SALVADOR CRUZ, PLAINTIFF AND APPELLEE, VS. TITA TIRONA MALABAYASBAS, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 11334. May 15, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an action to recover the sum of P790.00, plus damages and attorney's fees, filed before the Municipal Court of Quezon City. Judgment having been rendered against defendants', the latter appealed to the court of first instance.

When the case was called for hearing on July 14, 1955, the case was dismissed due to plaintiff's failure to appear. However, upon plaintiff's motion, the order of dismissal was lifted and the case was set for hearing on December 12, 1955. On said date, only the plaintiff appeared, the defendants or their counsel having failed to do so, in spite of the notice given to them on November 4, 1955. They have however filed a motion for postponement on the same date stating that their counsel could not come because he had to appear in another case before the Court of First Instance of Pampanga. This motion was denied. The subject matter of the complaint being one which involves accounting, the trial court commissioned its clerk of court to receive the evidence for the plaintiff. Subsequently, the court rendered judgment ordering defendants to pay the amount prayed for in the complaint. Their motion for reconsideration having been denied, defendants took the present appeal.

The main claim of appellants is that the trial court committed a grave abuse of discretion in denying their motion for postponement on the ground that their counsel could not come because he had to appear on the same date before the Court of First Instance of Pampanga. In denying said motion, the trial court said in part: "Atty. Penañflor should have filed this motion within the reglementary period and not at the last moment", which evidently means that counsel should have filed his motion in accordance with Section 4, Rule 26, which requires that copy of the motion be served on the other party at least 3 days before the hearing thereof, which was not complied with by appellants. Indeed, here it appears that the trial court set the case for hearing on December 12, 1955, and notice thereof was received by appellants' counsel on November 4, 1955, and yet he filed his motion only at the eleventh hour. Even assuming to be true what appellants claim that their counsel had to appear on the same date before the Court of First Instance of Pampanga, they have not however satisfactorily explained why their counsel had to file their motion only on the very morning of the hearing considering that they had been notified thereof more than one month in advance. The fact that one of the defendants promised to go to their counsel's office one week before the date of the hearing to get the motion for submission to the court but failed to do so because he was then busy with certain military maneuver somewhere in Luzon, does not constitute a sufficient excuse for the counsel's failure to comply with the rules. In fact, the trial court found said excuse without merit, considering that this case had been pending for over one year and a half since it was originally instituted. In the circumstances, we find no plausible reason for holding that the trial court has acted on the matter with abuse of discretion.

Motion for continuance are addressed to the sound discretion of the court. The exercise of such discretion is

generally upheld unless good reasons are shown to the contrary. Thus, in Gayon vs. Ubaldo, G. R. No. L-7650, December 28, 1955, this Court had occasion to uphold this ruling in the following wise:

> "It is urged, in the first place, that the lower court abused its discretion in denying defendants' motion for continuance- But it appears that there had already been two prior postponements granted, both at defendants' own instance and that the last motion for that purpose, though sent five days before the date set for trial, did not conform to the Rules and gave no notice to the adverse party or counsel. Moreover, the only ground therein stated was that the parties were on their way to an amicable settlement. But it would appear that opposing counsel informed the court that there was no truth about that statement as no proposal for settlement had ever been made. In the circumstances we do not think the lower court abused its discretion in denying a continuance.
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> "Defendants cannot now be heard to say that because trial was not postponed they were deprived of their day in court. No one deprived them of their day in court. Of their own volition they preferred not to come to the hearing on the day set, presumably assuming that their motion for continuance would be granted. Defendants had no right to make such assumption, for continuance are granted for good cause alleged and proved and not merely at the will of either or both of the parties to the ease." (Italics supplied)

Appellants next assail the decision of the trial court for having commissioned its clerk of court to receive the evidence for the plaintiff instead of receiving itself said evidence. We see nothing irregular in this proceeding especially when the case involves matters of accounting This is sanctioned by Section 2, Rule 34, which authorizes the court, even upon its own motion, to designate a commissioner to receive the evidence in some cases, as (a) when the trial of an issue of fact requires the examination of a long account, or (b) when the taking of an account is necessary for the information of the court. In fact, this was done in the case above referred to wherein on this matter this Court said:

> "It is next contended that the trial court erred in delegating the reception of evidence to the clerk of court as the court had no authority to do so. But no showing having been made that the clerk of court committed any error in the performance of the work intrusted to him or that the court did not make a correct appreciation of the evidence because it was received by another person, the error allege is non-prejudicial and should be no ground for a re-trial." (Gayon vs. Ubaldo, supra)

With regard to the claim that the trial court erred in admitting certain exhibits even if they were tampered with, or were marked paid, the claim must be disregarded, for the simple reason that it involves questions of fact which cannot now be raised at this instance. This appeal was taken on purely questions of law.

Finally, with regard to Exhibits C and B-l, which are claimed not to have been presented as evidence, assuming this to be true, the claim is insubstantial, for it appears that the decision of the court was based on evidence different from the exhibits above referred to.

Wherefore, the decision appealed from is affirmed, with costs against appellants.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Labrador, Concepcion, and Endencia, JJ., concur.

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