

MADRIGAL SHIPPING COMPANY, INC., PETITIONER, VS. JESUS G. OGILVIE, SALVADOR ORTILE, MIGUEL M. FERMIN, ANTONIO C. MILITAR AND THE COURT OF APPEALS, RESPONDENTS.

G. R. No. L-8431. October 30, 1958

Ponente: PADILLA, J.

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PADILLA, J.:

Jesus G. Ogilvie, Salvador Ortile, Miguel M. Fermin and Antonio C. Militar brought an action in the Court of First Instance of Manila to collect from the Madrigal Shipping Company, Inc., the aggregate sum of P12,104.50 for salaries and subsistence from 19 March to 30 September 1948 (Civil No. 8446, Annex A). The defendant moved for the dismissal of the complaint on the ground of lack of jurisdiction over the subject matter of the action (Annex B). The Court denied the motion and directed the defendant to answer the complaint within ten days from receipt of a copy of the order (Annex C). As the defendant failed to answer the complaint as directed, upon motion of the plaintiffs (Annex D) the Court declared it in default and set the case for hearing on 30 September 1949 (Annex E). The defendant filed a motion to set aside the order of default (Annex F) which was denied (Annex I). A motion for reconsideration of the previous order (Annex J) was likewise denied (Annex K). The defendant filed a petition for a writ of certiorari with preliminary injunction in this Court to annul and set aside the order of default, which was dismissed for the reason that appeal was the proper remedy (Annex L).[1] The trial court then proceeded to hear the plaintiffs' evidence and after the hearing it rendered judgment dismissing the plaintiffs' complaint upon the sole ground that the plaintiffs failed to prove that the defendant is a corporation duly organized and existing under the laws of the Philippines. A motion was filed praying that plaintiffs be allowed to submit evidence to prove that the defendant is a duly organized and existing corporation under the laws of the Philippines (Annex O), which was granted (Annex P). After hearing the additional evidence presented by the plaintiffs showing that the defendant is an organized and existing juridical entity under the laws of the Philippines, the trial court dismissed the complaint on the ground that the evidence was not new but forgotten (Annex Q). The plaintiffs appealed to the Court of Appeals. The judgment appealed from was reversed and the defendant was ordered to pay Jesus G. Ogilvie the sum of P3,226.50 and Salvador Ortile, Miguel M. Fermin and Antonio C. Militar the sum of P2,934 each. The defendant has brought the case to this Court by way of certiorari to have the judgment of the Court of Appeals reviewed.

The respondents herein, appellants in the Court of Appeals, did not furnish the herein petitioner, defendant in the court of first instance, with a copy of their brief in the Court of Appeals for the reason that as the petitioner had been declared in default by the trial court it had lost its standing in court and hence was not entitled to service of appellants' brief on appeal. In a special division of five justices of the Court of Appeals, a majority of four and one dissenting upheld the respondents contention that the case was deemed submitted and ready for disposition or judgment, and proceeded to determine the case on appeal without the petitioner's brief, a view now assailed by the petitioner who claims that it had been deprived of its day in court.

In *Lim To Co vs. Go Fay*, 80 Phil. 166, interpreting section 9, Rule 27, which provides:

No service of papers shall be necessary on a party in default except when he files a motion to set aside the order of default, in which event he is entitled to notice of all further proceedings, this Court held that "a defendant in default is not entitled to notice of the proceedings until the final termination of the case, and therefore he has no right to be heard or file brief or memoranda on appeal." [1]

A defendant in default loses his standing in or is considered out of Court, and consequently can not appear in court; adduce evidence; and be heard, and for that reason he is not entitled to notice. If he is not entitled to notice of the proceedings in the case and to be heard, he can not appeal from the judgment rendered by the court on the merits, because he can not file a notice of appeal, and file an appeal bond and the record on appeal, for approval by the court. The only exception provided by law is when the defendant in default files a motion to set aside the order of default on the grounds stated in Rule 38 "in which event he is entitled to notice of all further proceedings." That a defendant in default can not be heard in the suit, not only in the trial court but also in the final hearing, that is, on appeal which is part of the proceedings in a suit, is the ruling laid down for guidance of courts and practitioners by this Court in the case of *Velez vs. Ramos*, 40 Phil., 787, * * *. (Lim To Co vs. Go Fay, supra, p. 169.)

And the remedy available to a party who was declared in default to regain his standing in court and be entitled once more to notice of the proceedings is to move for the setting aside of the order of default under section 2, Rule 38 and to appeal therefrom if denied. [2]

Counsel argue that an order of default being interlocutory, the petitioner could not appeal therefrom. True, but from a denial of a motion to set aside an order of default, as the petitioner's "urgent motion to set aside order of default" (Annex F), which may be deemed to fall under section 2, Rule 38, the petitioner could have appealed. Instead of taking an appeal from such denial, the petitioner chose to bring the matter to this Court by a petition for a writ of certiorari with a prayer for a writ of preliminary injunction which was correctly dismissed for the remedy was an appeal from the order denying the motion to set aside the order of default entered against the petitioner because of mistake or excusable neglect. Not having appealed from the order denying the motion to set aside the order of default under section 2, Rule 38, the order of default remained in force with all the consequences that the party against whom it had been entered must suffer. One of them is the loss of the right to be served with the brief of the herein respondents, appellants in the Court of Appeals.

