

**EDUARDO S. SAN JUAN, PETITIONER, VS. NIEVES RALLOS CUENTO,
BY AND THRU HER ATTORNEY-IN-FACT, NELITA GALLITO CUENTO
AND COURT OF APPEALS, RESPONDENTS.**

G.R. No. L-45063. April 15, 1988

Ponente: FERNAN, J.

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FERNAN, J.:

This is a petition for review of the decision and resolution of the Court of Appeals in CA G.R. No. SP-04024 entitled "Nieves Rallos Cuento vs. Hon. Enrique Agana, Sr. and Eduardo San Juan". In the resolution of March 21, 1977, this Court resolved to treat the petition as a special civil action for certiorari.

On June 3, 1971, petitioner-plaintiff Eduardo San Juan, a medical practitioner and former member of the Pasay City Council, instituted in the then Court of First Instance of Rizal, Branch 28, Pasay City, an action for collection of a sum of money with damages against Nieves Rallos Cuento, her son Romulo Cuento and the Rural Bank of Nagcarlan, Laguna, Inc., praying specifically for P200,000 as actual damages, P50,000 as moral damages and P20,000 as attorney's fees.[1]

Summons, together with copies of the complaint, was duly served upon Nieves Rallos Cuento and the Nagcarlan Rural Bank but not upon Romulo Cuento.

Despite two extensions, counsel for defendants Atty. Alberto S. Plantilla failed to seasonably file an answer or a responsive pleading. After the lapse of the second extension, he filed instead a motion for a bill of particulars. Nonetheless, the case was set for pre-trial on November 18, 1971. Upon agreement of the parties, however, the pre-trial was reset to December 16, 1971. On the latter date, neither defendants nor their common counsel appeared despite previous notice.

Upon motion of petitioner-plaintiff San Juan, Judge Agana declared the defendants as in default and allowed the plaintiff to present his evidence *ex parte*. No motion for reconsideration from this order was ever filed by the defendants or their counsel.

From the evidence adduced, it appears that petitioner San Juan owed the Nagcarlan Rural Bank P26,000 which was secured by a real estate mortgage over a parcel of land with an area of 9,394 square meters situated in Pansol, Laguna. San Juan failed to pay when the loan fell due. As quid pro quo for not pressing him for payment, San Juan entered into a written agreement with the Nagcarlan Bank, through its president, Nieves Rallos Cuento, whereby he authorized the bank to apply for a loan of P70,000 with the Progressive Bank, using the same mortgaged property belonging to San Juan as collateral.[2] It was expressly agreed by the parties that upon maturity of the loan from the Progressive Bank, San Juan would pay the P26,000 and the Nagcarlan Bank would shoulder the balance of P44,000 and the full interest charge. When the Progressive Bank loan matured, San Juan proffered his P26,000 but the Nagcarlan Bank was unable to produce its counterpart of P44,000.

To remedy the situation, the parties agreed to have the loan with the Progressive Bank renewed. For this purpose,

San Juan gave P26,000 to the Nagcarlan Bank with the condition that if within thirty days the Nagcarlan Bank was unable to secure the renewal, it would shoulder the payment of the full amount of P70,000 so as to redeem the mortgage after which it would return the title of the mortgaged property to San Juan free from liens and encumbrances. However, after receiving the P26,000 from San Juan, the Nagcarlan Bank failed to renew the loan. The end result was that Progressive Bank foreclosed the mortgage and San Juan irretrievably lost his land after the Nagcarlan Bank likewise failed to redeem the same within the reglementary period. Hence, the civil suit.

On November 8, 1972, Judge Agana ruled in favor of petitioner-plaintiff San Juan, thus:

"Wherefore, finding the plaintiff's causes of action in the Complaint to be duly supported by the evidence, judgment is hereby rendered in favor of plaintiff and against the defendants, sentencing the latter to pay to the former P230,000 to enable plaintiff to repurchase the property from the Progressive Bank; P50,000 as moral damages, P25,000 as exemplary damages, and P65,000 as attorney's fees plus the costs of this suit." [3]

Atty. Plantilla, counsel for the defendants, received notice of the decision on November 30, 1972 and thereafter moved for a reconsideration. This was denied in an order dated January 18, 1973, which order was received by Atty. Plantilla on January 26, 1973. Upon plaintiff's motion for execution of judgment, the writ was issued on March 9, 1973.

