

LUZON SURETY CO., INC., PLAINTIFF-APPELLEE, VS. JESUS PANAGUITON, ET AL., DEFENDANTS, CUSTODIA J. VDA. DE VELASCO, AS ADMINISTRATRIX OF THE INTESTATE ESTATE OF ANGELES VELASCO, ...

G.R. No. L-26054. July 21, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is an appeal from the order of the Court of First Instance of Manila, issued in Civil Case No. 35662 denying the appellant's petition for relief from judgment. The Court of Appeals, finding that this case posed only questions of law, elevated it to this Court for disposition pursuant to section 31 of the Judiciary Act, as amended, and section 3, Rule 50 of the Revised Rules of Court.

The records disclose the following undisputed facts:

"That on April 21, 1955, plaintiff, as surety, and defendant Jesus Panaguiton, as principal, executed jointly and severally a surety bond for P10,000.00 in favor of the International Tobacco Co., Inc. to secure the payment of all his monetary liabilities, as well as the faithful performance of his obligation to said Company (Exhibit A); that in consideration of the execution by plaintiff of the said Surety Bond (Exhibit A), there were, in turn, executed in the latter's favor an Indemnity Agreement (Exhibit B) by defendant Jesus Panaguiton, Paz Lomugdan, Emilia Lotilla, Julian Panaguiton (now deceased) and succeeded by Paz T. Panaguiton, Estefania Panaguiton, Juana Panaguiton and Epifania Panaguiton), Angeles Velasco (also deceased and whose estate is now represented by Custodia J. Vda. de Velasco) and Juana Alera Vda. de Lotilla, and a Mortgage (Exhibit C) by defendants Paz Lomugdan, Emilia Lotilla, the two deceased just mentioned (now represented by their respective representatives above referred to) and Juana Alera Vda. de Lotilla, which Mortgage is duly registered with the Register of Deeds of the Province of Antique; that for failure of defendant Jesus Panaguiton to comply with the terms and conditions of the Surety Bond (Exhibit A), the International Tobacco Co., Inc. filed Civil Case No. 30842 of the Court of First Instance of Manila against plaintiff and said Jesus Panaguiton (Exhibits D and F); that in the Civil Case just mentioned, a decision was rendered sentencing the defendants therein (Jesus Panaguiton and Luzon Surety Co., Inc.) to pay to the International Tobacco Co., Inc., the sum of P3,752.61 with 6% interest thereon from October 9, 1956, together with P600.00 as attorney's fees (Exhibit F); that in compliance with said decision, herein plaintiff paid to the International Tobacco Co., Inc., the sum of P600.00 and P3,552.61 on November 15, 1957 and December 24, 1957 (Exhibits G to G-3) and that notwithstanding demands made by plaintiff on defendants herein for the reimbursement of the sums thus paid by it to the said International Tobacco Co., Inc., said defendants have failed and refused to make said reimbursement (Exhibits H to H-14) x x x "[1]

On July 20, 1960, the trial court rendered judgment ordering defendants, including herein defendant-appellant to pay plaintiff within ninety (90) days from notice jointly and severally, the sum of P4,352.61 with interest thereon at 12% per annum plus attorney's fees and costs. On October 7, 1960, defendant-appellant Custodia J. Vda. de

Velasco (as administratrix of the estate of the deceased Angeles Velasco) filed a petition for relief from judgment, accompanied with an affidavit of merit, alleging:

"1. That the said decision, in so far as the petitioning defendant is concerned, is a complete nullity for the reason that she was not notified of the hearing of the case held on March 1, 1960;

"2. That if she was duly notified of the hearing she would be able to show that the Indemnity Agreement (Exhibit B) was not at all signed by the deceased Angeles Velasco; and

"3. That the petitioning defendant, not having been represented by legal counsel, was of the mistaken belief that she has sixty (60) days within which to file a petition for new trial, or reconsideration or appeal from the decision." [2]

After the trial court's denial of her petition for relief from judgment on December 6, 1960, defendant-appellant on December 27, 1960 filed a motion for reconsideration of the order denying her petition for relief, which motion was also denied, hence the present appeal.

The order appealed from dated December 6, 1960 states:

"Considering (1) defendant Custodia J. Vda. de Velasco's Petition For Relief From Judgment and (2) plaintiff's Answer To Petition For Relief - and it being admitted by said defendant that she received copy of the decision of this Court of July 20, 1960, on August 26, 1960; that she could have appealed from said decision within thirty (30) days from the date last mentioned, but failed to do so, hence the said decision has become final, and that therefore she is no longer entitled to the said Petition For Relief From Judgment - the latter is hereby denied.

SO ORDERED.

Manila, Philippines, December 6, 1960.

(Sgd.) E. Soriano
E. SORIANO
Judge"

In her brief, the appellant assigns the following errors:

I

"The lower court erred in denying the appellant's petition for relief from judgment on the erroneous ground that the appellant had a remedy by appeal from the decision of July 26, 1960, which she did not avail of and

allowed to lapse, without considering that the decision subject matter of the petition is a complete nullity in so far as appellant is concerned because she was never notified of the hearing of the case and was deprived of her day in court.

II

"The lower court erred in denying the petition for relief from judgment in spite of the fact that it was filed within the period provided for in Sec. 3, Rule 38 of the Rules of Court and the further fact that appellant has a substantial and meritorious defense which warrant the granting of said relief."

