

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

First Division

**VICTORIAS AGRICULTURAL
DISTRICT MULTI-PURPOSE
COOPERATIVE,**

CTA Case No. 9828

Petitioner, Members:

-versus-

**DEL ROSARIO, P.J., Chairperson,
FABON-VICTORINO, and
MANAHAN, JJ.**

**COMMISSIONER OF INTERNAL
REVENUE, BIR REGIONAL
DIRECTOR, REGION 12,
BACOLOD CITY,**

Promulgated:

Respondents.

MAY 27 2020 8:26am

X - - - - - X

R E S O L U T I O N

On November 14, 2019, petitioner did not appear in the pre-trial conference scheduled on that day, hence, respondent's counsel moved for the dismissal of the case based on Section 5, Rule 18 of the Rules of Court which the Court granted.

On January 16, 2020, petitioner filed an **Urgent Motion for Reconsideration** through registered mail and received by this Court on January 24, 2020. Petitioner avers that it received such Order of dismissal only on January 14, 2020 and reasoned out that it filed a *Motion to Reset the Pre-Trial Conference* due to difficulty in attending the scheduled conference and that it was religiously attending the mediation proceedings before the mediator in an effort to reach an amicable settlement.

Petitioner avers that it already signed an amicable settlement prepared by respondent and complied with all his requests on May 28, 2019. However, it did not receive a copy of the Mediator's Report dated September 10, 2019 which declared the failure of the parties to reach an amicable settlement and it only came to know about it when it received

this Court's Order dated September 25, 2019¹ on November 6, 2019. Petitioner apologizes for its non-appearance in the scheduled pre-trial conference, hence, it prays for this Court to reconsider the dismissal of the case in its Order dated November 14, 2019 and to set another pre-trial conference at its most convenient time and date.

The records of the case reveal that petitioner's *Motion to Reset the Pre-Trial Conference* was only filed on November 13, 2014, one day before said conference, hence, such was the basis for the denial of said motion in this Court's Order dated November 14, 2019. Further, in said motion, petitioner's counsel did not explain his alleged "previously set important conference" set on the same date as the pre-trial conference in order for this Court to find merit in his request.

Petitioner should be aware that the appearance in pre-trial conference is mandatory as provided under Section 4, Rule 18 of the Rules of Court, to wit:

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. (*Emphasis supplied*)

Further, Section 5 of the same Rules provides for the penalty upon a party who will fail to attend such pre-trial conference, to wit:

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. (*Emphasis supplied*)

In *Spouses Roberto and Lilia Mondonado v. Court of Appeals et al.*², the Supreme Court ruled that dismissal for

¹ Petitioner actually refers to Notice of Resolution dated September 25, 2019 on this Court's Resolution dated September 23, 2019 which sets the Pre-Trial Conference on November 14, 2019.

² G.R. No. 113349, January 18, 1996.

failure to appear at the pre-trial conference is deemed an adjudication on the merits, to wit:

The Court finds no reversible error in the said Resolutions of the Court of Appeals. Well-settled is the rule that a dismissal for failure to appear at the pre-trial hearing is deemed an adjudication on the merits, unless otherwise stated in the order.

"For nonappearance at the pre-trial, a plaintiff may be non-suited and a dismissal of the complaint for failure to prosecute has the effect of an adjudication upon the merits unless otherwise provided by the trial court." (Geralde vs. Sabido, G.R. No. L-35440, August 19, 1982, 115 SCRA 839, 841, citing Sec. 3, Rule 17 and Sec. 2, Rule 20, Rules of Court, and Ouye vs. American President Lines, Ltd., 77 Phil. 635; Tuballa vs. De la Cruz, 111 Phil. 335, 337; American Insurance Co. vs. Republic, 21 SCRA 464; Home Insurance Co. vs. United States Lines Co., 21 SCRA 863.)

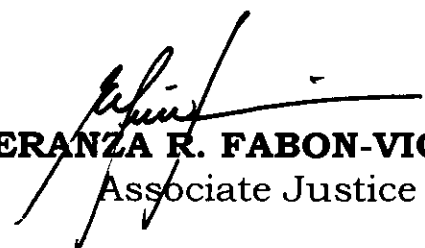
And the remedy of a plaintiff declared non-suited is to appeal from the order of dismissal, the same being a final resolution of the case (Regalado, Remedial Law Compendium, 1988 ed., p. 185). Further, if a motion for reconsideration had been filed by the plaintiff but was denied, appeal lies from both orders (ibid.). And where appeal is the proper remedy, certiorari will not lie.

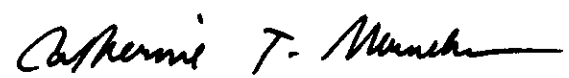
Considering that petitioner failed to provide a valid cause or explanation for its non-appearance at the said scheduled pre-trial conference, this Court finds no basis to reverse its previous decision of dismissal of the instant case.

WHEREFORE, premises considered, petitioner's *Urgent Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CATHERINE T. MANAHAN
Associate Justice