

TERESITA. M. CONSUL, PLAINTIFF AND APPELLEE VS. JESUS L. CONSUL, DEFENDANT AND APPELLANT.

G.R. No. L-22713. July 26, 1966

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Appeal "on purely question of law"[1] from the orders of the Rizal Court of First Instance,[2] dated October 25, 1963 and November 27, 1963, respectively denying defendant's petition for relief from Judgment and the motion to reconsider the denial.

The case below was one for support filed by the wife against her husband.

The pivotal facts bearing on the issue of law are, as stated in the petition for relief, filed October 25, 1963, viz:

"1. On 21 September 1963, an order was issued declaring defendant in default and, on 26 September 1963, judgment by default was rendered in favor of plaintiff and against defendant ordering the latter to pay the former P400.00 a month for support effective the month of July 1963 payable within the first five days of each month.

2. Defendant learned of the foregoing order and judgment of default only on 30 September 1963 when he received notice of the order of 28 September 1963 denying his motion to dismiss the above-entitled case when said order noted 'that defendant has been declared in default and has lost his personality, the order of default not being lifted and there being already a decision in this case.[1] Defendant received copies of the aforesaid order of default and judgment only on 4 October 1963.

3. The aforesaid order and judgment by default were taken through mistake and/or fraud, in that—

(a) Within the period of the extension granted for the filing of defendant's answer (summons was served on defendant on 31 July 1963; under date 14 August 1963, defendant filed a motion for 15 days' extension to file responsive pleading to the complaint, 'the parties being in the process of amicably settling their differences'; by order of 16 August 1963, the Court granted the extension) plaintiff and defendant filed a joint petition dated 26 August 1963 for judgment based on their agreement for dissolution of their conjugal partnership, separation of property, custody and support of children.

(b) Certainly, the filing of the aforesaid motion rendered unnecessary, if not improper, defendant's filing an answer which will contest the complaint. As far as the parties were concerned, their controversy had been settled.

(c) It is true that, by order of 27 August 1963, the Court denied the aforesaid petition dated 26 August 1963 of the parties since 'this action is one for support. The Court believes that it cannot enter a decree of dissolution of conjugal partnership in this case. If parties want to enter into an agreement in this case, it should only be as regard the principal action for support.'

(d) By reason of this order of denial, the parties agreed nevertheless to take such steps with a view to implementing their agreement embodied in the said petition. Therefore, on 4 September 1963, plaintiff filed a

motion to amend her complaint to embody the terms and conditions of the mutual agreement reached by the parties and thus avoid the inconvenience of filing a new case. Defendant did not oppose the said motion to amend.

(e) However, by order of 5 September 1963, the Court still denied the motion to amend.

(f) Whereupon, the parties elected to file their joint petition as a new case. So, on 25 September 1963, defendant filed a motion to dismiss the complaint precisely on these allegations:

'(a) the spouses having already reached an amicable settlement of their disputes, part of the amicable settlement having to do with the support of plaintiff and their children, and

(b) the said amicable settlement having been embodied in a joint petition dated 10 September 1963 for dissolution of conjugal partnership, separation of property and custody of children—the petition to be filed as a new case in this court of first instance.'

Plaintiff did not oppose this motion to dismiss,

(g) However, when defendant received on 30 September 1963 notice of the order of 28 September 1963 denying appellant's petition for relief as 'not sufficient in denying appellant's petition for relief[1] as 'not sufficient in form substance' because not accompanied by a separate affidavit of merits—since it incorporated said affidavit of

4. Defendant has meritorious defense against the complaint for support: namely the fact of the amicable settlement which he has reached with plaintiff thereon the terms of which contradict the judgment. Under said amicable settlement, defendant agreed to give support only if plaintiff agreed to the liquidation of the conjugal partnership, the separation of the property, custody and support of children as set out in the joint petition dated 26 August 1963. On support, their agreement was for P200.00 monthly to be raised to P400.00 commencing September 30, 1963 and monthly thereafter until the P35,000.00 participation in the liquidation of the conjugal partnership shall be fully paid by the defendant to plaintiff, at which time of full payment the monthly support shall again be reduced to P200.00 monthly. These terms have not been embodied in the judgment by default.

