be served on the parties-litigants as well as on their counsel of record.

The Court has resolved this issue against petitioners' contention that notice of pre-trial served on counsel alone is sufficient in the two recent decisions of *Lim vs. Animas*[1[]] and *Pineda vs. Court of Appeals*,[2] wherein we ruled 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." [3]

The Court based its ruling on Rule 20, section 1 which makes pre-trial mandatory and provides that "after the last pleading has been filed, the court shall direct the parties and their attorneys to appear before it" for a pre-trial conference and on section 2 which further provides that "(A) party who fails to appear at a pre-trial conference may be non-suited or considered as in default."

Hence, the general rule of notice to counsel constituting notice to parties under Rule 13, section 2 [4] has been held insufficient and inadequate for purposes of pre-trial. As expounded in *Lim, supra*, "(T)he Court recognizes the importance of pre-trial procedure as a means of facilitating the disposal of cases by simplifying or limiting the issues and avoiding unnecessary proof of facts at the trial, (or exploring the possibility of an amicable settlement or of submission to arbitration), and generally to do whatever may reasonably be necessary to facilitate and shorten the formal trial. Considering, however, the adverse effects of a party's failure to appear at the pre-trial conference, We hold that before the party is non-suited or considered in default, it must be shown that the party and his counsel were duly served with notice of such pre-trial conference." [5]

The Court is aware that Rule 20 on pre-trial does not provide for the method of sending the notices thereof both to parties and their attorneys directing them to appear at the pre-trial conference, as well as of the many difficulties and complications which could frustrate and defeat the very holding of the pre-trial, as per the extreme example usually given in seminars on trial problems of numerous plaintiffs and defendants residing in different and distant places, which would unduly tax the courts' staff, resources and facilities for sending individual notices of the pre-trial, say, to a hundred parties, not to mention that the addresses of the parties litigants are not generally made a matter of record in the case.

For the guidance of the bench and bar, therefore, the Court in reaffirming the ruling that notice of pre-trial must be served separately upon the party and his counsel of record, restates that while service of such notice to party may be made directly to the party, it is best that the trial courts uniformly serve such notice to party through or care of his counsel at counsel's address with the express imposition upon counsel of the obligation of notifying the party of the date, time and place of the pre-trial conference and assuring that the party either appear thereat or deliver to counsel a written authority to represent the party with power to compromise the case, with the warning that a party who fails to do so may be non-suited or declared in default.

Thus, the notice of pre-trial stating the date, time and place thereof shall be addressed not only to counsels of record but also to the parties themselves who shall be expressly named, care of their counsel at counsel's address of record. To take the present case as a model, the pre-trial notice to respondent and to counsel should read: "Mr. Inocencio Crisostomo, defendant, c/o or through counsel, Atty. Castor Raval, Laoag City and Atty. Castor Raval, counsel for defendant, Laoag City" and should contain the express notice that counsel is charged with the obligation of notifying his client(s) (plaintiff/defendant) of the date, time and place of pre-trial and of assuring that his client(s) either appear at the pre-trial conference or deliver to him a written authority to represent his client(s) with power to compromise the case, with the warning that a party who fails to do so may be non-suited or considered as in default under Rule 20, section 2.

This obligation imposed upon counsel as an officer of the Court to receive the notice of pre-trial addressed to his client but to his care and of making sure that the client as party-litigant is duly apprised of the notice and attend the pre-trial or authorize him to represent his client with power to compromise under pain of non-suit or default must be faithfully complied with by counsel. Needless to say, his failure to discharge his duty in compliance with the Court's express requirement shall subject him to disciplinary action and grave administrative liability as a member of the bar.

The petition at bar must, therefore, fail since respondent had not been served with notice of the pre-trial, whether directly or through his then counsel, Atty. Albano. Hence, respondent judge properly set aside the default order and ex parte decision and reset the case anew for pre-trial and thus "gave both parties every chance to fight their case fairly and in the open, without resort to technicality" - to borrow the language of Pineda, supra.

