Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **August 17, 2022** *which reads as follows:*

"G.R. No. 257295 ***(Philippine National Bank, petitioner v. Marilyn Castro, Rodillo Lazaro, Urduja Toralba, Daisy Aguilar, Jerome Toloza, Arminda Asunza, Violeta Gabuyo, Daisy de Guzman, Florencia Castro, Eduardo Carreon, Rosanna Carreon, Reynaldo Castro and Benjamin Castro, respondents)***. — This is an Appeal by *Certiorari*[1] seeking to reverse and set aside the October 8, 2020 Decision[2] and the May 24, 2021 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 159606. The CA upheld the July 12, 2018, August 31, 2018 and December 6, 2018 Orders[4] of the Regional Trial Court, Rosales, Pangasinan, Branch 63 *(RTC)*, in Civil Case No. 1564-R, declaring Philippine National Bank *(PNB; petitioner)* in default, denying petitioner's motion to lift order of default, and denying the subsequent motion for reconsideration, respectively.

The Antecedents

Marilyn Castro, Rodillo Lazaro, Urduja Toralba, Daisy Aguilar, Jerome Toloza, Arminda Asunza, Violeta Gabuyo, Daisy De Guzman, Florencia Castro, Eduardo Carreon, Rosanna Carreon, Reynaldo Castro, and Benjamin Castro *(respondents)* filed a complaint for annulment of transfer certificates of title *(TCTs)* and writ of possession issued against petitioner. The complaint likewise included

[1] *Rollo*, pp. 22-39.
[2] Id. at 44-53; penned by Associate Justice Ruben Reynaldo G. Roxas, with Associate Justice Myra V. Garcia-Fernandez and Associate Justice Carlito B. Calpatura, concurring.
[3] Id. at 8-9.
[4] Id. at 45.

a prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction against petitioner. In its answer, petitioner prayed for the dismissal of the complaint for lack of cause of action and lack of jurisdiction over the subject matter of the claim.[5]

The RTC initially scheduled the preliminary conference on November 3, 2017. Petitioner's counsel, Atty. Isagani Arenas *(Atty. Arenas)*, attended the aforesaid hearing, but respondents' counsel Atty. Vincent Mataban *(Atty. Mataban)* failed to appear. Hence, the trial court rescheduled the preliminary conference on January 12, 2018 and set the pre-trial on February 23, 2018.[6]

During the preliminary conference, Atty. Arenas stated that aside from being petitioner's legal counsel, he was likewise authorized to act on behalf of petitioner as its attorney-in-fact. Thus, the RTC, in open court, directed Atty. Arenas to submit a copy of his Special Power of Attorney *(SPA; first directive)*, which the latter undertook to bring on the pre-trial.[7] However, during pre-trial, petitioner informed the Clerk of Court that Atty. Arenas could not attend the hearing because of his unstable blood pressure. Thus, in its February 23, 2018 Order, the RTC rescheduled the pre-trial on May 11, 2018. It likewise ordered petitioner to pay the postponement fee of ₱100.00 and for Atty. Arenas to submit a notarized medical certificate *(second directive)*.[8]

The scheduled pre-trial on May 11, 2018, though, was again moved to July 12, 2018. Petitioner and Atty. Arenas, however, failed to submit a copy of the SPA as required in the RTC's first directive. They likewise failed to pay the postponement fee and to submit the notarized medical certificate as required in the RTC's second directive.[9]

The RTC Ruling

In its July 12, 2018 Order, the RTC declared petitioner in default for its failure to comply with the RTC's first and second directives, to wit:

[5] Id.
[6] Id.; also stated as "February 3, 2018" in some parts of the *rollo* (see *rollo*, p. 45).
[7] Id.
[8] Id. at 46.
[9] Id.

