

RICE AND CORN ADMINISTRATION, PETITIONER, VS. MARIANO ONG ANTE AND THE HON. VIVENCIO M. RUIZ (JUDGE CFI OF RIZAL, BRANCH XV, MAKATI, RIZAL,) RESPONDENTS.

G.R. No. L-30558. October 04, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

An original action for certiorari with preliminary injunction against a default order and judgment of the Court of First Instance of Rizal.

Private respondent Mariano Ong Ante as plaintiff had filed with respondent court on January 20, 1969 an action against petitioner RCA as defendant[1] for the recovery of the value of 65,575 good second hand jute sacks used as containers of corn grains allegedly sold and delivered in 1965 by respondent and his assignors[2] to petitioner with the obligation on petitioner's part to return the sacks or pay for their value of P1.00 per sack, with damages and attorney's fees.

Petitioner in due course filed its verified answer with counter-claim to the complaint. It flatly denied that any "such transaction ever transpired between the plaintiff and the defendant" and attached to its answer a Disposition Form of its accounting department as of March 27, 1969 that it has "no record of empty sacks borrowed by RCA from claimants mentioned in said complaint." [3] Petitioner further averred as counterclaim with supporting documents attached as Annexes B and C of its answer that "plaintiff, who is a corn contractor with the Rice and Corn Administration, has an outstanding accountability in corn grains amounting to 5,742-36 cavans totalling 321,588 kilos net with the aggregate money value of P96,476.40 computed at the replacement cost of P0.30 per kilo, as shown in the liquidation report of the Auditor's representative" and that "as early as May 14, 1968, the Auditor's representative, for and in behalf of the defendant RCA, made a written demand upon the plaintiff to produce the said missing corn grains or reconstitute the money value thereof in the total amount of P96,476.40". Petitioner therefore prayed for dismissal of respondent's complaint against it and that respondent instead be sentenced on its counterclaim "to return the missing corn grains subject of defendant's counterclaim or to reconstitute the money value thereof in the total amount of P96,476.40."

Thereafter, as recounted in respondent court's default decision rendered against petitioner under date of May 19, 1969, the following transpired: "After the issues have been joined and the last pleading filed, this case was set for pre-trial on May 6, 1969 with due notice to the parties and their counsel. At the pre-trial of May 6, 1969, the plaintiff and his counsel, as well as Atty. Maximo Silao, counsel for the defendant appeared. At the start of the pre-trial, the Court asked Atty. Silao whether he is duly authorized or empowered to represent and act for and in behalf of the defendant Rice and Corn Administration in the matter of compromise and said counsel answered that he is not. Atty. Silao promised, however, that if given a chance to postpone the pre-trial on the said day, he will take along with him the RCA General Manager or the necessary Board Resolution authorizing him to represent and act for and in behalf of the defendant corporation in the next hearing. The Court, overruling the vehement

objection of plain-tiff's counsel, postponed the pre-trial to May 17, 1969. On this date, another counsel for the RCA Atty. Aniano Calalang, appeared in lieu of Atty. Maximo Silao. The Court thereupon asked the new counsel whether he is armed with the necessary Board Resolution to represent and act for and in behalf of the defendant corporation and he answered in the negative.* Atty. Laureta thereupon reiterated his previous mo-tion to declare the defendant in default and prayed that he be allowed to present his evidence ex-parte before the Clerk of Court or his deputy which was granted."

Petitioner immediately filed on May 20, 1969 its urgent motion to set aside order of default, alleging that if there was any defect in the written authority of May 15, 1969 granted by it through its assistant general manager, Pedro A. Rodrigo, for its counsel, Atty. Aniano Calalang "to act as representative of management as well as counsel for defendant in the pre-trial" in not empowering counsel to act in the matter of compromise, that the same was due to "honest mistake and/or excu-sable negligence," and should not be taken against petitioner RCA;" con-sidering further that the said authority was prepared by the lawyer who is actually handling the instant case, the undersigned had more reasons to believe that the same is sufficient in substance and form for purposes of complying with the provisions of the rules of Court." Petitioner fur-ther urged that the purpose for which a special authority to compromise in case of amicable settlement should be given counsel did not exist in the case and would be mere surplusage since "plaintiff in the instant case had on several occasions attempted to settle this case with the manage-ment of the RCA by making proposals and (said) proposals were rejected."

Respondent court denied petitioner's motion in its order dated May 24, 1969. Petitioner thereupon filed on May 30, 1969 the instant petition to annul the default order and to restore its rights as a litigant to present its evidence in the case below, and prayed for a preliminary injunction to restrain respondent court from proceeding ex-parte with the trial and rendition of judgment.

Respondent court's default decision dated May 19, 1969 was in the meanwhile released, sentencing petitioner RCA to pay respondent the following:

"(a) The sum of P65,575.00 representing value of 65,575 good second-hand jute sacks, or to return the said quantity of good second-hand jute sacks;

"(b) The sum of P6,560.00 per year from 1966 up to the time the claims herein are paid, representing unrealized profits;

"(c) The sum of P3,000.00 as attorney's fees; With costs against the defendant."

Petitioner accordingly filed on June 3, 1969 its supplemental petition apprising the Court thereof and praying further for the annulment of respondent court's said ex-parte decision.

The Court, per its resolution of June 17, 1969 restrained respondent court from implementing and enforcing the said decision.

The Court finds the petition to be meritorious.