We find merit in defendant-appellant's contention that the trial court committed reversible errors.

That the defendant-appellant was not notified of the hearings set for March 1st and May 13, 1960 is borne by the records. Her name as a party defendant does not even appear in the list of persons to be given notice of the hearings by the Clerk of Court.[3] She was, therefore, denied the fundamental right to be heard, an essential element of procedural due process which this Court in the leading case of *El Banco Español Filipino vs. Palanca*, 37 Phil. 921 said, and We must reiterate, thus: "(D)ue process of law implies that there must be a court or tribunal clothed with power to hear and determine the matter before it, that jurisdiction shall have been lawfully acquired, that the defendant shall have an opportunity to be heard, and that judgment shall be rendered upon lawful hearing."

For well-entrenched indeed in our jurisprudence is the indispensable requisite that for the constitutional guarantee of the right to be heard, parties to the case must be notified as to when such hearing shall take place. Not only have the parties the right to be present at the trial of their cases but are also entitled to a reasonable notice of the time fixed for trial. Nothing is better settled than that absent such notice, resulting in the failure of a litigant to be accorded his day in court, there can be a resort to this Tribunal. Its response has invariably been to assure that such a right be respected.[4]

We agree with defendant-appellant's contention that not having been duly informed of the scheduled hearings, the decision is a complete nullity insofar as she is concerned. The ruling of this Court in the case of *Cayetano v. Ceguerra*,[5] wherein We held that: "Having filed an answer, defendants should have been entitled to notice of hearing. And if the answer was not responsive, the trial court should have apprised the defendants of such fact, considering that they were not lawyers. It appearing that they were not informed of the scheduled hearing, all the proceedings undertaken therein became a nullity, there being a deprivation of their day in court, amounting to lack of due process," squarely supports defendant-appellant's position.

Philippine jurisprudence is replete with decisions of this Court laying down as a fundamental part of due process the essential requisite that a party should be given an opportunity to be heard by notifying or informing him or his counsel as to when such a hearing will take place, affording him reasonable notice of the time fixed for the hearing or trial of the case. To cite a few of these decisions:

"Lack of notice to a party in a judicial proceedings is a denial of due process." (*Shell Company of the Philippines vs. Enage*, 49 SCRA 416)

"Denial of procedural due process is a grave jurisdictional defect rendering judgment void." (*Aducayen vs.*

Flores, 51 SCRA 78)

"Procedural due process is that which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. It contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property." (Macabingkil vs. Yatco, 21 SCRA 151; Batangas Laguna Tayabas Bus Company vs. Cadiao, L-28725, March 12, 1966, 22 SCRA 987; Bermejo vs. Barrios, 31 SCRA 764, 775; Jose Carandang vs. Hon. Jose Cabatuando, etc., et al., L-25384, October 26, 1973)

"Lack of notice to a party adversely affected has invariably been held to mean the nullity of the decisions rendered in ordinary civil cases, since they suffer from a fatal infirmity for want of due process." (Tiglaio vs. Commission on Elections, et al., L-31566 and 31847, August 31, 1970.)

The rationale of these rulings is so basic and fundamental, founded on fair play, simple justice and fairness that We cannot but express our concern, if not displeasure, when cases as the case at bar are delayed and keep clogging court dockets for the failure, negligence and/or ignorance of judges to apply these simple legal precepts and judicial pronouncements.

In the instant case, the trial court had peremptorily rejected defendant-appellant's petition for relief from judgment, declaring that her failure to appeal within 30 days from receipt of the decision was fatal to her cause. We disagree with the court's ruling. It is precisely because of the expiration of the period for appeal that she seeks to avail of the remedy of relief from judgment, alleging that being a layman and without the benefit of counsel, she was of the mistaken belief that she had sixty (60) days within which to appeal the decision. Such remedy of relief from judgment is available to her as provided under Rule 38, Sec. 2 and 3, Revised Rules of Court, thus:

"Sec. 2. Petition to Court of First Instance for relief from judgment or other proceeding thereof. - When a judgment or order is entered, or any other proceeding is taken, against a party in a Court of First Instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment, order or proceeding be set aside.

"Sec. 3. Time for filing petition; contents and verification. - A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be."

Appellant having received on August 26, 1960 notice of the decision dated July 20, 1960, filed her petition for relief from judgment on October 6, 1960, accompanied with the affidavit of merit, which is clearly within the sixty (60) days period laid down by the Rules. The trial court gravely erred in denying appellant's petition for relief.

WHEREFORE, the decision rendered by the trial court on July 20, 1960 is hereby nullified and set aside insofar as herein defendant-appellant is concerned. The case is remanded to the trial court to enable the defendant-appellant to present her evidence and for said trial court to proceed and act accordingly.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Fernandez, JJ., concur.

[1] Decision, Record on Appeal, pp. 47-49.

[2] Record on Appeal, pp. 51-52.

[3] See pp. 41-44, Record on Appeal.

[4] See *Loquias v. Rodriguez*, L-38388, July 31, 1975, 65 SCRA 659; also cited in *Flores v. Buencamino*, L-43818, December 17, 1976, 74 SCRA 332.

[5] L-18831, January 30, 1965, 13 SCRA 73, 78-79.

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