

**SPOUSES ANTONIO MARTINEZ AND BENEDICTA
BALATBAT--MARTINEZ, PETITIONERS, VS. THE HONORABLE JUDGE
EUFROCINIO S. DE LA MERCED, BIENVENIDO U. JUAN AND SACRED
HEART SCHOOL MALABON, I...**

G.R. No. 82039. June 20, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Raised in this petition for review on certiorari is a novel issue in procedural law. More particularly, the question posed by petitioners is whether or not the preliminary conference under the Rules on Summary Procedure[1] can be waived, albeit impliedly, by failing to object to its non-observance in the proceedings had before the inferior court.

The subject provision is contained in Section 6 of the above-mentioned rule which states:

"SEC. 6. Preliminary Conference.- Not later than thirty (30) days after the last answer is filed, the case shall be calendared for a preliminary conference. Among other matters, should the parties fail to arrive at an amicable settlement, the court must clarify and define the issues of the case, which must be clearly and distinctly set forth in the order to be issued immediately after such preliminary conference, together with other matters taken up during the same."

The facts of the case as found by the Court of Appeals are as follows:[2] On August 24, 1979, petitioners instituted before the Metropolitan Trial Court an unlawful detainer case against the herein private respondents Bienvenido Juan and Sacred Heart School of Malabon, Inc., for the recovery of possession of the premises being used by the latter as school building. For their causes of action, they claimed that the contract of lease has expired, and the terms and conditions of the contract of lease were violated.

Private respondents filed their answer to the complaint alleging, among others, that the period of the contract of lease is for 25 years from November 8, 1973 which has not expired, and that its terms have not been violated.

On December 13, 1979, private respondents filed a motion to suspend proceedings because of the pendency of their interpleader case, Civil Case No. C-8046, with the Regional Trial Court of Caloocan City, against the petitioners and their predecessors-in-interest, the estates of Ricardo and Soledad Balatbat, who were all claiming to be the owners of the leased premises. This motion was granted.

About five years thereafter or on August 17, 1984, petitioners filed a motion to lift the said order of suspension alleging therein that the pendency of the interpleader case is not a bar to its trial. Private respondents opposed the motion by asserting that the petitioners in Civil Case No. C-8046 were ordered to recover (sic) the titles of the leased premises to the estates of Ricardo and Soledad Balatbat. Consequently, the motion was denied by the court.

On June 5, 1985, petitioners filed a Second Motion to Lift Order of Suspension invoking the same ground. This time, however, the court, in an order dated July 11, 1985, lifted the suspension in view of the absence of any

opposition and that there was no showing as to the progress of Civil Case No. C-8046.

On October 24, 1985, the Metropolitan Trial Court denied the motion for reconsideration and set the case for trial on the merits. On November 23, 1985, private respondents filed a motion to implead necessary and/or indispensable parties inasmuch as the estates of Ricardo and Soledad Balatbat or their lawful heirs have an interest over the leased premises.

In its order dated March 31, 1986, the Metropolitan Trial Court denied the motion. In the same order, the court ordered the case to be tried under the Rules on Summary Procedure and, without setting the case for pre-trial conference, required the parties to submit the affidavits of their witnesses with supporting documents and position papers within ten (10) days from receipt thereof.

On April 23, 1986, private respondents filed a motion for extension of time to file the required pleadings for the reason that their counsel was still recuperating from a recent major operation. The motion was granted in another order dated April 23, 1986, which reads as follows:

"As prayed for in the 'Motion for Extension of time to file Defendant's Position Paper' xxx the same is hereby granted and the said counsel is hereby given an extension of twenty (20) days from April 24, 1986 xxx provided that he submit before this court a medical certificate from the hospital attesting to the fact that he has recently underwent a major surgical operation. (Underscoring supplied.)

SO ORDERED."[3]

On May 14, 1986 or within the given period, private respondents filed their position paper. However, the required medical certificate was posted by registered mail only on May 18, 1986 and received by the court on May 21, 1986.

Earlier, on May 20, 1986, the court issued the following order:

"Considering that no hospital record whatsoever xxx was submitted by counsel for the defendants when he filed their position paper and counter-affidavit xxx, a condition given (by) the court when it granted defendants' Motion for Extension of Time to File Defendants' Position Paper, the said petition paper and counter-affidavits of the defendant Bienvenido U. Juan which constitutes their evidence should be, as they are hereby, ordered stricken off the record as they were clearly filed out of time, the last day of the filing the same being on April 24, 1986 (sic).

