

PURIFICACION V. ADVENTO, PETITIONER, VS. HON. PRISCILLA C. MIJARES, PRESIDING JUDGE OF CITY COURT, MANILA, BRANCH VII, HON. ERNESTO C. TENGCO, PRESIDING JUDGE, COURT OF FIRST IN...

G.R. No. 57173. January 17, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petition for prohibition with preliminary injunction and/or restraining order and annulment of Orders directed against the Orders dated March 4, 1980, March 25, 1980, April 30, 1980 and January 29, 1981 of the City Court of Manila, Branch VII, in Civil Case No. 047427 for ejectment entitled "Guillermo Lachica vs. Purificacion V. Advento" and the Order dated December 9, 1980 of the Court of First Instance of Manila, Branch XV for prohibition in Civil Case No. 047427.

It appears that in the initial hearing of said Civil Case No. 047427 in the City of Manila, presided by respondent Judge Priscilla Mijares, where petitioner is the defendant, the latter and her counsel failed to appear on time. Counsel for private respondent (then plaintiff) moved to allow plaintiff to present his evidence ex-parte which was granted on the same date at 10:00 o'clock in the morning. Petitioners filed on October 25, 1979, a motion for reconsideration of said Order of respondent Judge Mijares allowing private respondent to present his evidence ex-parte reasoning that petitioner and counsel's failure to appear on time is due to heavy traffic and a vehicular traffic accident that prevented them to be present on time. On December 29, 1979, respondent Judge Mijares issued an Order granting petitioner's motion for reconsideration and setting the hearing of the case for March 4, 1980 stating that "justice would be better served if petitioner is allowed to confront the evidence thus presented and to cross-examine the private respondent." [1]

On March 4, 1980, petitioner and counsel arrived in court at about 8:45 in the morning showing delay of about fifteen (15) minutes as per scheduled time of 8:30 in the morning. Respondent Judge Mijares, then, was already attending to another case. Private respondent and counsel, who were still around, informed the petitioner that the Court, through a verbal Order, had already considered herein petitioner to have waived her right to cross-examine the private respondent, and the case is deemed submitted for decision based on the evidence available at hand.

On May 10, 1980, petitioner filed a motion for reconsideration of the Order of March 4, 1980, offering as reason for their late arrival the fact that "counsel for petitioner had to appear in another case in the Court of First Instance of Manila, Branch XXV as counsel for the accused in Criminal Cases Nos. 42576 and 42579." The first and second Motion for Reconsideration of said Order were denied in the Orders dated March 25, 1980 and April 30, 1980, respectively, for "lack of merit." Hence, petitioner filed prohibition proceedings on June 8, 1980 with the Court of First Instance of Manila, Branch XV, presided by respondent Judge Ernesto Tengco. Under date of December 9, 1980, respondent Judge Tengco issued an order [2] dismissing the petition for prohibition on the ground that "this Court cannot prohibit the lower court in rendering judgment in Civil Case No. 047427."

On January 29, 1981, respondent Judge Mijares issued an Order again considering Civil Case No. 047427

submitted for decision after receiving the Order dated December 9, 1980 of respondent Judge Tengco. Petitioner, then, filed with the Court of Appeals a petition for prohibition which was, however, dismissed on March 17, 1981 on the ground of lack of jurisdiction.[3] Motion for reconsideration of said order was likewise denied. Hence, the present petition, which although denominated as a special civil action for prohibition with prayer for preliminary injunction, is in reality a petition for certiorari and prohibition since it (a) seeks to annul and set aside the Orders of March 4, 1980, March 25, 1980, April 30, 1980 and January 29, 1981 and (b) seeks to prohibit respondent Judge Mijares from rendering any decision in Civil Case No. 047427 merely based on the evidence presented by private respondent.

