

JAIME BALITE, PETITIONER, VS. THE HON. JUDGE DOMINGO CABANGON, DELFIN MACADANGDANG, ET AL., RESPONDENTS.

G.R. No. L-24105. May 18, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

As alleged co-owners of a 15-hectares parcel of land in Sta. Ines East, Sta. Ignacia municipality, Tarlac, Delfin Macadaeg and six others filed on June 3, 1963 a petition for ejectment against the tenant, Jaime Balite, in the Court of Agrarian Relations, third regional district. Stated as ground therefor was their desire and intention to till their own land, the tenant having allegedly agreed to surrender it to them for this purpose.

Tenant Balite filed on May 26, 1964 his answer, re-sisting the petition, stating that, per amicable settlement of another case, the petitioners-landowners had agreed NOT to eject him. Subsequently, on August 28, 1964, an amended petition was filed with substantially the same allegations.

On September 26, 1964, at 10 a.m., pre-trial conference was called as scheduled. Neither the tenant nor his counsel was present. And thereupon the court declared said tenant in default.

At around 11:25 a.m. that same day, respondent tenant's lawyer arrived and filed a motion to lift the default order, stating that he arrived late due to traffic delay. Altho the lawyer was only an hour and 25 minutes late, said motion was denied on October 3, 1964 on the ground it was not under oath as required by the Rules of Court. Respondent tenant's counsel received the denial order on October 9, 1964.

The next move of respondent tenant's counsel was to file on October 21, 1964 a motion for leave to amend the motion for reconsideration. This, too, was denied on October 29, 1964, the denial order being served on November 20, 1964. A motion for reconsideration of said denial order, and of the first order dated October 3, 1964 maintaining defendant in default, was further lodged on November 27, 1964. It was denied on December 16, 1964 and service of the denial was made on December 21, 1964.

Finally, therein respondent's counsel filed in the same court a petition for relief from the default order. For the reason that it was late, the same was denied on January 13, 1965.

On February 3, 1965, respondent tenant filed herein the petition at bar for prohibition, with prayer for preliminary mandatory injunction, asking that respondent Judge be ordered to desist from receiving petitioner-landholders' evidence below; to lift the default order; and to allow him to present his evidence. No preliminary injunction was granted by Us but respondents were required to answer. Submission of the case on May 19, 1965 followed after said answer was filed and the case was heard.

The Rules of Court provides that a petition for relief from judgment or other proceeding must be filed "within sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken" (Sec. 3, Rule 38, Rev. Rules of Court).

It is at once evident from the record that respondent Judge erred in finding that the petition for relief was filed 83 days after receipt on October 9, 1964 of copy of the order sought to be set aside. In reaching said conclusion, respondent Judge said: "From October 9, 1964 to November 27, 1964 [When a motion for reconsideration was filed], there has elapsed a period of 67 days. The motion for reconsideration was denied on December 16, 1964 and this order of denial... was served upon the defendant, thru counsel on December 21 1964.... From December 21, 1964 to January 5, 1965 [when petition for relief was filed], there has lapsed a period of 16 days 67 days plus 16 days equals 83 days." (Petition, Annex M, p. 4.) Actually, however, from October 9, 1964 to November 27, 1964 is only 49 days, not 67; from December 21, 1964 to January 5, 1965 is, indeed, 16 days. So 49 days plus 16 days equals 65 days in all.

The petition, therefore, was late for only five days, not for twenty-three days.

Now the rulings of this Court in regard to the 60? day period requirement, is that a few days in excess there-of would not be fatal, as long as the petition for relief is filed, as in this case, within six (6) months from the date the order was issued (*Prudential Bank v. Macadaeg*, L-10454, May 25, 1959; *Angala v. Tan*, L-10562, Oct. 31, 1959). Adding to this the fact that the present case involves the Court of Agrarian Relations which, altho governed by the Rules of Court, is not bound by technicalities of procedure (Sec. 155, Agricultural Land Reform Code), the dismissal of the said petition for being late constituted serious abuse of discretion remediable by certiorari. Altho the new Rules of Court provides for appeal from the denial of a petition for relief (Sec. 2, Rule 44) said remedy would not have been sufficient or timely, especially because appeal does not stay execution of a decision of the Court of Agrarian Relations (Sec. 10, Rule 43, Rules of Court).

WHEREFORE, respondent Judge's order dismissing the petition for relief is hereby set aside and further proceedings on said petition for relief, in accordance with Sections 4 to 7 of Rule 38, Revised Rules of Court are hereby ordered, staying in the meantime the proceedings in the petition for ejectment, until the petition for relief is finally resolved.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Castro, JJ., concur.
Dizon, A.P. J., separate concurring opinion.

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CONCURRING OPINION

DIZON, A.P., J.:

I concur with the opinion penned by Mr. Justice Jose P. Bengzon, in the result, for the reason that, in my opinion, the provisions of Rule 38 of the Rules of Court apply only when the order or judgment from which relief is sought has become final and executory (*Veluz vs. Justice of the Peace etc.* 42 Phil.557, 563; *Anuran vs. Aquino*, 38 Phil. 29; *Punzalan vs. Papica* 107 Phil. 246). In the case at bar, relief is sought from an order of default - which is merely of an interlocutory character. This is the reason why in *Prudential Bank etc. vs. Macadaeg*, 105 Phil. 791, we held:

"However, in other decisions, the opinion was expressed that a default order being interlocutory, is subject to

the control of the court and may be modified or rescinded at any time before final judgment.

"From these decisions the resultant principle appears to be that an order of default may be set aside at any time before final judgment, provided the petition for vacating it is made within six months after entry of the order."

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