

MEDRANO & ASSOCIATES, INC., PETITIONER, VS. ROXAS & CO., ET AL., RESPONDENTS.*G.R. NO. 83346. March 22, 1990*

Ponente: GANCAYCO, J.

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Once more the Court is saddled with the choice between sustaining a technicality and rendering substantial justice which the trial court can very well dispense on its own.

This petition refers to an action for damages filed by plaintiff Medrano & Associates, Inc. against defendant Roxas & Co. in the Regional Trial Court of Manila. The case was assigned to the sale of Judge Manuel Yuzon. Pre-trial hearings were scheduled in due course. Another hearing was reset for November 11, 1985 but plaintiff's counsel failed to appear so the same was cancelled. The hearing scheduled on November 6, 1985, was also cancelled as the judge was indisposed. On March 5, 1986, the trial court *motu proprio* ordered the dismissal of the case without prejudice for failure to prosecute.

On May 5, 1986, plaintiff filed a motion to set with a request for subpoena setting the same for hearing on May 9, 1986. Counsel for plaintiff received a copy of the order of dismissal dated March 5, 1986 on May 7, 1986. Nevertheless, acting on the motion to set, the trial court calendared the case for 3 days hearing in June, 1986. The order was typewritten but was not signed by the judge and was merely attached to the record. It was never sent out.

Thereafter, the trial court sent notices setting the hearing for September 23, 1986. Defendant filed a manifestation and motion to the effect that the dismissal order of March 5, 1986 had become final and the hearing should only be on the counterclaim. Plaintiff filed an opposition alleging that the filing of the motion to set prevented the said order of dismissal from becoming final.

Before Judge Yuzon could act thereon, he was replaced by Judge Consuelo Ynares-Santiago. The case was set for hearing on December 23, 1986. In a manifestation defendant informed the court of the finality of the March 5 order of dismissal. A counter manifestation was filed by plaintiff. The trial court in an order dated December 3, 1986 cancelled the hearing and issuance of subpoena due to the finality of the order of dismissal dated March 5, 1986. Upon the denial of a motion for reconsideration thereof in an order dated February 4, 1987, the plaintiff interposed this appeal.

The main thrust of the appeal is the argument of plaintiff that the motion to set may be considered a motion for reconsideration which tolled the running of the period of appeal from the March 5 order of dismissal. Defendant disagrees stating that a motion to set cannot be considered a motion for reconsideration so the order of dismissal had become final.

A copy of this order of dismissal dated March 5, 1986 was served on counsel for plaintiff only on May 7, 1986. The motion to set was filed on May 5, 1986. Obviously, said motion to set cannot be a motion for reconsideration

of the March 5 order which was received by plaintiff's counsel only after filing said motion to set.

Nevertheless, it appears that the trial court treated the motion to set as a motion for reconsideration of the March 5 order as it set the trial dates for 3 days in June, 1986, which in effect is a grant of the motion for reconsideration. Inadvertently, this order was not signed or sent out. However, it remained, part of the records. The trial court reset the hearing for September 23, 1986. Despite the manifestation and motion of defendant that the March 5 order was final the trial court did not act on the same.

The judge who took over the same case reset the hearing for December 23, 1986. However, when her attention was called by the defendant to the March 5 dismissal order which had allegedly become final, the trial court cancelled the hearing on this ground.

Pre-trial hearings in this case had been held. Some evidence on the merits have been presented. The Court finds that substantial justice will be better served by allowing the plaintiff another day in court than falling back on a technicality.

Although the March 5, 1986 order of dismissal appears to have become final as plaintiff failed to appeal therefrom or to file a motion for reconsideration within the reglementary period, the reason plaintiff failed to act accordingly appears to be that even before receipt of said notice of the dismissal order he filed a motion to set the case for hearing. He was obviously awaiting action on the same. Nevertheless, the trial court reset the hearing of the case not once but three times. The only logical consequence of these actions is that the trial court effectively reconsidered its order of dismissal dated March 5.

Since the said March 5 order had not become final and the trial court having set the hearing of case anew, it was clearly erroneous for the trial court when it thereafter retraced its steps and said that inasmuch as the March 5 order had become final, the hearing of the case was thereby cancelled. It cannot be mere oversight for the trial court and the succeeding judge in setting the case for hearing three times, when in the process its attention was called to the March 5 order.

Moreover, even assuming said dismissal order had become final, the said dismissal was without prejudice. Plaintiff can very well refile the case. There is no reason why instead of asking plaintiff to refile the case, the case can not be reopened in the interest of justice.

It is far better to dispose of a case on the merits rather than on a technicality. That is the primordial end of justice.

WHEREFORE, the appealed orders of the trial court dated December 3, 1986 and February 4, 1987 are hereby REVERSED and SET ASIDE and the records of the case are remanded to the trial court for further proceedings. No costs.

SO ORDERED.

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

* As written in the petition.

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