

**VILLA-REY TRANSIT, INC., PETITIONER VS. HON. ELOY B. BELLO,
FLORENTINA ASUNCION, IN HER OWN BEHALF AND AS GUARDIAN
AD-LITEM OF HER MINOR CHILDREN, CARMENCITA, DANILO,
EVENGELINE...**

G. R. No. L-18957. April 23, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

On August 7, 1961, herein respondents, the Tejasdas, presented with the Court of First Instance of Pangasinan, a complaint for "Damages with Preliminary Attachment", against herein petitioner and the incorporators thereof, as a result of the death of Felipe Tejada, (husband and father of respondents), who was one of the passengers of petitioner's Bus No. 107, which figured in a vehicular accident on the morning of July 17, 1961.

Summons was received by petitioner Villa-Rey Transit, Inc. on August 18, 1961, and had until September 2, 1961, within which to Answer. One day before the expiration of the period to present Answer, a "Motion for Extension of Time Within which to File Responsive Pleading", was mailed by counsel of the defendants, asking fifteen (15) days from September 2, 1961. They were given 10 days from September 2, 1961. Counsel claims that he did not receive any resolution before the expiration of the period of extension. However, on September 12, 1961, within the period prayed for, counsel for defendants filed a "Motion to Dismiss", the principal allegations and arguments of which read as follows-

"* * * The complaint alleges that the above-referred defendants 'are included as such because they are the original incorporators of the defendant Villa-Rey Transit, Inc.; that according to the Articles of Incorporators, they have subscribed to P200,000.00 worth of shares of Stock and have paid only P105,000.02; and that the balance of P95,000.00 still in the hands of these defendants form part of the assets of the Villa-Rey Transit, Inc. (Par. V, of plaintiffs' complaint). Admitting the same to be true, yet, it is respectfully submitted that defendants are liable for their unpaid subscriptions to the corporation, but, not to a third party, It could not be a cause for including them as party defendants herein. Hence, the plaintiff has no cause of action against said defendants. To allow said defendants to be parties herein, would only cause them embarrassment and expenses.

WHEREFORE, it is respectfully prayed that the complaint of plaintiffs be dismissed, or that plaintiffs be ordered to amend their complaint by discharging Virgilio Reyes, Emma P. Reyes, Benigno Cunanan, Felicitas V. Cunanan, Natividad R. Villarama and Feliciano Reyes as parties-defendants thereof."

The motion to dismiss was set for hearing on September 20, 1961. However, on September 14, 1961, herein respondents presented with the lower court, a Petition Ex-Parte to declare herein petitioner in Default, it appearing that the period granted, to it, had already elapsed and the Motion to Dismiss was only for the benefit of the other defendants, but not of herein petitioner. On September 18, 1961, respondents filed a Motion Ex-Parte, praying that the defendants-incorporators in said Civil Case, be dropped from the complaint, as prayed for in the Motion to Dismiss.

Under date of September 18, 1961, the respondent Court handed down an Order, the pertinent portions of which recite-

"From the records of the case, it appears that the defendant Villa-Rey Transit, Inc. was served with summons on August 17, 1961; that on September 4, 1961, the said defendant filed a motion for an extension of time within which to file responsive pleading; and that this Court acting on said motion gave the defendants ten (10) days from September 2, 1961, within which to file their answer. In the records of the case, there is no answer filed by the defendants but a motion to dismiss for the defendants other than the defendant Villa-Rey Transit, Inc. From September 2, 1961, until the present time, more than ten (10) days have already elapsed.

As prayed for, the defendant Villa-Rey Transit is hereby declared in default.

This Court may even declare the other defendants in default because their motion of August 29, 1961, asking for an extension of time to file a responsive pleading, and a motion to dismiss is not a responsive pleading. However, on September 18, 1961, the plaintiffs thru counsel, have just filed a motion ex-parte praying that the complaint be dropped against the defendants Virgilio Reyes, Emma P. Reyes, Benigno Cunanan, Felicitas V. Cunanan, Natividad R. Villarama, and Feliciano Reyes.

As prayed for, the complaint as far as the above-named defendants are concerned are hereby dropped. As prayed for in the motion ex-parte of plaintiffs dated September 14, 1961, the Special Deputy Clerk of Court, Branch I, is hereby commissioned to receive the evidence which the plaintiffs may desire to present in support of their complaint."

On September 20, 1961, the respondent Court, resolving the Motion to Dismiss, stated that since the defendants-incorporators had already been dropped from the complaint, it was superfluous to act thereon.

On September 23, 1961, the respondent Court rendered a default judgment against the Villa-Rey Transit, Inc., the relevant portions of which read-

"From the evidence presented it has been established that the late Felipe R. Tejada is the legitimate husband of the plaintiff Florentina Asuncion and the legitimate father of the other plaintiffs; that at around 3:00 o'clock in the morning of July 17, 1961, the said Felipe R. Tejada boarded a Bus No. 107 of the defendant corporation at Lingayen, Pangasinan, in his way to Manila where he is employed; that he (Tejada), was a paying passenger in said bus; that while the bus was on its way on the national highway at San Manuel, Tarlac, and while visibility was not very clear, the driver of the said Bus No. 107 drove the said bus at a terrific speed and; while doing so bumped against a cargo truck that was parked along the side of the road at said municipality, * * * the right side of the bus was smashed and all the seven passengers seated on the right side died as a result of the accident, and among those passengers was the late Felipe R. Tejada; that the said Tejada; was a permanent employee of the Court of Appeals with a salary of P3,300.00 a year, * * * and that Felipe R. Tejada was 38 years, old at the time of his death.