> Considering the absence of the defendant and/or upon query, Atty. Arenas, who represents that he is empowered as attorney-in-fact for PNB, he could not produce the same in open court despite the fact that there is already an undertaking during the preliminary conference on January 12, 2018. Thus, the court is constrained to declare defendant in default.
>
> [x x x x]
>
> It is also noted that the defendant did not abide (by) the directive of the court contained in the January (sic) 23, 2018 Order requiring them to pay a postponement fee of [₱]100.00 and the court notes also the failure of the counsel for the defendant to submit to the court the notarized medical certificate showing the cause of his absence in the last hearing.
>
> SO ORDERED.[10]

Aggrieved, petitioner moved to lift the order of default on the ground that it did not defy the RTC's directives. It claimed that it did not receive any written orders from the trial court containing the first and second directives. Nevertheless, it attached a copy of its Secretary's Certificate dated August 12, 2016 that allegedly authorizes Atty. Arenas to attend the pre-trial of the case on its behalf.[11]

In its August 31, 2018 Order, the RTC denied petitioner's motion to lift the order of default. The RTC emphasized that contrary to the verification and certification attached to petitioner's pleadings, Atty. Arenas was not among its authorized representatives. Likewise, the Secretary's Certificate dated August 12, 2016 did not indicate Atty. Arenas' authority to represent petitioner in the pre-trial proceedings. Since no written authority was submitted that shows Atty. Arenas' authority to act on behalf of petitioner, the RTC cannot consider the latter's attendance and justly declared petitioner in default.[12]

The RTC also held that petitioner failed to file a pre-trial brief at least three days before the scheduled pre-trial and likewise defied the RTC's second directive when it failed to pay the postponement fee and submit the notarized medical certificate within a reasonable

[10] Id.
[11] Id.
[12] Id. at 47.

period of time. The RTC pointed out that the medical certificate submitted by Atty. Arenas was issued on January 23, 2018, or about a month prior to the February 23, 2018 hearing, and was notarized only on August 2, 2018.[13]

Petitioner filed a motion for reconsideration and attached a copy of its Secretary's Certificate dated May 23, 2003 and the SPA dated September 17, 2018, showing Atty. Arenas' authority to act on its behalf. In its December 6, 2018 Order, the RTC denied the said motion on the ground that petitioner failed to present a meritorious defense to avail of the liberal application of the rules of procedure and emphasized that petitioner failed to produce the required documents within a reasonable period.[14]

Petitioner then filed a petition for *certiorari* before the CA.

The CA Ruling

In its October 8, 2020 Decision, the CA denied the petition for *certiorari* and upheld the assailed orders of the RTC. The CA emphasized that pre-trial cannot be taken for granted and failure of either party to appear at the pre-trial as mandated by law is fatal to their respective cases. As such, the RTC was justified in applying the law to the letter considering the number of infractions that petitioner and Atty. Arenas committed during the pre-trial proceedings. They also failed to show valid and reasonable grounds for the trial court to relieve them from the order of default.[15] The dispositive portion of the decision reads:

> **WHEREFORE**, the petition for *certiorari* is **DENIED**. The Orders dated 12 July 2018, 31 August 2018, and 6 December 2018, issued by the RTC, Branch 63, Rosales, Pangasinan, in Civil Case No. 1564-R, **STAND**.
>
> **SO ORDERED**.[16]

Petitioner's motion for reconsideration was denied by the CA in its May 24, 2021 Resolution. Hence, this petition.

[13] Id.
[14] Id.
[15] Id. at 50.
[16] Id. at 52.

Issue

Petitioner raises this lone issue for the allowance of the petition:

> THE HONORABLE COURT OF APPEALS ERRED WHEN IT DENIED THE PETITION PURELY ON PROCEDURAL LAPSES OF PNB WITHOUT GOING OVER THE MERITS OF ITS DEFENSE.[17]

Petitioner invokes the liberal application of the rules in the interest of substantial justice, claiming that its counsel committed simple negligence only, which does not justify the penalty of default. It asks the Court to look into the merits of its defense instead of its infraction of the rules, citing Section 3(b), Rule 9 of the Rules of Court which allows the court to set aside an order of default when the party declared in default has a meritorious defense. Thus, petitioner restated respondents' allegations and causes of action in the initiatory complaint and, in doing so, pointed out the merits of its defenses.[18]

The Court's Ruling

The petition lacks merit.

