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ACCORDINGLY, the questioned default orders are set aside and the case is ordered remanded to respondent judge for prompt hearing and determination on the merits. With costs against respondents jointly and severally. This decision shall be immediately executory upon promulgation.

SO ORDERED.

Makasiar, Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

FIRST DIVISION

[G.R. No. 50835. October 30, 1979]

PRIMA TANDOC, *petitioner, vs.* **Honorable RICARDO TENSUAN in his capacity as Presiding Judge of the Court of First Instance of Rizal, Quezon City, and ELEUTERIO PAGTAKHAN and JIMMY MORALES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; WHEN PROPER, CASE AT BAR.**— Under the circumstances, respondent judge acted with grave abuse of discretion in not granting reconsideration and reinstating the complaint. Assuming that petitioner's counsel erred in waiting for eight months before seeking a default judgment against respondent Pagtakhan, because their hopes to locate the other respondent Morales proved to be in vain, it was not fair to visit this error of counsel on the poor petitioner-litigant (who depended only on her counsel's advice and judgment) and inflict upon her just suit the capital penalty of dismissal. Rule 17, Section 3 permits such dismissal which has "the effect of an adjudication on the merits" only if plaintiff "fails to prosecute

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(her) action for an *unreasonable* length of time" and under the environmental circumstances of this case, as duly explained by counsel, petitioner could not be adjudged guilty of failure to prosecute for an *unreasonable* length of time.

2. **ID.; ID.; ID.; THE APPLICATION OF THE PROCEDURAL RULES ON DISMISSAL OF ACTIONS RESTS UPON THE SOUND JUDICIAL DISCRETION OF THE TRIAL COURTS.**— It cannot be overstressed that the application of the procedural rules on dismissal of actions (as well as on defaults) rests upon the sound judicial discretion of the trial courts and such discretion "must be exercised wisely and prudently, never capriciously, with a view to substantial justice," in the light of the Rules' express mandate that they be "liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding."

APPEARANCERS OF COUNSEL

Teodoro M. Ramos for petitioner.
Senen S. Santayana for private respondents.

D E C I S I O N

TEEHANKEE, *J.*:

The dismissal orders issued by respondent judge are set aside for having been issued with grave abuse of discretion. There was no failure on petitioner's part to prosecute her just suit for an unreasonable length of time as to warrant dismissal thereof by respondent judge *motu proprio*. The procedural rules are addressed to the sound judicial discretion of the courts which must be exercised wisely and prudently, never capriciously, with a view to rendering substantial justice.

In a Joint Order covering three separate civil cases dated December 29, 1978, respondent judge, simply stating that "it appearing that the parties. . . have failed to take the necessary steps to terminate the same notwithstanding the length of time that has already elapsed, the Court considers such inaction as

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lack of interest," ordered the dismissal of the cases "for failure to prosecute."

Among the cases so dismissed was the complaint filed some eight months earlier on April 12, 1978 by herein petitioner as plaintiff against private respondents Eleuterio Pagtakhan and, Jimmy Morales as defendants.[1] In her complaint, petitioner, a widow and low-salaried employee earning some ₱460.00 monthly, seeks the recovery of ₱17,500.00 as actual, moral and exemplary damages and attorney's fees for serious injuries inflicted on her while crossing the street by a Betts taxicab owned and operated by respondent Pagtakhan and recklessly driven by respondent Morales as driver.

Summons was issued and served on respondent Pagtakhan on April 25, 1978 but respondent Morales could not be served with summons at his residence and he has remained at-large. On February 2, 1979, her efforts to locate and have the summons served on Morales having failed, petitioner filed a motion to declare respondent Pagtakhan in default.

It was only subsequent thereto on February 5, 1979 that petitioner's counsel received respondent judge's above-mentioned dismissal order dated December 29, 1978. Petitioner forthwith filed on the next day her motion for reconsideration, but under date of March 14, 1979 respondent judge summarily denied reconsideration as well as petitioner's motion to declare respondent Pagtakhan in default, stating that the other respondent-defendant Morales had not yet been served with summons and "until now [petitioner] has not taken any step to have the summons served" and that the motion for default "was filed only after the case was dismissed for her failure to prosecute."

Hence the petition at bar. The Court finding patent merit therein has dispensed with the filing of briefs or memoranda and sets aside the questioned orders for having been issued arbitrarily and with grave abuse of discretion.

