

SUN UN GIOK, PETITIONER, VS. HERMOGENES MATUSA, HON. JOSE TEODORO, SR., PRESIDING JUDGE OF THE SECOND BRANCH OF THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, AND THE PROVINC...

G. R. No. L-10304. May 31, 1957

Ponente: FELIX, J.

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FELIX, J.:

This is a petition for certiorari filed by Sun Un Giok, owner of a theater in La Carlota, Negros Occidental, seeking to annul the order of Judge Jose Teodoro, Sr., of the Court of First Instance of said province, dated January 26, 1956, denying petitioner's motion to lift order of default and to vacate judgment rendered in Civil Case No. 3428 of said court. The facts of the case may be summarized as follows:

On July 1, 1955, an amended complaint was filed by Hermogenes Matusa with the Court of First Instance of Negros Occidental against Sun Un Giok, as owner and manager of the Idelco Theater located in said municipality of La Carlota, alleging among other things, that he had been employed in said theater as gate-keeper from November 1, 1948, up to December 1, 1954; that he had rendered services for 8 hours on ordinary days and for 12 hours on Saturdays, Sundays and holidays throughout the duration of said employment without being given the corresponding overtime compensation in accordance with the 8 Hour Labor Law; that he was paid a salary below the amount fixed by the Minimum Wage Law; that defendant, in order to defraud the plaintiff of his just wages and to circumvent the provisions of the law, kept daily time records and payrolls which he knew to be contrary to facts; that the Idelco Theater had more than 6 individuals in its employ, and prayed that after due hearing, judgment be rendered ordering 'defendant to pay the plaintiff the sum of P2,897.82 as the total balance of his salary underpaid, with interest at 6 per cent per annum on said amount until the whole sum is paid, plus the additional sum of 10 per cent of the total amount for attorney's fees; for moral damages in the sum of P10,000; for nominal damages in accordance with Articles 2221 and 2222 of the New Civil Code; exemplary or correctional damages in accordance with Articles 2229 and 2230 of the same Code; and for such other relief as may be deemed just and equitable under the circumstances.

The corresponding summons was served on defendant on September 8, 1955, and on the following day, counsel for Sun Un Giok filed a motion to dismiss the complaint and amended complaint on the ground that the cause of action was already barred by the statute of limitations because plaintiff was asking for the recovery of underpaid salaries from November 1, 1946, to December 1, 1954, when under Section 16 of the Minimum Wage Law, an action must be commenced within three years after the cause of action accrued; and that the Court had no jurisdiction over the subject matter. It was contended that defendant, as managing partner of said moviehouse, employed regularly only four employees and hired occasionally one more, and, therefore, granting that plaintiff actually received a salary below the amount provided for by the Minimum Wage Law, said law can not be invoked in the case at bar because retail or service establishments that regularly employ less than five employees are exempted from the operation of the Minimum Wage Law. This pleading (motion to dismiss) contains the

following notice addressed to the Clerk of Court:

"The Clerk of Court
Court of First Instance
Bacolod City, Philippines
Greetings:

Please submit the foregoing Motion to Dismiss Complaint and Amended Complaint for the proper consideration of the Honorable Court and as soon as thereafter as counsel can be heard.

(Sgd.) ALFONSO CRISOSTOMO

"I hereby certify that I have sent a copy of the foregoing motion to Attorney Pio Tan, Counsel for the plaintiff this 9th day of September, 1955, by registered mail as evidenced by Registry Receipt No. 703 hereto attached, at Sibalom, Antique.