There is no question that the defendant, Villa-Rey Transit, Inc." had committed a breach of contract in failing to comply, with its common carrier obligation of bringing safely the passenger Felipe R. Tejada to his place of destination, in this particular case, to Manila. There is no question that had not the late Felipe R. Tejada met a fatal, accident on July 17, 1961, he would have continued to serve in the Government until he would retire at the age of 65, years, so that he would still have to render service for some 27 years. Just for the death of Felipe R. Tejada, the heirs are entitled to compensation of P6,000.00 (Art. 2206, CC). As consequential damages, the heirs have been deprived of the earning capacity of their husband and father, respectively, at the rate of P3,300.00 a year. The average life of a Filipino is between 50 to 60 years; so, the plaintiffs are entitled to, at least seventeen (17) years, or the sum of P56,100.00 (Art 2206, Par. 1,. C.C.). For failure of the defendant to exercise due diligence in employing a careful and prudent driver, as an example for the public good, the amount' of P2,000,00 as exemplary damage is hereby awarded. For the agony, mental anguish and sorrow suffered by the plaintiffs because of the sudden death of said father and husband, and the mutilated and gory

condition of the body, the amount of P5,000.00 is awarded as moral damages.

IN VIEW OF THE FOREGOING, decision is hereby rendered, ordering the defendant, Villa-Rey Transit, Inc., to pay the sum of P70,100.00 as damages, with costs against the defendant."

On September 26, 1961, private-parties: respondents presented an Ex-Parte Petition for the execution of the decision. The same was granted and personal properties of petitioner company were levied upon. On September 27, 1961, petitioner herein, filed a Motion to Lift Order of Default alleging that the order was entered against the defendant thru accident, mistake or excusable negligence; that the Motion to Dismiss, presented within the period granted, included petitioner herein; that the same was a responsive pleading; and that petitioner had valid defenses. The motion with the opposition of the respondents, was set for hearing on October 5, 1961. A motion to lift the Order of Execution dated September 30, 1961 was also presented by petitioner, alleging that the motion to lift order of default, should first be resolved before the decision could be executed. The motion to lift the Order of Execution was denied in open court on October 2, 1961, in the following manner:

"* * * considering that, the issuance for the execution of judgment is a matter of right on the part of the plaintiffs, the defendant having been declared in default and as such it has no right to appeal, and considering that, not until this court sets aside its decision and lifts the order of default will the writ of execution be affected, the said motion is denied."

On the same date (Oct. 2,), petitioner filed a Motion for New Trial or to Set Aside Judgment, and requested the same to be heard also on October 5, 1961. An opposition to the above motion was registered on October 4, 1961, by respondents. When the motion was heard on October 5, 1961, the respondent judge suggested to counsel for petitioner to file his petition under Rule 38 of the Rules, and to file a bond of P30,000.00 in order to stop the projected sale of the properties levied upon. The suggestion, however, was a voice in the wilderness, because on October 4, 1961, petitioner had filed the present action.

In the petition, it was alleged that respondent Court (1) acted without jurisdiction or in excess of it, or with grave abuse of discretion in declaring petitioner in default and (2) in not lifting or suspending the writ of execution, pending the resolution of the motion to lift order of default and the motion for New Trial and/or to set aside the judgment. Petitioner prayed:

- (a) that judgment be entered annulling the decision rendered on September 23, 1961 and the orders issued, thereafter;
- (b) that pending hearing and determination of the petition, an order of preliminary injunction issue directing the respondent Judge to desist and refrain from enforcing the Writ of Execution dated September 27, 1961 and restraining the Provincial Sheriff of Pangasinan to desist and refrain from selling at auction, on October 7, 1961, the properties levied upon.

On October 6, 1961, this Court gave due course to the petition and issued a writ of preliminary injunction. Respondents, answering, maintain that petitioner was correctly declared in default and that the respondent Court did not commit the abuse alluded to.

The issues raised by petitioner boil down to the proposition of "whether or not respondent Court acted without, or in excess of jurisdiction, or with grave abuse of discretion in declaring petitioner in default and in rendering the default judgment.

Admittedly, respondent Court had jurisdiction over the case. The impugned orders were issued in the exercise of such jurisdiction. If the court has jurisdiction of the subject-matter and of the person, orders or decisions upon all questions pertaining to the cause are orders or decisions within its jurisdiction and, however irregular or erroneous

they may be, they cannot be corrected by certiorari (*Gala vs. Cui and Rodriguez*, 25 Phil., 522). Judicial errors or mistakes of law, are proper subjects of appeal (*Macasieb Sison vs. CFI of Pangasinan*, 34 Phil., 404; *Galang vs. Endencia*, 73 Phil., 399). The respondent, in declaring petitioner in default, found that it did not file a responsive pleading within the period granted to it, and that the Motion to Dismiss, (which, by the way, is not a responsive pleading, *Paeste & Carpio vs. Jaurique*, 94 Phil., 179; 50 Off. Gaz. 112), did not pertain to petitioner, but to the defendants-incorporators. Granting, for the purposes of argument, that these findings are erroneous, still it is a legal truism that not every error in the proceeding, or every erroneous conclusion of law or of fact, is abuse of discretion (*Gov't. vs. Judge of First Instance*, 34 Phil., 157). True, that petitioner had filed a motion to lift order of default, and a motion for new trial and to set aside the default judgment, but before they could be resolved, petitioner had already brought the matter to this Court, on a petition for Certiorari and Injunction, without giving the respondent court an opportunity to pass upon said motions, which act renders the filing of the present petition premature. Moreover, the trial court did not act with abuse of discretion, in issuing the orders complained of, for it is clear that they are in accordance with the facts and circumstances of record and the law on the subject.

Wherefore, the petition should be, as it is hereby DENIED, for lack of merits. The injunction issued is DISSOLVED, find costs taxed against herein petitioner VILLA-REY TRANSIT, INC.

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

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