

PACIFIC IMPORTING & EXPORTING CO., PETITIONER, VS. CATALINO TINIO, F.C. STELTON, AND POTENCIANO PECSON, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENTS.

G.R. No. L-2634. December 29, 1949

Ponente: BENGZON, J.

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BENGZON, J.:

This is a petition to annul the order of the respondent judge of Manila dated February 10, 1948, revoking a previous order of the court of May 30, 1947 that definitely dismissed a certain civil case. The facts are these:

- On April 15, 1947, respondent Catalino Tinio filed, in the Manila Court of First Instance, a complaint to recover from herein petitioner Pacific Importing & Exporting Co. (hereafter called Pacific Company) the sum of P24,722.78 as commissions due him for sales of merchandise, and from the Manila manager of same defendant (F. C. Stelton) the sum of P1,150 as commission for sales of other goods (civil case No. 2278).
- By its answer of April 80, 1947, the Pacific Company denied liability, alleged that Tinio's employer was F. C. Stelton, and submitted a counterclaim for over-payment of commissions.
- On May 12, 1947, the Pacific Company and respondent Tinio filed in the said civil case No. 2278 a statement praying for its definite dismissal, and declaring that the Pacific Company ceased to be the employer of Tinio as of October 1, 1946, and that F. C. Stelton stood liable to Tinio for commissions after that date and that the Pacific Company had paid Tinio all commissions due before October, 1946.
- As prayed for, an order of definite dismissal was issued on May 30, 1947. The Pacific Company alleges (and respondents do not deny) that such order became final on June 29, 1947, there having been no appeal.
- However, on February 3, 1948, Catalino Tinio filed a petition to set aside the order of dismissal, explaining that he had been fraudulently induced to sign it upon the strength of certain specific promises and manifestations made to him by the representative of the Pacific Company, promises which said company subsequently failed to honor and manifestations which turned out to be untrue.
- On February 10, 1948, the court set aside the order of dismissal, dated May 30, 1947, and revived the case. Then on July 13, 1948, upon a motion for reconsideration, it entered an order setting forth that:

"El arreglo habido entre el demandante y la referida entidad demandada que culminó en la petición de sobreseimiento de esta causa con respecto a la referida demandada, se fundó en que dicha demandada ayudaría y facilitaría al demandante todas las pruebas necesarias para establecer el hecho de que entre dicha demandada y el otro demandado F. C. Stelton hubo un contrato, en virtud del cual este último asumía la responsabilidad exclusiva de todos cuantos contratos de empleo celebrados por el con las respectivas partes interesadas, entre ellos, el contrato celebrado con el aquí demandante. Esta promesa se hizo, no solo por la entidad demandada al hacerse el arreglo entre ella y el demandante, sino también por sus abogados ante este Juzgado, prometiendo facilitar el documento o documentos que el demandante necesitaba para probar su acción contra el otro

demandado Stelton, pero es el hecho que dicha entidad demandada no ha cumplido, ni ha querido cumplir, pues al parecer no existe el documento o documentos que ha prometido facilitar al demandante."

- Another motion to reconsider was filed. It was also denied.

- Hence this petition which is planted on the proposition that the court had no jurisdiction to act on the motion of February 3, 1948, because at that time the order of dismissal had become final and the six-month period (Rule 38, sec. 3) within which relief could be asked on the ground of fraud, accident, mistake or excusable negligence had expired.

The petitioner is right. From May 30, 1947 to February 3, 1948 more than seven months had elapsed. Six months after May 30, 1947 the court lost all jurisdiction to entertain motions for relief.

Wherefore, although we are satisfied, like the court below, that plaintiff Tinio had been induced to consent to the dismissal through the fraudulent misrepresentations of the Pacific Company, however, due to the expiration of the six-month period, we must declare the court without jurisdiction to reopen the civil case No. 2278. This, however, will be without prejudice to Tinio's right to bring another suit to annul the order of May 30, 1947 on the ground of fraud (which is obviously extrinsic as distinguished from intrinsic)[1] and at the same time, to claim as a second cause of action for recovery of the commissions which he has tried to obtain in the aforesaid civil case. On the other hand, the Pacific Company should be allowed to repeat, if it so desires, the counterclaim it has previously presented against respondent Catalino Tinio. The writ is granted, without costs.

Moran, C.J., Ozaeta, Paras, Pablo, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

[1] Moran Comments on the Rules of Court, Vol. 1, page 633 citing *Anuran vs. Aquino*, 38 Phil., 29, 32; *Francisco vs. David* and other cases.

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