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SECOND DIVISION

[G.R. No. L-44884. February 28, 1979]

BENJAMIN JARANILLA, JR., *petitioner*, *vs.* **HON. MIDPANTAO L. ADIL, in his capacity as Presiding Judge of the Court of First Instance of Iloilo, Branch II, and ANTONIO ARTAJO**, *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; WHEN SECOND PRE-TRIAL CONFERENCE NOT NECESSARY.** — There is no necessity for calling a second pre-trial conference where it appears that at a previous pre-trial conference, the defendant had admitted his obligation to the plaintiff and asked for sufficient time within which to pay plaintiff. What the trial court should have done was to enter judgment pursuant to Section 2, Rule 20 of the Rules of Court instead of declaring petitioner in default for non-appearance at the second pre-trial conference. However, since a decision had already been rendered, there would be no necessity to set aside the orders complained of and return the records of the case to the court below for the rendition of a judgment in accordance with Sec. 2, Rule 20 of the Revised Rules of Court.

2. **ID.; ID.; TRIAL; NOTICE TO PARTIES; SATISFIED IN CASE AT BAR.** — Defendant's claim that he and his counsel were misinformed of the date of trial is untenable where it appears that defendant and his counsel were duly notified of the hearing, as shown by the defendant's signature on the notice of hearing, that one of his counsel was present on the date of hearing, and that defendant and his counsel admittedly went to court the day before the hearing, so that they could have easily found from the records that the hearing was set for the following day.

APPEARANCES OF COUNSEL

Constantino S. Dignadice, Jr. for petitioner.
Romeo Hibionada for private respondent.

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DECISION

CONCEPCION JR., *J.*:

Petition for *certiorari* to annul and set aside the order of the respondent Judge in Civil Case No. 10654 of the Court of First Instance of Iloilo, dated September 30, 1976, denying the petitioner's motion to dismiss the complaint and declaring the petitioner in default, as well as the order dated October 4, 1976, denying the motion for the reconsideration of said order.

The petitioner, Benjamin Jaranilla, Jr., is the defendant in said Civil Case No. 10654 of the Court of First Instance of Iloilo, entitled: "*Antonio Artajo, plaintiff, versus Benjamin Jaranilla, Jr., defendant,*" an action for the rescission of a contract of sale of a motor vehicle and damages.[1] The said petitioner, assisted by his counsel, Atty. Manuel A. Pama, filed answer to the complaint,[2] and the case was set for a pre-trail conference on September 9, 1976.[3] At the scheduled pre-trail conference, the parties appeared and the petitioner asked the court to give him sufficient time to pay his obligation to the plaintiff. The court granted the motion and deferred the hearing to September 30, 1976 in order to give the petitioner enough time to raise the amount with which to pay the plaintiff.[4]

Meanwhile, Atty. Constantino S. Dignadice, Jr., entered his appearance as counsel for the petitioner, in collaboration with Atty. Pama.[5] However, on September 16, 1976, Atty. Dignadice Jr., independently of Atty. Pama, filed an Urgent Motion to Discharge Writ of Attachment, previously issued,[6] and a Motion to Dismiss the complaint[7] setting the hearing of both motions

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[1] *Rollo*, p. 14.

[2] *Id.*, p. 19.

[3] *Id.*, pp. 38, 63.

[4] *Id.*, pp. 75, 42, 63.

[5] *Id.*, p. 25.

[6] *Id.*, p. 26.

[7] *Id.*, p. 33.

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on September 20, 1976. On the date set for the hearing, counsel for the plaintiff manifested his intention to file an opposition to the petitioner's motions and the respondent court granted him 10 days within which to do so.[8]

On September 30, 1976, the case was called for hearing, as scheduled. Atty. Manuel A. Pama, counsel for the petitioner, appeared, but without the defendant Jaranilla, Jr. Atty. Pama asked for, and was granted leave to retire as counsel for the petitioner in view of the actuations of his client and Atty. Dignadice, Jr.[9] Counsel for the plaintiff then manifested that he was no longer filing a written opposition to the two motions filed by Atty. Dignadice, Jr. and instead argued his case orally. He also asked the court to declare the defendant in default for non-appearance at a pre-trial conference. As a result, the respondent court issued an order denying the petitioner's motions to dismiss the complaint. He also declared the absent petitioner Jaranilla, Jr. in default and directed the plaintiff to present his evidence in the afternoon of that day.[10]

