

CO LEA CHU, HON. GAUDENCIO CLORIBEL, JUDGE, COURT OF FIRST INSTANCE OF MANILA, AND THE CITY SHERIFF OF MANILA, PETITIONERS, VS. CORAZON GONZALES AND THE COURT OF APPEALS, RESPON...

G.R. No. L-23687. February 26, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Appeal from a decision of the Court of Appeals.[1] The facts in the opinion written by Justice Jose P. Bengzon, then Presiding Justice of the Court of Appeals, viz:

"Aggrieved by what she alleges to be a denial of her day in court, Petitioner Corazon Gonzales has come to this Court pleading in the alternative for re-trial of her case or her right to appeal from a decision rendered after an ex-parte hearing of a counterclaim against her.

It appears that petitioner was a lessee of a stall in the Manila Shopping Center, She in turn verbally subleased the same on a month-to-month basis to respondent Go Lea Chu, also a lessee of the same shopping Center earlier dispossessed of her stall.

On July 25, 1963, when it was necessary to demolish the stall for the construction of the Cinerama, petitioner assigned her 15-year leasehold right to the R & R Realty Company for P11,000.00, P5,500.00 of which was paid to petitioner and the other P5,500.00 to 'become due and payable only after final judgment has been rendered by the court in Civil Case No. 111371' to whoever may be adjudged entitled thereto, although P2,000.00 was paid by R & R Realty Company to respondent Go Lea Chu in consideration of her vacating the subject stall on August 21, 1963.

When the case was called for hearing on February 28, 1964, counsel for petitioner was not present, thereby prompting the respondent Judge to dismiss petitioner's complaint and order Go Lea Chu to prove her counterclaim before the Deputy Clerk of Court. When petitioner's counsel arrived, he pleaded to the respondent Judge in his chamber for reconsideration of the order but the latter refused, advising him to a motion for reconsideration.

Right on that day, petitioner's counsel filed a motion for recon-sideration of the order dismissing the complaint.

On March 2, 1964, petitioner's counsel received a copy of the order and the decision, both dated February 28, 1964, dismissing petitioner's complaint and ordering her to pay respondent Go Lea Chu one-half of whatever amount she would receive from the R & R Realty Company by reason of the closure of the stall in question plus P900.00 as attorney's fees.

On March 9, 1964, petitioner's counsel received a copy of the respondent Judge's order denying his motion for reconsideration of order, and on the same day petitioner filed a verified pleading entitled 'Second Motion for Reconsideration.' The motion for reconsideration was set for oral argument on March 21, 1964. On May 11, 1964,

the respondent Judge denied the second motion for reconsideration on the ground that the same was pro forma. Petitioner's counsel received copy of the denial on May 15, 1964, and on June 2, 1964, petitioner's counsel filed a notice of appeal and a motion for extension to submit a record on appeal and deposited the cash appeal bond.

On June 5, 1964, an order of execution was issued followed by notice of garnishment issued on the next day, both of which were served by counsel for respondent Go Lea Chu and by a deputy sheriff of Manila upon the R & R Realty Company which paid to them P3, 500. 00.

Surprisingly, however, on June 10, 1964, after the writ of execution and garnishment were served and enforced, the respondent Judge issue an order granting petitioner 30 days from said date within which to file her record on appeal. The order does not appear to have been served upon the parties although counsel for respondents was aware of it, quoting the order in his answer."

The judgment of the Court of Appeals under review reads:

"Wherefore, the order and decision by the respondent Judge dismissing plaintiff's complaint and granting the counterclaim of respondent Go Lea Chu are set aside and respondent Judge is hereby ordered to conduct a re-trial of the case. The respondent Go Lea Chu is ordered to deposit before the Clerk of the Court of First Instance of Manila P3,500.00, she prematurely collected from the R & R Realty Company. Costs against respondent Co Lea Chu. So ordered."

1. Was certiorari the appropriate remedy? Petitioners take the view that private respondent's remedy is appeal, not certiorari. They premise their argument on the averment that the lower court's decision is final. If this were true, the argument knocks at an open door, in the ordinary course of law, appeal should be the remedy. Here, how facts and circumstances justify resort to certiorari.

There is an officer exercising judicial function - trial judge Gaudencio Cloribel. Capricious and whimsical exercise of judicial power amounting to grave abuse of discretion is charged.

That charge finds ample support in the following:

(a) The trial was set on February 28, 1964 at 8:30 a. m. Counsel for respondent Gonzales came about ten minutes late. For such tardiness the trial judge ordered the dismissal of private respondent's complaint, directed an ex-parte hearing on the adversary's counterclaim. That dismissal is with prejudice.[2] One's day in court should not so easily be denied a suitor.