(Sgd.) ALFONSO CIUSOSTOMO"

The records further show that said motion was set for hearing on Saturday, September 24, 1955, before Branch II of the Court of First Instance of Negros Occidental (Annex "D") although plaintiff Hermogenes Matusa avers that he was not notified of said hearing. Counsel for plaintiff did not appear, but as defendant, who was properly represented, was not able to present proof of service on the adverse party, the Court deferred action on the motion to dismiss and issued an order dated September 24, 1955, postponing consideration on the same "until proof can be shown that attorney for the plaintiff has received a copy of said motion to dismiss" Hermogenes Matusa received a copy of this order of postponement, but before counsel for defendant could present the required proof of service, counsel for plaintiff filed a motion to declare the defendant in default which was granted by order of the Court of October 15, 1955, and consequently, the Court received plaintiff's evidence and judgment was rendered thereon.

Upon receipt of a copy of said decision, counsel for defendant filed a motion to lift order of default and to vacate judgment dated November 28, 1955, advancing the argument that defendant should not have been declared in default because there was a motion to dismiss pending consideration of the Court which suspended the time within which to file an answer; that the Court had not resolved this motion because it required defendant to produce proof that the adverse party had received said pleading, and said requirement was not complied with at once because the return card evidencing receipt of said pleading was not yet forwarded to him by the post office of Sibalom, Antique; that upon receipt of said card he immediately wanted to file the same but found out that he was already declared in default; that the ruling in the case of Manakel vs. Revilla which pronounced that where no notice of hearing is served upon the plaintiff the pleading becomes a mere scrap of paper which the Clerk of Court should not have received for filing, should not be made applicable to the instant case, because plaintiff was notified of the hearing of said motion and was likewise furnished with copy of the order of the Court postponing consideration on the motion to dismiss and was aware of the existence of said hearing. Defendant, therefore, prayed that the order of default be lifted; that the judgment of November 14, 1955, vacated; that a date be set for the hearing of the motion to dismiss and for such other relief that may be deemed proper in the premises.

By order of January 26, 1956, the Court denied this motion and ordered that the writ of execution of judgment, prayed for by plaintiff, be issued. A motion for the reconsideration of said order dated February 6, 1956, having been denied by order of the Court of February 14, 1956, defendant Sun Un Giok filed the present petition for certiorari with preliminary injunction praying that respondent Judge, Hon. Jose Teodoro, Sr., be restrained from taking any further steps concerning the instant case; that the Provincial Sheriff of Negros Occidental or any of his deputies be ordered to refrain from enforcing the writ of execution already issued by the respondent Judge and

from taking possession of the apparatus and equipment of the Idelco Theater for the purpose of selling the same at public auction; and that after hearing, the order of the respondent Judge denying the motion to lift the order of default and to vacate judgment be declared null and void.

By resolution of February 22, 1956, this Court gave due course to the petition and issued the writ of preliminary injunction prayed for by petitioner upon approval of the required bond of P2,000. Within the reglamentary period, Hermogenes Matusa filed an answer admitting that he had received a copy of the "Motion to Dismiss Complaint and Amended Complaint" filed by counsel for petitioner, but contending that said defective pleading was merely a scrap of paper because it failed to comply with the essential requisites provided for by sections 4 and 5 of Rule 26 of the Rules of Court, for said pleading contained no notice of hearing and should not be considered a motion at all; that the Clerk of Court should not have accepted and included the same in the calendar of the Court; that this error on the part of the Clerk did not produce a remedial effect to the prejudice of the adverse party; that the defective pleading remained to be a useless scrap of paper attached to the records, the requirement that notice of hearing be served on the adverse party still being uncomplished; that the Court had nothing to resolve because what was before it was not a motion at all; that said party was aware of the order of the Court postponing action on the supposed motion to dismiss but he was also aware that said order could never be complied with as no notice of such hearing was ever sent to himself or his counsel; and that respondent has the right to rely on the Rules of Court instead of being bound to wait indefinitely for proof of a non-existent notice to be produced; hence after 30 days had elapsed, he filed a motion to declare therein plaintiff in default.

From the foregoing facts, it is clear that the question in the case at bar revolves on whether the notice incorporated in said (pleading is sufficient under sections 4 and 5 of Rule 26 of the Rules of Court, and granting that it is defective, whether the Clerk of Court in including the same for hearing on September 24, 1955, and the Court in taking cognizance of the same to the extent of ordering the postponement of the hearing thereof until certain requirements were complied with, did in effect cure whatever omission counsel for defendant might have committed in connection with defendant's motion to dismiss.