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WHEREFORE, this case is now submitted for decision and let a judgment be rendered in accordance with Section 6 of the Rules on Summary Procedure based on evidence submitted by the plaintiff.

IT IS SO ORDERED."[4] (Underscoring supplied.)

On the basis of petitioners' evidence, on May 26, 1986, the lower court rendered an ex parte decision in favor of the petitioners, the dispositive part of which reads as follows:

"WHEREFORE, judgment is hereby rendered for the plaintiffs, ordering the defendants and all those claiming right under them, to:

1. vacate the premises in question and restore complete and peaceful possession thereof to the plaintiffs;
2. pay the plaintiffs the sum of P10,000.00 as and by way of attorney's fees; and
3. pay the costs of the suit.

IT IS SO ORDERED."[5]

This decision was appealed to the Regional Trial Court presided by respondent Judge Eufrocinio de la Merced. On August 13, 1986, said respondent judge rendered a decision declaring the judgment of the inferior court "null and void" on the ground that a preliminary conference under the Rules on Summary Procedure is a jurisdictional requirement, the non-observance of which constitutes reversible error.[6]

From this appealed decision, a petition for review was filed with the Court of Appeals. In a decision promulgated on November 25, 1987,[7] the appellate court affirmed the decision of the Regional Trial Court on two grounds: first, that the preliminary conference under the Rule on Summary Procedure is mandatory and jurisdictional and second, that the order of the Metropolitan Trial Court dated May 20, 1986, ordering private respondents' evidence expunged from the record, illegally denied them their day in court.[8]

The petition is impressed with merit.

The Rules on Summary Procedure in Special Cases are designed primarily to achieve an expeditious and inexpensive determination of particular cases to which it applies. To achieve this goal, the Rules adopted, among others, simplified procedures without regard to technical rules; abbreviated periods of time to file responsive pleadings; certain pleadings and motions are expressly prohibited from its application; and the Rules likewise provide for a "preliminary conference" by which parties are admonished to settle their dispute amicably, and if this is not possible, to narrow, clarify and define the issues of the case.[9]

At the outset, the issue appears simple.

Petitioners claim that the failure of private respondents to raise the matter of lack of preliminary conference during the proceedings in the lower court effectively estops them from raising the same on appeal.[10]

On the other hand the respondents seek the dismissal of the petition on the ground that both the Regional Trial Court and the Court of Appeals, correctly ruled that the proceedings in the inferior court are illegal and, therefore, null and void, there being no preliminary conference conducted.[11]

While the Court of Appeals is correct in its view that Section 6 of the Rules on Summary Procedure is made mandatory by the use of the auxiliary verbs "shall" and "must" instead of the permissive "may," it does not, however, logically follow that the absence of a preliminary conference would necessarily render nugatory the proceedings had in the court below.[12]

While termed a "preliminary conference," a closer look thereat would reveal that the provision is akin and similar to the provision on "pre-trial" under Rule 20 of the Revised Rules of Court.[13] Both provisions are essentially designed to promote amicable settlement or to avoid or simplify the trial.

An analysis of existing jurisprudence on the matter reveals that proceedings undertaken without first conducting a pre-trial or with a legally defective pre-trial is voided because either of the parties thereto suffered substantial prejudice thereby or they were denied their right to due process.[14] Be that as it may, petitioners cite as exceptions to the foregoing rule *Santamaria vs. Court of Appeals*,[15]; *Insurance Company of North America vs. Republic*,[16]; and *Trocio vs. Labayo*. [17] Notable in these cases is the fact that the issue of pre-trial did not affect the trial court's jurisdiction because no injury was caused to any party therein. Additionally, facts and circumstances dictate that to conduct another pre-trial would only be a superfluity, its purpose of expediting the proceedings having been attained otherwise.

Thus, unless there is a showing of substantial prejudice caused to a party, the trial court's inadvertent failure to calendar the case for a pre-trial or a preliminary conference cannot render the proceedings illegal or void ab initio.

A party's failure to object to the absence of a pre-trial is deemed a waiver of his right thereto. This observation holds with more reason in the case at hand where private respondents have already submitted to the jurisdiction of the trial court.

