

LCC CORPORATION (FORMERLY LUZON COMMODITIES CORPORATION), PLAINTIFF-APPELLEE, VS. JESUS FARRALES, DEFENDANT-APPELLANT.

G.R. No. L-39804. April 17, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A case certified to this Tribunal by the then Court of Appeals on a question of law, herein being resolved on the basis of rules prior to Batas Pambansa Blg. 129.

In their chronological order, the facts follow:

1. On September 4, 1969, LCC Corporation filed a complaint against Jesus Farrales with the then City Court of Manila (Case No. 183562) for the recovery of P4,749.49 representing the purchase price of "Union" brand cement allegedly delivered to Farrales.
2. (a) On September 25, 1969, defendant Farrales was served with summons.
(b) On October 15, 1969, defendant sent by registered mail an Urgent Petition for extension of ten days within which to file an Answer, or up to October 25, 1969.
(c) On October 24, 1969, defendant filed his Answer, also by registered mail, contending principally that he was never privy to any transaction with plaintiff involving cement.
3. (a) On November 12, 1969, plaintiff filed a Motion to Strike Out Answer for having been filed 9 days late and for a declaration of default.
(b) On November 15, 1969, the City Court acted favorably on the Motion.
4. (a) On November 18, 1969, defendant filed an Urgent Motion for Reconsideration alleging "that the registered letter bearing the original copy of the Urgent Petition for Extension addressed to the Clerk of Court, City of Manila Branch III, was returned unclaimed," attaching the necessary Annexes ("A" & "B") as proof thereof, and praying that his Answer be admitted. Defendant also averred that plaintiff's counsel was sent and had received a copy of the motion for extension (Annexes "C" & "D").
(b) The City Court denied reconsideration on November 29, 1969.
5. (a) On December 10, 1969, defendant received copy of the City Court Decision in plaintiff's favor, also rendered on November 15, 1969.
(b) On December 26, 1969, defendant filed a Motion for Reconsideration and/or New Trial reiterating the previous ground alleged by him, invoking in addition accident, mistake, and/or excusable negligence which could not have been guarded against, and alleging that he had a good, valid, and meritorious defense, particularly, lack of privity of contract.

(c) On January 7, 1970, defendant filed a Supplemental Motion for Reconsideration and/or New Trial with an Affidavit of Merit.

(d) On January 10, 1970, the City Court denied both the first and the Supplemental Motion for Reconsideration and/or New Trial.

6. (a) Defendant appealed to the then Court of First Instance of Manila, Branch V (Civil Case No. 78840).

(b) Upon plaintiff's Motion, the Court of First Instance dismissed the appeal, over defendant's opposition, on the ground that no appeal may be taken from a judgment by default rendered by an inferior Court, the proper remedy being a Petition for Relief under Rule 38 of the Rules of Court, and that a defendant must justify his failure to answer by fraud, accident, mistake or excusable negligence.

7. Defendant appealed to the Appellate Court (CA-G.R. No. 47337-R), which elevated the case to this Tribunal, no question of fact being involved.

It is well settled that a party in default cannot appeal until his standing in Court is regained.

"It is well settled in our jurisdiction that a defendant who has been declared in default loses his standing in court and without having regained the same has no right to appeal from the judgment by default (*Lim Toco vs. Go Fay*, 80 Phil., 1966; *Manila Motor Co., Inc. vs. San Juan*, G. R. No. L-9163, May 29, 1959)." x x x[1]

To regain that lost standing, the same case recites:

"The rule in this jurisdiction is that a defendant, who has been declared in default by the municipal or city court, in order to enable him to restore his standing in court, may avail himself of either of two remedies, i.e., (1) he may ask the court, within one (1) day after notice of the order of default, to set aside such order, by appearing and showing to the satisfaction of the court that his failure to appeal was due to fraud, accident, mistake or excusable negligence under Section 13, Rule 5 of the Revised Rules of Court; or (2) he may, if he fails to avail himself of this remedy and the judgment has become final and executory, file a petition for relief in the Court of First Instance under Section 1 of Rule 38 of the Revised Rules of Court. He may also file a motion to lift the default judgment and ask for new trial, before the judgment becomes final and executory under Section 16 of Rule 5." [2]

The foregoing authoritative precedent was reiterated in and applied in *Strachan & Macmurray, Ltd. vs. Court of Appeals*. [3]

Applying the foregoing criteria, of note is the fact that, before the City Court, defendant did file a Motion for Reconsideration and/or New Trial within fifteen (15) days after receipt of the default judgment of the City Court, followed by a Supplemental Motion for Reconsideration and/or New Trial to which was attached an Affidavit of Merit signed by defendant. It was after receiving the City Court Order denying his first Motion and Supplemental Motion that defendant appealed to the Court of First Instance.

It is apparent, therefore, that defendant availed of remedies in an attempt to regain his lost standing before the City Court. His first Motion for Reconsideration and/or New Trial may substantially be said to be the equivalent of a Motion to lift the default judgment and for new trial under Section 16 of Rule 5, Rules of Court; [4] his Supplemental Motion for Reconsideration and/or New Trial to which was attached an Affidavit of Merit alleging accident, mistake and/or excusable negligence, the equivalent of a Petition for Relief under Rule 38 of the Rules of Court, although not so entitled. With the denial of both said Motions by the City Court, the appeal to the Court of First Instance interposed by defendant, therefore, was more of an appeal from the City Court order denying relief and not from the judgment by default itself. Consequently, contrary to the ruling of the Court of First Instance, it could have entertained the appeal.

Further, defendant had alleged before the City Court that his Urgent Motion for extension of time to file his Answer sent to the City Court by registered mail had been returned unclaimed, which, if proven, would have a bearing on the timeliness of the filing of the Answer. The latter pleading was filed within the ten-day extension prayed for by defendant. We also note that in pleading absence of privity of contract with plaintiff, defendant could have a good and valid defense.

ACCORDINGLY, the Orders of the then Court of First Instance of Manila, Branch V, appealed from, are hereby REVERSED and SET ASIDE, and this case remanded to the Metropolitan Trial Court corresponding to the former City Court of Manila, Branch III, for further proceedings. No costs.

SO ORDERED.

Teehankee, (Chairman), Plana, Relova, Gutierrez, Jr., and De la Fuente, JJ., concur.

[1] Luzon Rubber & Mfg. Co. vs. Estaris, 52 ESCRA 391, 392 (1973).

[2] Luzon Rubber & Mfg. Co. vs. Estaris, *supra*.

[3] 62 SCRA 109 (1975).

[4] “Section 16, New trial. - Within the time provided for perfecting an appeal from a judgment rendered by an inferior court and before an appeal is so perfected, the court may grant a new trial to correct an error or injustice it may have committed.”

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