

**MARIA MONSERRAT R. KOR, PETITIONER, VS. HONORABLE
INTERMEDIATE APPELLATE COURT, HON. JOB. B. MADAYAG IN HIS
CAPACITY AS THE PRESIDING JUDGE, OF BRANCH CXLV, REGIONAL
TRIAL COURT...**

G.R. NO. 71388. September 23, 1986

Ponente: FERIA, J.

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FERIA, J.:

The Court affirms the decision of the Intermediate Appellate Court (now renamed Court of Appeals) which dismissed the petition for certiorari filed by petitioner against respondent Judge Job B. Madayag of the Regional Trial Court of Makati and respondent First Interstate Bank of California. Petitioner sought to annul and set aside the order of respondent Judge denying her motion to dismiss the complaint based on res adjudicata.

On June 15, 1983, respondent Bank filed a Complaint against petitioner to recover the sum of US-\$7,434.90 or its equivalent in Philippine Currency which, due to a computer error, it had overpaid to her on October 8, 1981. The Complaint alleged that on September 30, 1981, petitioner's father sent her US-\$500.00 through the Metropolitan Bank & Trust Company which was the remitting bank of respondent Bank. But due to computer mistake, respondent Bank's Los Angeles Office erroneously overstated the amount to US-\$8,500.00 instead of US-\$500.00, and as a consequence respondent Bank issued and delivered to petitioner Cashier Check No. 1217681 amounting to US-\$8,500.00 dated October 8, 1981 which petitioner deposited to her account and subsequently withdrew.

In her Answer dated August 17, 1983, petitioner admitted the above-stated allegations in the Complaint and alleged that immediately after receipt of a formal demand letter to return the overpayment, she offered to pay respondent Bank through its lawyer in installments of \$100.00 a month but the offer was unreasonably rejected.

It is significant to note that no copy of said Answer was attached to the petition for certiorari filed by petitioner with the Intermediate Appellate Court, nor was any copy thereof attached to the petition for review on certiorari filed with this Court. It was only in the Comment of respondents' counsel filed with this Court that a copy of said Answer was attached thereto.

On August 19, 1983, Mr. E.R. Belen, Officer-in-Charge of the Regional Trial Court of Makati, Branch 141, sent the following "NOTICE OF CASE STATUS" to the parties through their respective lawyers.

GREETINGS:

Please take notice that cases where issues have been joined will be scheduled for pre-trial conference only after Rules 24, 25, 26, 27, 28, and 29 — where applicable, necessary and or feasible u have been resorted to by the parties.

If a party believes that those modes of discovery are not applicable, necessary or feasible with respect to him, he shall file a manifestation to that effect.

The pre-trial conference, shall be scheduled as soon as the respective manifestations of having resorted to, or of dispensing with, those modes of discovery — have been filed by the parties.

The party, who has dispensed with those modes of discovery shall be deemed to have waived resort thereto, and, unless for good cause shown, motion to resort thereto, after termination of the pre-trial, shall not be granted. The costs entailed by the waiving party in presenting evidence during trial that could have been obtained through any of those modes of discovery which were waived, shall not be assessed against the adverse party nor awarded as part of the litigation expenses.

If, after 30 days from receipt of this notice, no such manifestation has been filed, the case shall be archived or dismissed as the case may be.

Upon Order of the Court, this 19th day of August 1983. 0 Makati, Metro Manila.

(SGD.) E.R. BELEN
Officer-in-Charge

No manifestation was filed by the parties' lawyers. On November 29, 1983, the presiding Judge (not respondent Judge), issued the following order:

“For non-compliance with the Order (Notice of Case Status) dated August 19, 1983, more particularly the last paragraph thereof, this case is hereby dismissed.”

This order was received by respondent Bank's counsel on December 28, 1983.

On July 4, 1984, respondent Bank, through a new counsel, refiled its complaint which was assigned to Branch 143 of the Regional Trial Court of Makati presided over by respondent Judge. Petitioner filed a motion to dismiss the complaint on the ground of res adjudicata, as well as a supplement thereto, which was opposed by respondent Bank.

On August 27, 1984, respondent Judge denied the motion to dismiss and on November 27, 1984, he denied petitioner's motion for reconsideration, on the following grounds:

- (1) The dismissal was too drastic and was tantamount to depriving the plaintiff of its day in court.
- (2) Notwithstanding the failure of the parties in said case to comply with said notice of case status (above quoted), the court (Branch 141) should have set the case for pre-trial conference since the last pleading had been filed and there are no other conditions to be complied with before any case is calendared for pre-trial under Section 1 of Rule 20.
- (3) It would be better for the defendant to have a definite and clear-cut decision as to her liability or non-liability, instead of winning a case on a technicality.

On May 8, 1985, petitioner filed a petition for certiorari with the Intermediate Appellate Court praying that the orders denying the motion to dismiss and the motion for reconsideration be set aside as null and void and that the complaint be ordered dismissed. On May 21, 1985, the appellate court, finding no merit to the petition, resolved not to give it due course. In its decision, the appellate court ruled as follows:

We concur with the above reasoning of respondent Judge. We should add to that our observation that the order of dismissal of Judge Elbiñas in Civil case N^o- 4272 (Annex F) was null and void for lack of legal basis. The notice of case status' (Annex D) was not an order¹ of the court. It was, as its title indicated, only a 'notice,' not an order. The warring in the last Paragraph of the notice advising the parties that —
'If, after 30 days from receipt of this notice, no such manifestation as been filed, the case shall be archived or dismissed as the case maybe.'

was not an order of the court. It was a warning emanating from E.R. Belen, the officer-in-charge (of civil cases). The failure of the parties to heed the warning was not tantamount to disobedience of a lawful order of the court, for the 'officer-in-charge' was not the court or judge.