Procedural defects

At the outset, it must be pointed out that the petition contains various procedural defects in contravention of Sec. 4, Rule 45 of the 1997 Rules of Civil Procedure, which states:

> Sec. 4. *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final

[17] Id. at 27.
[18] Id. at 27-36.

> order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42.

First, petitioner erroneously impleaded the RTC as respondent in the instant petition. The abovementioned provision clearly states that the petition shall state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents.

Second, petitioner failed to indicate the date when it filed a motion for reconsideration before the CA in contravention of item (b) of the abovementioned provision.

Clearly, these violations can be grounds for the dismissal of the petition as provided in Sec. 5, Rule 45 of the 1997 Rules of Civil Procedure, to wit:

> **Sec. 5. *Dismissal or denial of petition.* — The failure of the petitioner to comply with any of the foregoing requirements** regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, **and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.** (emphases supplied)

It is well-settled that these procedural rules are not to be belittled or brushed aside simply because their non-observance may have resulted in prejudice to a party's substantive rights.[19] Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his or her thoughtlessness in not complying with the procedure prescribed.[20] Such exception does not apply in the instant case.

However, even if the Court sets aside these procedural defects, the petition still lacks substantive merit.

Order of default v. failure to attend pre-trial

[19] *Spouses Bergonia v. Court of Appeals*, 680 Phil. 334, 343 (2012).
[20] Id.

The CA did not err in denying the petition for *certiorari* because the RTC's order allowing respondents to present their evidence *ex parte*, and rendering judgment on the basis thereof, was not issued with grave abuse of discretion. Under the 1997 Rules of Civil Procedure, which was applicable when the complaint was filed in the RTC,[21] Sec. 4, Rule 18 thereof requires the parties and their counsel to appear at the pre-trial conference, while Sec. 5 of the same rule provides the effect of their failure to comply, as follows:

> Sec. 4. *Appearance of parties.* — It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.
>
> Sec. 5. *Effect of failure to appear.* — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

Further, Sec. 6 of the same rule also sanctions a party's failure to file a pre-trial brief:

> Sec. 6. *Pre-trial brief.* — The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:
>
> x x x x
>
> Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

[21] Under Rule 144 of the Rules of Court as amended by the 2019 Amendments to the 1997 Rules of Civil Procedure, A.M. No. 19-10-20-SC, dated October 15, 2019, states that:

> The 2019 Proposed Amendments to the 1997 Rules of Civil Procedure shall govern all cases filed after their effectivity on May 1, 2020, and also all pending proceedings, except to the extent that in the opinion of the court, their application would not be feasible or would work injustice, in which case the procedure under which the cases were filed shall govern[.]

Evidently, if the absent party is the defendant such as in this case, then the plaintiff may be allowed to present evidence *ex parte* and the court to render judgment on the basis thereof.

By way of exception, the non-appearance of a party and counsel may be excused if (1) a valid cause is shown; or (2) there is an appearance of a representative on behalf of a party fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.[22] But none of these justifications exist.

Nevertheless, the Court must clarify that there is a difference between the failure of a party to attend the pre-trial conference and when a party is declared in default.

In *Spouses Salvador v. Spouses Rabaja*,[23] the Court held that the failure to attend the pre-trial conference does not result in the default of an absent party. Under the 1997 Rules of Civil Procedure, a defendant is only declared in default if he fails to file an answer within the reglementary period. On the other hand, if a defendant fails to attend the pre-trial conference, the plaintiff can present evidence *ex parte*. As cited above, Secs. 4 and 5, Rule 18 of the Rules of Court govern the situation in this case.[24]

In *The Philippine American Life & General Insurance Company v. Enario*,[25] the Court discussed the difference between the non-appearance of a defendant in a pre-trial conference and the declaration of a defendant in default, to wit:

> x x x Prior to the 1997 Revised Rules of Civil Procedure, the phrase "as in default" was initially included in Rule 20 of the old rules, and which read as follows:
>
> > Sec. 2. A party who fails to appear at a pre-trial conference may be non-suited or considered as in default.
>
> It was, however, amended in the 1997 Revised Rules of Civil Procedure. Justice Regalado, in his book, REMEDIAL LAW COMPENDIUM, explained the rationale for the deletion of the phrase "as in default" in the amended provision, to wit:

[22] *Ultra Mar Aqua Resource, Inc. v. Fermida Construction Services*, 808 Phil. 648, 657 (2017).
[23] 753 Phil. 175 (2015).
[24] Id. at 189-190.
[25] 645 Phil. 166 (2010).

