

CELESTINO PAHILANGA, PETITIONER, VS. HON. ARTEMON D. LUNA, JUDGE CFI OF NEGROS OCCIDENTAL, BR. I, FUNDADOR PAHILANGA, ANTERO PAHILANGA, CARLOS PAHILANGA, ENRIQUETA P. VECERA, AN...

G.R. No. L-48724. August 29, 1988

Ponente: CORTES, J.

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CORTES, J.:

It is basic that the defendant's failure to file an answer within the reglementary period or the extension granted entitles the plaintiff, upon proper motion, to an order of default. Absent any cogent reason for setting aside the default order, as in the instant case, the denial of a motion to lift such default order must be sustained.

The antecedent facts are simple.

Private respondents, the brothers and sisters of the petitioner, Celestino Pahilanga, filed on June 18, 1977 before the Court of First Instance of Negros Occidental, Branch I, Silay City a complaint for reconveyance of their shares as co-heirs and co-owners of Lot No. 372, Talisay, Negros Occidental Cadastre and for damages against the petitioner. Summons was served on the petitioner thru his wife on February 28, 1978.

On March 27, 1978, counsel for the petitioner filed in the court below a motion for an extension of ten days counted from March 28, 1978, within which to file his answer to the complaint. The court in an order dated April 3, 1978 required petitioner to explain within five days from receipt of the order why his motion should not be denied considering that the reglementary period has lapsed and hence, there was no more period to be extended. Petitioner's counsel submitted an explanation stating that according to his client's recollection, summons was served on March 13, 1978.

On April 5, 1978, while the petitioner's motion for extension was still pending resolution, the respondent judge, upon motion of the private respondents, issued an order declaring the petitioner in default and authorizing the private respondents to present their evidence ex-parte on June 19, 1978.

On July 6, 1978, petitioner filed a motion to set aside the order of default, which was denied. A motion for reconsideration was filed by petitioner, alleging denial of due process, considering that there was a valid reason for the delay in filing his motion for extension, i.e. his alleged illness (neuro-arthritis). This was also denied; hence, petitioner filed this special civil action for certiorari and mandamus with application for a writ of preliminary injunction.

This case calls for a determination of whether respondent judge gravely abused his discretion when he denied the motion to lift the default order.

The record shows that the validity of the default order is beyond question. The undisputed fact is that summons and a copy of the complaint were served on the petitioner, through his wife, on February 28, 1978. Petitioner

himself admitted in paragraph III of his petition that he was "undergoing treatment of (sic) neuro-arthritis (knee bilateral) which, un-able (sic) him to walk, when he received the summons and complaint on February 28, 1978 through his wife, Encarnacion Pahilanga." [Rollo, p. 9] Consequently, the 15-day period within which to file an answer should be reckoned from this date. As petitioner failed to file an answer or a motion for extension within the reglementary period which expired on March 15, 1978, he was properly declared in default. His motion for extension of time to file answer was correctly denied by the trial judge inasmuch as when it was filed on March 24, 1978, the reglementary period had already lapsed and consequently, there was no longer any period to extend. A motion for extension filed beyond the period sought to be extended without any proper showing of a valid excuse for the delay in filing said motion does not merit the court's approval [Quirante v. Verano, G. R. No. L-30207, February 27, 1971, 37 SCRA 801.] The petitioner in his motion to set aside the order of default alleges honest mistake or excusable negligence, claiming that since he was already very old and feeble-minded and has just recovered from a bout of "neuro-arthritis,[*]" he can hardly remember the exact date when he was served with summons and a copy of the complaint. So, when his counsel prodded him to remember the exact date when he was served with summons, he answered that probably, it was a week before March 22 (the date he engaged the services of his counsel) or on March 13, 1978. Accordingly, his counsel jotted down the said date on the petitioner's copy of the summons as the date of receipt.

Petitioner's avowed excuses for the delay in filing an answer deserve scant consideration.

