

SOLEDAD QUIRANTE, MERCEDES YULO, SEVERINO DETOYATO AND LEONOR ORTOÑO, PETITIONERS-APPELLANTS, VS. THE SPOUSES RAYMUNDO AND PURA VERANO, AND HON. ALEJANDRO DINSAY, MUNICIPAL JUDG...

G.R. No. L-30207. February 27, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal from the decision of the Court of First Instance of Negros Occidental (Bacolod City) dismissing the petition for certiorari filed therein by appellants, Civil Case No. 8164, to set aside the actuations of the Bacolod City Court in a case of illegal detainer brought by the appellees against the appellants, Civil Case No. 5106.

The facts are stipulated. The complaint for illegal detainer was filed on December 14, 1966. Summons was served on the defendant on December 19, 1966, requiring them to answer "in not less than 2 days nor more than 5 days after the service," and setting the case for trial on January 11, 1967. No answer was filed within the period stated. On the date set for the trial counsel for the defendants filed a motion for a 15-day extension within which to answer. On the same day counsel for the plaintiffs moved that the defendants be declared in default. Of this motion the defendants were not notified. The City Court, however, granted their counsel 5 days within which to present a memorandum in support of his motion for extension.

On January 14, 1967 the defendants filed their answer. On January 27 after both parties submitted their respective memoranda, the City Court issued an order denying the defendants' motion for extension and at the same time declaring them in default, and further authorizing the plaintiffs to present their evidence before the Clerk of Court.

On February 2, 1967 the defendants filed a motion to set aside the order of default. This was denied in an order dated February 11. On February 17 the defendants moved to reconsider the order of February 11, and again the motion was denied in an order dated March 4.

Pursuant to the order of January 27, the plaintiffs presented their evidence ex-parte before the Clerk of Court on March 6, 1967, and on the same date the Court rendered its decision in their favor. On March 9 they moved for execution. On March 13 the defendants opposed and moved for reconsideration of the decision, which motion was denied on March 15, 1967. Execution was, however, suspended. Thereupon the defendants filed a petition for certiorari with the Court of First Instance, assailing the different orders as well as the decision of the City Court of Bacolod on the following grounds: (1) that a declaration of default is frowned upon judicially and each party should be given his day in court; and (2) that the decision of March 6, 1967 is null and void because no notice of hearing had been given to the petitioners.

The Court of First Instance dismissed the petition, ruling that the proper remedy was appeal from the judgment by default instead of certiorari; and that in any event no grave abuse of discretion was committed by the City

Court.

The decision appealed from is correct. The summons served upon the defendants directed that they should file their answer to the complaint within 5 days pursuant to section 4 of Rule 5. And section 12 of the same Rule provides that "except as provided in section 17 of this Rule (1)[1], if the defendant does not file a written answer within the time designated in the summons, he may be de-clared in default, and the court shall thereupon proceed to hear the testimony of the plaintiff and his witnesses, and shall render judgment for the plaintiff in accordance with the facts alleged and proved."

The argument that default orders are judicially frowned upon is true only in meritorious cases, that is, where the failure to file an answer on time was due to fraud, accident, mistake or excusable negligence and when the existence of a good and substantial defense has been shown. In the present case, the defendants motion for extension of time within which to answer the complaint was filed only on January 11, 1967, the very date set for the trial, which was 23 days after the service of summons and 18 days after the expiration of the period stated therein. Obviously it was not only the extension asked for that should have been justified, but also the fact that the motion itself was outside the period to be extended.

The following observations of the Court in the decision appealed from are apropos:

"x x x. This apparent lack of diligence therefore of the defendants-petitioners to secure counsel, and/or to explain this negligence on this score must have provided the bases for the lower court to deny said motion.

"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. Otherwise, these guidelines for an orderly and expeditious procedure will be rendered meaningless. In this instance the interval of twenty-six days is significantly long and there is neither in the Stipulation of Facts nor in the exhibits or record anything indicating the reason why the petitioners failed to secure counsel and submit their Answer to the complaint in due time in the lower court. In fact when petitioners thought of securing counsel on January 10, 1967, the period which they should have answered had long lapsed."

It should be observed likewise in this connection that none of the different motions of the defendants to set aside the order of default and the judgment by de-fault was verified, or accompanied by an affidavit of merits. Reference was made to the answer which was tardily filed, but not only was it not verified, but the allegations therein do not constitute good and sub-stantial defenses in the suit for illegal detainer.

The appellants contend that they were not given notice of the presentation of the plaintiffs' evidence before the Clerk of Court on March 6, 1967, to which notice they say they were entitled since they had filed a motion to set aside the order of default. Section 9 of Rule 13 is cited, to the effect that if a party in default has filed a motion to set aside the order of default he shall be entitled to notice of all future proceedings regardless of whether the order of default is set aside or not. But as pointed out by the lower court, while the motion to set aside was filed on February 2, 1967, the presentation of evidence on March 6 was not by virtue of any order issued after February 2 but pursuant to a prior order - that of January 27 - of which the defendants had been duly notified.

In any event, if there was error in this regard, it was not one that infringed the requirement of due process, since after all the defendants could not have been heard in their own defense, their motion to set aside the order of default having been denied.

In view of the foregoing, without ruling on the question of whether or not the remedy of appeal instead of certiorari should have been pursued, we hold that the challenged actuations of the Bacolod City Court constitute

neither excess of jurisdiction nor grave abuse of discretion. What we do find is that on the face of the record, especially considering the absence of good and substantial defenses to the complaint for illegal detainer, the petition for certiorari before the Court of First Instance and the instant appeal to this Court have needlessly taken up their time which could have been devoted to more meritorious cases.

WHEREFORE, the decision appealed from is affirmed, with treble costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Castro, Fernando, Villamor, and Makasiar, JJ., concur.

Barredo, J., concurs, reserving, however, his opinion as to whether or not under the Revised Rules, a defendant in default in an inferior court has the right to appeal.

[1] Summary procedure for money claims not exceeding P200.00.

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