

95 Phil. 634

[G.R. No. L-6450. August 11, 1954]

GONZALO MAKABENTA, PETITIONER, VS. JUAN L. BOCAR, JUDGE OF FIRST INSTANCE OF LEYTE, AND FILOMENO R. NEGADO, RESPONDENTS.

D E C I S I O N

REYES, J.B.L., J.:

On September 30, 1950, Filomeno R. Negado filed a complaint in the Justice of the Peace Court of Carigara, Leyte, against Gonzalo Makabenta for the recovery of a sum of money. Within the prescribed period, the defendant Gonzalo Makabenta filed his answer with counterclaim. After issues had been joined, the case was set for trial on September 18, 1951. At the trial, defendant failed to appear; plaintiff moved that the former be declared in default, and accordingly, the Justice of the Peace Court declared him in default and ordered the plaintiff to present his evidence. Judgment was rendered for the plaintiff on November 24, 1951, copy of which defendant Makabenta received on December 8, 1951, and it was only then that he learned for the first time that he was declared in default and that judgment by default had been taken against him. Whereupon, defendant Gonzalo Makabenta appealed to the Court of First Instance of Leyte (Civil Case No. 1453), where both parties filed their respective pleadings. When the case was ready for trial, the plaintiff-appellee Filomeno R. Negado filed on July 20, 1952 a motion for the dismissal of the appeal on the ground that the appellant had been declared in default in the Justice of the Peace Court and had, therefore, no standing in court. The Court of First Instance considered the motion well-taken and dismissed the appeal, holding that Makabenta had no right to appeal unless the order declaring him in default is first set aside. A motion for the reconsideration of the order of dismissal was denied, and defendant-appellant Gonzalo Makabenta came to this court with a petition for certiorari, asking that after due hearing, the order of the respondent Judge dismissing his appeal be annulled, and the case set for trial on the merits.

The petition must be granted. The order of default taken against the petitioner Gonzalo

Makabenta in the Justice of the Peace Court of Carigara, Leyte is clearly illegal and without effect; for although petitioner failed to appear during the trial of the case therein, he filed his answer to the complaint, and as we have consistently held, the sole ground for default in the inferior courts is failure to appear (*Veluz vs. Justice of the Peace of Sariaya*, 42 Phil., 557; *Quizan vs. Arellano*, 90 Phil., 644, *Carballo vs. Hon. Demetrio B. Encarnacion, et al.*, 92 Phil., 974). By filing his answer in the Justice of the Peace Court, petitioner put in his appearance and submitted to its jurisdiction; hence, he was not, and should not have been declared, in default. While it was discretionary for the court to proceed with the trial of the case in the absence of petitioner or his counsel, and render judgment on the basis of the evidence presented by the plaintiff, such judgment was not by default, and petitioner could, under the law, appeal, as he in fact did appeal, to the Court of First Instance (*Carballo vs. Hon. Demetrio B. Encarnacion, supra*). Consequently, in dismissing petitioner's appeal on the ground that he had no standing in court unless the order of default is first set aside, the respondent Court committed a grave abuse of discretion amounting to lack of jurisdiction.

This petition for certiorari to annul the order of dismissal of the appeal is in the nature of a petition for mandamus to order the Court of First Instance to proceed with the hearing of the case, and it is not barred by the fact that the order complained of was appealable (*Quizan vs. Arellano, Supra*).

Wherefore, the petition for certiorari is granted, the order of the court a quo dismissing petitioner's appeal is annulled, and the respondent judge is hereby directed to reinstate said appeal and proceed with the trial of the case on the merits. Costs to be taxed against the respondent Filomeno R. Negado.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Juao, Bautista Angelo, Labrador and Concepcion, JJ., concur.