Petitioner's counsel proffered an explanation for the delay. That on the same morning of March 1980, counsel and petitioner went to the sala of Judge Emeterio Cui of the Court of First Instance of Manila, Branch XXV to request for a "Second Call" in Criminal Cases Nos. 42576 and 52579 where counsel appears as counsel for all the accused, so that he could attend to the case before the sala of respondent Judge Mijares. That as proof thereof, counsel for petitioner presented the Certification[4] by the Clerk of Court of the Court of First Instance of Manila, Branch XXV that indeed "on March 4, 1980 counsel appeared in the sala of the Court of First Instance of Manila, Branch XXV as counsel for the accused in said Criminal Cases Nos. 42576 and 42579."

Under the circumstances obtaining in this case, this Court is of the opinion that respondent Judge Mijares committed grave abuse of discretion when she issued the Order of March 4, 1980 considering petitioner to have waived her right to cross-examine the private respondent and submitting the case for decision based on the evidence available at hand, just because petitioner and counsel arrived in court 15 minutes late from the scheduled hearing. Petitioner has presented a justifiable reason for the delay. Petitioner's counsel may have inadvertently forgotten to take note of the time when he appeared before the sala of CFI Judge Emeterio Cui, but this inadvertence is understandable. Preoccupation with work on hand could very well induce such lapses. At any rate, tardiness for 15 minutes is not such a gross or brazen disregard of his duty to appear on time to merit too severe a penalty or making petitioner suffer so much as losing a hard-earned chance to be heard, for such a short tardiness.[5]

While tardiness in court attendance is to be discouraged, because a lawyer is bound "not only to his client, but also to the courts and to the public to be punctual in attendance,"[6] this, however, is no license for a trial judge to immediately consider the case submitted for decision without the petitioner presenting her evidence just because of tardiness for a very short time occasioned by excusable negligence, properly brought to the attention of the court. A judge is enjoined to be temperate and attentive, patient and impartial. It may be well to sound a reminder that a judge is not a depository of arbitrary power, but one under the sanction of law.[7]

In this case, it may be noted that when respondent Judge Mijares issued the Order of December 29, 1979, granting petitioner's motion for reconsideration and setting the hearing of the case for March 4, 1980, she said that "justice would be better served if the defendant is given a chance to cross-examine the witness presented by the plaintiff and thereafter to adduce her evidence in support of her defense." Petitioner's mere tardiness as aforesaid should not be reason enough for a change of mind to overcome a woman's usually greater kindness of heart. In the absence of a clear intention to delay, justice is, indeed, better served by a brief continuance, trial on the merits, and final disposition of the cases before the court.[8] What We said in the case of *Philippine Homesite and Housing Corporation vs. Tiongco*,[9] may be worth repeating at this juncture, thus—

"Rules of procedure should receive liberal interpretation in order to promote their object and to assist the parties in obtaining a just, speedy and inexpensive determination of every action. Procedural technicality should not be made a bar to the vindication of a legitimate grievance. When such technicality deserts from being an aid to justice, the Courts are justified in excepting from its operation a particular case."

IN VIEW OF THE FOREGOING, the Orders of respondent Judge Mijares dated March 4, 1980, March 25, 1980, April 30, 1980 and January 29, 1981 and the Order of respondent Judge Tengco dated December 9, 1980 are hereby set aside and the case is ordered remanded to the trial court for cross-examination of private respondent by petitioner and the reception of petitioner's evidence in the case below. No costs.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero, Abad Santos and Escolin, JJ., concur.

[1] p. 66, Rollo.

[2] Annex "F" to the Petition, p. 21, Rollo.

[3] Annex "A" to the Petition, p. 14, Rollo.

[4] Annex "C" to the Petition, p. 18, Rollo.

[5] See *Gil vs. Tabaña*, 96 Phil. 32, 34.

[6] Canon 21, Canons of Professional Ethics.

[7] *Go Lea Chu vs. Gonzales, et al.*, 22 SCRA 766.

[8] *Amberti vs. Court of Appeals*, 89 SCRA 240; See also *Estebaya vs. Mijares*, 108 SCRA 98.

[9] 12 SCRA 471, 475, also cited in *Udan vs. Amon*, 23 SCRA 837, 841.

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