

**PEDRO ADUCAYEN, PETITIONER, VS. HON. DELFIN V. FLORES, AS
PRESIDING JUDGE OF BRANCH XI, COURT OF FIRST INSTANCE OF
RIZAL, HON. DAVID C. CONCEPCION, AS MUNICIPAL JUDGE OF
MAKATI,...**

G.R. No. L-30370. May 25, 1973

Ponente: FERNANDO, J.

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FERNANDO, J.:

What is immediately discernible, even at a glance the most cursory, in this petition for review on certiorari of an order of respondent Court of First Instance Judge,[1] is the marked deviation from a prevailing doctrine of this Court uninterruptedly adhered to over all these years that a denial of procedural due process is a grave jurisdictional defect. It came as a surprise then to have the lower court intone with all solemnity: "It is therefore very clear that the herein plaintiff [now petitioner] has been deprived of a hearing in the lower court. Such being the case the instant complaint for certiorari will not lie. x x x[2] Such a pronouncement uttered with dogmatic finality is, to put it at its mildest, impressed with unorthodoxy. The law is anything but that. When it is further considered that as shown in such terse and succinct two-paragraph order, petitioner was adjudged liable on the evidence against him being heard ex-parte, with the judgment first sentencing him to pay P644.45 with interest then subsequently increased in an amended decision a week later to P2,090.00, also with interest, the failure of respondent Judge to grant the certiorari prayed for certainly defies explanation. This is one of those cases where with the undeniable being added to the obvious, the conclusion that must emerge from a petition for review is inescapable. We reverse.

There is no dispute as to the facts. On January 23, 1968, a complaint was filed by respondent Regal Sales Center, Inc., with the Municipal Court of Makati, Rizal, presided by respondent Judge David C. Concepcion, for a sum of money against one Simeon Figueras, Jr. and petitioner Pedro Aducayen. Petitioner as well as defendant Figueras filed their answer in writing on February 27, 1968. Respondent Municipal Judge apparently of the belief that he could set the case for pre-trial did so, scheduling it on August 22 of that year. On said date, only counsel for defendants appeared in view of a telegram received by him that the principal defendant, the vendee, Simeon Figueras, Jr., was still sick in the province. Petitioner was not notified of such pre-trial.[3] Then on September 9, 1968, petitioner received a copy of the decision of respondent Municipal Judge dated August 22, 1968 where it was made to appear that the evidence was adduced solely by plaintiff, respondent Regal Sales Center, Inc., in view of the "default of defendant Pedro Aducayen, who failed to appear at the scheduled pre-trial conference today"[4] and that the cause of action having been thus sufficiently established judgment was rendered against petitioner as defendant "to pay plaintiff the sum of P644.45 constituting the principal cause of action herein, plus interest at 1% per month from August 3, 1967 until fully paid; x x x." [5] Then on September 11, 1968, petitioner received an amended decision from respondent Municipal Judge dated August 30, 1968 where the amount for which he was held liable was increased to P2,090.00, this, on the very same evidence presented ex-parte on August 22, 1968, there being no such scheduled pre-trial conference for August 30th.[6] Nonetheless, the opening

paragraph of the amended decision reads thus: "Considering the evidence adduced solely by plaintiff in default of the defendant Pedro Aducayen who failed to appear at the scheduled pre-trial conference today, and finding the cause of action set forth therein to have been sufficiently established, judgment in favor of plaintiff and against defendant is hereby rendered as follows. x x x." [7] After which petitioner filed with respondent Court of First Instance Judge his suit for certiorari where the due process question was squarely raised. It was all in vain. Notwithstanding, as above shown that petitioner was not heard at all, the order dismissing his petition, now subject of this review, was handed down on January 25, 1969. [8]

The petition for certiorari was filed with this Court on April 1, 1969 and was thereafter given due course as on its face its merit is quite discernible. After going over the answer and the respective briefs of the parties, this Court, as noted, holds that the challenged order dismissing the petition for certiorari must be set aside. So we rule.

