

**LEDESMA OVERSEAS SHIPPING CORPORATION, PETITIONER, VS.
HON. CELSO AVELINO, IN HIS CAPACITY AS PRESIDING JUDGE OF
CFI OF CEBU, BRANCH XIII, AND CEBU STEVEDORING CO., INC.,
RESPON...**

G.R. No. L-47698. April 28, 1978

Ponente: FERNANDO, J.

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FERNANDO, J.:

The stress of petitioner Ledesma Overseas Shipping Corporation in this certiorari petition, and quite understandably too, is on the failure of respondent Judge Celso Avelino to abide by the mandate of procedural due process. Such allegation it would justify by the claim that notwithstanding the fact that under a compromise agreement, submitted to the Court as its answer, its liability was fixed in the amount of P8,388.74, the judgment sought to be set aside increased its liability to P16,388.74, plus the additional sums of P1,000.00 as attorney's fees and P1,000.00 as costs and expenses of litigation. Such decision, moreover, was arrived at after an ex-parte hearing, petitioner being declared in default. A motion under oath to have such order lifted and the decision reconsidered proved futile. Private respondent Cebu Stevedoring Co., Inc. could not very well deny that there was truth in the above assertions. An even more impressive argument for the stand taken by petitioner is that with the pleading submitted by it as its answer embodying the compromise agreement, a default order was not warranted. Respondent Judge apparently could not free himself from the fetters of technicality in acting the way he did. Petitioner, in the light of the above undisputed facts, had made out a case for certiorari. It has been the constant holding of this Court since the leading case of *Coombs v. Santos*[1] that a motion to set aside an order of default should be viewed with sympathy, the appropriate judicial response being one of liberality. There is relevance to these words of Chief Justice Concepcion in *Mata v. Flores*: [2] "[A] serious danger of committing a grave injustice would exist if [petitioner] were denied an opportunity, at least, to introduce evidence on their behalf." [3] That basic principle was ignored by respondent Judge. The procedure followed by respondent Judge is likewise marred by the fact that a default order could have been avoided in the first place as he had cognizance of the compromise entered into, although not formally submitted in the way it should be, but specifically referred to as the answer in a communication sent to him. Again, under a liberal interpretation of the Rules of Court, that ought to suffice and to preclude the issuance of an order of default. [4] The assailed decision must be set aside.

The compromise entered into on January 21, 1976 between petitioner and private respondent is in the form of a letter signed by Jaime L. Ledesma as Executive Vice-President of petitioner addressed to private respondent and worded thus: "This is in connection with our outstanding account balance of P18,834.69 due to the discharging of M/V 'LEDESCO UNO.' As per our agreement yesterday, we shall pay you the sum of P10,000.00 and the balance payable within 60 days. Furthermore, we agreed to waive our claims for a deduction of P726.28 per Bill No. 7-72 and on your part the interest thereof. Please sign on the space provided below to confirm your agreement. Thank you for your cooperation." [5] It was duly signed on behalf of private respondent by its official, Romulo Robles by name. As admitted by it in its answer, such "agreement between the [parties]" was furnished respondent Judge on

January 22, 1976.[6] Moreover, such letter contained the following explicit affirmation that it was intended as the answer: "In connection with the above case, please find enclosed copy of the agreement between the plaintiff and ourselves. By copy of this letter, we would advise that this is our Answer to the summons as stated above." [7] Nonetheless, private respondent did rely on the fact that "petitioner did not file any responsive pleading and neither however did it pay the balance of P8,388.74 within the stipulated period as stated above." [8] After several incidents before respondent Judge, private respondent, on February 7, 1977, filed a motion for declaration of default. [9] It was granted by respondent Judge in an order dated February 17, 1977. It was then allowed to present its evidence ex-parte, resulting in a decision dated June 2, 1977, increasing its liability to the much bigger amount, as noted at the outset. [10] As likewise previously mentioned, the motion under oath to set aside the decision by default and for new trial proved futile. Hence this certiorari petition.

To repeat, the petition is impressed with merit.

