

ZENITH FILMS, INC., PETITIONER-APPELLANT, VS. THE HONORABLE JUDGE JOSE B. HERRERA AND UNIT FILMS ENTERPRISES, INC., RESPONDENT-APPELLEE.

G.R. No. L-22619. March 27, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal from the order of the Court of First Instance of Manila in its Civil Case No. 65628 dismissing the herein appellant's petition for certiorari with preliminary injunction.

On April 12, 1966 the United Films Enterprises Inc. filed a complaint in the City Court of Manila (Civil Case No. 147654) for the recovery of a sum of money against Zenith Films, Inc. The summons, which was received by the defendant on April 19, 1966, ordered him to answer the complaint and to enter trial on May 5, 1966 at 2 o'clock in the afternoon. Instead of answering the complaint the defendant filed a motion to dismiss on the grounds that venue was improperly laid, that the plaintiff had no legal capacity to sue and that the complaint stated no cause of action. With specific reference to the first ground, the motion averred that since the complaint was a personal action based on a written contract allegedly executed in the State of New York, U.S.A. and since venue had not been agreed upon, it should be the place of execution of said contract in accordance with Section 1, b (2), of Rule 4. The second ground is that while the complaint alleges that the plaintiff is a foreign corporation there is no averment that it was licensed to do business in the Philippines, for which reason it may not sue in Philippine courts in view of Section 69 of the Corporation Law.

A copy of the motion to dismiss was served on the plaintiff on April 23, 1966. Contending that the motion to dismiss was "no motion at all and is nothing but a piece of paper filed with the court" because it contained no notice of hearing, the plaintiff moved to declare the defendant in default for failure to file its answer within the five-day period prescribed in Section 4 of Rule 5. The City Court, without having notified or heard the defendant on the motion, sustained the plaintiff and ordered the reception of the latter's evidence, after which judgment by default was rendered on April 30, 1966, as follows:

"JUDGMENT by default is hereby rendered for the plaintiff and against the defendant, ordering the latter to pay unto the former the sum of \$1,150.00 in Philippine currency at the legal exchange rate of P3.92 per \$1.00 with legal interest thereon from June 25, 1965 until fully paid; to pay the sum of P500.00 as attorney's fees, aside from the costs of suit."

"Defendant's motion to Dismiss is denied and the same is hereby dismissed."

On May 5, 1966, the date stated in the summons for the trial, the defendant's counsel appeared before the City Court and was thereupon informed that the case had already been decided. On the following day the defendant filed a motion to lift the order of default and to set aside the judgment, alleging that the said order was improper because the motion to dismiss had suspended the running of the period within which to file an answer. In its order dated May 14, 1966, the City Court denied the motion.

On June 2, 1966 the defendant filed a petition for certiorari with preliminary injunction with the Court of First Instance of Manila, praying that the judgment by default and the order denying petitioner's motion to dismiss be annulled; that respondent Judge be declared without jurisdiction over the person of the petitioner; and that said respondent be directed to dismiss civil case No. 147654.

Upon motion of the respondents the lower court dismissed the petition in an order dated July 22, 1966, which states:

"Upon careful consideration of the motion filed by the respondents, the Honorable Judge Jose B. Herrera and United Films Enterprises Inc., to dismiss the petition for certiorari with preliminary injunction presented by the petitioner, Zenith Films Inc., against said respondents, on the ground, among others, that said petition for certiorari is not the proper remedy for the reason that the remedy of appeal is available, the Court finds that said motion is well founded and, therefore, the petition is hereby dismissed with-out costs."

The case is before us on appeal by the petitioner from the foregoing order of dismissal.

The only issue here is whether or not the Court of First Instance erred in dismissing the petition for certiorari on the ground that it was not the proper remedy. In the resolution of this issue the inquiry must be, in turn, whether or not the City court committed a grave abuse of discretion in declaring the appellant in default and rendering judgment for the appellee upon evidence presented by it ex parte.

Section 4 of Rule 5, concerning procedure in inferior courts, provides that "the direction contained in the summons must be that the defendant answer the complaint, and produce his evidence at a stated place, day, and hour, which shall not be less than two (2) days nor more than five (5) days after the service of the summons if it be served in the municipality or city in which the action is brought..." While it devolves upon the court itself to observe the time limitation thus fixed when it issues the summons, the clear import of the provision is that a defendant has up to the date set for trial within which to file his answer to the complaint. The City Court in this case did not observe the time limitation, for it ordered the appellant "to answer the complaint and to enter trial on May 5, 1966, at 2 o'clock in the after-noon" - more than five (5) days after the service of summons on April 19; but it is clear, not only from the wording of the summons itself but also from the import of Section 4 of Rule 5, as indicated above, that the appellant had until May 5, 1966 to answer the complaint. Consequently, the mere fact that it filed a motion to dismiss instead of answering and that the said motion did not contain a notice of hearing did not deprive it of the right to file an answer to the complaint within the period expressly stated in the summons, that is, up to May 5, nor justify the court in advancing the date for the reception of the appellee's evidence and rendering a default judgment.

The requirement that a motion must contain a notice directed to the parties concerned, stating the time and place for the hearing thereof, is found in Section 5 of Rule 15, concerning procedure in Courts of First Instance; and this particular provision is not one of those expressly made applicable in inferior courts by Section 19 of Rule 5. But without passing on the question of whether or not the appellant's motion to dismiss was "a mere scrap of paper" for lack of notice of hearing or, in other words, whether or not Section 5 of Rule 15 applies to inferior courts at all, what the City Court in the instant case should have done was to wait until May 5, 1966 to see if the defendant would file an answer; and only if it failed to do so would the Court be justified in entering an order of default. For the Court to ignore the terms of its own summons and maintain the judgment it had rendered without hearing the defendant was a grave abuse of discretion properly correctible by certiorari.

Assuming that the defendant could have appealed from the default judgment - a question we do not find it necessary to decide here categorically - such appeal would not have discharged its proper function any differently from the remedy of certiorari pursued by herein appellant under the peculiar circumstances of this

particular case. All that the appellant could have raised on appeal in the Court of First Instance was the legal question of whether or not he had been correctly declared in default; and a negative ruling by the said Court on that question would have had the effect of having the case remanded to the court of origin for the filing of an answer and for the trial of the case on the merits, which was precisely the relief asked for in the petition for certiorari. In short, to deny this remedy on the ground that appeal was available was to give primacy to form over substance and forsake unnecessarily the court's fundamental duty to inquire into the facts in order to be able to judge accordingly.

WHEREFORE, the order of the Court of First Instance dismissing the appellant's petition for certiorari is set aside; the writ prayed for is hereby granted and the case remanded to the Court of origin for further proceedings after giving the defendant therein the opportunity to answer the complaint within such period as may be fixed by said Court in accordance with the Rules. Costs against respondent-appellee.

Concepcion, C.J., Reyes, Dizon, Zaldivar, Castro, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.
Teehankee, J., concurs and adds brief remarks in a separate opinion.

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