> 1. This is a substantial reproduction of Section 2 of the former Rule 20 with the change that, instead of defendant being declared "as in default" by reason of his non-appearance, this section now spells out that the procedure will be to allow the *ex parte* presentation of plaintiff's evidence and the rendition of judgment on the basis thereof. While actually the procedure remains the same, the purpose is one of semantical propriety or terminological accuracy as there were criticisms on the use of the word "default" in the former provision since that term is identified with the failure to file a required answer, not appearance in court.

Still, in the same book, Justice Regalado clarified that while the order of default no longer obtains, its effects were retained, thus:

> Failure to file a responsive pleading within the reglementary period, and not failure to appear at the hearing, is the sole ground for an order of default, except the failure to appear at a pre-trial conference wherein the effects of a default on the part of the defendant are followed, that is, the plaintiff shall be allowed to present evidence *ex parte* and a judgment based thereon may be rendered against defendant.[26]

It is clear from the foregoing that the failure of a party to appear at the pre-trial indeed has adverse consequences. If the absent party is the plaintiff, then his case shall be dismissed. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence *ex parte* and the court shall render judgment based on the evidence presented. Hence, the plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence.[27]

In this case, the RTC properly held that the absence of petitioner's representative and counsel at the pre-trial conference is unjustified. However, instead of declaring petitioner in default, the proper nomenclature that should have been used by the RTC is that the plaintiffs shall be allowed to present evidence *ex parte* and the court shall render judgment on the basis thereof.

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[26] Id. at 174-175.
[27] *Spouses Salvador v. Spouses Rabaja*, supra note 23 at 191.

Unjustified absences of petitioner and its counsel during pre-trial conferences

Nevertheless, the Court finds that the repeated absences of petitioner's representative and counsel in the pre-trial conference scheduled on February 23, 2018, May 11, 2018, and July 12, 2018 were unwarranted and shall be cause to allow the plaintiff to present their evidence *ex parte* and the court to render judgment on the basis thereof, due to the following reasons:

First, the belated filing of the SPA could not cure Atty. Arenas' lack of authority to appear before the RTC on behalf of petitioner. As early as January 12, 2018, Atty. Arenas was directed by the RTC to submit a copy of his SPA in representing petitioner. However, Atty. Arenas submitted a copy of his SPA dated September 17, 2018 only after petitioner's motion to lift order of default was denied by the RTC in its August 31, 2018 Order.

Notably, the SPA presented by Atty. Arenas was dated September 17, 2018, or after the RTC declared that plaintiffs may present evidence *ex parte* due to the absence of the defendant during pre-trial. Evidently, Atty. Arenas had no authority to act as petitioner's attorney-in-fact even as early as the first scheduled preliminary conference on November 3, 2017, or in the pre-trial conferences scheduled on February 23, 2018, May 11, 2018, and July 12, 2018.

Second, the postponement fee required by the RTC for the resetting of the pre-trial conference remained unpaid even after the first resetting of the pre-trial hearing. Petitioner and Atty. Arenas only paid the same when the RTC already held that plaintiffs can present their evidence *ex parte* due to the former's failure to attend the pre-trial conferences. The only justification that petitioner and Atty. Arenas could offer was that they did not receive a written copy of the RTC's second directive to pay the postponement fee and for Atty. Arenas to submit a notarized medical certificate.[28]

As correctly observed by the CA, even assuming *arguendo* that Atty. Arenas did not receive a copy of the directive of the trial court, as a lawyer, he is required to inquire, from time to time, and whenever

