

ELOY PROSPERO, PLAINTIFF AND APPELLEE, VS. ALFREDO ROBLES, IGNACIO LOYOLA, EMILIO MAGCALOS, LUCIO BERSAMIN AND ANDOY “DOE”; DEFENDANTS AND APPELLANTS.

G.R. No. L-16870. May 31, 1963

Ponente: DIZON, J.

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DIZON, J.:

Eloy Prospero filed the present action on January 30, 1959, to recover damages and obtain a writ of injunction against appellants. The preliminary writ was issued upon his filing a bond in the sum of P1,000.

On February 18, 1959, appellants, represented by Attys. Beltran and Lacson, filed a motion to dismiss the complaint, but the same was denied for lack of merit. The order of denial required them to file their answer-presumably within the usual reglementary period after service of summons-"the period to be computed from the notification of this court."

On May 16, 1959, appellee filed a motion for default, but the same was denied on the ground that, according to the record, appellants' period for the filing of their answer had not yet expired.

On May 20, 1959, appellants filed a motion for the reconsideration of the order denying their motion to dismiss, but the same was denied on May 23 of the same year. Notice of this order was received by appellants on the 29th of the same month.

On July 8, 1959, appellee filed a second motion for default alleging, among other things, that, up to that time, appellants had not filed their answer. As this allegation was found substantiated by the record, the court entered the corresponding order of default, proceeded to receive the evidence of appellee and subsequently rendered decision as follows:

"WHEREFORE, this Court hereby renders judgment ordering the defendants to pay jointly and severally to the plaintiff the sum of:

'(1) P1,000.00 for his pecuniary loss due to the injury to his good will and patronage;

'(2) P1,000.00 as moral damages;

'(3) P1,000.00 as attorney's fees; and

'(4) Costs.

"Finally, the Court hereby orders the defendants, Alfredo Robles, Ignacio Loyola, Emilio Magcalos, Lucio Bersamin and Andoy "Doe", singly and en masse, including their attorneys, representatives, agents and any other person or persons assisting them, to refrain permanently from establishing picket lines in and around the premises and/or places where the plaintiff may perform professional musical services."

On October 26, 1959, appellants, this time through Atty. Edgardo Diaz de Rivera, filed a verified motion for new

trial, alleging that their failure to answer the complaint was due to accident, mistake or the excusable negligence of their former counsel, Atty. Aurelio S. Arguelles, Jr., and alleging further that the decision and the writ of injunction were against the law. The court denied this motion on December 2, 1959 on the ground that it was not supported by any affidavit of merit nor did it allege facts sufficient to constitute a ground for relief from a final judgment. The order of denial further stated that appellants had no standing in court because the order of default entered against them had not been set aside.

On January 8, 1960, appellants filed a petition for relief from judgment, verified by appellant Robles who, in a separate affidavit, alleged that he was the president of the Philippine Musicians Guild, a registered labor union; that he was one of the defendants in the case; that they were declared in default because their former lawyer, Atty. Aurelio S. Arguelles, Jr., failed to file their answer to the complaint and that because of his "mistake or excusable negligence", the substantial rights of his clients had been prejudiced; that had they been able to present evidence, the decision rendered against appellants would have been different.

Appellee naturally opposed the petition, and on February 8, 1960, the court denied the same firstly, because it was filed out of time, and secondly, because it did not rely on any ground sufficient to meet any of the reglementary requirements.

The present appeal from the order last mentioned is without merit.

As the lower court held, the petition for relief was filed out of time. Appellant admit that they had knowledge of the order and decision by default rendered against them since October 21, 1959. It is clear, therefore, that the petition for relief filed on January 8, 1960, or seventy-nine (79) days after appellants knew of the order and decision by default, came too late-beyond the period of sixty (60) days provided for in Rule 38, Rules of Court.

Moreover, neither their motion for new trial nor the petition for relief was supported with any affidavit sufficient in form and substance to prove even one of the grounds provided for in Rule 38 of the Rules of Court, nor to show that appellants have a good and meritorious defense.

The mere allegation made by appellants in the petition for relief that the default was due to the gross negligence or mistake and/or abandonment of their attorney, without stating the facts that constitute such negligence, mistake or abandonment, is not legally sufficient to justify the granting of the relief provided for in Rule 38. Likewise, it has been repeatedly held that, to merit the relief, it is not sufficient to allege that the aggrieved party has good and strong evidence to support his case, this being clearly a mere conclusion. The affidavit of merit required by the rules must contain and submit to the court such facts as would probably convince the latter that the aggrieved party has a meritorious case.

Lastly, appellants also claim that the lower court erred in assuming jurisdiction over the case and issuing a writ of injunction against them, claiming that picketing is a legitimate exercise of freedom of speech and can not be enjoined in labor disputes. The only trouble with this contention is that the lower court made an express finding-which can not now be reviewed-that, at the time of the picketing, there was totally no employer-employee relations between plaintiff and appellants and the action was merely an ordinary one for damages and a restraining order.

WHEREFORE, the order appealed from is affirmed, with costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, Regala, and Makalintal, JJ., concur.

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