1. It is not easy to understand how after duly noting the undeniable facts, respondent Court of First Instance Judge could order the dismissal of the certiorari proceeding before it. He was quite categorical and quite right in asserting that petitioner "has been deprived of a hearing in the lower court." Clearly then, there was a denial of procedural due process, which need not have occurred had respondent Municipal Judge, ignoring what is clearly set forth in the Rules of Court as to when a default may be ordered, [9] refrained from doing so and thus avoided the grave infirmity of petitioner as defendant not being given his day in court. As provided therein, only when there is no written answer is a declaration of default justified. Then ex-parte evidence may be submitted for plaintiff without offense to the due process clause. The uncontradicted facts reveal that petitioner as defendant did not incur such omission. Respondent Court of First Instance Judge was aware that such was the case. Yet sad to say, contrary to the authoritative doctrines of this Court, he would dismiss a petition for certiorari when such is the appropriate remedy in case of a grave jurisdictional defect. Considering the denial of procedural due process, petitioner was entitled to the relief sought. As expressed in the rather colorful rhetoric that every once in a while exhibited itself in the opinions of Justice Street, [10] in the leading case of *Banco Español- Filipino vs. Palanca*, [11] decided almost fifty-five years ago: "Where a judgment or judicial order is void in this sense it may be said to be a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head." [12] Chief Justice Concepcion, not too long ago, did reiterate such a view in a more restrained phraseology. [13] Thus: "Indeed, acts of Congress, as well as those of the Executive, can deny due process only under pain of nullity, and judicial proceedings suffering from the same flaw are subject to the same sanction, any statutory provision to the contrary notwithstanding." [14] Undoubtedly then, certiorari lies. This Court has made it abundantly clear in a number of cases. [15] The order of respondent Court of First Instance Judge then which precisely holds the opposite cannot be allowed to stand. Such seeming defiance of what this Court has so often pronounced cannot be tolerated.

2. Nor is this all that has to be said. There is need, it does seem, to caution anew judges of inferior courts, which according to the Constitution refer to all those outside this Tribunal, to exercise greater care in the discharge of their judicial functions. They are called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules. Moreover, while it becomes hourly difficult to keep abreast of our ever-increasing decisions, a modicum of effort should be exerted by them not to lag too far behind. Nor is it too much to expect that they betray awareness of well-settled and authoritative doctrines. If such were the case, then resort to us would be less frequent. That way our time could be devoted to questions of greater significance. Not only that, there would be on the part of party litigants less expense and greater faith in the administration of justice if there be a belief on their part that the occupants of the bench cannot justly be accused of an apparent deficiency in their grasp of legal principles. Such an indictment unfortunately cannot just be dismissed as a manifestation of chronic fault-finding. The situation thus calls for a more conscientious and diligent approach to the discharge of judicial functions to avoid the imputation that there is on the part of a number of judges less than full and adequate comprehension of

the law.

WHEREFORE, the writ of certiorari is granted. The order of January 25, 1969 is reversed and set aside, the prayer of petitioner before respondent Court of First Instance Judge, Delfin B. Flores, is granted, annulling the order of default issued by respondent Municipal Court Judge David C. Concepcion, as well as nullifying his decision of August 22, 1968 and his amended decision of August 30, 1968. Respondent Municipal Court Judge Concepcion or whoever is acting in his place is ordered to set Civil Case No. 2966 in the Municipal Court of Makati, Rizal, anew for trial with the right of petitioner Pedro Aducayen as defendant to be heard being duly respected. With costs against respondent Regal Sales Center, Inc.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

[1] He is thus identified because the Municipal Judge, David C. Concepcion, is likewise a respondent.

[2] Order of the lower court, Brief for petitioner, Appendix A, 30.

[3] Petition, pars. 1 and 2.

[4] Ibid., par. 3.

[5] Ibid.

[6] Ibid., pars. 4 and 5.

[7] Amended Decision, Brief for Petitioner, 34.

[8] Order of January 25, 1969, Brief for Petitioner, Appendix A, 29.

[9] According to Section 12 of Rule 5 on procedure in municipal courts: "Except as provided in Section 17 of this Rule, if the defendant does not file a written answer within the time designated in the summons, he may be declared in default, and the court shall thereupon proceed to hear the testimony of the plaintiff and his witnesses, and shall render judgment for the plaintiff in accordance with the facts alleged and proved.

[10] Cf. *United States vs. Virrey*, 37 Phil. 618 (1918); *Leun Ben vs. O'Brien*, 38 Phil. 182 (1918).

[11] 37 Phil. 921 (1918).

[12] Ibid., 949.

[13] *Vda. de Cuaycong vs. Vda. de Sengbengco*, 110 Phil. 113 (1960).

[14] Ibid., 118.

[15] Cf. *Riera vs. Palmoroli*, 40 Phil. 105 (1919); *Slade Perkins vs. Dizon*, 69 Phil. 186 (1939); *Co Tiamco vs. Diaz*, 75 Phil. 672 (1946); *Joson vs. Nable*, 87 Phil. 337 (1950); *Asprec vs. Itchon*, L-21685, April 30, 1966, 16 SCRA 921; *People's Surety and Insurance Company, Inc. vs. Court of Appeals*, L-21627, June 29, 1927, 20 SCRA 481; *Austria vs. Masaquel*, L-22536, August 31, 1967, 20 SCRA 1247; *Fernandez vs. Tañada*, L-21673, June 30, 1971, 39 SCRA 662.

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