

WOODCRAFT WORKS, LTD., PETITIONER, VS. SEGUNDO C. MOSCOSO, JUDGE OF THE COURT OF FIRST INSTANCE OF LEYTE; JOSE ABESAMIS AND THE SHERIFF OF MANILA, RESPONDENTS.

G. R. No. L-5470. April 29, 1953

Ponente: REYES, J.

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REYES, J.:

On September 18, 1951, the herein respondent Jose Abesamis filed an action in the Court of First Instance of Leyte for the rescission of a contract to supply lumber to the petitioner at an agreed price and for damages for the breach of said contract. Served with summons and a copy of the complaint five days later (September 18), the herein petitioner, as defendant in said action, moved for a bill of particulars on October 1, setting the motion for hearing on October 13. But at the hearing no one appeared for defendant, and the attorney for plaintiff, who was present, made a verbal motion to have the defendant declared in default. Resolving the two motions together, the court, on October 16, handed down an order, of which the defendant was not notified, declaring the latter in default and denying its motion for a bill of particulars as filed out of time. Thereafter, the court allowed plaintiff to present his evidence, and on October 29 rendered its judgment awarding plaintiff the sum of P128,604.14.

On hearing news of what had happened, defendant on December 13, filed a motion to set aside the order and judgment above-mentioned and to decide its motion for a bill of particulars, alleging that the said order was illegal and invalid in that it declared defendant in default before its time for filing its answer had expired, and that the said judgment was for that same reason also null and void. The motion having been denied, defendant came to this Court with a petition for certiorari and prohibition to annul the order and judgment aforementioned and prevent the writ issued for the execution of said judgment from being carried out.

The petition should be granted.

The Rules of Court give the defendant in an action 15 days, after service of summons, to file his answer (section 1, Rule 9). Herein petitioner, who was defendant in the court below and who was served with summons on September 18, had therefore until October 3 within which to file its answer. Two days before this deadline, however, or on October 1, defendant filed a motion for a bill of particulars. This is permitted by section 2 of Rule 16 which provides that a party may file such a motion "before responding to a pleading or if no responsive pleading is permitted by these rules, within 10 days after service of the pleading upon him." It is obvious that the time allowed by the Rules for filing a motion for particulars is co-extensive with that allowed for filing the answer, which is 15 days (Section 1, Rule 9), except when no responsive pleading is permitted in which case the time allowed for such motion is only 10 days after service of the pleading upon the movant. As responsive pleading was permissible in the present case, defendant had from the service of which he filed on October 1, or 13 days after service of summons upon him, was filed within the reglementary period.

It should furthermore be noted in this connection that the filing of the motion for a bill of particulars interrupted the running of the period for filing the answer, and in accordance with section 2 of the same Rule (Rule 16) the

defendant should have, after notice of the denial of his motion—or, if the motion was successful, after service of the amended pleading or bill of particulars—the same time to serve his answer "as that to which he was entitled at the time of serving his motion, but not less than 5 days in any event."

It is obvious from the foregoing that at the time defendant was declared in default the time for filing its answer had not yet expired, for it was only then that his motion for specifications was denied and he still should have, after notice of such denial (if any had been given) no less than 5 days to file its answer.

This conclusion is clearly deducible from the above-cited provisions of the Rules which read as follows:

"Section 1. Motion for bill of particulars.—Before responding to a pleading or, if no responsive pleading is permitted by these rules, within ten (10) days after service of the pleading upon him, a party may move for a more definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading or to prepare for trial. Such motion shall point out the defects complained of and the details desired.

"Sec. 2. Stay.—After service of the amended pleading or bill of particulars or after notice of denial of his motion, the moving is any is permitted by these rules, as that to which he was entitled at the time of serving his motion, but not less than five (5) days in any event." (Rule 16).

But disregarding the plain meaning of the above sections of Rule 16 by arbitrarily holding that the defendant in any case has only 10 days after the service of summons to file his bill of particulars, the lower court in the present case declared the defendant in default before its time to answer had expired, thereby depriving it of its day in court. This the lower court had no authority to do, and for purposes of certiorari the lower court may in that regard be deemed to have exceeded its jurisdiction.

And while it is true that defendant could have appealed from the order denying its motion to set aside, and the rule is that certiorari does not lie when there is appeal, the rule may be relaxed where, as in the present case, a writ of execution had already issued and is in the process of being carried out. (II Moran, Rules of Court, 1952 ed. p. 166, citing *Saludes vs. Pajarillo*.[*] 44 Off. Gaz. 4892.)

In view of the foregoing, the writ prayed for is granted and the judgment and orders complained of are set aside, with costs against the respondent Jose Abesamis.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor and Baustista Angelo, JJ., concur.

[*] 78 Phil., 754.

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