

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON. JUDGE JESUS Y. PEREZ, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND STA. CRUZ TIMBER COMPANY, RESPONDE...

G.R. No. L-16112. June 29, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

On August 6, 1947, respondent Sta. Cruz Timber Company, represented by its then Manager Alfonso L. Felix and Ambrosio Carbungco, entered into an agreement whereby the latter assigned to the former Timber License Agreement No. 35 granted to him. One of the conditions of the assignment was—

"The party of the second part (Sta. Cruz Timber Company) undertakes, agrees to and binds itself to comply with all the stipulations, clauses and requirements set down by the Republic of the Philippines in License Agreement No. 35 granted to the first part (Carbungco)."

Pursuant to the above condition, the Sta. Cruz Timber Company executed on September 25, 1947, a Forestry Bond in the amount of P5,000.00 in favor of the Government, which was guaranteed by a surety bond of the Central Surety and Insurance Company. The bond was signed by Alfonso L. Felix Jr., as President of the Sta. Cruz Timber Company, and as principal. On June 4, 1949, about two (2) years after the execution of the Forestry Bond, the Sta. Cruz Timber Company was assessed by the Bureau of Internal Revenue, for alleged unpaid forest charges amounting to P4,216.22, supposedly incurred by the company from March, 1948 to July, 1948. For the repeated refusal of the Company to pay, the Republic on March 20, 1958, filed with the CFI of Manila, Civil Case No. 35646, entitled "Republic of the Philippines vs. Sta. Cruz Timber Company and Central Surety & Insurance Co.", for the forfeiture of the bond. The pertinent portion of the complaint, reads as follows—

"That plaintiff is a political entity with capacity to sue and may be served with summons at c/o Office of the Solicitor General, Manila, and defendant Sta. Cruz Timber Company is a domestic corporation and may be served with summons thru its president Alfonso L. Felix, residing at 73 Quezon Boulevard, Quezon City, and that defendant Central Surety & Insurance Company is likewise a domestic corporation with principal place of business at R-210 Burke Building, Escolta, Manila, where it may be served with summons;"

Defendant Insurance Company filed an Answer with Cross- Claim against Sta. Cruz Timber Co. on April 2, 1958. On March 29, 1958, the Sheriff of Quezon City issued a certificate to the effect that on March 29, 1958, he served copy of the summons with the complaint, upon the defendant Sta. Cruz Timber Company, thru its President Atty. Alfonso Felix, Jr., at 73 Quezon Boulevard, Quezon City, by leaving copies thereof with one Montano Renato. In spite of the supposed summons; defendant Sta. Cruz Timber Co., failed to present its Answer, within the reglementary period.

On June 26, 1958, the CFI of Manila issued an Order granting the motion of the Insurance Company to file a third-party complaint against Alfonso Felix, Jr. and Ramon Pickett, who were signatories to the indemnity

agreement on which the Forestry Bond was granted by said insurance company.

On August 5, 1958, Alfonso Felix, Jr., presented a "Constancia", worded as follows—

"On August 5, 1958, the undersigned received a copy of the Order of this Court dated August 2, 1958. This copy was apparently sent to him in the belief that it was the copy destined for the Sta. Cruz Timber Company. The undersigned would like to make it of record that he is not connected with said company in any capacity whatever, save as a stockholder of the same."

On September 15, 1958, the Solicitor General presented a motion to declare defendant Sta. Cruz Timber Co., in default for failure to Answer. The lower court on September 20, 1958, declared Sta. Cruz Timber in default. At the hearing of September 10, 1959, Atty. Alfonso Felix, Jr., tried to intervene, reason for which the lower court issued the following Order—

"* * * and considering that this defendant had already been declared in default so that aforesaid Atty. Felix desired to take steps in order that defendant Sta. Cruz Timber Co., may be relieved of the effects of the order of default issued against it and act as counsel for this defendant in order to protect himself from any liability for any adverse decision that may be rendered against the Central Surety and Ins. Co., let the continuance of the trial of this case be postponed to September 28, and October 6, 1959, at 8:00 o'clock in the morning, as previously scheduled in order, in the meantime, to afford Atty. Alfonso Felix, Jr. to take steps for the lifting of the order of default against Central Surety and Ins., Co."

On the same date, September 10, 1959, Atty. Felix, Jr., presented the following Motion—

"1. On or about March, 1958, the Republic of the Philippines filed a suit against the Sta. Cruz Timber Co., alleging, among other things, that the Sta. Cruz Timber Co. 'is a domestic corporation and may be served with summons through its President, Alfonso L. Felix, residing at 73 Quezon Boulevard, Quezon City/ Pursuant to this complaint, summons was issued against the Sta. Cruz Timber Co. and on March 29, 1958, the Sheriff of Quezon City filed a return to the effect that it had served summons and complaint upon defendant Sta. Cruz Timber Co., thru its President Alfonso L. Felix, at 73 Quezon City, by leaving said copies to Montano Renato, receiving clerk of the said Sta. Cruz Timber Co.

