

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

SECOND DIVISION

JEANE CATHERINE NAPOLES,

CTA Case No. 9354

Petitioner,

Members:

-versus-

CASTAÑEDA, JR., *Chairperson*

CASANOVA, *and*

COMMISSIONER OF INTERNAL REVENUE,

MANAHAN, JJ.

Respondent.

Promulgated:

APR 10 2017

3:15 pm *[Signature]*

X- - - - -X

RESOLUTION

For resolution is petitioner's "Motion for Reconsideration" filed with this Court via courier on March 6, 2017, with respondent's "Comment/Opposition (Re: Petitioner's Motion for Reconsideration) ("Comment") filed on March 24, 2017. In addition, a Motion to Suspend Proceedings was thereafter filed by petitioner on February 16, 2017.

In its Motion for Reconsideration, petitioner seeks to reverse the ruling pronounced in open court on February 16, 2017 ordering the dismissal of the instant petition for her failure to appear in the pre-trial conference despite due notice by the Court. This order (dismissing the case) made in open Court was followed by a written Order issued on that same day and received by petitioner on February 23, 2017.

In her Motion for Reconsideration, petitioner prays for the following:

"WHEREFORE, it is respectfully requested that:

1. The Order dated February 16, 2017 be REVERSED and SET ASIDE;

2. The Petition for Review filed by the petitioner be REINSTATED and be heard of again for trial before the Honorable Second Division;
3. The Urgent Motion to Suspend Proceedings be CONSIDERED by the Honorable Second Division, and to cause the Pre-Trial Conference to be HELD IN ABEYANCE until the completion of CTA Criminal Case Nos. O-452 to 453 titled "People of the Philippines vs. Jeane Catherine Napoles y Lim" pending before the Honorable Third Division of this Court. "

Petitioner explains that her absence on the scheduled date of the pre-trial conference was due to her many commitments that day; a hearing in Pasig City and a Board Meeting in Makati. She then claimed in her motion that she was in the vicinity of this Court on that day and arrived at 1:50 p.m. right after the Court had already adjourned. She, however, claimed that she sent a representative to advise the Court in advance that she might be late for the pre-trial conference who unfortunately made the mistake of informing the Third Division of the Court instead of the Second Division. Counsel attached an affidavit of her representative to support the aforesaid allegations.¹

In opposing petitioner's request for reconsideration, respondent submits that the dismissal of this Court is proper in the light of the provisions of Section 5, Rule 18 of the Revised Rules of Court ("Rules") which read as follows:

Section 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 of the dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court xxx xxx xxx xxx

Respondent avers that rules on pre-trial are designed precisely to secure the just, speedy and inexpensive disposition of an action, hence, it is mandatory for the parties to appear during pre-trial. He concludes that the non-appearance of petitioner and/counsel makes the dismissal of the case proper and in accord with the Rules.

Respondent also belies the claim of petitioner that she did not intend to delay the proceedings of this case as records, on the contrary, would clearly show that there were already numerous re-settings requested by her as shown hereunder:

¹ Annex "A" "Sinumpaang Salaysay" of Manny M. Galamgam dated February 28, 2017.

- In the “Motion to Reset Pre-Trial Conference” filed by registered mail on October 18, 2016, petitioner requested that the scheduled pre-trial conference on October 27, 2016 be moved to November 24, 2016 citing as reason “that having only been recently engaged as counsel for petitioner, cases have already been set previously” giving rise to conflicts of schedule. The Court in an Order dated November 11, 2016 merely took note of the request for re-setting because an earlier Notice was already issued re-setting the same to November 24, 2016.
- During the hearing set on November 24, 2016, petitioner moved that “today’s hearing be canceled and re-set to January 19, 2017”. Without objection from respondent, the Court granted the motion and ordered that the pre-trial conference be re-set to January 19, 2017. A confirming Order of the Court followed re-setting the hearing scheduled on November 24, 2016 to January 19, 2017 at 1:30 p.m.².
- On January 19, 2017 petitioner again filed an “Urgent Motion to Re-set Pre-Trial” due to a medical condition which requires counsel of petitioner to seek hospital treatment. In this Motion, counsel for petitioner gave the Court three alternative dates (February 2, 9 or 23, 2017) for the pre-trial conference. This motion was granted in open court on January 19, 2017 over the objection of counsel for respondent. The pre-trial conference was then re-set to February 16, 2017. A confirming Order followed where this Court re-set the pre-trial conference to February 16, 2017 at 1:30 p.m. and required the counsel for petitioner to submit a medical certificate during the next hearing date. In her “Submission” filed on February 16, 2017, counsel for petitioner attached a Medical Certificate dated January 20, 2017.³
- During the pre-trial conference on February 16, 2017, petitioner as well as counsel again failed to appear and only counsels for respondent appeared during the

² Page 208, Court records.

