

SPOUSES ROBERTO AND LILIA MONDONEDO, PETITIONERS, VS. COURT OF APPEALS, HON. LUCIA VIOLAGO ISNANI, AS PRESIDING JUDGE OF BR. 59, REGIONAL TRIAL COURT OF MAKATI, MAKATI DEPUTY SH...*G.R. No. 113349. January 18, 1996*

Ponente: PANGANIBAN, J.

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What is the remedy of a plaintiff declared non-suited for failure to appear at the pre-trial hearings? This is the main issue in this Petition for certiorari praying for a review of a Resolution of the respondent Court of Appeals[1] promulgated on October 6, 1993 (and the subsequent Resolution denying the motion for reconsideration, promulgated on January 7, 1994) dismissing a petition for certiorari to set aside orders issued by the Regional Trial Court of Makati, Branch 59, which threw out the complaint in view of counsel's late appearance during the pre-trial. Reason advanced for counsel's delay was allegedly "flooded Street" due to a typhoon, which reason was factually disputed by the private respondent Security Bank and Trust Company.

[By resolution of the First Division of this Court on October 25, 1995, this case (along with several others) was transferred to the Third Division. After carefully deliberating on the Petition, the Omnibus Motion to Cite Petitioners, et al. In Contempt and to Lift Temporary Restraining Order, the Comment, the Reply (to Comment) and Opposition (to Omnibus Motion), the Rejoinder (to Reply) and Reply (to Opposition), the Motion for Reconsideration, and the Opposition (to Motion for Reconsideration) and Reply (to Opposition) as well as all the other submissions of the parties, the Court assigned the writing of this Resolution to the undersigned ponente.]

The respondent Court held that appeal, not certiorari, is the remedy of a party declared non-suited for failure to appear at the pre-trial hearing. In addition, said Court noted the failure of petitioners to state the date of receipt of the order denying the motion for reconsideration in the court a quo. Hence, it could not determine whether the petition was filed on time.

The Court finds no reversible error in the said Resolutions of the Court of Appeals. Well-settled is the rule that a dismissal for failure to appear at the pre-trial hearing is deemed an adjudication on the merits, unless otherwise stated in the order.

"For nonappearance at the pre-trial, a plaintiff may be non-suited and a dismissal of the complaint for failure to prosecute has the effect of an adjudication upon the merits unless otherwise provided by the trial court." (Geralde vs. Sabido, G.R. No. L-35440, August 19, 1982, 115 SCRA 839, 841, citing Sec. 3, Rule 17 and Sec. 2, Rule 20, Rules of Court, and Ouye vs. American President Lines, Ltd., 77 Phil. 635; Tuballa vs. De la Cruz, 111 Phil. 335, 337; American Insurance Co. vs. Republic, 21 SCRA 464; Home Insurance Co. vs. United States Lines Co., 21 SCRA 863.)

And the remedy of a plaintiff declared non-suited is to appeal from the order of dismissal, the same being a final resolution of the case (Regalado, Remedial Law Compendium, 1988 ed., p. 185). Further, if a motion for

reconsideration had been filed by the plaintiff but was denied, appeal lies from both orders (*ibid.*). And where appeal is the proper remedy, certiorari will not lie.

We are not unaware of the fact that there is a pending motion for reconsideration of this Court's Order dated January 11, 1995 denying respondent Bank's motion for contempt. However, we find no more need to resolve directly such motion as by this Resolution, the temporary restraining order is lifted and the possession of the subject property is thus to be restored to said respondent.

WHEREFORE, finding no reversible error in the questioned Resolution, the petition is hereby DENIED, and the temporary restraining order issued by this Court lifted. Costs against petitioners.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] First Division, composed of Justice Minerva P. Gonzaga-Reyes, ponente, and JJ. Santiago M. Kapunan and Eduardo G. Montenegro.

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