

IGMEDIO AZAJAR, PETITIONER, VS. THE HONORABLE COURT OF APPEALS (SECOND DIVISION) AND CHAM SAMCO & SONS, INC., RESPONDENTS.

G.R. No. L-40945. November 10, 1986

Ponente: NARVASA, J.

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NARVASA, J.:

Petitioner seeks reversal of the Resolution of the respondent Court of Appeals (now Intermediate Appellate Court) dated March 25, 1975 setting aside the judgment by default rendered against private respondent by the Court of First Instance, and directing that said respondent be allowed to file its answer to the complaint and after joinder of issues, trial be had and judgment rendered on the merits.

This case originated from a complaint filed by petitioner Igmedio Azajar against respondent Cham Samco and Sons, Inc. in the Court of First Instance (now Regional Trial Court) of Camarines Sur.[1] Azajar's claim, briefly, is that he had purchased from defendant (hereafter referred to simply as Cham Samco), thru the latter's agent, 100 Kegs of nails of various sizes, specified in one of Cham Samco's printed order forms, and had given to the agent P18,000.00 in full payment thereof; but in breach of contract, Cham Samco had offered to deliver only a part of the quantity ordered.

Cham Samco filed a motion to dismiss on two grounds: (1) failure of the complaint to state a cause of action -- the complaint's language indicating not a perfected sale but merely an "offer to buy by plaintiff that was partly accepted by defendant," and failing to shag that as explicitly required by the order form, prices had been confirmed by Cham Samco's "Manila Office,"[2] and (2) that venue was improperly laid -- Cham Samco's invariable condition in transactions of this nature, as Azajar well knew from many such transactions in the past, being that "any legal action thereon must be instituted in the City of Manila." [3]

The motion to dismiss contained a notice addressed to the Clerk of Court reading as follows:

"The Clerk of Court
Court of First Instance of Camarines Sur
Naga City

Sir :

Please submit the foregoing motion to the Court for its consideration and resolution immediately upon receipt thereof.

Makati, Rizal for Naga City, February 4, 1974

(SGD) POLO S. PANTALEON

Copy furnished:

Atty. Augusto A. Pardalis

Naga City

NF-927"[4]

It is this notice that has given rise to the controversy at bar.

Contending that such a notice was fatally defective and rendered the Motion to Dismiss incapable of tolling the period to answer, Azajar filed a motion dated February 20, 1974 to declare Cham Samco in default, which the Court granted. By Order dated February 22, 1974 the Court pronounced Cham Samco in default and allowed Azajar to present evidence ex-parte. The Court justified the order of default in this wise:

"On February 4, 1974, defendant thru counsel, instead of filing an answer to the complaint, filed a "Motion to Dismiss" which, in legal contemplation, is not a motion at all because the "notice" therein is directed to the Clerk of Court instead of to the party concerned (as required by Section 5, Rule 15 of the Rules of Court) and is without the requisite notice of time and place of hearing; that a motion "with a notice of hearing (a) directed to the Clerk of Court not to the parties; and (b) merely stating that the same be "submitted for resolution of the Honorable Court upon receipt thereof," copy of which motion was duly furnished to and received by "the adverse counsel, is fatally defective and did not toll the running of the period to appeal" (Cladera v. Sarmiento, 39 SCRA 552). Consequently, inasmuch as the "motion to dismiss in this case is a mere scrap of paper because it is without the requisite notice of time and place of hearing (Manakil v. Hevilla, 42 Phil. 81; Raman Catholic Bishop v. Unisan, 44 Phil. 866; Director of Lands v. Sanz, 45 Phil. 117; and Manila Surety v. Bath, 14 SCRA 435), the filing thereof did not suspend the running of the period to file the required responsive pleading. That from February 4, 1974 to February 21, 1974, seventeen (17) days had lapsed and defendant failed to file any responsive pleading. x x x "[5]

Then on March 30, 1974, the Trial Court rendered judgment by default against defendant Cham Samco ordering it:

"x x x to deliver immediately to the plaintiff the nails mentioned in the Order Form No. 9020 (Exhibit A); (2) requiring defendant to pay plaintiff the sum of P15,000.00 by way of actual damages, the sum of P10,000.00 by way of consequential damages, plus interest in both instances, and the additional sum of P5,000.00, for exemplary damages; (3) ordering defendant to pay plaintiff the sum of P7,500.00 for attorney's fees and related expenses of litigation; and (4) to pay the costs."