On October 29, 1973, defendants Nagcarlan Bank and Romulo Cuento filed with the Court of Appeals a petition for certiorari with preliminary injunction^[4] questioning the validity of the trial court's default order and judgment. They alleged that because of the gross negligence of their lawyer they were deprived of due process and, as a consequence, the decision was null and void. They averred that they only came to know of the adverse decision on October 25, 1973 when their counsel, Atty. Plantilla, handed a copy thereof to the Rural Bank.^[5] The other defendant, Nieves Rallos Cuento, did not join them as she was reportedly trying to settle the case amicably with petitioner San Juan.

On June 26, 1974, the Appellate Court rendered a decision nullifying the questioned default order and judgment and permanently enjoining execution on the case.^[6] On appeal to this Court by petitioner San Juan, the same was affirmed in a minute resolution dated September 23, 1974 in G.R. No. L-39177. Nonetheless, acting on San Juan's supplemental motion for reconsideration, the Court issued a clarificatory statement that "the decision rendered by the Court of Appeals in CA-G.R. No. 02522-R necessarily affects only Romulo Cuento and the Rural Bank of Nagcarlan, Laguna, Inc. who are the Petitioners in said case and not Nieves Rallos Cuento who did not appeal from the judgment rendered against her by the Court of First Instance of Rizal in Civil Case No. 3659-P".^[7]

It was only in March 1975, when the 1972 judgment in the aforementioned Civil Case No. 3659-P was being executed that Nieves Rallos Cuento made her move. She instituted a special civil action for certiorari in the Court of Appeals, docketed as CA-G.R. No. SP?04024, likewise seeking to set aside the trial court's default order and judgment on the ground that she had been deprived of due process due to the incompetence and manifest negligence of her counsel, Atty. Plantilla. She further stated that the assailed judgment had become inequitable as to her in view of the favorable Appellate Court's decision in CA-G.R. No. SP-02522 which freed her co-defendants from the harsh consequences of the lower court's default judgment and which was later upheld by the High Court.

In similarly setting aside the default order and judgment as against Nieves Rallos Cuento and making permanent the restraining order issued on March 11, 1975, respondent Appellate Court, in its decision dated March 1, 1976, held that the gross negligence or irresponsibility of her counsel had effectively deprived her of her day in court and she should not be made to suffer for the failure of her attorney to exercise the reasonable diligence and skill required of him. Moreover, judgments by default are never looked upon with favor because they are akin to a

denial of due process since only one side of the controversy is heard. Accordingly, the Court of Appeals ordered the case remanded to the court of origin with instructions to allow Nieves Rallos Cuento to present her evidence and to grant relief as the new facts and circumstances would warrant.[8]

Upon denial of his motion for reconsideration on November 2, 1976, petitioner San Juan elevated his case to this Court on a petition for review which, as earlier mentioned, was consider as a special civil action.

Prescinding from the other features of the case, there are two reasons why the instant petition must prevail: the equitable principle of laches and the rule on finality of judgments.

Assuming it to be true that respondent Nieves Rallos Cuento's counsel, Atty. Plantilla, was "grossly negligent" in failing to inform her of the adverse decision of the trial court in 1972, we can, however, safely deduce that respondent had taken cognizance of the same when counsel personally handed a copy thereof to her co-defendants at the Nagcarlan Bank. She admitted that she chose not to go along with Romulo Cuento [her son] and the Nagcarlan Bank in their petition for certiorari in the Court of Appeals[9] because she wanted to settle out of court her differences with San Juan. When she finally decided to seek judicial redress, it was already in 1975 or approximately two [2] years after her co-defendants had gone to the Court of Appeals or nearly three [3] years since the default judgment in the lower court.

