

**LILIA B. BARRERA, REPRESENTED BY MIGUEL R. LOGARTA,
ATTORNEY-IN-FACT, PETITIONER, VS. THE HONORABLE FRANCIS J.
MILITANTE, JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU,
BRANCH XI...**

G.R. No. 54681. May 31, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Special civil action of certiorari to annul and set aside the Orders of respondent Francis J. Militante, Presiding Judge of the Court of First Instance of Cebu, Branch XII, issued on June 11 and 20, 1980, in Civil Case No. R-17617 entitled "Lilia B. Barrera, etc., Plaintiff, versus, Carmen Belleza, et al., Defendants," respectively dismissing petitioner's complaint and denying the motion for reconsideration of the said order of dismissal.

The foregoing Orders of respondent Judge read as follows:

"When this case was called for hearing today, the defendants (private respondents herein) and their counsel appeared. Neither the plaintiff (petitioner herein) nor her counsel appeared. In view of the failure of the plaintiff to appear despite the fact that she was duly notified, this case is hereby dismissed.

"IT IS SO ORDERED.

"Given in open court, Cebu City, this 11th day of June 1980."[1]

"Finding the motion for reconsideration to be without merit, the same is hereby DENIED.

"IT IS SO ORDERED.

"Given in open court, Cebu City, this 20th day of June, 1980."[2]

It appears that on December 13, 1978, petitioner filed a complaint in the Court of First Instance of Cebu, docketed as Civil Case No. R-17617, against private respondents for recovery of ownership and possession of a parcel of land designated as Lot 4356 of the Talisay-Minglanilla Friar Lands Estate, and damages. Private respondents were accordingly summoned to answer said complaint and to enter into pre-trial and trial. The case was set for pre-trial conferences at various dates, the last two of which, were on May 18, 1980 and on June 11, 1980 at 8:30 A.M. The scheduled pre-trial conference of May 18, 1980 was postponed to June 11, 1980 because of the unreadiness of petitioner's counsel to go on with the pre-trial conference. When the case was called for pre-trial conference on June 11, 1980 at 8:30 A.M., neither petitioner nor her counsel appeared, thus prompting respondent Judge to issue the dismissal order of even date as quoted above.

On June 17, 1980, petitioner filed a motion[3] to recon-sider said dismissal order, stating that on the scheduled pre-trial conference of June 11, 1980, her counsel, who was allegedly armed with "a special power of attorney to appear at the pre-trial and to enter into a compromise was a little late," because "the secretary of the law office did not arrive early in the said office where counsel could pick up the records of the case on his way to Court."[4]

Attached to said motion for reconsideration is an affidavit of the supposed secretary of the above-referred law office, stating that she was feverish sometime last June 11, 1980, and was thus unable to report for work early. Petitioner's above-stated motion was however denied by the respondent Judge for lack of merit in the order of June 20, 1980, also as above-quoted.

Hence, the present recourse, petitioner claiming that respondent Judge committed grave abuse of discretion in dismissing her complaint as well as in denying her motion for reconsideration.

From a casual perusal of the order of dismissal of June 11, 1980, We can readily understand the considerations which prompted the respondent Judge in dismissing petitioner's complaint, especially considering that since the filing of the complaint on December 13, 1978 up to the issuance of the order of dismissal on June 11, 1980, or a lapsed period of about eighteen months, the pre-trial stage of the case has not yet been terminated, showing that its progress was abnormally very slow. Moreover, unrefuted by petitioner is private respondent's claim that in all the pre-trial conferences scheduled by the lower court, petitioner has never appeared nor does the record show that she had executed a special power of attorney in favor of either her attorney-in-fact Miguel R. Logarta or her counsel of record to serve as the written authority to represent her in said pre-trial conferences, with power to compromise the case.^[5] This is a measure conducive to the early and expeditious termination of the case, which is consistent with the purpose of a pre-trial as provided under Section 1 of Rule 20, which petitioner could have easily availed of but did not.

For failure of the petitioner and her counsel to appear at the last scheduled pre-trial of June 11, 1980, the lower court is given the discretion to dismiss the case, said failure to appear being a ground to authorize dismissal of the complaint for failure to prosecute.^[6] We find no reversible error committed by the respondent Judge in dismissing the case on this ground.

The explanation given in petitioner's motion for reconsideration regarding her counsel's alleged late arrival in court at the pre-trial conference of June 11, 1980, is far from being satisfactory. While an affidavit supposedly executed by the secretary of counsel's law office was attached to the motion for reconsideration, the same was not even supported by a medical certificate, authenticated or otherwise, to substantiate the official's claim of illness which is her supposed reason of failing to report for work early. Besides, as correctly pointed out by private respondents, the allegation of the office secretary that she arrived in the law office at almost 9:00 in the morning of June 11, 1980 does not jibe with the allegation of counsel for the petitioner that he arrived in court some ten minutes after 8:15 A.M. of said day when the case was called for pre-trial.

Counsel for the petitioner would, likewise, have us believe that he was armed with a special power of attorney, without, however, showing the scope, extent and limits of the authority granted him. Worse still, said special power of attorney was only allegedly executed by petitioner's attorney--in-fact, one Miguel R. Logarta, the scope, extent and limits of whose authority was, likewise, not shown. As earlier indicated, the record does not show that petitioner had executed a special power of attorney in favor of either her attorney--in-fact or her counsel of record. We are thus left without any idea as to the nature and extent of said alleged authority, which have to be proven, because Section 23, Rule 138 of the Rules of Court requires, for attorneys to compromise the litigation of their clients, a "special authority." And while the same does not state that the special authority be in writing, the court has every reason to expect that, if not in writing, the same be duly established by evidence other than the self-serving assertion of counsel himself that such authority was given him. The respondent Judge, therefore, did not act erroneously, much less abuse his discretion gravely, in denying the motion for reconsideration in spite of such manifestation of petitioner's counsel because the authority to compromise cannot lightly be presumed.⁷ And if, with good reason, the judge is not satisfied that said authority exists, as in this case, dismissal of the case for non-appearance of petitioner in pre-trial is sanctioned by the Rules.

We take this opportunity to remind the lower courts once more that the issuance of minute orders, like the one denying the motion for reconsideration of petitioner, is not sanctioned by our jurisprudence. As categorically stated by this Court in *Continental Bank v. Tiangco*, 94 SCRA 715:

"We have admonished the trial courts not to issue a minute order like the one under appeal. A trial court should specify in its order the reasons for the dismissal of the complaint so that when the order is appealed, this Court can readily determine from a casual perusal thereof whether there is a prima facie justification for the dismissal."

But notwithstanding the foregoing omission of respondent Judge, We cannot however grant the instant petition for reasons already explained earlier.

WHEREFORE, the petition for certiorari is dismissed. Costs against the petitioner.

SO ORDERED.

Aquino, Guerrero, and Escolin, JJ., concur.

Barredo, J., (Chairman), reserve his view as to the observation made by J. Abad Santos which needs further study of the correlation between the 2 of Rule 20, on the one hand, and Secs. 2 and 3 of Rule 17. Abad Santos, J., concur. He takes it that the petition can file a new complaint provided that her action has not prescribed. Concepcion, J., on leave.

[1] Annex "A" Petition, p. 6, Rollo.

[2] Annex "C" Petition, p. 10, Id.

[3] Annex "B" Petition, p. 7, Id.

[4] Ibid.

[5] cf. *Taroma v. Sayo*, 67 SCRA 508.

[6] *Arcuino v. Aparis*, 22 SCRA 407; Section 2, Rule 20, Rules of Court.

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