Cham Samco filed a Motion for New Trial on April 9, 1974. It contended that its failure to observe the rules governing notice of motions was due to excusable negligence, "because the grounds alleged in the Motion to Dismiss were all in such nature and character that addressed themselves to a motu proprio resolution by the court and thus rendered a hearing dispensable." [6] It also alleged certain defenses available to it which if duly alleged and proven, would absolve it from all liability. [7] This motion was denied.

Cham Samco went to the Court of Appeals on certiorari asserting that the trial court acted with grave abuse of discretion to lack of jurisdiction in declaring it in default and then rendering judgment by default. [8] The petition was dismissed for lack of merit by the Court of Appeals on November 20, 1974. [9]

But on motion for reconsideration seasonably presented, the Court of Appeals reversed itself. By Resolution dated March 25, 1975, [10] it set aside the Trial Court's order of default of February 22, 1974, judgment by default of March 13, 1974, and Order dated June 4, 1974 denying Cham Samco's motion for new trial, and directed the lower Court to allow Cham Samco to file its answer to the complaint and upon due joinder of issues, to try and decide the case on the merits.

The Court held that:

"x x x (t)he notice in the motion which was addressed to the clerk of court asking him to submit the motion for

the consideration of the court is a substantial compliance with the provision of section 3 Rule 16 of the Rules of Court. Verily under the said rule, the Court has the alternative of either hearing the case or deferring the hearing and determination thereof until the trial on the merits. Thus upon the filing of said motion the court should have set the motion for hearing or outrightly deny the motion, or otherwise postpone the hearing until the trial on the ground that the grounds thereof do not appear to be indubitable. The prompt filing and apparently valid grounds invoked in the motion are not the acts and declarations of a defaulting party."

"x x x (E)ven assuming that the declaration of default of the petitioner was in order we find that the trial court committed a grave abuse of discretion when it denied the motion for new trial that was filed by the petitioner not only on the ground of excusable negligence we have above discussed but also on the ground that it has a meritorious defense." and

"x x x (E)xcessive damages have been awarded to the private respondent. In addition to ordering the petitioner to deliver to the private respondent the nails ordered by the latter, the petitioner was also ordered to pay not only P15,000 actual damages for profits that the private respondent could have earned but also consequential damages of P10,000 for the unrealized profits that the said earnings and capital of the plaintiff could have earned, plus interest in both instances, exemplary damages of P5,000 and P7,500 for attorney's fees and related expenses of litigation. Thus for the capital of respondent of P18,100.00 in the purchase of the nails, the petitioner was ordered to pay damages of a total of P37,500.00, which including the interest awarded can amount to over P40,000, more than double the value of the said investment of respondent. Under Section 1, Rule 37 of the Rules of Court award of excessive damages could be a ground for new trial."

The Court concluded its opinion with the observation that "the ends of justice would be better served in this case if we brush aside technicality and afford the petitioner its day in court."

It was wrong, of course, for Cham Samco to have failed to set its motion to dismiss for hearing on a specified date and time. The law explicitly requires that notice of a motion shall be served by the applicant to all parties concerned at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it;^[11] and that the notice shall be directed to the parties concerned, stating the time and place for the hearing of the motion.^[12] The uniform holding of this Court has been that a failure to comply with the requirement is a fatal flaw.^[13] Such notice is required to avoid surprises upon the opposite party and give the latter time to study and meet the arguments of the motion, as well as to determine or make determinable the time of submission of the motion for resolution.^[14]

Cham Samco quite frankly admits its error. It pleads however that under the circumstances the error be not regarded as irremediable, or that it be deemed as constituting excusable negligence, warranting relief. It argues that legal and logical considerations, which it took to be tenable, caused it to theorize that a hearing on the motion was dispensable. It also adverts to its possession of affirmative defenses in addition to those set out in its motion to dismiss which, if ventilated and established at the trial, would absolve it from all liability under the complaint.

