

SPS. RICARDO BEMBO AND NICOLASA BEMBO, PETITIONERS, VS. COURT OF APPEALS AND THE PANGASINAN DEVELOPMENT BANK, RESPONDENTS.*G.R. No. 116845. November 29, 1995*

Ponente: MENDOZA, J.

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Petitioners, spouses Ricardo and Nicolasa Bembo, brought this case for declaratory relief in the Regional Trial Court (Branch 41) at Dagupan City. Upon their motion, the court declared private respondent Pangasinan Development Bank as in default for failure of its representative and its counsel to appear at the pretrial conference held on December 6, 1993. However, upon petition of private respondent, the Court of Appeals' Third Division set aside the orders of default, finding that they had been issued with grave abuse of discretion. Hence this petition filed by the spouses Ricardo and Nicolasa Bembo for a review by certiorari of the decision of the Court of Appeals' Third Division.

The records show that the pretrial conference was originally set on September 1, 1993 but that it was reset on October 1, 1993 by the trial court to allow petitioners to amend their complaint. The pretrial conference scheduled on October 1, 1993 was again reset, however, as petitioners' counsel had to undergo medical examination in Metro Manila. The new date set was October 27, 1993. Again, no pretrial was held on October 27, 1993, as the presiding judge, Hon. Erna Falloran Aliposa, was in Manila attending the World Law Conference.

On November 9, 1993, she issued an order stating this fact and setting "the hearing of this case" on December 6, 1993, at 2 o'clock in the afternoon. Although the order directed the clerk of court to "notify the parties and counsels," it appears that only the latter were given notice. None was sent to the parties themselves.

On December 6, 1993, Judge Deodoro J. Sison proceeded with the pretrial conference as scheduled. As neither private respondent nor its counsel was present, the judge, upon motion of the petitioners, declared private respondent as in default and authorized petitioners to present their evidence *ex parte* on December 27, 1993.

Private respondent moved for a reconsideration. Private respondent's counsel explained that their absence at the pretrial conference was due to the fact that on December 3, 1993, he had been told by Judge Aliposa that a new date for the pretrial would be set in view of the fact that she had been detailed to the Regional Trial Court of Makati and Judge Deodoro J. Sison, the pairing judge who would take over, would "adjust his hearing schedule." Counsel further alleged that as he had to attend the hearing of other cases in another branch of the RTC, he did not appear on December 6, 1993 for the pretrial conference on the case. He said he had advised his client's representative that it was not necessary for the latter to go to the court on that day because of what Judge Aliposa had told him (counsel).

As its motion for reconsideration was denied, private respondent filed a petition for certiorari in the Court of Appeals. The appellate court gave due course to the petition, noting that no notice of the pretrial had been sent to the parties themselves as required by *Pineda v. Court of Appeals*, 67 SCRA 228 (1975) and *Patalinhug v. Peralta*,

90 SCRA 50 (1979) and that the notice sent to counsels issued on November 9, 1993 was for a "hearing" and not a pretrial.

The appellate court cited the policy of the law to discourage judgments by default (*Citibank, N.A. v. Chua*, 220 SCRA 75, 77 (1993)), especially since it found the defense of private respondents to be *prima facie* meritorious.

Hence this petition. Petitioners contend that the appellate court erred in holding that no notice of the pretrial had properly been made, because the order of the trial court referred to a "hearing" and no copy of the order had been given to the parties themselves. Petitioners contend that, in fact, private respondent's reason for his failure to attend the pretrial on December 6, 1993, as stated in his motion for reconsideration of the order of default, was not lack of knowledge of the pretrial, but of excusable neglect.

Indeed, in its motion for reconsideration (Annex "P", Rollo, p. 52), private respondent averred:

- The hearing of the above-entitled case has been set on December 6, 1993, during the time of Judge Erna Falloran-Aliposa, who was detailed to Makati;
- The last day Judge Aliposa presided over Branch 41, was December 3, 1993, on which date the undersigned asked her about the hearing of his cases in the succeeding week. The latter told him that we would be notified as his pairing Judge, Hon. Deodoro J. Sison, would have to adjust his hearing schedule.
- Believing in good faith that there would be no hearing of the above-entitled case on December 6, 1993 as Judge Sison also has to adjust his calendar, as he had also cases to hear in Branch 40, the undersigned counsel did not appear on said date, as he would first wait for the other setting the next hearing;
- He, likewise, advised his client not to appear, although the manager of the bank who was authorized to appear for the bank alleged that she did not receive any notice of hearing;
- The undersigned counsel was surprised when he received the order of this Honorable Court declaring the defendant as if in default and allowing the plaintiff to present their evidence on December 27, 1993.
- The non-appearance of the undersigned counsel and his client on December 6, 1993 was due to, as stated above, excusable neglect;

Moreover, the sufficiency of the written notice of pretrial is irrelevant where the evidence shows that the counsel and the parties actually knew of the pretrial. Here, the private respondent admitted that a copy of the order of November 9, 1993, resetting the pretrial conference on December 6, 1993, had been served on him and that he notified private respondent of this date although he advised private respondent that it was not necessary for the latter to be in court because of what counsel had been told by the judge. It would be sheer technicality to insist that there was lack of proper notice to private respondent and counsel under these circumstances. (*Cf. Arcilla v. Arcilla*, 138 SCRA 560 (1985))

Nor was the notice given defective for referring to a "hearing" rather than to a pretrial. As this Court, through Justice, later Chief Justice, Fernando, said in *Trocio v. Labayo*, 53 SCRA 97, (1973) in rejecting a similar contention: "No merit attaches to the contention of petitioner that the notice as to the hearing scheduled for October 14 should specify that it was for a pretrial. A hearing as known to the law is not confined to a trial but embraces the several stages of a litigation. It does not preclude pretrial."

Indeed, there was no reason to suppose that the hearing scheduled on December 6, 1993 was for anything other than a pretrial. The holding of a pretrial conference had been the subject of several previous notices to the parties and their counsel, and private respondent never pretended that it did not know that what had been scheduled was a pretrial.

The discretion and authority of the respondent court to declare private respondent in default after it failed to appear at the pretrial is clear from §2 of Rule 20 of the Rules of Court, and the Court of Appeals, without a clear showing of grave abuse of this discretion, should not have annulled the default order.

The trial court could certainly not be faulted for declaring private respondent as in default. Although he had been advised by Judge Aliposa to wait for further orders from Judge Sison, who was taking over the trial of the case, private respondent's counsel was not justified in assuming that no hearing on his case would be held as previously scheduled, especially since he did not receive any notice of any new date.

Indeed, he knew that the pretrial was scheduled on December 6, 1993. If he thought there was a possibility that the pretrial would be postponed on account of the change of judges, he could have inquired from the court as the more prudent course, instead of assuming that the pretrial conference would again be postponed. This was necessary since he had been told of the possibility of postponement merely by the judge formerly trying his case.

The trial court acted within its discretion and correctly held private as in default, and it was error for the appellate court to issue the writ of certiorari.

WHEREFORE, the petition is granted and the decision appealed from is REVERSED, with costs against private respondent.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Puno, and Francisco, JJ., concur.

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