First. Petitioner's conflicting statements as to his alleged illness create serious doubt as to their veracity. Originally, he claimed in his explanation to the lower court that he suffered from a bout of "heart attack" [Rollo, p. 21.] In his motion to set aside order of default, however, he alleged "neuro-arthritis" as his ailment [Rollo, p. 31.]

Second. Even granting that he was indeed ill with neuro-arthritis, the medical certificate signed by his doctor shows that such illness disabled him from walking only "since March 20, 1978 up to the present (July 3, 1978)". [Rollo, p. 44.] There was no proof at all that he was ailing during the pendency of the reglementary period and that such illness prevented him from consulting a lawyer regarding the summons served upon him. His receipt of the summons should have prompted him to immediately engage the services of counsel for ". . . (t)he purpose of summons is to give notice to the defendant or respondent that an action has been commenced against him. The defendant or respondent is thus put on guard as to the demands of plaintiffs or petitioners." (Far Corporation v. Francisco, G.R. No. L-57218, December 12, 1986, 146 SCRA 197, 204.) Ordinary prudence dictates that petitioner, upon receipt of the summons, should consult a lawyer about the case, involving as it does his property rights and a demand for reconveyance of real property as well as payment of damages.

While this Court has recognized that an order of default is not proper where defendant's failure to file her answer on time was due to illness which prevented her from consulting a lawyer about her case within the period fixed by law [Ladislao v. Pestano, 96 Phil. 890 (1955)], this ruling finds no application here. In the aforesaid case, the defendant fell ill on the third day after summons was served on her and such illness lasted for 45 days, thus effectively preventing the defendant from preparing an answer. On the other hand, the petitioner's illness in this case disabled him only after the period to answer has expired. Such illness therefore constitutes no valid excuse for setting aside the default order.

This Tribunal's pronouncement in *Malipol v. Tan* [G.R. No. L-27730, January 21, 1974, 53 SCRA 202, 208] cannot be more emphatic:

. . . It is within the sound discretion of the court to set aside an order of default and to permit a defendant to file his answer and to be heard on the merits even after the reglementary period for the filing of the answer has expired, but it is not error, or an abuse of discretion, on the part of the court to refuse to set aside its order of

default and to refuse to accept the answer where it finds no justifiable reason for the delay in the filing of the answer. In motions for reconsideration of an order of default, the moving party has the burden of showing such diligence as would justify his being excused from not filing the answer within the reglementary period as provided by the Rules of Court, otherwise, these guidelines for an orderly and expeditious procedure would be rendered meaningless. Unless it is shown clearly that a party has justifiable reason for the delay the court will not ordinarily exercise its discretion in his favor [Underscoring supplied.]

Earlier, this Court had already stressed that

. . It is not enough that no order of default has yet been issued by the court or that there may be valid defenses which a defendant may interpose in order that the default order may be set aside. Equally important is a proper showing why a party may be justifiably excused for disregarding the reglementary period provided for by the Rules of Court within which such party should submit his answer. . . . [Quirante v. Verano, supra at 804; Underscoring supplied.]

Furthermore, the motion to lift the order of default was properly denied in view of the absence of any meritorious defense interposed by petitioner. In merely alleging that he "purchased the property from third persons in good faith and for valuable consideration" and "besides, the same property has been transferred to third persons already" (Rollo, p. 31], petitioner failed to establish prima facie a valid defense, thus, a lifting of the default order was not warranted. For as this Court once observed, nothing would be gained by having the order of default set aside where the party held in default has no valid defense in his favor for in such case, he will just the same fail on the merits even if the default order is lifted (Development Insurance Corporation v. Intermediate Appellate Court, G.R. No. 71360, July 16, 1986, 143 SCRA 62.)

IN VIEW OF THE FOREGOING, the Court finds no grave abuse of discretion attributable to the respondent judge and hereby DISMISSES the instant special civil action and AFFIRMS the order of the respondent judge denying the motion to set aside the order of default. The temporary restraining order issued by this Court is lifted.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[*] Petitioner had attached a copy of the medical certificate to the herein petition to support his claim of illness. [Rollo. p. 44.]

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