Respondent Gonzales counsel proffered an explanation for the delay, Counsel earlier in the morning went to Branch XIV to inquire the deputy clerk of court the date of hearing of the case entitled Republic of the Philippines vs. Patricia Ventura" (Civil Case 53283). From thence, he proceeded to Branch XV in connection with the case People of the Philippines vs. Adolfo Ong" (Criminal Case 72332) in which counsel's law office represented defendant. Perhaps it was not absolutely necessary for counsel to first attend to his business in Branches XIV and XV. But it is not unusual for a practicing attorney to do so. Counsel may have inadvertently forgotten to take note of time. This understandable. Because, preoccupation with work on hand induces some such lapses. One thing is certain though. Tardiness for ten minutes is not such contemptuous disregard of his duty to appear on time; it does not warrant immediate and absolute purging of his client's complaint and letting the opponent's counterclaim to be heard ex-parte, Gil vs. Talaña, supra, should have reminded the trial judge that where plaintiff and counsel "were only about fifteen minutes late in arriving at the court," it was "an abuse of discretion of the trial court to dismiss the case definitely," and that it "would be too drastic" to make a litigant "suffer for such a short tardiness." And again, in The Philippine National Bank vs. Philippine Recording System, Inc., L-11310, March 29, 1960, where plaintiff's witnesses were not in court at the scheduled time of hearing, did not arrive at the extended period of ten

minutes, but finally showed up barely two minutes after the entry of the order of dismissal, this Court reprobated the trial could in the following language: "Once more we are confronted with a question which could have been avoided had the trial judge been more human and tolerant. As the records show, barely two minutes had passed after the entry of the order of dismissal when plaintiff's witnesses arrived in court. There was a display on the part of the court of incorrect use of discretion. It was impatience personified." [3]

It could have been an easy matter for the trial judge to call off the ex-parte hearing before his deputy clerk, or if hearing had started, to have allowed Gonzales' lawyer to take part therein if only to cross-examine the witnesses and to present his client's own evidence. Because Gonzales was not declared in default on the counterclaim. She was entitled to be heard. Not that such action, on the part of the trial judge would bring about injustice to Go Lea Chu. The latter did not stand suffer prejudice. And then, one distinct advantage is that the rights of the parties could have been tested in the crucible of a trial on the merits.

Tardiness in court attendance, indeed, is to be discouraged. Because, by Canon 21 of the Canons of Professional Ethics, a lawyer is bound "not only to his client, but also to the Courts and to the public to be punctual in attendance." Justice Malcolm aptly stated that "[a]n attorney of character should make it unnecessary for a court to discipline him on account of tardy appearance." [4] This, however, is no license for a trial judge to summarily dismiss a case where tardiness for very short time occasioned by excusable negligence is brought to the court's attention. For, a judge is enjoined to be temperate and attentive, patient and impartial. [5] He is warned that "he is not a depository of arbitrary power, but a judge under the sanction of law." [6]

There was grave abuse of discretion.

(b) On June 5, 1964, Judge Cloribel authorized execution of the February 28, 1964 judgment, which reads: "WHEREFORE, judgment is hereby rendered reiterating the dismissal of plaintiff's complaint, and on the counterclaim, ordering the plaintiff to pay to the defendant one-half (1/2) of whatever amount she will receive from the R & R Realty Corporation or from anybody arising from the closure of Stall 3-B, Section 1, Pasillo 4 of the Manila Shopping Center, plus the sum of P900.00 as attorney's fees, and the costs of suit."

The judge then said that judgment had become final and executory. P3,500.00 of the money due respondent Gonzales was by reason of a garnishment, paid over by R & R Realty Company to petitioner Go Lea Chu.

But is the decision really final? Petitioners' pose is that it became final "after April 1, 1964." The February 28, 1964 decision was received on March 2, 1964. On March 9, 1964, respondent Gonzales filed what she incorrectly styled "Second Motion for Reconsideration." This is actually the first motion directed at the judgment. Because, the one she filed on February 28, 1964 was only against the order of dismissal. And on February 28, 1964, she could not have assailed the judgment for the reason that the judgment had not yet been served upon her.

The motion for reconsideration on March 9, 1964 decidedly is not pro forma. We join the Court of Appeals in the statement that "[f]ar from being pro forma the motion in question sought the reconsideration of the judgment at least on two grounds: (1) the structure of the judgment lies on a mistake or excusable negligence of petitioner's counsel which ordinary prudence could not have guarded against and which impaired her rights and (2) that the evidence presented on the counterclaim to justify the decision and is against the law." [7]

Needless to state, a motion which not pro forma suspends the running of the period to perfect an appeal.

