

ALFONSO DARAN, PETITIONER-APPELLANT, VS. DOMINADOR ANGCO, RESPONDENT- APPELLEE. DAMASO ACOSTA, INTERVENOR.

G.R. No. L-23561. August 28, 1967

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This case was certified by the Court of Appeals to this Supreme Court as involving only questions of law. It originated in the Court of First Instance of Isabela, as a petition for relief, under Rule of Court 38, from a judgment of the Municipal (then Justice of the Peace) Court of the Municipality of Aurora, Isabela, wherein petitioner Alfonso Daran was declared in default.

The facts are not in controversy, and are recited in a stipulation of facts submitted to the Court of First Instance in its Civil Case No. 1475, which reads:

"1. That the summons dated July 13, 1961, of the Justice of the Peace Court of Aurora, Isabela, together with a copy of the complaint in Civil Case No. 147 of the Justice of the Peace Court was received and signed by Celestina Daran, wife of the petitioner Alfonso Daran, on July 30, 1961, true copy of which summons is hereto attached as Annex '1' hereof;

"2. That the decision of the Justice of the Peace Court of Aurora, Isabela, in Civil Case No. 147, copy of which is hereto attached as Annex 'B' of the stipulation of facts, is dated and entered by the Justice of the Peace Court of Aurora, Isabela, on September 4, 1961;

"3. That the petitioner learned that he was declared in default and judgment was rendered against him on October 16, 1961 (paragraph 8 of the petition admitted);

"4. That the petition in question was filed and docketed as Civil Case No. 1475 on April 12, 1962 as shown on the stamp appearing in the record of the case;

"5. That the parties agree on the communication by counsel for the petitioner dated February 1, 1962 with the attached money order 144744 in the amount of P10.00; so with the communication of the Clerk of Court dated February 23, 1962 to Atty. Felix V. Fernandez asking the latter to remit additional sum of P22.00 to complete docket fee; likewise, the communication of Atty. Felix V. Fernandez dated March 13, 1962 to the Clerk of Court remitting the sum of P27.25;

"6. That the parties also agree on the communication by the Clerk of Court dated April 16, 1962 to Atty. Felix V. Fernandez asking the latter to remit the deficiency in the sum of P3.99 in money order payable to the Provincial Sheriff of Isabela, and also enclosing therein Official Receipt No. C-7023769 for P32.00 covering docket fee." (Record on Appeal, pp. 30-31.)

Upon the facts, the Court a quo dismissed the petition for relief as untimely filed. Unable to secure reconsideration, petitioner Daran duly appealed.

We find no ground to alter the decision appealed from.

The stipulation of facts show that although Daran learned of the judgment rendered against him on October 16, 1961 (Stipulation, par. 3), yet he did not seek relief therefrom in the Court of First Instance until April 12, 1962 (Stipulation, par. 4) or nearly six months (less a few days) afterwards.

As correctly held by the Court of origin, the petition was belated, having been filed much later than the period allowed for the purpose by section 3 of Rule 38 of the Rules of Court, which is only "sixty (60) days after the petitioner learns of the judgment, order or other proceeding to be set aside". In the case at bar, that period expired on December 16, 1961, so that even the original receipt of the petition (without full payment of docket fees) by the Clerk's office on February 3, 1962, was beyond the proper period.

Petitioner-appellant contends also that the service of summons was irregular, in that there was substituted service upon his wife, without showing of any effort to serve summons upon him personally, in violation of section 8, Rule 7 of the 1940 Rules of Court. We do not agree. Since appellant's own evidence (affidavit of his wife) shows that the municipal policeman who served the summons did not find Daran in his usual place of abode, but was informed by the wife that the appellant was in barrio Cabasingan, municipality of Callang, and there being no adequate assurance that he could be served there, substituted service was justified. There is no evidence that the wife was not a person of sufficient discretion to accept service of summons.

The judgment under appeal is affirmed. Costs against appellant, Alfonso Daran.

Concepcion, C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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