1. As far back as 1913, in the aforesaid leading case of *Coombs v. Santos*, Justice Trent as ponente explained why a default judgment may be tainted with infirmity: "A default judgment does not pretend to be based upon the merits of the controversy. Its existence is justified on the ground that it is the one final expedient to induce the defendant to join issue upon the allegations tendered by the plaintiff, and to do so without unnecessary delay. A judgment by default may amount to a positive and considerable injustice to the defendant; and the possibility of such serious consequences necessitates a careful examination of the grounds upon which the defendant asks that it be set aside." [11] Such a doctrine has been subsequently followed, the latest case being *Pineda v. Court of Appeals*. [12] In *Amante v. Suñga*, [13] a 1975 decision, this Court, through Justice Antonio, reiterated in emphatic language the reason for such a liberal approach. Thus: "In the attendant circumstances, We cannot perceive how the interest of justice was served and promoted by the precipitate action of the trial court. A default judgment does not pretend to be based on the merits of the controversy. Its existence is justified by expediency. It may, however, amount to a positive and considerable injustice to the defendant. The possibility of such serious consequences necessarily requires a careful examination of the circumstances under which a default order was issued. And when no real injury would result to the interests of the plaintiff by the reopening of the case, the only objection to such action would, therefore, be solely on a technicality. On such an infirm foundation, it would be a grievous error to sacrifice the substantial rights of a litigant. For the rules should be liberally construed in order to promote their objective in assisting the parties in obtaining just, speedy and inexpensive determination of their cases." [14] It is obvious, in the light of the above excerpts from Chief Justice Concepcion and Justices Trent and Antonio, why a failure to abide by such controlling norm may raise a due process question. It cannot be denied that with the opportunity afforded the prevailing plaintiff to present evidence ex-parte, the defendant is denied the right to a hearing which is an indispensable element of due process. The probability of injustice being inflicted on one of the parties, repugnant to this basic constitutional law precept, precisely mandates a liberal approach to a motion to set aside a default order. In appropriate circumstances then, and this is one of them, the invocation of the protection of the procedural due process guarantee is warranted.

2. An infirmity of an equally serious character that calls for the grant of the certiorari petition was the lack of support in law for the declaration of default. The answer of private respondent Cebu Stevedoring Co., Inc. cannot be any more explicit: "That under date Jan. 22, 1976, defendant through Mr. Jaime L. Ledesma, Executive Vice-President of Ledesma Overseas Shipping Corp. filed a letter with the Honorable Court below enclosing thereto an agreement between the plaintiff and defendant signed on Jan. 21, 1976. The letter of Jan. 22, 1976 reads in part: 'In connection with the above case, please find enclosed a copy of the agreement between the plaintiff and ourselves. By copy of this letter, we would advise that this is our Answer to the summons as stated above.' 4. That the agreement dated Jan. 21, 1976 referred to above by Capt. Romulo Robles, representing the plaintiff and Mr. Jaime L. Ledesma, representing the defendant reads in part: 'This is in connection with our

outstanding account balance of P18,834.69 due to the discharging of M/V "LEDESCO UNO." As per our Agreement yesterday, we shall pay you the sum of P10,000.00 and the balance deducting P726.28 payable within 60 days.' (underscoring supplied)."[15] Neither respondent Judge, therefore, much less private respondent, could very well assert that no answer was filed by petitioner. The Rules of Court cannot be any clearer. Only where there is failure by defendant to answer within the time specified may a court, upon motion of the plaintiff and proof of such failure, "declare the defendant in default." [16] It is to be admitted that counsel for petitioner, perhaps due to inexperience, failed to file its answer in the proper form. Nonetheless, respondent Judge ought to have been more cautious and prudent and ought to have refrained from taking the step he did. There was no default on the part of petitioner. Even private respondent, in the answer to this petition, admitted as much, as evidenced by the portion quoted above. This palpable fact adds reinforcement to the plea of petitioner that such order, improvidently and erroneously granted, ought to have been set aside and petitioner as defendant in the suit before respondent Judge allowed to present its evidence.

3. The liberal approach in the interpretation of procedural rules goes back to the leading case of *Alonzo v. Villamor*, [17] a 1910 decision. In the oft-quoted language of Justice Moreland: "Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities." [18] An excerpt from the recent opinion of Justice Barredo in *Lim Tanhu v. Ramolete* [19] is apropos: "After careful scrutiny of all the above-related proceedings in the court below and mature deliberation, the Court has arrived at the conclusion that petitioners should be granted relief, if only to stress emphatically once more that the rules of procedure may not be misused and abused as instruments for the denial of substantial justice. A review of the record of this case immediately discloses that here is another demonstrative instance of how some members of the bar, availing of their proficiency in invoking the letter of the rules without regard to their real spirit and intent, succeed in inducing courts to act contrary to the dictates of justice and equity, and, in some instances, to wittingly or unwittingly abet unfair advantage by ironically camouflaging their actuations as earnest efforts to satisfy the public clamor for speedy disposition of litigations, forgetting all the while that the plain injunction of Section 2 of Rule 1 is that the 'rules shall be liberally construed in order to promote their object and to assist the parties in obtaining' not only 'speedy' but more imperatively, 'just * * * and inexpensive determination of every action and proceeding.'" [20]