While it is true that since the adoption of the 1964 Rules of Court, it is now mandatory for the parties and their attorneys to appear before the trial court for a pre-trial conference to consider inter alia the possibility of an amicable settlement, the simplification of the issues, the possibility of obtaining stipulations or admissions of facts, totally or partially, and such other matters as may aid in the prompt disposition of the action (Rule 20, section 1) and that "(A) party who fails to appear at a pre-trial conference may be non-suited or considered in default," (Idem, section 2), the rule was by no means intended as an implacable bludgeon but as a tool to assist the trial courts in the orderly and expeditious conduct of trials. The rule is addressed to the sound discretion of the trial court.[4]

Thus, the rule has further evolved in its application that when the party litigant himself cannot appear at the pre-trial, it would generally be advisable that he should execute a special authority in favor of his attorney to represent him and, to compromise the case, under pain of otherwise being defaulted or non-suited. The Court thus held in *Home Ins. Co. vs. U. S. Lines Co.*[5] that "(T)aking into consideration said purpose and spirit of the new Rules as well as the facts in the present case, We find no reversible error committed by the court a quo in dismissing the action for the reason that only plaintiff's counsel appeared at the pre-trial (and not plaintiff's official representative also). True, said counsel asserted that he had verbal authority to compromise the case. The Rules, however, require, for attorneys to compromise the litigation of their clients, a 'special authority' (Section 23, Rule 138, Rules of Court). And while the same does not state that the special authority be in writing, the court has every reason to expect that, if not in writing, the same be duly established by evidence other than the self-serving assertion of counsel himself that such authority was verbally given him. For, authority to compromise cannot lightly be presumed. And if, with good reason, the judge is not satisfied that said authority exists, as in this case, dismissal of the suit for non-appearance of plaintiff in pre-trial is sanctioned by the Rules."

It will be noted further in these cited cases where the Court sustained the trial court's default or non-suit orders for non-appearance, that there was disclosed "a pattern of conduct ... to delay disposal of the present case"[6] or a wanton failure to observe the mandatory requirement of the rule.

In the case at bar, however, no such wanton attitude on the part of petitioner could be shown. On the contrary, Atty. Calalang as the new RCA counsel vice Atty. Silao had brought along the RCA assistant general manager's written authority "to act as representative of management ... in the pre-trial." This did not constitute a compliance with Atty. Silao's undertaking to "take along with him the RCA general manager or the necessary board resolution authorizing him to represent and act for and in behalf of the defendant corporation in the next hearing," as pointed out in respondent court's decision. This constitutes an honest mistake or excusable negligence, as pleaded by Atty. Calalang, but should not prejudice petitioner's case on the merits.

More importantly, it was shown that the presentation by petitioner's counsel of special authority to compromise the case on behalf of petitioner would serve no purpose, as previous proposals of respondent for such compromise or settlement had already been rejected. Indeed, since petitioner's traversing and denial of respondent's claim in the latter's complaint, as well as petitioner's counterclaim against respondent, were based on its official records as shown by the documents annexed to its answer with counterclaim, the Court can readily appreciate the fact that no possible compromise could be worked out by petitioner with respondent.

The non-presentation by petitioner's counsel of special authority to compromise the case was moot and academic. Respondent court therefore acted with grave abuse of discretion in defaulting petitioner - defendant and rendering its ex-parte judgment by virtue of the non-presentation of such special authority to compromise the case, rather than considering with due circumspection the substance rather than the form; and instead holding, as urged by petitioner, that such special authority was academic and could serve no valid purpose and that it would not therefore deprive petitioner of its right to present its evidence, not only to support its defense but also to establish its substantial documented counterclaim against respondent. The Court has so held in the analogous cases of *P. N. B. vs. Puruganan*[7] where we held that the trial court's dismissal order after pre-trial "deprived (plaintiff) of its right to adduce evidence in support of its complaint" and of *Lucero vs. Dacayo*[8] where we held that "a postponement of the pre-trial to another date (for the excusable non-appearance on time of the plaintiff although his counsel was present) would not have caused the respondents landowners irreparable damage or prejudice."

ACCORDINGLY, the writ of certiorari is granted as prayed for. Respondent court's default order of May 17, 1969 and ex-parte decision of May 19, 1969 are annulled and set aside. Respondent court is directed to proceed

anew with the trial of the case on the merits with due notice to the parties and to re-ceive their evidence and thereafter render its deci-sion on the basis thereof. With costs against private respondent.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Fernando, Villamor, and Makasiar, JJ., concur.

Castro, J., reserves his vote.

Barredo, J., reserves right to file a dissent in a separate opinion.

[1] Civil Case No. 11495 of Branch XV of the Court of First Instance of Rizal, at Makati, presided by respondent judge Vivencio M. Ruiz, entitled "Ma-riano Ong Ante, plaintiff vs. Rice and Corn Adminis-tration, defendant."

[2] According to the complaint, respondent himself delivered only 5,825 sacks while he is "the assignee of the proceeds of the claims for the return or payment of (59,750) sack containers of corn grains sold to the de-fendant" by four other grain dealers.

[3] Annex A, RCA answer with counterclaim.

* This is not an accurate statement, as Atty. Calalang had brought a written authority from the assistant general manager; see next paragraph.

[4] Arcuino vs. Aparis, 22 SCRA 407 (Jan. 31, 1968).

[5] 21 SCRA 863 (Nov. 15, 1967); vide also American Ins. Co. vs. Republic, 21 SCRA 464 (Oct. 23, 1967) and Saulog vs. Custombuilt Mfg. Corp., 26 SCRA 1 (Nov. 15, 1968).

[6] Saulog vs. Custombuilt Mfg. Corp., supra, fn. 5.

[7] 22 SCRA 468 (Jan. 31, 1968).

[8] 22 SCRA 1004 (Mar. 13, 1968); notes supplied.

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