2. In connection with this return, it is respectfully averred, under oath, 'hat Alfonso Felix was not the President of the Sta. Cruz Timber Co. on the date appearing on the Sheriff's return, March 29, 1958. The truth of the matter is that, as shown by plaintiff's own Exh. O, Alfonso Felix had ceased to be President and Director of Sta. Cruz Timber Co. on April, 1949. As a matter of fact, plaintiff has introduced evidence (See Exh. G) showing that as of February, 1950, it was one Mr. Martinet who was acting as President of the Sta. Cruz Timber Co.

3. It is further averred, likewise under oath, that Atty. Alfonso Felix, Jr. has never resided at No. 73 Quezon Boulevard, Quezon City, either on March 29, 1958 or on any other date. The truth of the matter is that Atty. Alfonso Felix is a resident of 105 West Riverside, San Francisco del Monte, Quezon City, as can be seen from the summons dated July 17, 1958 issued by this Court in connection with the service of the third-party complaint;

4. It is further averred, again under oath, that the copy allegedly received on behalf of the Sta. Cruz Timber Co. was never received by Atty. Felix or supplied to him;

5. Finally, it is averred, also under oath, that Mr. Montano Renato is not an employee of the Sta. Cruz Timber Co. much less an agent or director of the same.

6. In view of the foregoing, we respectfully submit that there has been no service of summons upon defendant Sta. Cruz Timber Co. Consequently, the Order of this Court declaring the Sta. Cruz Timber Co. in default, which was based on the erroneous assumption of service, should be set aside.

* * * *

On September 12, 1959, the lower court, issued the following—

* * * * *

It appearing that Alfonso Felix was no longer the President of defendant Sta. Cruz Timber Co. since 1949, or long before the service of summons and copy of the complaint was affected and that Montano Renato is not one of the persons who can receive summons and a copy of complaint on behalf of the defendant corporation and there being no objection interposed on behalf of plaintiff, the Court hereby sets aside its order declaring Sta. Cruz Timber Co. in default and hereby grants said defendant a period of ten days within which to file its answer."

the motion for reconsideration presented by plaintiff of the above order, stating that the same was not supported by evidence, and not in accordance with law, since the plaintiff was not given a chance to oppose or answer said motion, as provided for by the rules, was denied. Plaintiff brought the matter to this Court on Petition for Certiorari and Mandamus with Preliminary Injunction, alleging that the respondent Court, in considering the Motion of September 10, 1959, (supra), and thereafter setting aside the Order of Default almost one (1) year after the issuance thereof, and in denying the motion for reconsideration, acted without jurisdiction or in excess thereof, or with grave abuse of discretion.

This Court gave due course to the petition. In the Answer, after the usual admissions and denials, respondents pointed out that respondent Court had the authority and jurisdiction to lift the Order of default, after it was informed of the circumstances leading to the failure of respondent Sta. Cruz Timber to file an Answer.

It would seem that the pivotal issue presented by the pleadings is whether or not the respondent Court had still the power and authority to act on the Order of Default, since the motion to set aside the same was presented outside the period provided for in the Rules.

There is no question that the respondent Court had jurisdiction over the complaint for forfeiture of bond. The Orders lifting the default and denying the motion for reconsideration were issued in the exercise of such jurisdiction. The Order of default was lifted, only after the Court had found the true facts which caused the failure of the respondent Sta. Cruz Timber Company to present its Answer. The main case is still in the stage of hearing and after assuring itself that there was no summons validly served upon respondent Timber Company, respondent Court was of the opinion that permitting it to refute or answer the allegations in the complaint, would be giving the said company a day in court. We find no abuse of discretion, in the above actuation of respondent Judge. Even if we assume, for purposes of argument, that the conclusions reached by respondent Judge were Erroneous, still it is a truism that not all errors of law or of fact, constitute grave abuse of discretion. Furthermore, even if we concede that the order lifting the order of default was irregular (it is claimed that the three day notice was not observed), etill certiorari or mandamus is not the proper remedy, since judicial errors or mistakes of law are proper subjects of appeal (*Villa Rey Transit, Inc. vs. Bello, et al.*, G. R. No. L-18957, April 23, 1963, and cases cited therein.)

The record is clear that there was no valid service of summons effected, since the person the complaint had cited as one to whom summons could be served, was no longer connected with the Timber Company in that capacity. This fact was known to plaintiff, for long before the filing of the complaint, it had been dealing already with Atty. de las Alas on matters having to do with respondent Timber Company. No satisfactory explanation or refutation appears on record, why plaintiff, in spite of its knowledge of such fact (that Atty. Felix, Jr., was no longer the President), it caused the summons to be served upon him. The rules provide that "If the defendant is a corporation formed under the law of the Philippines * * *, service may be made on the president, manager,

secretary, cashier, agent, or any of its directors" (Sec. 13, Rule 7). Atty. Felix was not then anyone of those mentioned, and the person (Montano Renato) who allegedly received the summons did not at all occupy any position in the corporation.

Under the facts obtaining in the case, and as found by the respondent Court, We are of the opinion that said court was correct in lifting the Order of default and denying the motion to set the same aside. Verily, the trial court had not acquired jurisdiction over the respondent Sta. Cruz Timber Company.

Wherefore, the Writ is denied, for lack of merits. The Orders lifting the Default and denying the motion for reconsideration, are affirmed. No pronouncement as to costs.

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

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