

THIRD DIVISION

[G.R. No. 113349, January 18, 1996]

SPOUSES ROBERTO AND LILIA MONDONEDO, PETITIONERS, VS. COURT OF APPEALS, HON. LUCIA VIOLAGO ISNANI, AS PRESIDING JUDGE OF BR. 59, REGIONAL TRIAL COURT OF MAKATI, MAKATI DEPUTY SHERIFF MAXIMO CON-TRERAS, REGISTER OF DEEDS OF MAKATI, REGISTER OF DEEDS OF LAS PIRAS, REGISTER OF DEEDS OF BAGUIO CITY, AND SECURITY BANK AND TRUST COMPANY, RESPONDENTS.

RESOLUTION

PANGANIBAN, J.:

What is the remedy of a plaintiff declared non-suited for failure to appear at the pre-trial hearings? This is the main issue in this Petition for certiorari praying for a review of a Resolution of the respondent Court of Appeals^[1] promulgated on October 6, 1993 (and the subsequent Resolution denying the motion for reconsideration, promulgated on January 7, 1994) dismissing a petition for certiorari to set aside orders issued by the Regional Trial Court of Makati, Branch 59, which threw out the complaint in view of counsel's late appearance during the pre-trial. Reason advanced for counsel's delay was allegedly "flooded Street" due to a typhoon, which reason was factually disputed by the private respondent Security Bank and Trust Company.

[By resolution of the First Division of this Court on October 25, 1995, this case (along with several others) was transferred to the Third Division. After carefully deliberating on the Petition, the Omnibus Motion to Cite Petitioners, et al. In Contempt and to Lift Temporary Restraining Order, the Comment, the Reply (to Comment) and Opposition (to Omnibus Motion), the Rejoinder (to Reply) and Reply (to Opposition), the Motion for Reconsideration, and the Opposition (to Motion for Reconsideration) and Reply (to Opposition) as well as all the other submissions of the parties, the Court assigned the writing of this Resolution to the undersigned ponente.]

The respondent Court held that appeal, not certiorari, is the remedy of a party declared non-suited for failure to appear at the pre-trial hearing. In addition, said Court noted the failure of petitioners to state the date of receipt of the order denying the motion for reconsideration in the court a quo. Hence, it could not determine whether the petition was filed on time.

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.