Upon learning of the order of default and the denial of his motions, or on October 1, 1976, the petitioner filed a motion for the reconsideration of the order of September 30, 1976 and the consequent lifting of the order of default, claiming that he and his counsel were misinformed of the date set for the pre-trial conference in that they believed that the pre-trial conference was on September 29, 1976, and not on September 30, 1976, so that he and his counsel were present in court on September 29, 1976; that the plaintiff, contrary to the Rules, had filed an opposition to his motions to dismiss the complaint and to discharge the writ of preliminary attachment without furnishing him a copy of the same; and that he has a very good and valid defense, as can be seen from his motion to dismiss.[11] The respondent court, however, denied this motion on October 4, 1976, for the reasons that (1) the petitioner and his counsel were duly notified

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[8] *Id.*, p. 63.

[9] *Id.*, p. 64.

[10] *Id.*, p. 38.

[11] *Id.*, p. 39.

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of the pre-trial of the case on September 30, 1976; (2) petitioner's excuse for failing to appear at the pre-trial is untenable; and (3) the motion for reconsideration does not meet the requirements of the law in that the affidavit of merit attached to the motion does not contain a clear statement of the facts which would constitute a good and valid defense, and that it is not under oath, as required.[12] Whereupon, the petitioner initiated the instant recourse.

The petitioner claims that there was a denial of due process of law when the respondent court declared him in default and at the same time denied his motion to dismiss the complaint. The petitioner contends that the private respondent had filed an opposition to his motion to dismiss the complaint and motion to discharge writ of preliminary attachment without furnishing him with a copy of the said opposition, and that being the case, the "respondent Judge should have noted such fact of failure to serve a copy of the opposition to petitioner or counsel and then require such service or compliance and as said opposition was filed on the same day when the case was allegedly set for pre-trial conference, a resetting of the latter incident is very logical and responsive to the due process of law."[13]

We find no merit in the contention. The record does show that the plaintiff had filed a written opposition to the petitioner's motions so that there was nothing to furnish petitioner. What transpired in the court below is that when the case was called for hearing on September 30, 1976, counsel for the plaintiff, upon noting the absence of the petitioner finding a distinct advantage in his favor, manifested to the court that he was no longer filing a written opposition to the petitioner's motions, after which, he moved that the petitioner declared in default for non-appearance at a pre-trial conference, pursuant to Section 2, Rule 20 of the Revised Rules of Courts, and finding merit in the motion, the respondent court declared the petitioner in default and denied petitioner's motions to dismiss the complaint and to discharge writ of attachment.

[12] *Id.*, p. 42.

[13] *Id.*, pp. 8-9.

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Besides, the reason advanced by the petitioner for his failure to appear at the hearing of September 30, 1976, *viz*; that he and his counsel were misinformed of the date, is untenable since the petitioner and his counsel were duly notified thereof, as shown by the signature of the petitioner on the notice of hearing,[14] and the presence of his counsel on September 30, 1976.

Moreover, in his Motion for Reconsideration, filed the next day, the petitioner stated that he and his counsel went to court on September 29, 1976, to attend the hearing of the case, on the belief that the hearing was set for that day. This being the case, the petitioner and his counsel would have easily found from the records that the hearing was set for September 30, 1976.

We find, however, that the respondent court incorrectly declared the petitioner in default for non-appearance at a pre-trial conference. It appears that at the pre-trial conference held on September 9, 1976, the defendant had admitted his obligation to the plaintiff and asked for sufficient time within which to pay the plaintiff, so that there was no more necessity for calling a second pre-trial conference. What the respondent court should have done was to enter judgment pursuant to Section 3, Rule 20 of the Revised Rules of Court. But, since a decision has already been rendered in this case on October 21, 1976,[15] We find it no longer necessary to set aside the orders complained of and return the records of the case to the below for the rendition of a judgment in accordance with said Section 3, Rule 20 of the Revised Rules of Court.

WHEREFORE, the petition should be, as it is hereby, dismissed. Costs against the petitioner.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, Santos, and *Abad Santos, JJ.*, concur.

Aquino, J., did not take part.

[14] *Id.*, p. 38.

[15] *Id.*, p. 76.