

101 Phil. 828

[ G.R. No. L-9421. June 29, 1957 ]

**DANIEL JAIME, PETITIONER AND APPELLANT, VS. MELCHOR MANIEGO,  
RESPONDENT AND APPELLEE.**

**PARAS, C.J.:**

The appellant Daniel Jaynie seeks to reverse the decision of the Court of Industrial Relations, declaring his motion for bill of particulars as improperly taken and denying the same, and granting appellee Melchor Maniego's authority to dispossess the appellant of his landholding at Parang Manga, San Jose, Nueva Ecija.

It appears that on February 27, 1954, appellee Melchor Maniego filed a complaint before the Nueva Ecija branch of the Court of Industrial Relations to eject the appellant from his landholding. At the hearing set for March 9, 1954, the appellant did not appear and was declared in default. Appellee Maniego was forthwith allowed by the court to present his evidence. On March 31, 1954, the appellant moved for the lifting of the order of default which was granted in an order dated April 30, 1954, requiring him to file his answer to the complaint within five days from notice. Appellee Maniego, on his part, moved for the reconsideration of the resolution lifting the order of default but the court denied said motion on July 2, 1954. Pursuant to the order of April 30, 1954 the hearing was set for September 21, 1954. On June 23, 1954, the appellant filed a motion for bill of particulars and on September 17, 1954, asked for a continuance of the hearing set for September- 21, 1954. On the latter date, the appellant did not appear for trial. Appellee Maniego was present. On March 11, 1955, the court issued an order denying the motion for bill of particulars copy of which was received by the appellant on March 19, 1955. Subsequently, or on March 29, 1955, the court rendered its decision awarding relief to appellee Maniego—granting him authority to dispossess the appellant of his landholding at Parang Manga, San Jose, Nueva Ecija.

The questions of law raised by the appellant are as follows:

(a) Was it legal for the lower court to hear the case on September 21, 1954, although on

that date it had not yet resolved appellant's motion for bill of particulars, and much less had answer been filed; hence the issues had not yet been joined?

(b) Was it legal for the lower court to revoke its order of April 30, 1954, and revive both its verbal order of default and the evidence taken pursuant to said order which had already been set aside?

(c) Did the lower court act within the proper exercise of judicial discretion when it deprived the appellant in its order of March 11, 1955 of the right to file his answer and the right to a hearing by considering the case submitted on the *ex parte* evidence aforementioned?

(d) Is the decision of March 29, 1955, based on the order of March 11, 1955, and aforementioned *ex parte* evidence or appellee Maniego valid?

(e) Did the lower court act within the proper exercise of sound discretion when by its resolution of June 15, 1955, it denied to reconsider its aforesaid decision?

The appellant argues (a) that the case was not yet ready for hearing when the court proceeded to hear the same *ex parte* on September 21, 1954, inasmuch as the appellant had not yet filed his answer, for which he could not be blamed as his motion for bill of particulars legally stopped the running of the period of five days to answer, and said motion was not yet resolved; (b) that when the lower court issued its order of March 11, 1955, the only matter submitted to it for consideration was that raised in the motion for bill of particulars; and the order of April 30, 1954 was not brought before it for resolution; (c) that while the court could perfectly deny appellant's motion for bill of particulars, it could not deprive him of the right to file an answer within the five days granted by the order of April 30, 1954; and if there was delay in the filing of said answer, it was due to the failure of the court to resolve the motion for bill of particulars; (d) that the decision of March 29, 1955, being based on incompetent evidence and irregular proceedings held on September 21, 1954, is not valid and legal.

The records reveal that inasmuch as the appellant did not appear for trial on March 9, 1954, he was declared in default while the appellee was allowed to present his evidence; that on March 31, 1954, the appellant moved for the lifting of the order of default and that acting on said motion, the lower court issued the order dated April 30, 1954, providing that:

“In the interest of justice and in order to give the respondent-tenant another chance to present his evidence, said respondent is hereby ordered to file his answer to the complaint within five days from receipt of this order. After the respondent had filed his answer, Atty. Marta Dallo, Commissioner of this Court in Nueva Ecija, is directed to set again this case for hearing and receive the evidence of the respondent, giving him the opportunity to cross examine the petitioner and his witness.”

It is noteworthy that this order did not declare the proceedings during the hearing on March 9, 1954, void. It merely ordered the appellant to file his answer and to appear for hearing to present his evidence and to cross examine appellee’s witnesses. An order setting aside a judgment by default shall not disturb the proceedings already taken, except that the defendant who did not answer and appear for trial shall by opening said judgment be given the right to file his answer and to appear for trial to present his evidence as well as to cross examine complainant’s witnesses.

“Merely opening a judgment or setting aside a final judgment by default, does not necessarily vacate prior proceedings in the case except such as are dependent upon the judgment.” (34 C. J. 386.) “Upon the entry of an order opening a judgment by default, defendant should serve or file his plea or answer, in pursuance of leave granted in the order, or on being ruled so to do, the case should be placed on the calendar or set for trial, and should there upon be proceeded with as if no default had been entered.” (*supra*, 431.)

The decision under consideration (order, of March 29, 1955) based its findings of facts on the evidence presented by appellee Maniego at the hearing held on March 9, 1954. This hearing was never set aside by the order of April 30, 1954, lifting the order of default. It was proper for the lower court to have utilized the evidence presented at such hearing as the basis for its order under appeal. When the appellant did not appear on September 21, 1954, which was fixed for the only purpose of receiving his evidence and giving him the opportunity to cross examine appellee Maniego’s witnesses, there was no need for said appellee to reintroduce his evidence.

We cannot understand why the appellant filed a motion for bill of particulars when in his motion for lifting the order of default, he had set forth clearly his defenses and set-offs. For

cause and effect, it is to be assumed that when one is definite in his defense, he is fully aware of the exact claims against him. Moreover, as the lower court had pointed out, inasmuch as the particular averments of appellee Maniego could be determined from the evidence already submitted and shown in the records, and if the appellant was really interested in the adjudication of his case, he could easily have examined said records and there was no need for any bill of particulars. By several motions for continuance, motion for bill of particulars," and subsequently blaming the lower court for delayed action on said motions, the appellant in effect had tried to avert due administration of justice.

Granting that appellant's motion for bill of particulars was not immediately resolved, and that in the meantime the five-day period within which to answer was suspended, there was still time to file the required answer after the appellant had received the order denying his motion on March 9, 1955. Within five days from the latter date, he had ample opportunity to do so. But he did not.

Wherefore, the decision appealed from is affirmed. So ordered, with costs against the appellant.

*Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L. and Felix, JJ., concur.*