Counsel for respondent in advancing its defense relied on these sections of Rule 26 of the Rules of Court:

Sec. 4. Notice.—Notice of motion shall be served by the applicant to all parties concerned, at least three days before the hearing' thereof, together with a copy of the motion and of any affidavits . and other papers accompanying it. The court, however, for good cause may hear a motion on shorter notice, specially on matters which the court may dispense of on its own.

Sec. 5. Contents of notice.—The notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion.

From the aforequoted sections, it is required that notice of a motion directed to the parties concerned, must be served by the movant stating therein the time and place for the hearing of the said motion. Counsel for defendant in addressing the notice to the Clerk of Court requesting that said motion be submitted for the "consideration of the Honorable Court and as soon as thereafter as counsel can be heard", and at the same time certifying that he had sent a copy of the motion to counsel for therein plaintiff, such notice seems to substantially comply with the requirement of section 5 of Rule 26, for in virtue of said notice, the hearing was actually set by Clerk of Court for September 24, 1955, of which, We can presume, counsel for respondent Hermogenes Matusa was notified. Respondents banked on the ruling laid down in the case of *Manakil vs. Revilla*, 42 Phil. 81, but the pronouncement therein is based on the provision of section 6 of the same Rule 26, which reads as follows:

Sec. 6. Proof of service, to be riled with motion.—No motion shall be acted upon by the Court, without proof of

service of the notice thereof.

It was in virtue of this requisite of proof of service that the trial court, in its order of September 24, 1955, deferred action on the motion to dismiss, postponing the same indefinitely until counsel for defendant could produce the necessary evidence that adverse party was furnished with copy of said motion, despite the fact that defendant's attorney certified that a copy of said pleading was sent by registered mail to adverse party and even attached to it the registry receipt thereof. The case of *Manakil vs. Revilla*, supra enunciated that notice of motions is necessary, and without proof of service thereof, a motion is nothing but a useless piece of paper which the clerk should not receive for filing, but the facts of the case at bar are quite different.

But let us grant, for the sake of argument, that the notice in question, as quoted above is defective, for failure to specify the exact date when that motion should be heard. Even so, We believe that the Court in taking cognizance of the motion on the date set for hearing thereof, cured whatever iota of defect such pleading may have had, specially if it is taken into account that upon receipt of the motion to dismiss, plaintiff was properly notified of the existence of said pleading. Counsel for plaintiff should not have relied on mere technicalities which in the interest of justice may be relaxed for it was said that:

"A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other". *Alonso vs. Villamor*, 16 Phil. 815.)

"As the motion was heard after this notice, and strictly in compliance with the Rules of Court, it cannot be said that the hearing was held without due process of law. What the law prohibits is not the absence of previous notice, by the absolute absence thereof and lack of opportunity to be heard". (*Borja vs. Tan*, 93 Phil., 167; *Duran Embate vs. Penolio*, 93 Phil., 782, 49 Off. Gaz. [9] 8850).

Parties litigants shall not be deprived of their day in court as it was done in the case at bar.

Wherefore, the Court hereby grants the petition for *cetiorari* prayed for by petitioner and the questioned order of default and decision rendered by the respondent Court in the absence of the defendant in Civil Case No. 3423 of the Court of First Instance of Negros Occidental, are hereby set aside and left without force and effect. The respondent Court is further ordered to hear and pass upon the motion to dismiss filed by defendant and to proceed with said case until it is finally disposed of in that instance. The writ of preliminary injunction issued herein, is made permanent, with costs against respondent Hermogenes Matusa. It is so ordered.

Paras, C. J., Montemayor, Reyes, A., Bautista Angelo, Reyes, J. B, L., and Endencia, JJ., concur.

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