

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
EN BANC**

**REPUBLIC OF THE PHILIPPINES,  
represented by the Philippine National  
Bank, as TRUSTEE,  
*Plaintiff-Appellant,***

***-versus-***

**G.R. No. L-11782  
April 30, 1958**

**ISIDRO R. VILLAROSA,  
*Defendant-Appellee.***

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**DECISION**

**BENGZON, J.:**

When on February 15, 1956, this suit for recovery of money was called for hearing before the Occidental Negros Court of First Instance in Bacolod City, none appeared for the plaintiff.

Having noted that three months before, when this case came up on November 9, 1955, the plaintiff had also failed to show up and the hearing had to be postponed, His Honor, the trial judge concluded that plaintiff's repeated absence evinced lack of interest to prosecute its claim. Wherefore, he dismissed the suit immediately.

Within thirty days after notice of the dismissal, the plaintiff's attorney moved for reconsideration, explaining that defendant, through his brother, had on February 15, 1956 approached the plaintiff for amicable settlement and had deposited P800 as earnest of good faith; that consequently, plaintiff and defendant had agreed to ask for postponement of the hearing; that in fact at the hearing defendant's attorney pleaded for continuance, but was overruled; and that plaintiff's actuations stemmed from no desire to delay judicial proceedings. Movant prayed that, at least, the order be amended by making this dismissal "without prejudice."

The motion was not opposed by defendant, who never contradicted the factual allegations therein made. Nevertheless, it was denied, and the denial gave ground to this the plaintiff's appeal, wherein the question naturally is whether the trial court erred in refusing to amend, as requested.

In the light of generally known opinions of this Court on the matter of postponements, His Honor may be was not to blame. We have emphasized and upheld the court's discretion; we have ruled that even if the adverse party should agree to a postponement, the court is not bound to postpone.<sup>[1]</sup> This case had once been delayed due to absence of Plaintiff's counsel, so that February 15, 1956 was the second non- appearance of such counsel, whom the court knew resided in Bacolod City itself. Considering the court's policy to expedite disposal of litigations and prevent the clogging of their dockets, the outright dismissal could not be criticized.

Subsequent disclosures, however, should have modified His Honor's strictly legal attitude. Efforts at compromise are favored by the law. In *Brandt vs. Behn Meyer & Co.* 38 Phil., 355 it was held that "an action should not be dismissed on a non-suit for want of prosecution when the delay was caused by an arrangement between the parties looking towards a settlement."

The New Civil Code directs the courts to "endeavour to persuade the litigants in a civil case to agree upon some fair compromise" (Art. 2029) and for that purpose a civil action "shall be suspended if willingness to discuss a possible compromise is expressed by one or both parties" (Art. 2030).

Reflecting that plaintiff's action had been pending less than one year, that it was based on written promissory notes the execution of which defendant expressly admitted, that his defense rested not on payment, but on the allegation that although he signed as maker thereof he was in fact a mere guarantor, and considering that defendant's attorney was agreeable to or had moved for continuance, we think it equitable to apply our view in *Torrefiel vs. Toriano*, 91 Phil., 209 which as summarized says:

“Where it did not appear that the motion for postponement of the trial was due to any deliberate desire on the part of the plaintiffs and intervenor to delay the proceedings or that the action was frivolous and as defendants' attorney had expressly agreed to plaintiffs' motion (to postpone), the interests of justice and of the court could have been served with a dismissal of the case without prejudice.”<sup>[2]</sup>

**ACCORDINGLY**, the appealed order is **AFFIRMED** with the **MODIFICATION** that the dismissal will not bar another action on the same subject matter. So **ORDERED**.

**Paras, C.J., Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, Endencia and Felix, JJ., concur.**

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[1] *Torrefiel vs. Toriano*, 91 Phil., 209; *Salvador vs. Romero*, 96 Phil., 34; *Phil. Airlines, Inc. vs. Ceniza, et al.*, L-8482, April 27, 1956.

[2] See also *Phil. National Bank vs. De la Cruz* supra, p. 344.