

JOSEPH COCHINGYAN, JR.,
Petitioner,

- versus -

C.T.A. CASE NO. 2339

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

2/23/77

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R E S O L U T I O N

When this case was called for hearing on February 16, 1977, petitioner and/or counsel failed to appear notwithstanding notice to this effect served to counsel's office on January 20, 1977. While the records of the case show that on February 11, 1977, petitioner filed an urgent motion for postponement, the notice addressed to the clerk of this Court requested her to submit the said motion "for the consideration and resolution of the Honorable Court on 22 February 1977 at 8:30 A.M. without further argument." Upon failure of petitioner and/or his counsel to appear on the scheduled hearing of this case on February 16, 1977, respondent's counsel therefore moved for the dismissal of the case on the ground that petitioner has no interest to prosecute his appeal.

We find respondent's motion meritorious as shown by the following facts borne out by the records:

1. The petition for review in this case was filed on October 22, 1971. After the issues were joined with the filing of respondent's answer, the case was set for hearing by this Court on February 28 and March

1. 1974. On the scheduled hearing of this case on February 28, 1974 petitioner appeared but moved for the postponement of the hearing. Acting on the said motion, this Court reset this case for hearing on May 7 and 8, 1974. The parties were notified in open court.

2. On May 7, 1974, when this case was called for hearing, neither petitioner nor his counsel appeared. In order to give petitioner another chance to prosecute his appeal, and there being no objection on the part of counsel for respondent, this Court set this case for trial on June 17 and 18, 1974. The notice of hearing was received by petitioner on May 21, 1974.

3. Instead of appearing on the scheduled hearing of this case on June 17, 1974, petitioner filed an urgent motion for postponement allegedly because he has to attend to other cases in other courts. There being no objection on the part of respondent's counsel, this Court set this case for trial on July 24 and 25, 1974. Notice of hearing to this effect was received by petitioner on June 22, 1974.

4. On July 23, 1974 petitioner's counsel again filed an urgent motion for postponement allegedly again because he has other cases in other courts, and the said "motion is not intended for delay, much less to defeat or frustrate the lawful processes of the Honorable Court." The trial scheduled for July 24, 1974 was cancelled but when the case was called for trial on July 25, 1974, petitioner and/or counsel failed to appear. The Court postponed the hearing to

September 23, 24 and 25, 1974. The notice of this hearing was received by counsel for petitioner on August 28, 1974.

5. As usual, on September 12, 1974 petitioner's counsel filed a now stereotyped urgent motion for postponement allegedly again on the ground that he is appearing in other cases in other courts, and, of course, the "Motion is not intended to delay muchless to defeat or frustrate the lawful processes of the Honorable Court." And for the reason stated therein, the Court granted the said motion and set this case for trial on October 22 and 23, 1974. Petitioner's counsel received the order to this effect on October 9, 1974.

6. Again on October 21, 1974 counsel for petitioner filed an urgent motion for cancellation of hearing on October 22, 1974 allegedly again because he has other cases in other courts, and again the said "motion is not intended for delay muchless to defeat or frustrate the lawful processes of the Honorable Court." It was, however, without prejudice to the hearing on October 23, 1974. Since the motion was filed only on October 21, 1974, the case was called for trial on October 22, 1974 as scheduled. Neither petitioner nor his counsel appeared, but this time counsel for respondent moved for the dismissal of the appeal on the ground that petitioner has been repeatedly asking for postponements. Petitioner immediately filed on October 25, 1974 an opposition thereto on the ground already stated in his earlier urgent motion for cancellation with the now hackneyed state-

ment that it "was not intended to delay the proceedings, much less to frustrate the lawful processes of the Honorable Court." The Court denied the said motion of respondent and reset this case for trial on December 16 and 17, 1974. Notice of the Court's resolution to this effect was received by petitioner's counsel on November 21, 1974.

7. Came the scheduled hearing on December 16, 1974 and counsel for petitioner at last appeared and manifested in open court that the hearing be cancelled on the ground that the parties would like, after all the delays and postponements, to settle the case. There being no objection on the part of counsel for respondent, the Court reset this case for hearing on February 11, 1975, notifying the parties in open court.

8. The hearing scheduled on February 11, 1975 was however postponed to April 1, 1975, upon request of both parties; later to June 9 and 11, 1975, upon agreement of the parties; and eventually to the next calendar of the Court, on motion of petitioner's counsel without objection of counsel for respondent.

9. On October 21, 1975 petitioner's counsel filed an urgent motion to suspend proceedings on the ground allegedly that he is again seriously interested to settle this case under Letter of Instructions No. 308 of the President of the Philippines. It seems clear now that from December 16, 1974, when petitioner's counsel first manifested in open court of his desire to compromise the case with respondent, to October 21, 1975, when he filed his motion to suspend proceedings, no steps were taken by petitioner and/or counsel to settle administratively this case.

10. The Court on December 22, 1975 again set this case for trial on January 28, 1977, notice of which was received by petitioner's counsel on January 5, 1977. This time, counsel for petitioner, returning to his usual dilatory tactics of wasting the time of this Court, again filed an urgent motion for postponement based on his "here-we-go-again" allegation that he has other cases in other courts and of course with the much-abused statement that it "is not intended for delay muchless to defeat or frustrate the lawful processes of the Honorable Court." This Court granted the said motion and reset the case for trial on February 16, 1977, notice thereof was received by petitioner's counsel on January 20, 1977.

11. And as if to demonstrate, and underscore, his utter lack of interest to prosecute his appeal, petitioner's counsel, without deviating from the procedure and manner already stated above, filed on February 11, 1977 his automatic urgent motion for postponement based (what else) on the same, unchanged, allegation that he has of course other cases in other courts and with the built-in accessory that the "notice is not intended for delay muchless to defeat or frustrate the lawful processes of the Honorable Court." This time, however, counsel for respondent probably realized that there would never be an end to this suit so long as petitioner and/or counsel could feel free to file his or their pro-forma, stereotyped, urgent motion for postponement equipped with the now mechanical averment of having cases in other courts and ornamented

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with the standard allegation that "the foregoing motion is not intended for delay muchless to defeat or frustrate the lawful processess of the Honorable Court." Consequently, during the hearing of this case on February 16, 1977, counsel for respondent objected to the urgent motion filed by petitioner's counsel and moved that the appeal be dismissed for failure to prosecute.

Finding the motion of respondent's counsel made in open court well-taken, the same is hereby GRANTED. Accordingly, let this case be dismissed for lack of interest of petitioner to prosecute his appeal. With costs against petitioner.

SO ORDERED.

Quezon City, March 23, 1977.

Amante Villar
AMANTE VILLER
Acting Presiding Judge

I CONCUR:

Roquin
CONSTANTO O. ROQUIN
Associate Judge