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SECOND DIVISION

[G.R. No. L-39037. January 23, 1978]

INSULAR BANK OF ASIA AND AMERICA (FORMERLY FIRST INSULAR BANK OF CEBU) and GREGORIO J. WALWAL, *petitioners*, *vs.* **HON. ISIDRO C. BORROMEO, Presiding Judge, CFI of South Cotabato, Branch II, and CIRIACO JABIDO,** *respondents*.

SYLLABUS

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; PROCEDURAL DUE PROCESS; NOTICE OF HEARING IS AN ESSENTIAL ELEMENT OF PROCEDURAL DUE PROCESS.** — Notice of hearing is an essential element of procedural due process. Parties have a right to be present at the trial of their cases either by themselves or by their attorneys. They are also entitled to reasonable notice of the time for the trial of their cause. In the absence thereof, resulting in the failure of a litigant to be accorded his day in court, there can be resort to the Supreme Court whose response has invariably been to assure such right be respected. Notice to be meaningful, however, must be both as to the time and the place.

2. **ID.; ID.; ID.; ID.; FAILURE TO NOTIFY COUNSEL OF TIME AND PLACE OF HEARING IS FATAL.** — All parties have the right to be present at the trial of their causes if not by themselves, through their attorneys. The failure to notify counsel of the time and the place of hearing renders nugatory in fact what is indispensable in law. For it would render such a right conspicuously futile if counsel were not given notice of the proceedings to be had. The constitutional guarantee, insofar as its procedural aspect is concerned, is reduced to a barren form of words. What use is an attorney of record, whose services are precisely sought so that one's interests may receive the protection to which they are entitled under the law, if he is kept ignorant as to when and where the hearings will be held. A party engages an attorney of record precisely because it does not feel competent to deal with the intricacies of law and procedure.

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APPEARANCES OF COUNSEL

Ramon C. Carag for petitioners.
Camilo Cariño Dionio, Jr. for private respondent.

D E C I S I O N

FERNANDO, *J.*:

It was the failure of respondent Judge Isidro C. Borromeo, then presiding over the Court of First Instance of South Cotabato, Branch II, located at Koronadal, to set aside the proceedings held in the absence of petitioners and their counsel that gave rise to this *certiorari* proceeding. Petitioners were the defendants in a civil suit[1] then pending in his sala with private respondent Ciriaco Jabido as plaintiff. For sometime, respondent Judge could not hold sessions: that led to the case being transferred to Branch I of the Court of First Instance of South Cotabato but located at General Santos City. That was the circumstance that ultimately led to the inability of counsel to attend a subsequent hearing when on the date designated, neither one of the petitioners, Gregorio J. Walwal, or counsel were able to appear. It turned out that, without their knowledge, the case had been transferred anew to Branch II, respondent Judge evidently having returned to his post. Nonetheless, private respondent as plaintiff was allowed to present his evidence. There was an urgent petition to set aside such proceeding, but it was denied, as was a subsequent motion for reconsideration. It is understandable why petitioners should lay considerable stress on the denial of procedural due process. More specifically, the submission is that to allow private respondent as plaintiff to submit his evidence without their presence, considering that their absence was not due to any fault on their part, was a deprivation of the right to be fully heard. The plea is that all the previous proceedings be set aside and a new trial ordered. The remedial measure need not go that far. It would suffice that the proceedings held on

[1] Civil Case No. 183.

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the date in question be set aside, and thereafter the trial be conducted strictly in accordance with the Rules of Court. So we decide.

The facts disclose, as noted, that due to the rather prolonged absence of the respondent Judge from his station in Marbel, Koronadal, South Cotabato, the records of Civil Case No. 183 were transferred to Branch I of the Court of First Instance of South Cotabato sitting at General Santos City, where it was first scheduled for trial on February 4, 1974.[2] There was a subsequent notification to petitioners' counsel by the Deputy Clerk of Court at Marbel, Koronadal, South Cotabato, to the effect that the date of trial was transferred to February 25, instead of February 4, 1974.[3] Petitioners sought to have the date of hearing set to any date after March 4, but they were unsuccessful.[4] The formal notices of hearing dated January 22 and January 31, 1974, respectively, the first stating that the date of such hearing was on February 4, and the second on February 25, 1974, made clear that General Santos City was the venue of the trial.[5] On February 25, 1974, the trial on the merits opened with the private respondent as plaintiff testifying on his behalf. He could not proceed with his testimony as the Presiding Judge noted that his counsel was not fully familiar with the case. The continuation of the trial was then set for April 1, 1974, a date chosen by petitioners' counsel as it did not conflict with his other scheduled cases.[6] Petitioner Gregorio J. Walwal, one of the defendants in Civil Case 183, arrived in General Santos City, for the continuation of trial. At the same time, counsel for petitioners had booked himself, and was actually on board PAL Flight No. 496 for Davao and General Santos City, but the flight was cancelled when the plane developed

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[2] Petition. par. 2.