That motion for reconsideration was denied on May 11, 1964. Notice of the denial was served on respondent Gonzales on May 15, 1964. On June 2, 1964, respondent Gonzales filed her notice of appeal and cash appeal bond and a motion for extension of time to file her record on appeal. It was on June 5, 1964 that the court granted the petition for a writ of execution. And yet, on June 10 following, the trial judge, acting upon Gonzales' motion for

extension of time, granted her a 30-day extension beginning from said date within which to file her record on appeal.

It thus results that the judgment had not yet become final. Because, from March 2 when Gonzales was notified of the judgment, to March 9 when she filed her motion for reconsideration but seven (7) days elapsed; and from May 15, when she was notified of the denial of her motion for reconsideration, to June 2, when she filed her notice of appeal and cash appeal bond with a prayer for extension of time to file record on appeal, eighteen (18) days had elapsed; or a total of twenty-five (25) days.

No reason then exists why a writ of execution based on a final judgment should issue. In fact, the trial judge reversed his own position. After he issued the writ of execution, he allowed the defeated party an extension to file a record on appeal. The execution so authorized is one which could not be categorized as execution pending appeal "upon good reasons" provided for in Section 2, Rule 39 of the Rules of Court. The court's order granting the writ did not specify any good reason why execution pending appeal should issue. In fact, the motion for execution was granted upon the erroneous belief that the judgment had become final.

We hold that the writ of execution herein was likewise given in grave abuse of discretion. Said writ and the proceedings thereunder are null and void.

Confronted by the clear abuse of discretion committed by the lower court in dismissing her suit, which deprived her of her day in court, and in executing the February 28, 1964 decision which the lower court incorrectly pronounced to be final and executory, she certainly had no recourse but to seek extraordinary relief.

Certiorari is the remedy.

2. Private petitioner here complains that it was wrong for the Court of Appeals to have directed her to deposit with the clerk of court of the Court of First Instance of Manila the P3,500.00 which she received from R & R Realty Company. She launches a two-pronged attack: (1) Gonzales did not pray for such relief in her pleadings; and (2) this power belongs to the Court of First Instance.

We cannot give our stamp of approval to the position thus taken. The Court of First Instance should not have directed execution. The garnishment issued in pursuance thereof produced adverse effects on the right of Gonzales because the money allegedly due her fell into the hands of Go Lea Chu. The Court of Appeals, under the law, is empowered to correct that error in the exercise of its supervisory power the Court of First Instance.⁸ And this, because Gonzales, in the certiorari proceedings, urged the appellate court to annul these proceedings in the Court of First Instance.

Besides, as we have declared in *Schenker vs. Gemperle*, L-16449 August 31, 1962: "A judgment may grant the relief to which a party in whose favor it is entered is entitled, even if the party has not demanded relief in his pleadings." Long ago, this Court, in *Shioji vs. Harvey*, 43 Phil. 333, 344, ruled: "Independent of any statutory provision, we assert that every court has inherent power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction.

Indeed, to deprive a court of power to give substantial justice is to render the administration thereof impotent and ineffectual. The prevailing precept is currently embodied in Section 6, Rule 135 of the Rules of Court, which categorically provides:

"SEC.6. Means to carry jurisdiction into effect. When law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction not specifically pointed out law or by these rules any suitable process or mode of proceeding may be adopted which appears

conformable to the spirit of said law or rules."

The foregoing more than suffice to sustain the power of the Court of Appeals to direct petitioner Go Lea Chu to deposit P3,500.00 with the Court of First instance.

For the reasons given, the judgment of the Court of Appeals hereby affirmed.

Costs against petitioner Go Lea Chu.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] CA-G.R. No. 34205-R, entitled "Corazon Gonzales, Petitioner vs. Hon. Gaudencio Cloribel, Judge, Court of First Instance of Manila, Go Lea Chu, R & R Realty Co., Inc., and The City Sheriff of Manila, Respondents."

[2] Section 3, Rule 17 of the Revised Rules of Court; Gil vs. Talaña, 96 Phil. 32, 34.

[3] Emphasis supplied.

[4] Malcolm, Legal and Judicial Ethics, 1949 ed., p. 32.

[5] Canon 4, Canons of Judicial Ethics. See also: Canon 31,

[6] Canon 18, id.

7 Valerio vs. Tan, 97 Phil. 558, 560; Carbonel vs. Padilla, 75 Phil. 95, 100-101; Ylanan vs. Mercado, 94 Phil. 769, 771.

8 Section 30, Judiciary Act of 1948, as amended.

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