Cham Samco's belief that it was not necessary that its motion to dismiss be set for hearing was avowedly engendered by two factors, namely:

1) the fact that while the Rules of Court "specify the motions which can be heard only with prior service upon adverse parties,"^[15] said Rules "do not point out which written motions may be ex parte, preferring, it appears, to leave to the court, in motions other than those specified, the discretion either to ex parte resolve x x x or to call the parties to a hearingx x x";^[16] and

2) the further fact that its motion to dismiss was based on two grounds on which a hearing was superfluous, the first, failure of the complaint to state a cause of action, being determinable exclusively from the allegations of the complaint and no evidence being allowable thereon; and the second, that venue is improperly laid, being

resolvable exclusively on the basis of documents annexed to the motion.[17]

These considerations, to be sure, did not erase movant's duty to give notice to the adverse party of the date and time of the hearing on its motion, the purpose of said notice being, as already stressed, not only to give the latter time to oppose the motion if so minded, but also to determine the time of its submission for resolution. Without such notice, the occasion would not arise to determine with reasonable certitude whether and within what time the adverse party would respond to the motion, and when the motion might already be resolved by the Court. The duty to give that notice is imposed on the movant, not on the Court.

Withal the reasons for Cham Samco's erroneous notion of the dispensability of a hearing on its motion to dismiss are not utterly without plausibility. This circumstance, taken together with the fact, found by the Intermediate Appellate Court and not disputed by petitioner Azajar, that Cham Samco has meritorious defenses which if proven would defeat Azajar's claim against it, and the eminent desirability more than once stressed by this Court that cases should be determined on the merits after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections,[18] all conduce to concurrence with the Court of Appeals that "the ends of justice would be better served in this case if we brush aside technicality and afford the petitioner its day in court."

WHEREFORE, the Resolutions of the Court of Appeals appealed from, are affirmed. Costs against petitioner.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Cruz, and Paras, JJ., concur.
Feliciano, J., took no part.

[1] Rollo, pp. 41-43; Annex D, petition.

[2] Annexes 1 and 2, Appellees-Respondents' Brief (Rollo, p. 133).

[3] Annex 2, Brief (Rollo, p. 133).

[4] Rollo, p. 133, Annex 2, p. 6, Brief for Appellants-Respondents.

[5] Rollo, p. 133.

[6] Annex 4, Brief (Rollo, p. 133).

[7] Id.

[8] Rollo, pp. 49 to 67, Annex F, Petition for Review.

[9] Rollo, pp. 32-39.

[10] Rollo, pp. 17-30.

[11] Sec. 4, Rule 15, Rules of Court.

[12] Sec. 5, id.

[13] C A S E S.

[14] SEE J. M. Tuason & Co. v. Magdangal, 4 SCRA 84, 86.

[15] It enumerates the motions as follows: (1) motion to intervene, Sec. 2, Rule 12; (2) motion for summary

judgment, Sec. 3, Rule 34; (3) motion for new trial, Sec. 2, Rule 37; (4) motion for execution pending appeal, Sec. 2, Rule 39; (5) motion for preliminary injunction, Sec. 5, Rule 58; (6) motion for support pendente lite, Sec. 2, Rule 61; (7) motion for immediate execution in an ejectment case, Sec. 8, Rule 70; (8) motion for approval of administrator's account, Sec. 10, Rule 85; and (9) motion for authority to sell or encumber a decedent's property, Sec. 1, Rule 89.

[16] Brief for Appellees-Respondents, pp. 13-14.

[17] *Id.*, pp. 15-16

[18] *A-One Feeds, Inc. vs. Court of Appeals*, 100 SCRA 590; *Yap vs. Court of Appeals*, 115 SCRA 104; *Abad vs. Court of Appeals*, 137 SCRA 416.

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