4. It is thus obvious that petitioner is entitled to a remedy. The last question is what form it should take. As a matter of strict law, it would suffice if the case be remanded to respondent Judge to enable petitioner to present its evidence, after which a decision could be rendered. Since certiorari is equitable in character, however, this Court could fashion a remedy much more appropriate and thus put an end to the controversy, considering that the only defense of petitioner is the compromise agreement. It is worth noting that even in an ordinary appeal, not a special civil action, such a principle has been followed. The latest expression of such a doctrine comes from the pen of Justice Aquino, the ponente in *Gayos v. Gayos*: [21] "Since the parties in their briefs and pleadings and the lower court in its order under appeal discussed the legality of whether the Gayos spouses could be regarded as the true owners of the homestead registered in their daughter's name, that issue might as well be passed upon in this appeal. For 'it is a cherished rule of procedure that a court should always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation.'" [22] Private respondent should be held bound to the compromise agreement. The liability of petitioner then is limited to the amount of P8,388.74. That sum was due and owing sixty days from January 21, 1976. It ought to have been paid on March 21, 1976. Petitioner was remiss of its obligation. It failed to do so. As of the next day then, it is liable for interest in the above sum. With the view this Court takes of this litigation in the above manner, it could be closed and terminated.

WHEREFORE, the writ of certiorari is granted and the decision promulgated by respondent Judge inaccurately captioned by him as an order dated June 2, 1977 is nullified and set aside. A new decision is entered, petitioner being adjudged liable for the sum of P8,388.74 with legal interest at six per cent from and after March 22, 1976 until fully paid. No costs.

Antonio, Concepcion, Jr., and Santos, JJ., concur.

Barredo, J., concurs in a separate opinion.

Aquino, J., see concurring opinion attached.

[1] 24 Phil. 446 (1913).

[2] L-26047, October 30, 1968, 25 SCRA 876.

[3] Ibid, 881.

[4] Cf. Rosario v. Alonzo, 118 Phil. 404 (1963).

[5] Annex A of Complaint.

[6] Answer, Discussion, par. 3.

[7] Ibid.

[8] Ibid, par. 5.

[9] Ibid, par. 10.

[10] Petition, Annex B.

[11] 24 Phil. 446, 449-450.

[12] L-35583, September 30, 1975, 67 SCRA 228. The other cases follow: Bañares v. Flordeliza, 51 Phil. 786 (1928); Centeno v. Centeno, 52 Phil. 332 (1928); Camus v. Paulino, 59 Phil. 411 (1934); Quirino v. Philippine National Bank, 101 Phil. 705 (1957); Macaraig v. Dy Sun, 105 Phil. 332 (1959); Mendez v. Seng Kiam, 108 Phil. 109 (1960); Maribojoc v. De Guzman, 109 Phil. 833 (1960); Comeda v. Cajilog, 117 Phil. 789 (1963); Tuason v. Fernandez, 120 Phil. 1023 (1964); Quetulio v. Ganitano, L-21173, June 23, 1966, 17 SCRA 447; Tumaming v. Ganson, L-17456, Oct. 22, 1966, 18 SCRA 411; Mata v. Flores, L-26047, Oct. 30, 1968, 25 SCRA 876.

[13] L-40491, May 28, 1975, 64 SCRA 192.

[14] Ibid, 196-197.

[15] Answer, Discussion, pars. 3-4.

[16] Section 1 of Rule 18 reads as follows: "Judgment by default. - If the defendant fails to answer within the time specified in these rules, the court shall, upon motion of the plaintiff and proof of such failure, declare the defendant in default. Thereupon the court shall proceed to receive the plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant. This provision applies where no answer is made to a counterclaim, cross-claim, or third-party complaint within the period provided in these rules."

[17] 16 Phil. 315.

[18] Ibid, 322.

[19] L-40098, August 29, 1975, 66 SCRA 425.

[20] Ibid, 441-442.

[21] L-27812, September 26, 1975, 67 SCRA 146.

