

NATIONAL LUMBER & HARDWARE CO., PLAINTIFF AND APPELLEE, VS. PEDRO J. VELASCO, DEFENDANT AND APPELLANT.

G.R. No. 14109. January 30, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

Appeal from an order of the Court of First Instance of Manila denying defendant-appellant's motion for new trial.

On August 21, 1952, a complaint was filed with the Municipal Court of Manila for the collection of the sum of P481.00, plus interest, allegedly representing the unpaid balance of the cost of lumber purchased by the defendant from the plaintiff. On January 17, 1953, after trial, said court rendered judgment in favor of plaintiff.

Defendant appealed to the Court of First Instance of Manila and after the issues were therein joined, the first hearing was set for March 23, 1954. On the 16th of the same month, however, counsel for defendant filed an "Urgent Ex-Parte Petition for Postponement of Hearing" on the ground that on the date set for hearing, the counsel would be busy with another case in Baguio City and the defendant would similarly be busy.

The hearing was rescheduled for October 26, 1954, upon plaintiff's motion, but on account of defendants "Very Urgent Ex-parte Petition for Change of Date of Hearing." due, allegedly, to pressure of work, the hearing was again reset for March 5, 1956. When that day came, however, another "Ex-Parte Very Urgent Emergency Petition" was filed by defendant. The hearing was once again postponed to June 21, 1956, at 2:00 p.m., in accordance with the defendant's desire expressed in said motion that postponement should be until the later part of June, 1956.

In the morning of June 21, 1956 at 10:30, defendant's counsel filed another "Very Urgent Ex-Parte Petition for Postponement of Hearing" because, according to him, he suddenly felt dizzy upon his arrival from Cavite at that hour. And so the hearing was once more ordered postponed to August 9, 1956 at 2:00 p.m. The order of postponement was issued in open court in the presence of defendant.

On August 7, 1956, counsel for defendant filed his fifth "Ex-Parte Very Urgent Petition" for continuance for the reason that he had not received any formal notice of the hearing set for August 9 and that he had another hearing in the Court of First Instance of Rizal.

On August 9, 1956, when the case was called for trial, neither the defendant nor his counsel of record appeared. Instead, a certain Atty. Moises O. Bontoc appeared with a medical certificate stating that the defendant was suffering from acute lumbago and reiterated the latter's request for postponement. This time the motion for continuance was denied and the plaintiff was allowed to present his evidence, the trial court being of the opinion that for the reception of plaintiff's evidence the presence of the defendant was not necessary. Atty. Bontoc refusing to represent the defendant, left the court before the plaintiff started presenting its evidence. On the same day, the lower court rendered judgment ordering the defendant to pay to plaintiff the sum of P481.00 with interest at 12% per annum from May 31, 1952, plus attorney's fees in the amount of P120.00 and costs of suit.

After receipt of a copy of the decision, the defendant filed an urgent, motion praying the court to set aside the decision and to set the hearing anew, but this was denied. Whereupon, defendant appealed to the Court of Appeals but that court certified the case to us on the ground that the questions raised are purely legal.

We do not think there has been any abuse of discretion on the part of the lower court in having proceeded with the trial on August 9, 1956 even without a copy of the notice of that trial set on that date having been sent to counsel for defendant-appellant. It is noteworthy that the further postponement of the trial from June 21, 1956 to August 9, 1956 was at defendant-appellant's request. It is, therefore, difficult to see how defendant-appellant's counsel could not have known, through eagerness, the result of his motion. Admittedly, the order resetting the case for trial on August 9, 1956 was in open court and in the presence of defendant-appellant himself. While it is true that a notice to a party is not sufficient notice in law, we think that objection to that defect may be waived. In this case, counsel for defendant-appellant's own act of filing his last "Ex-Parte Very Urgent Petition" for continuance of the trial set for August 9, shows that he had been informed of the order of the trial court setting the case for trial on that date. And we take this as a waiver on the part of said counsel to the formal notice required by the Rules.

Defendant-appellant has no valid reason to complain of the court's failure to resolve his last urgent petition for he filed it only two days before the 9th of August, 1956, the date set for the hearing of the case. Even if the court would have resolved the motion at the very moment it was filed, the resolution could not have even reached appellant's counsel before the time and date scheduled for the trial. It will be remembered that the hearing scheduled for August 9, 1956 was set way back on June 21, 1956, and, as stated in appellee's brief, following the usual course of human events, appellant must have informed his counsel, and one and a half months is long enough for counsel to have filed a motion for postponement in order to enable the court to resolve the same and to notify him of such resolution in due time.

If defendant-appellant was really ill on the date set for hearing, at least his counsel should have appeared to find out what action was taken on his motion for further postponement and be present at the presentation of the evidence for the plaintiff, cross-examine its witnesses and ask for an opportunity to present his own evidence at another time. While defendant-appellant's request for postponement may not be entirely groundless, neither he nor his counsel had reason to assume that the trial court would grant it (*Sarreal vs. Tan*, 92 Phil., 689, 49 Off. Gaz., 499), especially if their motion was filed in less than three days' notice (*Bautista vs. Municipal Council of Mandaluyong, et al.*, 98 Phil., 409, 52 Off. Gaz., p. 759). And it has been held time and again that motions for continuance are addressed to the sound discretion of the trial court and this discretion should not be interfered with unless it is shown to have been abused (See *Fabillo vs. Tiongko and Egay*, 43 Phil., 317; *Linis vs. Rovira*, 61 Phil., 138; *Dimayuga vs. Dimayuga*, 96 Phil., 859, 51 Off. Gaz., p. 2397; *Salvador Cruz vs. Malabayasbas*, 105 Phil., 708; *Rufino Adan et al. vs. Nicasia Pantalla*, 105 Phil., 921).

Remarkably, the present case had been ready for trial as far back as May, 1953, when the last pleading was filed. From that date up to the hearing on August 9, 1956, trial had been postponed four times, all at the instance of the defendant-appellant. It cannot, therefore, be said that appellant has been deprived of the opportunity to defend himself.

In view of the foregoing, the order appealed from is affirmed, with costs against the appellant.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, and Barrera, JJ., concur.

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