

PACWELD STEEL CORPORATION, PLAINTIFF-APPELLEE, VS. ASIA STEEL CORPORATION, DEFENDANT-APPELLANT.

G.R. No. L-26325. November 15, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from a decision of the Court of First Instance of Manila, presided by then Judge, now Minister of Justice, Ricardo C. Puno, which ordered appellant Asia Steel Corporation to pay appellee Pacweld Steel Corporation the sum of P15,900.00 on the principal obligation, P15,094.73 accrued interests, and interests on both sums at the legal rate from the filing of the complaint until full payment.

On May 21, 1964, Pacweld Steel and Asia Steel signed an agreement for the latter to liquidate its outstanding accounts with the former. In the agreement Asia Steel acknowledged its indebtedness to Pacweld Steel in the amount of P40,000.00. As payment, Asia Steel issued four checks, each for P10,000.00, in favor of Pacweld Steel and drawn against the Metro-politan Bank and Trust Corporation. The first check dated May 22, 1964 was encashed and applied to the indebtedness. The three other checks were post dated and bore the dates June 21, 1964, July 21, 1964 and August 21, 1964 respectively. All three checks were dishonored by the bank.

As of July 29, 1964, Asia Steel was able to pay only P18,700.00 of its P40,000.00 acknowledged debt. Pacweld Steel demanded payment of P21,300.00 on this date. On August 3 and 4, 1964 Asia Steel made additional payments totalling P5,400.00. As of August 13, 1964 when the complaint was filed, the outstanding balance was P15,900.00. After computing the interests due Pacweld Steel based on the agreement of the parties, the lower court reduced the claim for P15,241.72 accrued interests to P15,094.73. Thus, the judgment for P15,900.00 on the balance of the principal obligation and for P15,094.73 accrued interests.

The defendant-appellant raised the following assignments of errors in its appeal:

I

THE TRIAL COURT ERRED IN NOT GRANTING DEFENDANT-APPELLANT'S MOTION TO LIFT ORDER OF DEFAULT.

II

THE TRIAL COURT ERRED IN NOT GRANTING DEFENDANT-APPELLANT'S MOTION FOR RECONSIDERATION AND FOR RELIEF FROM ORDER OF DEFAULT.

The trial court set the pre-trial conference at 8:30 o'clock in the morning of July 2, 1965. On June 29, 1965, Asia Steel asked for a postponement of said pre-trial on the ground that its president, Yu Kong Tiong, could not attend because he was suffering from asthma and bronchitis and had been advised by his physician to stay in bed. The motion was denied. When no one appeared for the defendant at the scheduled pre-trial, it was declared as in default and the plaintiff was permitted to present its evidence ex-parte before a commissioner.

On July 28, 1965, Asia Steel filed an "ex-parte urgent motion to set aside order considering defendant in the above-entitled case in default." On July 30, 1965, the court ordered the ex-parte urgent motion set for hearing on August 7, 1965 at 8:30 in the morning.

On August 7, 1965, neither the defendant-movant nor its counsel appeared at the hearing. Acting on the opposition of the plaintiff, the court denied the motion to set aside the order of default.

On August 10, 1965, the defendant filed another "ex-parte urgent motion to set aside order, if any, considering the defendant in the above-entitled case in default." The court, on August 14, 1965, set the above motion for hearing on August 21, 1965.

When the motion was called for hearing on August 21, 1965, no one appeared for the defendant-movant and, upon the manifestations of plaintiff's counsel, the motion was denied.

On September 3, 1965, the defendant filed an urgent motion for reconsideration and for relief from order of default. After requiring the plaintiff to file comment on the motion for relief from order of default, the lower court issued an order on September 22, 1965 denying the defendant's motion.

On October 11, 1965, Asia Steel filed a "supplementary motion for reconsideration and for relief from order of default dated September 3, 1965." Pacweld Steel filed a "comments and manifestation" on the supplementary motion on October 12, 1965.

On October 16, 1965, the lower court issued an order denying the supplementary motion for reconsideration and for relief from the default order. On October 21, 1965, the court rendered the decision which is now before us on appeal.

We have outlined in fair detail the various incidents in the trial below to show that the court did not err much less commit any abuse of discretion in declaring the defendant-appellant as in default and in refusing to reconsider the default order.

Where the defendant and its counsel, after due notice, fail to appear at pre-trial, the trial court has authority to declare the defendant as in default. We have ruled:

"The law conferring upon a court of first instance discretion to dismiss a case for failure of a party to appear at the pre-trial is found in sections 1 and 2 of Rule 20 of the Rules of Court, which inter alia, state: ' Pre-Trial Mandatory. - In any action after the last pleading has been filed, the court shall direct the parties and their attorneys to appear before it for conference to consider: (a) the possibility of an amicable settlement or of submission to arbitration. x x x Failure to appear at the pre-trial conference. - A party who fails to appear at the pre-trial may be non-suited or considered as in default.' This Court, interpreting these provisions, has uniformly emphasized that pre-trial is mandatory, that the parties as well as their counsel are required to appear thereat, and that dismissal of the suit for non-appearance of the appellant at the pre-trial is sanctioned by the Rules. (American Insurance Co. vs. Republic of the Philippines, et al., L-25478, October 23, 1967, 21 SCRA 464, 128 Phil. 490 American Insurance Co. vs. Manila Port Service, et al., L-27776, January 31, 1968, 22 SCRA 482, 130 Phil. 501 Home Insurance Co. vs. United States Lines Co., et al., L-25593, November 15, 1967, 21 SCRA 863; 129 Phil. 106 (International Harvester Macleod, Inc. vs. Co Ban Ling & Sons Co., 25 SCRA 612)

It is also settled that whether the default order should be maintained under the circumstances of a particular case or whether it should be set aside depends on the sound discretion of the trial court. As a matter of fact, every presumption is in favor of the correctness of the court's action. (Inter-island Gas Service Inc. v. De la Cerna, 18 SCRA 386). Moreover, the repeated non-appearance of the defendant appellant and its counsel during the hearings on its twice filed ex-parte motion to set aside the default order shows not only the validity of the order

declaring it as in default but also a lack of interest to defend itself against the complaint. The defendant-appellant's pattern of conduct as outlined above discloses a desire to delay the disposal of the case. (Cf. *Saulog v. Custombuilt Manufacturing Corporation*, 26 SCRA 1).

WHEREFORE , the instant appeal is hereby dismissed for lack of merit. The decision of the court a quo is affirmed with costs against the defendant-appellant.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Vasquez, and Relova, JJ., concur.

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