

**PEDRO TRAJANO AND FRANK TRAJANO, PETITIONERS, VS. THE
HON. FERNANDO A. CRUZ, JUDGE OF THE CFI OF RIZAL, BRANCH
XII, AND SEGUNDINA VDA. DE FERRER, RUFINA F. LAGERA, DAMASO
FERRER...**

G.R. No. L-47070. December 29, 1977

Ponente: GUERRERO, J.

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GUERRERO, J.:

In this petition for review on certiorari, petitioners seek the reinstatement of the order dated November 4, 1976 of the Court of First Instance of Rizal, Branch XII, at Caloocan City, in Civil Case No. C-4032 granting their "Motion for Admission of Answer" and admitting their "Answer", it appearing that said order had been lifted and set aside in a subsequent order dated January 21, 1977 reviving a previous order of default, which the court reiterated in its order dated March 21, 1977 denying their motion for reconsideration.

Petitioners herein are the defendants in a complaint filed by private respondents as the lessors of the premises occupied by the former at 12 E. Alonzo Street, Daang Hari, Navotas, Rizal, for the recovery of the value of certain improvements allegedly destroyed, demolished and/or damaged by them, namely: (1) Two giant patis tanks of poured concrete (buhos) worth P6,000.00 each P12,000.00; (2) Steelmatting gate and fences with adobe/concrete bases P12,000.00; (3) One toilet bowl with water closet P650.00, all totalling P24,650.00.

Petitioners, as defendants below, were served summons through one Helen Avendaño, an employee in petitioners' factory and not the person-in-charge, on August 12, 1976. They allegedly found the said summons after the expiration of the reglementary period for filing the answer, as said Helen Avendaño did not deliver the same to the defendants but merely placed it in one of the tables in the office.

On September 22, 1976, petitioners filed their "Motion for Admission of Answer" and attached thereto their "Answer" to the complaint but failed to attach the proof of service of the aforementioned pleadings to the adverse parties. This motion was set for hearing on October 6, 1976 by petitioners' counsel but since the respondent Presiding Judge of the trial court was on vacation leave on that date, the Acting Branch Clerk of Court issued a notice to the parties resetting the hearing of said motion to October 27, 1976.

In the meantime, on October 13, 1976, respondents' counsel filed an "Ex-Parte Motion to Declare Defendants in Default" and set the same for hearing on October 20, 1976. In resolving said motion, the trial court issued an order on October 26, 1976 declaring the petitioners in default.

At the hearing of the "Motion for Admission of Answer" of petitioners on October 27, 1976, the trial court dictated an order in open court denying the same. However, upon discovery that said motion was filed earlier than the "Ex-Parte Motion to Declare Defendants in Default" of respondents, the trial court changed the order of denial and instead considered the said "Motion for Admission of Answer" submitted for resolution of the court. Then on November 4, 1976, the trial court issued an order granting the same "it appearing that said motion was filed before

the plaintiffs asked that defendants be declared in default, for reasons stated therein and in the interest of justice."

Seeking a reconsideration of the order dated November 4, 1976, respondents filed the corresponding pleading which was set for hearing on December 1, 1976. At the said hearing, the trial court, on prayer of petitioners' counsel, gave said counsel five (5) days from said date to file his opposition to the motion. But said counsel mailed his opposition only on December 13, 1976, or seven (7) days after the expiration of the period granted to him by the trial court.

In resolving the aforementioned "Motion for Reconsideration" of respondents and the opposition of petitioners, the trial court noted three (3) failures and/or omissions on the part of petitioners, to wit: (a) failure to file answer within the period provided by the Rules; (b) failure to furnish plaintiffs' counsel a copy of the "Motion for Admission of Answer"; and (c) failure to file opposition to the "Motion for Reconsideration" within the period prayed for by defendants' counsel and granted by the court.

Consequently, the trial court, on January 21, 1977 granted the "Motion for Reconsideration" of plaintiffs, lifted and set aside the order of November 4, 1976 and reinstated the order of October 26, 1976.

Upon the filing of a "Motion for Reconsideration of the Order Dated January 21, 1977" by petitioners, the trial court stood firm on the order of default. Hence, this petition for review on certiorari.

We find the petition meritorious and accordingly give due course to the same.

It appears from the facts aforesated that at the time of the filing of the "Motion for Admission of Answer" and the "Answer" by petitioners on September 22, 1976, they were not yet legally in default for failure to answer on time. Section 1, Rule 11 of the Rules of Court ordains that a party shall be declared in default "upon motion of the plaintiff and proof of such failure." As held in *Viacrusis vs. Estenzo, et al.*, L-18457, June 30, 1962, 5 SCRA 560, the court cannot motu proprio declare a party in default.