As pointed out by petitioners, private respondents had at least three opportunities to raise the question of lack of preliminary conference first, when private respondents filed a motion for extension of time to file their position paper; second, at the time when they actually filed their position paper in which they sought affirmative relief from the Metropolitan Trial Court; and third, when they filed a motion for reconsideration of the order of the Metropolitan Trial Court expunging from the records the position paper of private respondents, in which motion private respondents even urged the court to sustain their position paper. And yet, in none of these instances was the issue of lack of preliminary conference raised or even hinted at by private respondents.[18] In fine, these are acts amounting to a waiver of the irregularity of the proceedings. For it has been consistently held by this Court that while lack of jurisdiction may be assailed at any stage, a party's active participation in the proceedings before a court without jurisdiction will estop such party from assailing such lack of jurisdiction.[19]

Private respondents claim that their failure to raise the issue at hand before the Metropolitan Trial Court is by reason of a legal impediment. They argue that they could not raise the issue in the said court because a motion for reconsideration is one of the prohibited motions under Sec. 15 of the Rules on Summary Procedure.[20] This argument is specious. Private respondents filed a motion for extension of time to file their position paper and a motion for reconsideration of the order expunging from the record their position paper. These two pleadings are also disallowed in summary proceedings.[21] Obviously, the failure of private respondent to raise the issue was occasioned by negligence on their part, if not a belief that it was not vital for their cause, and not because filing a motion for reconsideration invoking this ground was prohibited by the rules.

The Court of Appeals observed that private respondents were illegally denied their day in court. Thus, it set aside the order of the Metropolitan Trial Court expunging from the records the position paper of private respondents.

This is erroneous. The order of the Metropolitan Trial Court dated April 23, 1988 granting private respondents' motion for extension of time to file position paper is conditioned upon the timely submission of the medical certificate to support the motion. We see no reversible error in the order of the Metropolitan Trial Court in ordering private respondents' position paper stricken from the record for their failure to submit the medical certificate with the position paper.

Nevertheless, while we hold in this case that the right to a preliminary conference under the Rules on Summary Procedure is deemed waived by a party's failure to invoke the same before the trial court, this is not in the least to suggest that the trial courts may dispense with such a preliminary conference. Courts should make full use of the pre-trial proceedings primarily so that all issues necessary to the early disposition of a cause are properly determined and to explore all avenues towards a compromise or settlement of the case.

WHEREFORE, the petition is hereby GRANTED. The appealed decision is hereby SET ASIDE and the decision of the Metropolitan Trial Court dated May 26, 1986 in Civil Case No. 4526 is hereby AFFIRMED in toto. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Supreme Court Resolution, June 15, 1983.

[2] Decision of the Court of Appeals in CA-G.R. SP No. 10059, Nov. 25, 1987.

[3] Page 47, Rollo.

[4] Page 48, Rollo.

[5] Page 49, Rollo.

[6] Page 50, Rollo.

[7] Pages 45-55, Rollo.

[8] Pages 7-9, Decision of the Court of Appeals; Pages 51-54, Rollo.

[9] Sections 4, 5, 7 and 15, Rules on Summary Procedure in Special Cases.

[10] Page 10, Rollo.

[11] Page 100, Rollo.

[12] Page 51, Rollo.

[13] Section 1, Rule 20 of the Rules of Court provides as follows: "SEC. 2. Pre-trial mandatory. - In any action, after the last pleading has been filed, the court shall direct the parties and their attorneys to appear before it for a conference to consider:

(a) The possibility of an amicable settlement or of a submission to arbitration;

(b) The simplification of the issues;

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(g) Such other matters as may aid in the prompt disposition of the action."

[14] Sagarino vs. Pelayo, 77 SCRA 402 (1977); Patalinjug vs. Peralta, 90 SCRA 50 (1979); Loquias vs. Rodriguez, 65 SCRA 659 (1975); People's Realty Brokerage Corp. vs. Lustre, 85 SCRA 545 (1978).

[15] 45 SCRA 596 (1972).

[16] 21 SCRA 887 (1967).

[17] 53 SCRA 97 (1973).

[18] Pages 70-71, Rollo.

[19] Tajonera vs. Lamoroza, (1981) 110 SCRA 438; Nieta vs. Manila Banking Corporation, (1983) 124 SCRA 455.

[20] Page 101, Rollo.

[21] Section 15(e), Rules on Summary Procedure.

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