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[1] Civil Case No. Q-25015 of the CFI of Rizal at Quezon City.

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1. The reasons summarily given by respondent judge for denying petitioner's pleas in her motion for reconsideration to reinstate the case "in the interest of justice and equity" do not find support in the record. Petitioner's counsel had disclaimed therein the lack of interest attributed to her, invoking the "necessary diligence" exerted to locate Morales and that "this representation has and is endeavoring its best to ascertain the place where defendant Morales could be served with summons. In fact, there is a pending criminal case against defendant Jimmy Morales for physical injuries, where the complaining witness is the same plaintiff in this instant case before the City Court of Quezon City, Branch IX, entitled *People vs. Jimmy Morales*, Criminal Case No. 13876911, wherein said accused is still at-large, as he is not yet arrested and has not yet filed his bond." The fact that petitioner through counsel immediately filed a motion for reconsideration of the dismissal order on the day following its receipt speaks against respondent judge's unfounded assumption of her "lack of interest" for as stated in her motion "her complaint shows a good cause of action against defendants and her evidence, if given the necessary opportunity to present them in court, is strong enough to prove her case against herein defendants." The record further shows that contrary to respondent judge's statement, petitioner had filed her motion to declare respondent Pagtakhan in default on February 2, 1979 — three days *before* she received on February 5, 1979 notice and copy of the dismissal order dated December 29, 1978. It should be noted in this regard that as late as February 15, 1979 when respondent Pagtakhan filed his opposition to the motion for default, claiming that the summons had not been received by him, he was as yet seemingly unaware and had not been served with copy of the dismissal order (attributable apparently to the notoriously poor mail service in Quezon City or to some other reasons not necessary to fathom here).

2. Under the circumstances, respondent judge acted with grave abuse of discretion in not granting reconsideration and reinstating the complaint. Assuming that petitioner's counsel erred in waiting for eight months before seeking a default

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judgment against respondent Pagtakhan, because their hopes to locate the other respondent Morales proved to be in vain, it was not fair to visit this error of counsel on the poor petitioner-litigant (who depended only on her counsel's advice and judgment) and inflict upon her just suit the capital penalty of dismissal. Rule 17, Section 3[2] permits such dismissal which has "the effect of an adjudication on the merits" only if plaintiff "fails to prosecute (her) action for an *unreasonable* length of time" and under the environmental circumstances of this case, as duly explained by counsel, petitioner could not be adjudged guilty of failure to prosecute for an *unreasonable* length of time.

3. It cannot be overstressed that the application of the procedural rules on dismissal of actions (as well as on defaults) rests upon the sound judicial discretion of the trial courts and such discretion "must be exercised wisely and prudently, never capriciously, with a view to substantial justice,"[3] in the light of the Rules' express mandate that they be "liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding."

In another case, *Gerian vs. Boncaros*,[4] decided also this month, the Court struck down a default order precipitately issued and a second order wrongfully denying the motion to lift the same, with the injunction that the trial courts address themselves to their clear duty of trying and deciding cases on their merits instead of issuing peremptory orders of default (or dismissal as in this case) which serve but to clog the dockets of the appellate courts who invariably remand the cases back to the

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[2] The text reads: "SEC. 3. *Failure to prosecute.* — If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court." (Rule 17).

[3] *Piedad vs. Batuyong*, 55 SCRA 763 (1974).

[4] L-48723.

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trial courts for proper disposition. What the Court enjoined in *Cucio vs. Court of Appeals and People*[5] (involving a wrongful dismissal by the appellate court of a pending appeal), *mutatis mutandis*, may well be applied herein and as a guideline for all courts, thus: "A more receptive attitude and circumspect consideration by the appellate court of the merits of petitioner's motion for reconsideration and for reinstatement of his appeal . . . rather than the arbitrary and inflexible denial thereof would have meant one case less in the Court's full docket and served to save its time and attention from unproductive matters such as this and leave it [free] for the study and determination of meritorious and truly controversial cases."[6]

ACCORDINGLY, the questioned dismissal orders are set aside and the case is ordered remanded to respondent judge for prompt hearing and determination on the merits, This decision shall be immediately executory upon promulgation.

Makasiar, Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

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[5] 57 SCRA 64, 69 (1974).

[6] See also *Mintu vs. Court of Appeals*, 53 SCRA 114 (1973) and cases therein cited: *Mun. of Tiwi vs. Cirujales*, 54 SCRA 390 (1973).