

DANILO BELENO, RODRIGO SICAT Y PANGALINAN AND TRIBEL TOURS, PETITIONERS, VS. DANILO ARGANOZA, EDGAR CURAMENG, ROOSEVELT MALONZO, JOHN BORROMEIO AND TEDDY CADIENTE REPRESENTED BY ...

Ponente: DIMARANAN-VIDAL, J.

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DIMARANAN-VIDAL, J.:

In this Petition for Certiorari under Rule 65 of the Revised Rules of Court, Petitioner DANILO BELENO (hereinafter Petitioner) is seeking the reversal of the Order[1] dated 20 June 2002 of the Regional Trial Court (RTC), National Capital Judicial Region (NCJR), Branch 26, Manila, in Civil Case No. 99-92546.

THE FACTS

On 1 February 1999, Respondents DANILO ARGANOZA, EDGAR CURAMENG, ROOSEVELT MALONZO, JOHN BORROMEIO and TEDDY CADIENTE represented by NARDITO P. SAGUITAN filed a complaint for Sum of Money and Damages docketed as Civil Case No. 99-92546.[2] They filed an amended complaint with prayer for preliminary attachment on 22 February 1999.[3]

Summons and a copy of the complaint was served on the Petitioner on 11 November 1999.[4] Under the Rules, Petitioner was supposed to file his answer within 15 days from the date notice was received, ergo, until 26 November 1999. Alleging that he may not be able to secure services of counsel soon considering that he had to attend to the discharge and release of his bus with Plate No. PXS 270, which was attached pursuant to the amended complaint with prayer for preliminary attachment filed by the Respondents, the Petitioner filed a motion for extension of time to file answer. He specifically prayed for a 15-day extension from 26 November 1999 to 11 December 1999 within which to file his answer. Aside from the Motion for Extension to File Answer (sic), Petitioner also filed a Motion to lift Preliminary Attachment.

On 25 November 1999, the court a quo ordered the Respondents to comment on the motions of the Petitioner.[5]

On 24 January 2000, Respondents filed a Motion to Declare Defendants in Default which the court a quo granted on 4 February 2000.[6] In the Order of Default, Respondents were allowed to present evidence ex parte.[7]

On 14 February 2000, Atty. MACARIO T. ESPEJO, JR. entered his appearance as counsel for the Petitioner. On 21 February 2000, Petitioner filed his Motion for Reconsideration with Answer Attached. This was denied by the court a quo on 9 March 2001.[8] Petitioner filed a second Motion for Reconsideration on 2 May 2001.

Meanwhile, despite the pending incident, initial trial was conducted with both parties and their respective counsels in attendance.[9] The Respondents presented their first witness, ROOSEVELT MALONZO during the initial trial.[10]

Finally, on 20 June 2002, the court a quo denied Petitioner's second Motion for Reconsideration. The dispositive portion of the assailed Order dated 20 June 2002 states:

IN THE LIGHT OF THE FOREGOING , defendants (sic) 2nd Motion for Reconsideration is hereby DENIED for utter lack of merit.[11]

Aggrieved, the Petitioner comes now before Us raising the following issues:

I

THAT THE LOWER COURT ERRED IN AFFIRMING THE PETITIONER TO BE IN DEFAULT IN ITS “ORDER” OF JUNE 20, 2002, FOR THE REASON THAT PETITIONER SHOULD HAVE FILED A MOTION TO LIFT AND SET ASIDE ORDER OF DEFAULT, INSTEAD OF A MOTION FOR RECONSIDERATION

II

THAT THE LOWER COURT ERRED IN ALLOWING THE PETITIONER TO PARTICIPATE IN THE TRIAL OF THE CSE ON THE MERITS, THEN DECLARING HIM TO BE IN DEFAULT, IN VIOLATION OF THE RULE OF “RES INTER ALIOS ACTA,” AND THE OPPORTUNITY OF THE PETITIONER TO HAVE HIS DAY IN COURT.[12]

OUR RULING

The Petition is bereft of merit.

Anent the first issue, a careful and judicious study of the assailed Order shows that the court a quo denied the Petitioner's second Motion for Reconsideration on the following grounds:

- (1) Respondents duly file a motion to declare defendants in default on 24 January 2000;
- (2) An order of default was issued by the court a quo on 4 February 2000;
- (3) Although there was a typographical error in the assignment of case number of the aforesaid motion and order, which referred to case number 91-5711, the body of both the motion and order clearly referred to Civil Case No. 99-92546;
- (4) The typographical error pertaining to the case number was corrected by the court a quo in its order dated 27 July 2001;
- (5) Petitioner cannot deny the existence of the motion and the order because they filed a motion for reconsideration dated 14 February 2000 of the 4 February 2000 order.