Respondents filed their "Ex-Parte Motion to Declare Defendants in Default" only on October 13, 1976 and due to circumstances not attributable to the fault of petitioners, the trial court heard the "Ex-Parte Motion to Declare Defendants in Default" on an earlier date although the "Motion for Admission of Answer" of petitioners was filed ahead. But upon discovery of said fact, the trial court granted the "Motion for Admission of Answer" of petitioners "for reasons stated therein and in the interest of justice."

The conclusion that becomes inescapable from the fact that petitioners filed their answer before respondents asked for a declaration of default is that respondents were not particularly diligent in the exercise of their rights and that they were not in any way prejudiced by the late filing of the answer by petitioners. Further, there was no evidence showing that petitioners intended to unduly delay the case. On the contrary, petitioners even attached their "Answer" to the complaint upon the filing of their "Motion for Admission of Answer" and did not even file an extension of time to file the same of any other dilatory motion.

Most importantly, petitioners set forth in their "Answer" facts which when duly proved may constitute good and substantial defenses against the complaint of respondents. They alleged therein that they were not the original lessees of the premises and at the time they entered into possession of the same, the toilet bowl and the water closet were no longer in place. They further alleged that they replaced the steelmatting gate and the steelmatting fences since they were already rotting due to the passage of time and the elements. At any rate, they assured respondents that the discarded steelmatting materials and the toilet bowl and its complements are still in the premises. As regards the two giant patis tanks, they alleged that they are intact and in place in exactly the same condition as they were when petitioners became the lessees of the premises.

Consequently, We hold that the trial court erred in issuing the order dated January 21, 1977 setting aside the order of November 4, 1976 and in maintaining its stand in the order dated March 21, 1977. In the case of Bañares vs. Flordeliza and Gavito, No. 29355, July 20, 1928, 51 Phil. 786, this Court held that "when a motion to set aside the order of default is made without loss of time and before a date is set for the hearing of the case on the merits and is accompanied by a sworn statement of merits and copies of documents which constitute prima facie a just and valid defense, such failure is insufficient to deprive a defendant of his rights, as in the present case, and the refusal to set aside the order of default constitutes an abuse of discretion, and especially when such setting aside of the order of default will in no way prejudice the plaintiff."

In the same vein, this Court held in the case of Ladislao vs. Pestano, L-7623, April 29, 1955, 96 Phil. 890, that "no prejudice could have been caused to plaintiff by the admission of defendant's answer, since the latter had not yet been declared in default and plaintiff had not yet presented her evidence on the merits. The lower court, therefore, in the exercise of its discretion, should have admitted defendant's answer instead of declaring her in default." These cases were reiterated in the recent ruling of this Court in Tumambing vs. Ganzon, L-17456, October 22, 1966, 18 SCRA 411.

It should be noted that it was only upon the resolution of a "Motion for Reconsideration" by respondents of the order dated November 4, 1976 that the trial court considered two other failures and/or omissions of petitioners, namely: (a) failure to furnish plaintiffs' counsel a copy of the "Motion for Admission of Answer"; and (b) failure to file the opposition to the "Motion for Reconsideration" within the period prayed for by defendants' counsel and granted by the court.

However, such fact of non-service was alleged by respondents for the first time in their "Motion for Reconsideration" of the order of November 4, 1976 since at the hearing of the "Motion for Admission of Answer" by petitioners, respondents' counsel merely manifested that he was submitting the motion for the resolution of the court. Besides, petitioners' counsel offered copies of the aforementioned pleadings. Therefore, on a second count, respondents failed to assert their rights at the first opportunity to do so. Moreover, petitioners' counsel offered copies of the aforementioned pleadings to respondents' counsel who, however, refused to accept the same. So petitioners' counsel just sent the copies by registered mail before the "Motion for Reconsideration" of respondents could even be resolved.

Anent the failure of petitioners' counsel to file his opposition to the "Motion for Reconsideration" of respondents within the period granted to him by the trial court, suffice it to say that such failure does not warrant the declaration of default of petitioners. At any rate, petitioners' counsel satisfactorily explained his failure as due to physical weakness as a result of influenza.

We must stress here again that it is the policy of the law to have every litigated case tried on the merits. It is for this reason that judgments by defaults are generally looked upon with disfavor. As aptly held in the leading case of Coombs vs. Santos, 24 Phil. 446, "a default judgment does not pretend to be based upon the merits of the controversy. Its existence is justified on the ground that it is the one final expedient to induce defendant to join issue upon the allegations tendered by the plaintiff, and to do so without unnecessary delay. A judgment by default may amount to a positive and considerable injustice to the defendant; and the possibility of such serious consequences necessitates a careful examination of the grounds upon which the defendant asks that it be set aside."

WHEREFORE, the questioned orders dated January 21, 1977 and March 21, 1977 are hereby lifted and set aside, the order dated November 4, 1976 reinstated and the case remanded to the trial court for trial on the merits. No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Fernandez, JJ., concur.
Martin, J., no part.

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