Turning now to the merits of the case, the Court of Appeals found that the services of Jesus G. Ogilvie, Salvador Ortile, Antonio C. Militar and Miguel M. Fermin were engaged by Manuel Mascuñana, master or captain employed by the petitioner Madrigal Shipping Company, Inc., to man and fetch the vessel "S.S. Bridge" from Sasebu, Japan, as evidenced by a contract executed on 24 December 1947 in Manila (Exhibit A), the pertinent provision of which is as follows:

(a) The several persons whose names are hereto subscribed, and whose descriptions are contained herein, engaged as seamen, hereby agree to serve on board the S.S. Bridge of which M. MASCUÑANA is master, in the several capacities expressed against their respective names, on a voyage from THE CREW WILL ENPLANE FROM MANILA TO JAPAN. IN JAPAN THE CREW WILL MAN THE SHIP TO MANILA. THIS CONTRACT EXPIRES ON THE ARRIVAL OF THIS BOAT AT THE PORT OF MANILA. EXTENSION OF THIS CONTRACT IS VALID ONLY WHEN SIGNED BY THE OFFICIAL SKIPPER.

On 7 January 1948, another contract of similar terms and conditions was executed in Manila before the Consul General of the Republic of Panama (Exhibit A-1) for the reason that the S.S. Bridge was registered under the laws of that Republic. Pursuant thereto the respondents were flown to Sasebu, Japan, and they manned the vessel out of the port of Sasebu. On 16 March 1948, when the vessel reached Hongkong, the respondents were dismissed and replaced by a crew of Chinese nationality. The respondents were flown back to Manila and paid their respective salaries up to the date of their dismissal. The total sum of P12,104.50 which the respondents seek to collect

represents salaries and subsistence allowance from 17 March 1948 to 30 September 1948 when the vessel arrived in the port of Manila.

In its motion to dismiss the complaint the petitioner invoked and relied solely upon lack of jurisdiction of the court over the subject matter of the action and did not deny ownership of the S.S. Bridge nor disavow the authority of Manuel Mascuñana, its captain, to engage the services of the respondents. More, in the answer of the petitioner (Annex H) attached to its "urgent motion to set aside order of default" (Annex F), the averments under its special defenses substantially admit the allegations of the respondents' complaint. The termination of the services of the respondents as members of the crew was not due to their fault. Upon the ship's arrival in Hongkong it was found that repairs had to be made on her before she could proceed on her voyage to Manila. A motion to dismiss an action must include all the grounds available at the time of its filing, and all grounds not so included are deemed waived, except lack of jurisdiction over the subject matter.[1] In the same motion to dismiss the complaint the petitioner, defendant in the court of first instance, alleged that "On the date of the execution of the service contract between the plaintiffs and the defendant (January 7, 1948), the subject vessel was in Sasebu, Japan, * * *," thereby implying that the petitioner in truth and in fact contracted the services of the respondents, plaintiffs in the court of first instance, to man its vessel. Furthermore, Moises J. Lopez, manager of the defendant shipping company, testified that he recalled having contracted the services of several persons to form a crew to man the S.S. Bridge belonging to the petitioner. How could the latter now disclaim ownership of the S.S. Bridge and the authority of Manuel Mascunana, its captain, to engage the services of the respondents?

Granting that the petitioner may not be sued for lack of juridical personality, as held by the trial court, and pressed by its counsel in this Court, it is now estopped from denying the existence of such personality to evade responsibility on the contract it had entered into, because it has taken advantage of the respondents' services and has profited thereby. Moreover, the trial court committed an error when it refused to take into account the evidence presented by the respondents to prove that the petitioner was a corporation duly organized and existing under the laws of the Philippines, the documents showing that fact having been reconstituted only after the first hearing of the case, upon the sole ground that it was not new but forgotten evidence. Such ground could be relied upon to deny a motion for new trial, but not after the motion had been granted, for official or public documents presented to show or prove the juridical personality or entity of a party to an action not known or available at the first hearing could not be ignored. The trial court could not close its eyes to reality.

Again, granting that it was not the Madrigal Shipping Company, Inc., that owned the S.S. Bridge but the Madrigal & Company, a corporation with a juridical personality distinct from the former, yet as the former was the subsidiary of the latter, and that the former was a business conduit of the latter, as found by the Court of Appeals, the fiction of corporate existence may be disregarded and the real party ordered to pay the respondents their just due.

The services of the respondents were engaged by the petitioner to man its vessel for a determinate time or voyage, with an express stipulation that "this contract expires on the arrival of this boat at the port of Manila." Article 605 of the Code of Commerce provides:

If the contracts of the captain and members of the crew with the ship agent should be for a definite period or voyage, they may not be discharged until after the fulfillment of their contracts except by reason of insubordination in serious matters, robbery, theft, habitual drunkenness, or damage caused to the vessel or its cargo through malice or manifest or proven negligence.

Not having been discharged for any of the causes enumerated in the foregoing article, the respondents are entitled to the amounts they respectively seek to collect from the petitioner.

The petition is denied, with costs against the petitioner.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[1]Minute Resolution of 29 December 1949, Madrigal Shipping , Inc. va. Pecson, G. R. No. L-3484.

[1]Sitchon vs. Provincial Sheriff of Occidental Negros, 45 Off. Gaz. Supp.No. 9, 25; 80 Phil., 397, Gequillana vs. Buenaventura, 48 Off. Gaz., 63, 87 Phil., 301.

[2]Tecson vs. Melendres, 88 Phil., 703.

[1]Section 8, Rule 26; Rili vs. Chunaco, 48 Off. Gaz. 614; 87 Phil, 545.

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