

ESTELITA T. CORLETO, FRANCISCO MILITANTE, JR., DELIA M. MENDOZA, LILIAN M. MADAYAG AND LINDA M. FACTORAN, PETITIONERS, VS. HONORABLE JOSE P. ARRO, JUDGE OF THE CFI OF LEYTE, PAL...

G.R. No. 51919. August 06, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

Impugned in these special civil actions of certiorari and mandamus is the order of respondent Judge dated September 28, 1979 wherein he refused to give due course to petitioners' appeal from an order of dismissal.

The petitioners, as the plaintiffs in Civil Case No. 5170 of the Court of First Instance at Palo, Leyte, presented three witnesses and finished the presentation of their evidence on August 1, 1977 when they formally offered their documentary evidence.

Thereafter the defendants (now private respondents) commenced the presentation of their evidence. The continuation of the hearing was scheduled on April 2, 1979 when the defendants supposedly would present their fourth and last witness.

On that date, respondent Judge issued a minute order dismissing the case because of the "failure of the counsels of the parties to appear". The plaintiffs and defendants filed motions for the reconsideration of that order of dismissal.

Respondent Judge in his order of June 13, 1979 denied plaintiffs' motion for reconsideration because it was not set for hearing and because "failure of the plaintiffs or their counsel to appear for the reception of defendants' evidence can only be construed as lack of interest or abandonment in the prosecution of their case".

Respondent Judge bypassed defendants' motion for reconsideration. (The order of dismissal was favorable to them.)

The petitioners perfected their appeal to the Court of Appeals from the order of dismissal but respondent Judge in his order of July 20, 1979 ruled that the appeal should be made to the Supreme Court.

Acting on the motion for approval of the record on appeal, respondent Judge in his order of September 28, 1979 held that the appeal should not be made by record on appeal "since the case was not decided on its merits and (there is) no question of law or of facts to be reviewed on appeal".

In his order of October 22, 1979, denying petitioners' motion for reconsideration, respondent Judge held that no record on appeal could be filed because no decision was rendered and a record on appeal is supposed to contain the decision under appeal. Respondent further held that the review of the order of dismissal should be made by means of "some other legal remedy".

In the interest of justice and to avoid delay, we have treated the petition for certiorari and mandamus (mailed on November 5, 1979) as an appeal from the order of dismissal under Republic Act No. 5440, a law which took effect on September 9, 1968 and of which many practising lawyers, especially those in the provinces, are not cognizant up to this time.

We hold that the trial court acted precipitately in dismissing the case for nonappearance of the parties and their lawyers at the continuation of the hearing for the reception of defendants' evidence.

In doing so, the lower court caused the plaintiffs to lose their case due to the mistake or irresponsibility of their lawyer in not informing the court that he was waiving his appearance at the hearing and that he was submitting plaintiffs' case on the basis of their evidence.

The trial court observed that plaintiffs' absence at the hearing constituted "willful and deliberate disobedience" of the court's order setting the case for hearing and that the plaintiffs could be held liable for contempt "for obstructing the speedy administration of justice".

What the trial court could have done was to adjudge the lawyers in contempt of court and to reset the hearing instead of dismissing the case and erasing the proceedings already held.

It is understandable why the lower court should take offense for the unexplained nonappearance of the parties and their lawyers at the hearing and why, to vindicate its dignity, it was provoked to dismiss the case and thus teach the lawyers an unforgettable lesson in courtesy and decorum and to make them realize that they should not trifle with the courts.

It is one of the duties of an attorney "to observe and maintain the respect due to the courts of justice and judicial officers" (Sec. 20 (b), Rule 138, Rules of Court).

A lawyer who does not appear at the scheduled hearing of a case without any explanation or justification shows disrespect to the court and the presiding judge. He is guilty of contumacious behavior for obstructing and degrading the administration of justice.

Such behavior is censurable and is bound to antagonize the presiding judge who would feel belittled and ignored. The lawyers involved in this case were evidently inexperienced and lacking in elementary courtesy to the court. They did not bother to apologize for their nonappearance in court.

WHEREFORE, the lower court's order of dismissal is set aside and it is directed to finish the trial of the case. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Guerrero,[*] and De Castro,[*] JJ., concur.

[*] Were designated to sit in the Second Division.

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