As consistently held in several decisions, the period for filing a petition for certiorari under Rule 65 of the Rules of Court is different from that prescribed for an ordinary appeal. There is no rule which specifies the period within which such pleading should be filed. The yardstick to measure the timeliness of a petition for certiorari is the reasonableness of the duration of time that had expired from the commission of the acts complained of, up to the institution of the proceedings to annul the same.[10]

As to what would be a "reasonable" time, it is obvious that the interval of two years cannot be considered as a reasonable time within which to avail oneself of the extraordinary remedy of certiorari. Too much negligence and indifference may already be attributed to the litigant and/or her counsel.[11]

By failing to act until March of 1975 when she filed her petition for certiorari in the Court of Appeals, respondent Cuento is palpably guilty of undue delay. Her long inaction for at least two years on the pretext that she was trying to raise the required amount to pay off her indebtedness to petitioner San Juan is certainly tantamount to laches. Time had run out against her and she is precluded from asserting those rights which she has irretrievably lost.

Thus we find that the Appellate Court went beyond the bounds of sound discretion when it gave due course to respondent Cuento's petition and ultimately resolved it in her favor. That belated petition should have been dismissed outright.

But even on the supposition that laches had not set in, there is absolutely no way by which the favorable aspect of the decision in CA-G.R. No. SP?02522 can be applied to respondent Cuento. Assuming arguendo that the gross negligence of her counsel should not bind her, still we cannot see our way clear to absolving her from the adverse effects of the default judgment.

Initially, our attention is drawn to the affidavit of November 19, 1973 which respondent Cuento herself had executed.[12] In that document she acknowledged that the Nagcarlan Bank had no connection whatsoever with her loan transaction with petitioner San Juan. Said transaction was purely a personal business arrangement with petitioner which the bank had not authorized. In other words, by respondent's own admission, she alone was responsible for the judgment debt.

More importantly, the judgment of default had long become final and executory as to respondent Cuento. As a matter of fact, in view of this Court's resolution in the related case, G.R. No. L-39177, categorically excluding her from the effects of the Court of Appeals decision in CA-G.R. No. SP-02522, the Deputy Sheriff of Rizal had levied on certain real and personal properties belonging to her for sale at public auction. Undoubtedly, there was already partial implementation of the writ of execution by the time respondent Cuento instituted the petition for certiorari in the Appellate Court to have the default judgment nullified.

While the courts are usually disposed to grant relief to parties aggrieved by the reckless inattention and downright incompetence of lawyers which have the consequence of depriving their clients of their day in court, we cannot do so in the case of respondent Cuento.

We must bear in mind that final judgments are entitled to respect and should not be disturbed, as otherwise, there would be a wavering of trust in the courts.[13] In the absence of a reasonable appeal therefrom, the questioned judgment of Judge Agana, Sr. has become final and executory. It is now the law of the case. Having been rendered by a court of competent jurisdiction acting within its authority, that judgment may no longer be altered even at the risk of legal infirmities and errors it may contain. Certainly they cannot be corrected by a special civil action of certiorari which, as in this case, was filed long after the judgment became final and executory.

Thus, respondent Court of Appeals committed grave abuse of discretion and acted without jurisdiction in rendering the assailed decision. A reversal is called for.

ACCORDINGLY, the petition is granted. The decision and resolution of respondent Court of Appeals in CA-G.R. No. SP-04024 dated March 1, 1976 and November 2, 1976, respectively, are hereby set aside and the restraining order issued on March 11, 1975 is ordered lifted. The case is remanded to the Pasay City Regional Trial Court for enforcement of the writ of execution of the judgment rendered in favor of petitioner Eduardo San Juan. This decision is immediately executory.

SO ORDERED.

Fernan (Chairman), Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Civil Case No. 3659-P

[2] Rollo, p. 42

[3] Rollo, p. 53

[4] CA-G.R. No. SP-02522

[5] Rollo, p. 67

[6] Rollo, p. 74

[7] Rollo, p. 76

[8] Rollo, p. 139

[9] CA-G.R. No. SP-02522

[10] Cortez vs. CFI of Cadiz, 52 Phil. 214; Centenero vs. Yatco, 106 Phil. 1064, Misamis Occidental vs. Catolico, G.R. No. L-24397, June 29, 1968, 23 SCRA 1295; Toledo vs. Pardo, G.R. No. 56761, November 19, 1982, 118 SCRA 566

[11] Velasco Vda. de Caldito vs. Segundo, G.R. No. 58187, September 30, 1982, 117 SCRA 573

[12] Rollo, p. 95

[13] Yuseco vs. Court of Appeals, G.R. Nos. L-40719-21, December 29, 1975, 68 SCRA 484

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