[3] *Ibid.* par. 3.

[4] *Ibid.*

[5] *Ibid.* par. 4.

[6] *Ibid.* par. 5. Annex F.

[7] *Ibid.* par. 6. Annexes G and H.

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mechanical trouble while taking off.[7] Moreover, Branch I of the Court of First Instance of South Cotabato was duly and promptly notified of such circumstance, with petitioners' counsel sending word to petitioner Gregorio Walwal by long distance telephone to appear at the continuation of trial either to ask for postponement of the hearing or to cross-examine the witnesses.[8] Petitioner Walwal did in fact appear on April 1, 1974 in Branch I of the said Court where the trial on the merits had commenced on February 25, 1974, but was informed for the first time that the records of Civil Case No. 183 had been returned to Branch II.[9] There was no notification to petitioners or their counsel of the change of venue of the above-entitled case.[10] Despite the failure to notify petitioners or counsel of the change of venue, the respondent Judge, on April 1, 1974, allowed the private respondent to present his evidence before the Branch Clerk of Court.[11] As noted in the Order of respondent Judge: "When this case was called for continuation of hearing, the defendants as well as their counsel failed to appear. It appears on record, however, that it was counsel for defendants who prayed for the setting of this case today which was duly approved. Upon petition of counsel for the plaintiff, the plaintiff is hereby allowed to present his evidence *ex-parte* before the Clerk of Court who is commissioned to receive the same."[12] An urgent petition to set aside the proceedings as well as a motion for reconsideration did not meet with success.[13]

There is justification, as noted at the outset, for the invocation of procedural due process. There is merit to the petition.

1. A recent decision, *Loquias v. Rodriguez*,[14] characterized as both rudimentary and indispensable the "notice

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[8] *Ibid.*, par. 7, Annex I.

[9] *Ibid.*, par. 8.

[10] *Ibid.*, par. 9.

[11] *Ibid.*, par. 10.

[12] *Ibid.*, Annex J.

[13] *Ibid.*, par. 11, Annexes J-1 and J-2.

[14] L-38388, July 31, 1975, 65 SCRA 659.

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of a hearing."[15] That is an essential element of procedural due process. Further on that point, the opinion stated: "Implicit in the leading case of *Banco Español-Filipino v. Palanca*, with its specific reference to the essential condition that a party should be given an opportunity to be heard, is the requirement that he should be so notified as to when such an event will take place. Such a principle was earlier stated thus: 'Parties have a right to be present at the trial of their causes either by themselves or by their attorneys. They are also entitled to reasonable notice of the time fixed for the trial of their cause.' Nothing is better settled then that in the absence thereof, resulting in the failure of a litigant to be accorded his day in court, there can be a resort to this Tribunal. Its response has invariably been to assure that such a right be respected. It is thus a guarantee fundamental in character. It would be revolting to the natural sense of justice if it were otherwise. So it must be in this case."[16] To be more precise, there was a disregard of the "indispensability of a notice for a hearing." It is true that the time for the resumption of the trial was mutually agreed upon. Notice to be meaningful, however, must be both as to *time* and the *place*. To repeat, there could be no question in this case as to the former. The date was known to the parties. As a matter of fact, one of the petitioners, himself a member of the bar, was present but at the wrong place. He failed to be notified as to where the hearing would be held. He went, as he had the right to expect, to General Santos City where Branch I of the Court of First Instance was located. It turned out that the venue was no longer there but at Koronadal instead, the case being returned to Branch II presided by respondent Judge. He was not informed as to such transfer. He was kept ignorant of that fact. Counsel for petitioners also took the necessary step to be present on the date agreed upon. He was unable to do so, but only because the plane that was to take him to the designated place developed engine trouble.

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[15] *Ibid*, 662.

[16] *Ibid*, 662-664. The Banco-Español decision is reported in 37 Phil. 921 (1918). The opinion cited twenty-five cases from *Lopez vs. Director of Lands*, 47 Phil. 123, a 1924 decision, to *Auyong Hian v. Court of Tax Appeals*, L-28782, September 12, 1974, 59 SCRA 110.

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There was this certification from the branch supervisor of the Philippine Air Lines: "This is to certify that [Atty. Ramon C. Carag] was actually on board Flight 496 for Davao connecting with Flight 493 to Gen. Santos City on March 31, 1974, with ticket No. D-2 1969752 O, but that the flight was cancelled for necessary mechanical adjustments. It is also certified that there was no other subsequent flight on that day with connecting flight to Gen. Santos City. This certificate is issued upon the request of Atty. Ramon C. Carag, Cotabato City. June 28, 1974."[17] He took the flight to General Santos City because that was the place of trial as he had been previously informed. It would appear, therefore, that even if there were no such mishap, he would have gone to the wrong site, but through no fault of his own. He was not notified either as to the venue being transferred. The failure to observe the requirement of procedural due process is thus evident.[18]

2. It is thus obvious that the infirmity that vitiated the *ex-parte* proceeding on April 1, 1974 was fatal in character. As far back as 1912, in *Muerteguy v. Delgado*,[19] there was affirmation of the principle, as noted in the Loquias opinion, that all parties have the right to be present at the trial of their causes if not by themselves, through their attorneys. The opinion in *Shell Company of the Philippines v. Enage*,[20] a 1973 decision,

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[17] Annex H.