And even without the amicable settlement, defendant has the right to elect to support plaintiff and her children in the conjugal home from where plaintiff left without cause. Defendant specifically denies plaintiff's assignment of causes for separate support. In fact, it is plaintiff who has offended against defendant—which defendant does not desire to disclose as they have precisely amicably settled their controversy for the sake of their children.

Besides, defendant has paid plaintiff P400.00 monthly support for the children up to 30 September 1963 and the plaintiff should not have given evidence (if she did) that she had not been paid support since May 1963 for Which judgment by default was rendered."

In due time, defendant presented his brief. Plaintiff in turn did not file a brief.

The sole error assigned is: "The lower court erred in denying appellant's petition for relief 'as not sufficient in form and substance' because not accompanied by a separate affidavit of merits—since it incorporated said affidavit of merits in the verified petition."

The trial court denied relief solely upon the ground that the petition for relief, without the separate affidavit of merits, does not meet the requirement that such petition "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." [3] We must concede that, in the case at bar, there was a lapse in the literal observance of the rule as to separate affidavits. But Section 2, Rule 1 of both the old and new rules of Court is a constant reminder that "These rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding".

We harmonize the two statutory provisions just cited. We are not to depart from the rule that form should not be exalted over substance. We are not to adopt too narrow a view. We are not to handicap the right to petition for relief, if there be substantial compliance with the statute.

Affidavit of merits has a known purpose: Courts and parties should not require the machinery of justice to grind anew, if the prospects of a different conclusion cannot be reasonably reached should relief from judgment be granted. We look back at the facts here. The petition for relief is verified by petitioner himself. The merits of petitioner's case are apparent in the recitals of the petition. Said petition is under oath. That oath, we believe, elevates the petition to the same category as a separate affidavit. To require defendant to append an affidavit of merits to his verified petition, in the circumstances, is to compel him to do the unnecessary. Therefore, the defect pointed by the court below is one of form, not of substance. Result: Absence of a separate affidavit is of de minimis importance.

Not that we are without reason. The course we now take is in line with a 1926 decision of this Court, where we said: "The rule [is] that a motion for the setting aside of a judgment by default must be accompanied by an affidavit of merit or its equivalent.[5] The verified petition for relief in question heretofore quoted is a reasonable "equivalent" within the meaning of the Gonzales doctrine. In a recent judicial test,[6] the petition for relief "is not accompanied with affidavits of merits". That petition, however, "was duly sworn to by Atty. Rillo," and there is an allegation therein that petitioner Eduque "has a meritorious defense * * * as shown in the answer filed on February 12, 1960". This court, upon the averments in the answer, ruled that the verified petition was sufficient, and set aside the decision of the Court of Appeals and that of the Court of First instance denying relief, and remanded the case for further proceedings.

We accordingly set aside the orders of October 25, 1963 and November 27, 1963 and remand the case to the court of origin for further proceedings. Without costs.

So ordered.

Concepción, C. J., Reyes, J. B. L., Barrera, Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar and Ruiz Castro, JJ., concur.

Orders set aside, case remanded for further proceedings.

[1] Record on Appeal, p. 28,

[2] Civil Case No. Q-7413, entitled Teresita M. Consul, plaintiff, vs. Jesus L. Consul, defendant.

[3] Section 3, Rule 38 of both the old and the new Rules of Court; R. A. p. 10.

[5] Gonzales and Mauricio vs. Francisco, 49 Phil. 747, 740, citing Wahl and Wahl vs. Donaldson, Sims & Co., 2 Phil. 301; Daipan vs. Sigabu, 25 Phil. 184; Combs vs. Santos, 24 Phil. 446; Real Monasterio de Santa Clara vs. Villamar, 33 Phil. 411. Italics applied.

[6] Eduque vs. Court of Appeals, L-19389, March 31, 1964.

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