"Since the order of dismissal was null and void, it did not have the force of a judgment. It did not constitute a bar to the refiling of the bank's complaint. Respondent Judge did not err, or abuse his discretion, in denying petitioner's motion to dismiss Civil Case No. 7765." (pp. 35-36, Record)

Petitioner has appealed by certiorari to this Court. We are constrained to affirm. Indeed, with the admission in petitioner's Answer of the allegations in the Complaint that due to computer error there was an overpayment to her of the amount of US-\$8,000.00, coupled with her offer to pay respondent Bank the amount of the overpayment in installments of \$100.00 a month, we cannot find any justification for ruling that the order dismissing the first complaint operated as an adjudication on the merits or constituted a bar to the second complaint. In fact, the trial court could have, on motion, rendered a judgment on the pleadings in the first case in favor of respondent Bank.

True it is that respondent Bank's counsel should have taken the precaution of complying with the instructions contained in the "NOTICE OF CASE STATUS" if only to avoid the consequent delay resulting from non-compliance; that respondent Bank's counsel was negligent in not seeking a reconsideration or clarification of the order of dismissal, or appealing therefrom. But, fortunately for respondent Bank, the omissions of its counsel are not fatal to its cause in view of the defective procedure which culminated in the dismissal of the first complaint.

The rules on discovery (Rules 24, 25, 26, 27, 28 and 29 of the Revised Rules of Court) are intended to enable a party to obtain knowledge of material facts within the knowledge of the adverse party or of third parties through depositions; to obtain knowledge of material facts or admissions from the adverse party through written interrogatories; to obtain admissions from the adverse party regarding the genuineness of relevant documents or relevant matters of fact through requests for admission; to inspect relevant documents or objects and lands or other property in the possession or control of the adverse party; and to determine the physical or mental condition of a party when such is in controversy. This mutual discovery enables a party to discover the evidence of the adverse party and thus facilitates an amicable settlement or expedites the trial of the case. All the parties are required to lay their cards on the table so that justice can be rendered on the merits of the case.

Trial judges should, therefore, encourage the proper utilization of the rules on discovery. However, recourse to discovery procedures is not mandatory. If the parties do not choose to resort to such procedures, the pre-trial conference should be set pursuant to the mandatory provisions of Section 1 of Rule 20.

Petitioner argues that respondent Judge was wrong in stating that a pre-trial order should have been issued since the last pleading had been filed, because the "notice of case status" was issued on August 19, 1983, while the last pleading or the answer to petitioner's counterclaim was filed much later. Although, ordinarily, the last pleading which has to be filed before the court shall set the case for pre-trial under Section 1 of Rule 20 is the answer to the counterclaim (*Itchon vs. Baligod*, 17 SCRA 268; *Pioneer Insurance & Surety Corp. vs. Hontanosas*, 78 SCRA 447), in the case at bar, petitioner's counterclaim for damages resulting from the filing of the complaint did not require an answer (*Navarro vs. Bello*, 102 Phil, 1019; *Gojo vs. Goyola*, 35 SCRA 557). Since the counterclaim was the last pleading, the court should have issued a pre-trial order after its submission and it was the duty of the clerk of court to place the case in the pre-trial calendar under Section 5 of Rule 20.

Petitioner invokes the provisions of Section 3 of Rule 17 which reads as follows:

"Failure to prosecute. — If plaintiff fails to appear at the time of the trial or to prosecute his action for an

unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. the dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court."

This provision is not applicable to the case at bar. As the appellate court correctly held, the "notice of case status" was not an order of the court. It was signed by Mr. E.R. Belen, officer-in-charge. Even the warning in the notice (that if no such manifestation has been filed after 30 days from receipt the case shall be archived or dismissed as the case may be) was ambiguous. The failure of the parties to heed the warning did not constitute disobedience of a lawful order of the court. Consequently, the order of dismissal could not have the effect of an adjudication upon the merits. Neither could respondent Bank be considered to have failed to prosecute its action for an unreasonable length of time, inasmuch as petitioner's Answer was dated August 17, 1983 and the order of dismissal was dated November 29, 1983.

Petitioner cites the case of Arellano vs. Court of First Instance of Sorsogon (65 SCRA 45) in support of her stand. However, in said case, the Court upheld the order of dismissal for failure of respondent Barretato serve any answer to petitioner Arellano's interrogatories. The dismissal was based on Section 5 of Rule 29 which provides that if a party fails to serve answers to interrogatories submitted under Rule 25, after proper service of such interrogatories, the Court on motion and notice may dismiss the action or render judgment by default.

Petitioner further contends that if the ruling of the appellate court regarding the legality of the notice signed by the officer-in-charge were sustained, then court processes such as summons, notices of pre-trial, writs of execution and the like can be merely disregarded by lawyers. This contention is without merit. Section 1 of Rule 14 expressly provides that upon the filing of the complaint, the clerk of court shall forthwith issue the corresponding summons to the defendant. Sections 1 and 5 of Rule 20 authorize the clerk of court to issue the notice of the date of the pre-trial and Section 2 of Rule 22 authorizes the clerk of court to issue the notice of the date of the trial. A writ of execution may be issued by the clerk of court pursuant to an order of execution signed by the judge. There is no rule authorizing the issuance of the "notice of case status" in question signed by an officer-in-charge. WHEREFORE, the decision of the appellate court is affirmed, with costs against petitioner. This decision is immediately executory.

SO ORDERED.

Fernan, Alampay, Gutierrez, Jr., and Paras, JJ., concur.

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