³ The medical condition alleged in the said motion requiring hospital treatment pertained to diarrhea.

hearing. The Court then ordered the dismissal of the case pursuant to Section 5, Rule 18 of the Rules.

Topping off the foregoing series of postponements, an “Urgent Motion to Suspend Proceedings” was also filed by petitioner on February 16, 2017 which was on the same day as the scheduled pre-trial conference where her counsel failed to appear. The Urgent Motion to Suspend Proceedings” was filed in violation of the three (3) day rule required by Sections 4 and 5 of Rule 15 of the Rules of Court, and we quote:

“Rule 15.

Section 4. Hearing of motion. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

Section 5. Notice of hearing. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.”

Respondent notes with emphasis that petitioner failed to serve the “Urgent Motion to Suspend Proceedings” at least three (3) days prior to the hearing date on February 16, 2017 in violation of the foregoing rules.

Finally, respondent in his Comment/Opposition (Re: Petitioner’s Motion for Reconsideration) argues that relaxation or suspension of the Rules should only be for persuasive reasons and for meritorious cases which are not attendant under the present circumstances.

After weighing the arguments of both parties and an astute consideration of the circumstances availing in this case, we find no meritorious reasons to grant the “Motion for Reconsideration”.

We find the prayer for the suspension of the proceedings stated in the Motion for Reconsideration incongruous with the Order of the Court dismissing the case. Instead of finding ways

and means to compensate for the delays caused by her non-appearances and constant requests for postponements, petitioner now prays for the suspension the proceedings until the completion of the CTA criminal case against the petitioner pending before the Third Division of this Court. This suspension will obviously further delay the resolution of the issues in this case.

To our minds, the many requests for re-setting of the pre-trial conference made by counsel of petitioner and the wide latitude and flexibility accorded by the Court to counsel for petitioner in granting the same should have, at the very least, given the petitioner a mindful attitude in ensuring her attendance in the 4th hearing set on February 16, 2017 which was even scheduled in the afternoon. We agree with respondent that appropriate action should have been taken by petitioner so as not to prejudice the proceedings in this case.

To emphasize, records show that due notice was given to both parties for the pre-trial conference via a confirming Order dated January 19, 2017 but in spite of this, petitioner failed to appear. Instead, offered the excuse that she had many commitments on that same day and that she sent a “representative” to inform the Court in advance of the possible delay in her arrival. If such many commitments take precedence over the early resolution of her petition before this Court, then such attitude shows disinterest of petitioner to pursue her case. Court notices of hearing dates always include a prescribed date and time for the appointment and counsels are expected to arrive on or before this time. Records show that the aforesaid confirming Order clearly provided a date and time for the scheduled hearing. It is worthy to emphasize that verbal notifications made by advance parties or by so-called “representatives” do not serve to replace the actual presence of counsels/parties to a scheduled hearing nor does it neutralize the effects of one’s none or late appearance.

This Court is not oblivious to acts done merely to delay the proceedings but it is not altogether unmindful of the principle that every litigant must be given the opportunity to be heard to achieve substantial justice and a liberal interpretation of the procedural rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret out such truth. (*Metro Rail Transit vs. CTA and Commissioner of Internal Revenue*, G.R. No. 166273 promulgated on September 21, 2005.)

However in the instant case, this principle of liberality when it comes to technical rules finds no place. The Court will not allow the petitioner to direct the course of the proceedings by filing motions that are meant to delay the proper dispensation of justice or to obstruct the order within which judicial business is to be conducted. Any acts done to further delay the proceedings will be dealt with accordingly by this Court.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is **DENIED** and the Order of the Court dated February 16, 2017 dismissing the case is **AFFIRMED**.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice


CATHERINE T. MANAHAN
Associate Justice