[22] Ibid, 151. The opinion cited *Marquez v. Marquez*, 73 Phil. 74 (1941) and *Keramil Industries, Inc. v. Guerrero*, L-38866, November 20, 1974, 61 SCRA 285.

CONCURRING OPINION

BARREDO, J.:

I concur in the concurring opinion of Justice Aquino, and additionally, I would like to emphasize that as I view the maneuver of private respondent of filing a motion for default after petitioner had paid the P10,000 down payment stipulated in the compromise agreement, it smacks of a trick to entice the petitioner to pay immediately said sum on the promise that the total amount of the obligation would be reduced, only to recover the original amount afterwards. Respondent judge who was aware of the compromise agreement ought to have perceived such manifestly unfair objective, considering that at the time the motion for default was submitted to him, hardly 26 days of the 60-day period for the payment of the balance of P8,388.74 had expired. And nowhere is it shown that the compromise was vitiated by any invalidating circumstance. Indeed, the order granting the motion for default and the ex-parte decision in question are incomprehensible. At the very least, the compromise agreement should have been considered by the court as a defense to reduce the liability of petitioner.

I do not find anything procedurally wrong with the letter of petitioner to respondent judge advising the latter of the compromise. The same should have been deemed as a motion for judgment on compromise, and if there was any doubt as to its authenticity and due execution, all that should have been done was to ask the plaintiff to comment thereon and set the motion for hearing. Actually, from what appears in the record, there is no dispute as to its genuineness and validity, hence the virtual motion for judgment on compromise instead of private respondent's motion for default should have been the one resolved.

The main opinion indicates that the ordinary remedy here, after Our holding that default was improperly declared and the default judgment was unwarranted, is to set aside said order and judgment and return this case for further proceedings, hence resort has to be made to the Supreme Court's broad power of supervision in order to cut this proceeding short by the Court now rendering the proper judgment embodied in the main opinion. I believe that what is more appropriate is for Us to consider the present petition as one for review of the default judgment in question under Republic Act 5440, and since there is no doubt that said judgment is irregular and legally erroneous, all We have to do is to reverse the same by rendering judgment on the basis of the compromise, thus reducing the liability of petitioner to that stated in the dispositive portion of the main opinion of Justice Fernando. We do not have to avail of Our extraordinary powers to correct the obviously irregular and unwarranted actuations of respondent court in this case.

CONCURRING OPINION

AQUINO, J.:

I concur. The parties on January 21, 1976 entered into an extrajudicial compromise whereby the claim of private respondent in the sum of P26,388.74 was reduced to P18,388.74 on condition that P10,000 of that amount would be paid immediately and the balance of P8,388.74 would be paid within 60 days from January 21 or on or before March 21, 1976. Romulo Robles, the manager of private respondent, signed the compromise agreement under the word "CONFORME". Pursuant to the compromise, the petitioner paid P10,000 to private respondent on January 21, 1976. Hence, the compromise was partly performed.

On the following day, January 22, 1976, the petitioner wrote to respondent Judge, enclosing a copy of the compromise agreement and informing the latter that the compromise should be treated as petitioner's answer. In spite of that letter, respondent Judge, upon respondent's ex parte motion, declared the petitioner in default in his order of February 17, 1976, which was issued before the expiration of the 60-day period for paying the balance of P8,388.74.

On the basis of private respondent's evidence, which was presented ex parte, respondent Judge rendered judgment ordering the petitioner to pay the private respondent the sum of P16,388.74 with 12% interest per annum beginning December 4, 1975, plus P2,000 as attorney's fees and litigation expenses.

Respondent Judge did not mention in his decision the extrajudicial compromise of which he had been duly apprised. That compromise has the force of res judicata (Art. 2037, Civil Code). Before asking that the petitioner be declared in default, the private respondent, as a matter of fairness, should have moved to set aside the compromise or should have informed the petitioner that it was no longer bound by it.

As the private respondent accepted the sum of P10,000, which was paid under the compromise agreement, and as the sixty-day period for paying the balance of P8,388.74 had not yet expired, when it asked that the petitioner be declared in default, the maneuver of the private respondent in securing ex parte an order of default seems to be vitiated by extrinsic or collateral fraud.

Because the compromise had not been set aside and on considerations of equity and fair dealing, I agree that the judgment for P16,388.74 should be reversed and that the petitioner should be held liable only for the balance of P8,388.74 with 6% interest per annum from March 22, 1976.

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