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SECOND DIVISION

[Adm. Matter No. R-177-MTJ. September 24, 1986]

ZENAIDA C. SALVADOR, *complainant, vs.* **HON. BIENVENIDO S. SALAMANCA, Presiding Judge, Branch XIV, Metropolitan Trial Court of Manila,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; NON-SUBMISSION OF MEMORANDA; CONSIDERED A WAIVER OF THE PRIVILEGE; CASE MAY BE DECIDED EVEN IN THE ABSENCE OF MEMORANDA.**— We find to be correct complainant's proposition that the case should have been deemed submitted for resolution at the end of the twenty-day period agreed upon by the parties for the submission of the memoranda. As held in *Bendesula v. Laya* (58 SCRA 16), judges should decide cases even if the parties failed to submit memoranda within the given periods. Non submission of memoranda is not a justification for failure to decide cases. The filing of memoranda is not a part of the trial nor is the itself an essential, much less indispensable pleading before a case may be submitted for decision. As it is merely intended to aid the court in the rendition of the decision in accordance with law and evidence, (*People v. Torrobias*, 103 SCRA 321) — which even in its absence the court can do on the basis of the judge's personal notes and the records of the case — non-submission thereof has invariably been considered a waiver of the privilege.

2. **ID.; SUMMARY PROCEDURE; PLEADINGS; MEMORANDA, PROHIBITED.** — Cases of forcible entry and detainer are summary in nature for they involve perturbation of social order which must be restored as promptly as possible, and, accordingly, technicalities or details of procedure which may cause unnecessary delays should carefully be avoided. It should also be noted that under the Rules on Summary Procedure, memoranda are prohibited.

RESOLUTION

FERNAN, *J.*:

Judge Bienvenido S. Salamanca, Presiding Judge of Branch XIV of the Metropolitan Trial Court of Manila is charged with culpable

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dereliction of duty and gross inefficiency for allegedly having delayed the resolution of a forcible entry case as well as the motions for the issuance of a writ of preliminary mandatory injunction filed in connection therewith.

On April 26, 1982, complainant Zenaida C. Salvador and others filed before the Metropolitan Trial Court of Manila a complaint for forcible entry against Lily Arreza, Antonio Co, Domingo Co and Lucio Co, docketed as Civil Case No. 073308 and raffled off to the sala of respondent judge. In said complaint, therein plaintiffs prayed for the issuance of a writ of preliminary mandatory injunction, which prayer was reiterated in a motion filed on May 16, 1983.

On April 5, 1984, or after almost two years of litigation, the parties rested their case for final adjudication by respondent judge. The parties agreed to simultaneously submit their respective memoranda within twenty (20) days from receipt of the last copy of the transcript of stenographic notes. On April 18, 1984, complainant and her co-plaintiffs filed an urgent motion for the issuance of a writ of preliminary mandatory injunction, and on May 3, 1984, they submitted their memorandum.

On May 16, 1984, respondent judge issued an Order, stating:

"Inasmuch as this case has already been submitted for decision, the court defers action on plaintiffs' motion for the issuance of a writ of preliminary injunction specially as it is based on factual allegations which the court still has to resolve in the decision on the merits."[1]

On June 25, 1984, when no memorandum was submitted by therein defendants within the period agreed upon, complainant manifested such failure to respondent judge and moved for the resolution of the case without defendants' memorandum. On September 20, 1984, complainant instituted the instant petition.

Required to comment on the petition, respondent judge stated that while the complaint contained a prayer for preliminary injunction, the matter was not pressed by therein plaintiffs, who later amended their complaint. When they moved for its issuance

[1] Annex "C", Petition, p. 8, *Rollo*.

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on May 16, 1983, he temporarily denied the motion in an order dated August 2, 1983 in view of the defendants' defense that plaintiffs did not have prior possession of the premises under consideration. He further explained that the resolution of plaintiffs' motion of April 16, 1984 was deferred as the same was based on factual allegations which the court still had to resolve in the decision on the merits.

Respondent judge added that although the parties rested their evidence on April 5, 1984, the case was deemed submitted for decision only upon the lapse of five (5) days from defendants' receipt of the court's order of August 22, 1984 which granted them another period of five (5) days within which to file their memorandum. He then concluded that at the time of the filing of the instant complaint as well as the comment thereon, the ninety-day period for deciding the case had not yet expired.

On October 29, 1984, complainant filed a reply to the comment further charging respondent judge with gross ignorance of the law and delayed rendition of judgment for the same actuation. On November 19, 1984, respondent judge rendered a decision in Civil Case No. 073308.

The facts irrefutably establish that there was a delay in the resolution of both the motions for preliminary injunction and the case itself. The urgency of the relief sought through a writ of preliminary mandatory injunction in a forcible entry case requires that an application therefor be resolved with dispatch one way or another. This is the reason why the last sentence of Section 3, Rule 70 of the Rules of Court specifically provides for its disposition within thirty days from the filing thereof. Evidently, respondent judge failed to respond to the situation with the speed required by the Rules.

Respondent judge would justify the delay in the rendition of the decision by saying that the case was deemed submitted for decision only after the lapse of five days from defendants' receipt of the court's order of August 22, 1984. This claim, however, is belied by his own order of May 16, 1984 wherein he stated *inter alia* that the case has already been submitted for resolution. Thus, We find to be correct complainant's proposition that the case should have been

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deemed submitted for resolution at the end of the twenty-day period agreed upon by the parties for the submission of the memoranda. As held in *Bendesula v. Laya* (58 SCRA 16), judges should decide cases even if the parties failed to submit memoranda within the given periods. Non-submission of memoranda is not a justification for failure to decide cases. The filing of memoranda is not a part of the trial nor is the memorandum itself an essential, much less indispensable pleading before a case may be submitted for decision. As it is merely intended to aid the court in the rendition of the decision in accordance with law and evidence, [*People v. Terrobias*, 103 SCRA 321] — which even in its absence the court can do on the basis of the judge's personal notes and the records of the case — non-submission thereof has invariably been considered a waiver of the privilege.

Cases of forcible entry and detainer are summary in nature for they involve perturbation of social order which must be restored as promptly as possible, and, accordingly, technicalities or details of procedure which may cause unnecessary delays should carefully be avoided.[2] It should also be noted that under the Rules on Summary Procedure, memoranda are prohibited.[3]

WHEREFORE, respondent Judge Bienvenido S. Salamanca is hereby REPRIMANDED for the delayed rendition of judgment in Civil Case No. 073308 with a warning that a repetition of a similar act will be dealt with more severely by this Court. Let copies of this resolution be attached to his records.

Feria (Chairman), Alampay, Paras, and *Feliciano, JJ.,* concur.

Gutierrez, Jr., J., took no part.

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[2] *Co Tiamco v. Diaz,* 75 Phil. 672.

[3] Section 15, Common Provisions.