The Petitioner has no basis to state that the court a quo, to wit, erred in affirming the Petitioner to be in default in its “Order” of June 20, 2002, for the reason that Petitioner should have filed a Motion to Lift and Set Aside Order of Default, instead of a Motion for Reconsideration.[13] There is no showing that the court a quo refused to lift the order of default for the simple reason that there was no motion to that effect and that the court a quo failed to ascertain the true intent of the motion for reconsideration and failed to carefully read and assess the same.

Verily, the court a quo committed no grave abuse of discretion amounting to lack or excess of jurisdiction in declaring the Petitioner in default. Rule 9, Sec. 3 of the 1997 Revised Rules of Civil Procedure provides that:

Default, declaration of.- If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as the pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

The evidence on record shows that the Petitioner received the summons and a copy of the complaint on 11 November 1999, which means that he had until 26 November 1999 to submit his answer. He filed a motion for extension of time to file answer in which he prayed for a 15-day extension from 26 November 1999 to 11 December 1999 to file his answer. It was not until 21 February 2001 that the Petitioner filed a Motion for

Reconsideration with Answer Attached.

A party may be entitled to relief from an order of default when the failure to answer was due to fraud, accident, mistake or excusable negligence and when the party has a meritorious defense.[14] Petitioner ascribes his negligence to his lack of knowledge regarding the consequences of not filing an answer and his failure to secure the services of counsel. Such excuses cannot be deemed as reasonable. It is basic that ignorance of the law excuses no one. After being properly summoned and given notice of the case, the Petitioner is expected to be put on guard of the action commenced against him. As the Supreme Court emphatically held in *Pahilanga v. Luna*,[15] ordinary prudence dictates that petitioner, upon receipt of the summons, should consult a lawyer about the case. Moreover, the lapse of time between the deadline for submission of the answer, i.e. 11 December 1999, and the Motion for Reconsideration with Answer Attached, i.e. 21 February 2000, is an unreasonably long time to find a competent lawyer. Otherwise stated, Petitioner's excuse that he was not able to contract the services of counsel is not justifiable. In *Pahilanga*, *supra*, the Supreme Court held that:

It is within the sound discretion of the court to set aside an order of default and to permit a defendant to file his answer and to be heard on the merits even after the reglementary period for the filing of the answer has expired, but it is not error, or an abuse of discretion, on the part of the court to refuse to set aside its order of default and to refuse to accept the answer where it finds no justifiable reason for the delay in the filing of the answer. In motions for reconsideration of an order of default, the moving party has the burden of showing such diligence as would justify his being excused from not filing the answer within the reglementary period as provided by the Rules of Court, otherwise, these guidelines for an orderly and expeditious procedure would be rendered meaningless. Unless it is shown clearly that a party has justifiable reason for the delay the court will not ordinarily exercise its discretion in his favor. (emphasis provided)

Anent the second issue, the court a quo clearly reserved its right to deny the motion for reconsideration of the order of default dated 4 February 2000 despite setting the case for trial. In its 11 May 2001 order, the court categorically stated thus:

At the ex-parte hearing of the instant case, parties appeared thru their respective counsels. Atty. Espejo has manifested before the Court that he has received the comment/opposition to the defendant's Motion for Reconsideration today and praying (sic) that he be given five (5) days from today to come up with the reply thereto.

Meanwhile, without prejudice on the outcome of the pending incident, initial trial is set to June 8, 2001 at 8:30 o'clock in the morning.[16] (emphasis provided)

The statement "without prejudice on the outcome of the pending incident" evidently referred to the Petitioner's motion for reconsideration of the Order of Default dated 4 February 2001, *supra*. In fact, the said motion was only submitted for resolution on 20 June 2002[17] and duly resolved on the same day.

It bears stressing that the court never issued an order lifting or setting aside the order of default. Neither was there an order admitting the answer with counterclaim. The accusation that the court a quo misled the Petitioner into believing otherwise has no factual basis.

WHEREFORE, premises considered, the instant Petition is DISMISSED.

SO ORDERED.

De Los Santos, (Chairman) and Lampas Peralta, JJ., concur.

[1] Rollo, pp. 42-43

- [2] Rollo, p.60
- [3] Rollo, pp. 17-24
- [4] Rollo, p. 25
- [5] Rollo, p.62
- [6] Ibid.
- [7] Ibid.
- [8] Rollo, p. 63
- [9] Rollo, p. 9
- [10] Ibid.
- [11] Rollo, p. 43
- [12] Rollo, p. 10
- [13] Rollo, p. 10
- [14] Sec. 3 (b), Rule 9, 1997 Rules of Civil Procedure.
- [15] G.R. No. L-48724. August 29, 1988.
- [16] Rollo, p. 53
- [17] Rollo, p. 56

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