[18] After *Loquias v. Rodriguez*, this Court likewise reiterated the well-settled doctrine that procedural due process is of the essence in the following decisions: *Reyes v. Subido*, L-27916, Aug. 21, 1975; 66 SCRA 203, *Panaligan v. Adolfo*, L-24100, Sept. 30, 1975, 67 SCRA 176; *Scott v. Inciong*, L-38868, Dec. 29, 1975; 68 SCRA 473; *Philippine Association of Free Labor Unions (PAFLU) v. Bureau of Labor Relations*, L-42115, Jan. 27, 1976, 69 SCRA 132; *Jacqueline Industries v. National Labor Relations Commission*, L-37034, Jan. 30, 1976, 69 SCRA 242; *Fontelera v. Amores*, L-41346, March 8, 1976, 70 SCRA 37; *Abuan vs. Valera*, L-42452, Aug. 10, 1976, 72 SCRA 301, *Flores v. Buencamino*, L-34815, Dec. 17, 1976, 74 SCRA 332; *Montemayor v. Araneta University Foundation*, L-44251, May 31, 1977, 77 SCRA 321.

[19] 22 Phil. 109.

[20] L-30111-12, February 27, 1973, 49 SCRA 416.

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is of equal relevance. Thus: "Respondent Judge failed to have counsel for petitioner Shell Company notified. What is indispensable in law was rendered nugatory in fact. For it would render such a right conspicuously futile if counsel were not given notice of the proceedings to be had. If sanction could therefore be given to what was done by respondent Judge, or, more appropriately, what he failed to do, then this guarantee, insofar as its procedural aspect is concerned, is reduced to a barren form of words. What use is an attorney of record, whose services are precisely sought so that one's interests may receive the protection to which they are entitled under the law, if he is kept ignorant as to when the hearings will be held. Whatever sound advice may be offered will go for naught. Whatever appropriate legal steps he may have in mind cannot be undertaken if he were not present at the trial, not because he did not care to be there but because he did not know as to when it was to be conducted. The most prejudicial testimony against the client, even if contrary to truth, may be accorded acceptance, as its veracity could not be tested in the crucible of cross-examination. One might as well say, if the respondent Judge were to be upheld, that the right to a hearing, far from being of the every essence of procedural due process, is just a useless formality. What ought to have been in the mind of the lower court is this succinct summary, from the pen of Justice J. B. L. Reyes, of the importance of the right to counsel: 'A party engages an attorney of record precisely because it does not feel competent to deal with the intricacies of law and procedure.'"[21] The only difference is that here there was notification as to the date but not as to the place. The effect was equally prejudicial to petitioners. The petition, to repeat, is impressed with merit.

WHEREFORE, the writ of *certiorari* is granted and the challenged order of April 1, 1974 allowing private respondent to present his evidence *ex-parte* is nullified and set aside, thus

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[21] *Ibid.*, 422-423. The citation from the opinion of Justice J. B. L. Reyes comes from *J.M. Javier Logging Corporation v. Mardo*, L-28188, August 27, 1968, 24 SCRA 776.

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rendering of no force and effect and devoid of any legal significance of the *ex-parte* hearing conducted on such date. The Judge now presiding in the Court of First Instance of South Cotabato, Branch II, located at Koronadal, is ordered to set the case anew for trial, the parties to proceed strictly in accordance with the Rules of Court. No costs.

Barredo, Antonio, Aquino, and *Concepcion Jr., JJ.*, concur.

Santos, J., is on leave.

SECOND DIVISION

[G.R. No. L-43233. January 23, 1978]

CITIZENS' SURETY AND INSURANCE CO., INC., *petitioner, vs.* **HON. JUDGE ALFREDO B. CONCEPCION, Presiding Judge of the Court of First Instance of Cavite, Branch IV, situated at Tagaytay City and VIRGILIO I. MANGUBAT, Chief Deputy Sheriff of Cavite,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL BONDS; DUTY OF BONDSMAN TO EXPLAIN ACCUSED'S FAILURE TO APPEAR.** — The bondsman of an accused who has defaulted is required to show that at the time the default occurred, the principal was prevented by some sufficient cause not imputable to his own negligence from complying with his duty.

2. **ID.; ID.; ID.; FAILURE TO PRODUCE ACCUSED; CONFISCATION OF BOND.** — The lower court did not commit grave abuse of discretion, nor did it exceed its jurisdiction in denying the motion to lift the order of arrest and the confiscation of bond, where