The Court has noted however from the petition and petitioners' reply that as against the alleged disclaimer of respondent's former counsel, Atty. Venancio Albano, of his having received by registered mail the notice of the pre-trial set for March 2, 1971, there appear on record the clerk's and postmaster's certifications to the contrary attesting that Atty. Albano did actually receive said pre-trial notice. While this would not in any way affect the outcome of the case as herein determined, nevertheless such misrepresentation by Atty. Albano, if duly proven, would constitute a grave misrepresentation of fact which would subject him to serious disciplinary action as a member of the bar, and respondent judge (or his successor)[6] should duly investigate the matter at the resumption of the proceedings below and submit to the Court a report of his findings and action.

The Court has noted, finally, that contrary to the provisions and requirements of Rule 65, section 5, wherein private respondent Crisostomo, through his counsel, is charged with the duty to appear and defend both in his own behalf and in behalf of respondent judge who is a mere formal party the challenged order of respondent judge which set aside the default order and ex parte decision against him, said respondent after filing through counsel, Atty. Raval, his Comment on the petition did exactly the reverse by absolutely doing nothing further and left it to respondent judge alone to file a memorandum on his own (the judge's) behalf when it is he (respondent) who should have filed such memorandum as the real party in interest.

The Court enjoins both judges and lawyers to comply with the cited Rule. Judges who are made respondents are mere formal parties and are not to be distracted from their main function of trying and adjudicating cases in their own courts. The burden of defending their challenged action falls on private respondent and the latter's counsel may be subject to disciplinary action should he fail to discharge the task.

The Court in its recent Resolution of October 14, 1975 did inform all concerned "that in all instances where a lower court or judge, including the Court of Appeals, is made respondent in any petition relating to acts or omissions of said court or judge, the provisions of Section 5 of Rule 65 x x x should be observed, hence whether the summons calls for an answer or a mere comment, respondent court or judge is considered a mere nominal party and need not file any separate pleading or comment distinct from that of the private respondent who is obligated under the above provision to appear and defend the court or judge concerned, unless the summons or order to comment specifically and expressly requires the court or the judge himself to comply with the directive of the superior court. In the latter case, the answer or comment must be over the signatures of the justices or judge of the respondent court, and not of any counsel whether private or public." [7]

ACCORDINGLY, the petition is dismissed and the restraining order issued on May 22, 1973 against the challenged order resetting the case anew for pre-trial and eventual trial and disposition on the merits is lifted. The judge now presiding respondent court shall as indicated in the opinion conduct an investigation of whether respondent's former counsel committed a grave misrepresentation of fact and submit to the Court a report of his findings and action. No costs.

Castro, Acting C.J., Barredo, Makasiar, Antonio, Muñoz Palma, Aquino, Concepcion, Jr., and Martin, JJ., concur.
Makalintal, C.J., Fernando, and Esguerra, JJ., on official leave.

[1] L-39094, April 18, 1975, reported in 63 SCRA 408, per Antonio, J., and cases cited.

[2] L-35583, September 30, 1975, per Makasiar, J., and cases cited. See also *Loquias vs. Rodriguez*, L-38388, July 31, 1975, per Fernando, J.

[3] Emphasis supplied.

[4] The pertinent portion of the cited Rule reads: "SEC. 2. Papers to be filed and served. — Every order required by its terms to be served, every pleading subsequent to the complaint, * * * * * shall be filed with the court, and served upon the parties affected thereby. If any of such parties has appeared by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them, unless service upon the party himself is ordered by the court."

[5] Note in parentheses supplied.

[6] Judge Arsenio M. Gonong, now presiding Branch IV, court of first instance of Ilocos Norte vice Judge Sayo, who has since been transferred to the Rizal court of first instance.

[7] L-41165, entitled "*Pilar Pangilinan, et al. vs. Hon. Court of Appeals (9th Division), et al.*"

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