[28] *Rollo*, p. 50.

necessary, about the status of the cases he handles.[29] Similarly, petitioner, as the litigant, also has the responsibility to monitor the status of its case, for no prudent party leaves the fate of his or her case entirely in the hands of his or her lawyer.[30]

Third, the pre-trial brief was submitted by petitioner on the day of the pre-trial. Notably, this violates Sec. 6, Rule 18 of the Rules of Court, which states that the parties should file the pre-trial brief with the trial court and serve on the adverse party, in such manner to ensure their receipt thereof at least three days before the date of the pre-trial. As observed by the CA, petitioner did not even bother to explain why it belatedly submitted its pre-trial brief despite plenty of time to prepare the same.[31]

Lastly, the belated submission of Atty. Arenas' medical certificate and the circumstances surrounding its issuance do not constitute a valid cause for his absence at the pre-trial. Notably, the Medical Certificate, which stated that Atty. Arenas had viral systemic illness, was dated January 23, 2018, or as early as one month before the scheduled pre-trial on February 23, 2018.[32] It was not explained why Atty. Arenas was still unwell even though one month had already lapsed since contracting the alleged viral systematic illness. Worse, the medical certificate was presented tardily only after the RTC already issued its July 12, 2018 Order, declaring that plaintiffs may present evidence *ex parte* due to the absence of the defendant during pre-trial, and said medical certificate was notarized only on August 2, 2018.[33] Evidently, the excuse proffered by Atty. Arenas was a mere afterthought.

Petitioner asks the Court to look into the merits of its defense rather than the aforesaid infractions. However, this would undermine the importance of pre-trial in civil actions, especially in expediting the proceedings, as enunciated in *The Philippine American Life & General Insurance Company v. Enario*,[34] to wit:

> The importance of pre-trial in civil actions cannot be overemphasized. In *Balatico v. Rodriguez*, the Court, citing *Tiu v. Middleton*, delved on the significance of pre-trial, thus:

[29] Id. at 51, citing *Spouses Zarate v. Maybank Philippines, Inc.*, 498 Phil. 825, 837-838 (2005).
[30] See *Baclaran Mktg. Corp. v. Nieva*, 809 Phil. 92, 105 (2017).
[31] *Rollo*, p. 51.
[32] Id.
[33] Id. at 47 and 50-51.
[34] Supra note 25.

> Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. Hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century," pre-trial seeks to achieve the following:
>
> (a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;
>
> (b) The simplification of the issues;
>
> (c) The necessity or desirability of amendments to the pleadings;
>
> (d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;
>
> (e) The limitation of the number of witnesses;
>
> (f) The advisability of a preliminary reference of issues to a commissioner;
>
> (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;
>
> (h) The advisability or necessity of suspending the proceedings; and
>
> (i) Such other matters as may aid in the prompt disposition of the action.
>
> Therefore, "pre-trial cannot be taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation."[35] (citations omitted)

Petitioner's repeated failure to timely comply with the trial court's directives to submit a copy of the SPA and medical certificate, to appear at the scheduled pre-trial, as well as its failure to timely file

[35] Id. at 176-177.

its pre-trial brief and pay the postponement fee, do not warrant a liberal application of the rules. Otherwise, the Court would disregard the importance of pre-trial and allow undue delay in the proceedings to the prejudice of the rights of the complying party.

Moreover, concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least promptly explain its failure to comply with the rules. Indeed, technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the prompt, proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. The utter disregard of these rules cannot justly be rationalized by harking on the policy of liberal construction.[36]

WHEREFORE, the petition is **DENIED**. The October 8, 2020 Decision and May 24, 2021 Resolution of the Court of Appeals, in CA-G.R. SP No. 159606, are **AFFIRMED *in toto***.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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- over -

[36] *Daaco v. Yu*, 761 Phil. 161, 172 (2015), citing *Suico Industrial Corp. v. Judge Lagura-Yap*, 694 Phil. 286, 303 (2012).

The Hon. Presiding Judge
Regional Trial Court, Branch 63
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(Civil Case No. 1564-R)

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