

TROPICAL HOMES, INC., PETITIONER, VS. THE HON. DELFIN FLORES, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH XI, SEVENTH JUDICIAL DISTRICT, AND BENITO LAPUZ, RESPONDENTS.

G.R. No. L-34057. December 19, 1980

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

In a second amended petition for certiorari,[1] after the original petition,[2] and amended petition,[3] had been dismissed for lack of the required annexes,[4] petitioner questions as alleged abuse of discretion the order dated October 29, 1970, issued by respondent Judge (Delfin B. Flores of the Court of First Instance of Rizal, Branch XI) in Civil Case No. 13217, entitled "Benito Lapuz, plaintiff versus Tropical Homes, Inc., defendant," of the following tenor:

"ORDER

"When this case was called for pre-trial today, neither the plaintiff-appellee nor his counsel appeared; only the counsel for the defendant-appellant was present.

"IN VIEW OF THE FOREGOING, plaintiff-appellant Benito Lapuz is hereby declared in default and the defendant-appellant is hereby directed to present its evidence before the Branch Clerk of Court of this Branch, who is hereby commissioned to receive the same.

"SO ORDERED." [5]

Petitioner contends that inasmuch as Civil Case No. 13217 is an appealed case from the decision of the Municipal Court of Makati, Rizal, in Civil Case No. 7943, entitled "Benito Lapuz vs. Tropical Homes Inc.," [6] at a time when said municipal court was not yet a court of record, there should be a trial de novo in respondent Court, and when plaintiff Benito Lapuz failed to appear during the pre-trial hearing of the case, respondent Court should have ordered the case dismissed for non-suit, instead of declaring the plaintiff Lapuz in default and ordering the defendant-appellant Tropical Homes Inc. to present evidence in Civil Case No. 13217.

Respondent Court insisted that petitioner present evidence in Civil Case No. 13217, [7] and notwithstanding petitioner's manifestation, [8] showing the respondent Court's error, the latter insisted on its October 29, 1970 order. [9] Petitioner's motion for reconsideration [10] was denied by respondent Court on August 17, 1971. [11]

This Court granted the motion of petitioner for admission of its second amended petition for certiorari on November 18, 1971. [12]

Pertinent undisputed facts of record are:

Private respondent Benito Lapuz initiated Civil Case No. 7943, for collection of a sum of money, in the Municipal Court of Makati, Rizal, against petitioner Tropical Homes Inc. in a complaint dated September 30, 1969. [13] Petitioner filed its answer dated October 22, 1969, denying that it ordered steel windows from Benito Lapuz. [14]

For failure of petitioner to appear, the municipal Court rendered a decision in favor of private respondent Lapuz on March 17, 1970.[15]

Petitioner appealed the case to the respondent Court (Civil Case No. 13217, "Benito Lapuz, plaintiff vs. Tropical Homes Inc., defendant").[16] During the scheduled pre-trial of Civil Case No. 13217, before respondent Judge, on October 29, 1970, the private respondent plaintiff Benito Lapuz and his counsel did not appear. Respondent Judge issued a verbal order dismissing the case for non-suit.[17]

However, in its written, now contested order, of October 29, 1970,[18] the respondent Court, declared plaintiff Benito Lapuz in default and ordered defendant-petitioner Tropical Homes to present evidence in Civil Case No. 13217, instead of clinging to its original verbal order dismissing Civil Case No. 13217, for non-suit.

Petitioner's efforts to point out the error to respondent Court were of no avail,[19] hence on September 3, 1971, petitioner filed a motion in Civil Case No. 13217, for period to elevate for review the contested orders of respondent Court dated October 29, 1970, June 24, 1971, August 2, 1971 and August 17, 1971.[20]

After this second amended petition was given due course on November 18, 1971, and after respondent's answer filed on January 3, 1972,[21] only the petitioner filed its memorandum on April 3, 1972.[22]

As stated by petitioner, the only issue here is whether or not respondent Court committed a grave abuse of discretion in insisting on the implementation of its contested October 29, 1970 order in Civil Case No. 13217, declaring plaintiff-appellee (private respondent) Benito Lapuz in default for non-appearance during the pre-trial of the case, and ordering defendant-appellant (petitioner) Tropical Homes Inc. to present evidence, instead of implementing its original verbal order of the same date dismissing Civil Case No. 13217, for non-suit.

When the appeal of Civil Case No. 7943 of the Municipal Court of Makati was perfected as Civil Case No. 13217, of the respondent Court, the former was not yet a court of record pursuant to R.A. 6031. In cases of appeal from a municipal court to the Court of First Instance, the Rules of Court categorically provide (Secs. 7 and 9, Rules of Court) that there must be a trial de novo. Upon the perfection of an appeal in those cases coming from the municipal courts, which were not yet considered courts of record at that time, the effect is as if there had been no trial in the municipal court and the appellate court (Court of First Instance) shall conduct trial of the case as if it had been originally instituted therein.[23]

Petitioner correctly contends that the case in the respondent Court is as if filed directly with the Court of First Instance and upon failure of either plaintiff or defendant to appear, the provisions of law applicable are Section 3 of Rule 17, and Section 1 of Rule 18, Rules of Court. If the plaintiff fails to appear, the case may be declared non-suited and dismissed by respondent Court. If defendant fails to appear, he is declared in default and the plaintiff is authorized to present evidence ex-parte.

If the plaintiff fails to appear at the mandatory pre-trial conference, as in this case, he may be considered as non-suit for lack of interest and the case dismissed.[24]

In the present case, when private respondent Lapuz failed to appear at the pre-trial conference of Civil Case No. 13217, in respondent Court, the latter was correct when it verbally dismissed the case for non-suit, as this case is on trial de novo. Stated otherwise, in Civil Case No. 13217, private respondent Lapuz is the plaintiff in the case and petitioner Tropical Homes, Inc. remains the defendant. Inasmuch as petitioner Tropical Homes, Inc. was present during the pre-trial conference, it cannot be declared in default. The absence of private respondent Lapuz during the pre-trial conference was fatal to his complaint since the case can be correctly dismissed for non-suit.

From the foregoing, the inevitable conclusion is that the respondent Court was correct in its admitted verbal order

to dismiss Civil Case No. 13217 for non-suit when private respondent Lapuz failed to appear at the scheduled pre-trial conference on October 29, 1970, and it committed grave abuse of discretion when it made its written order of the same date, declaring private respondent Lapuz in default, and ordered petitioner to present evidence, in violation of pertinent provisions of the Rules of Court already discussed above.

WHEREFORE, the contested written order of October 29, 1970, in Civil Case No. 13217, is hereby corrected and modified by re-flecting in it the verbal order of respondent Court considering said Civil Case No. 13217 dismissed for non-suit, and considering said dismissal final for failure of private respondent Lapuz to act since October 29, 1970; the orders dated June 24, 1971, Aug-ust 2, 1971 and August 17, 1971, in Civil Case No. 13217, are set aside and declared null and void, with costs against private respondent Lapuz.

SO ORDERED.

Barredo, Abad Santos, and De Castro[*], JJ., concur.

Aquino, J., see opinion below.

[*] Mr. Justice Pacifico P. de Castro, a member of the First Division, was designated to sit in the Second Division.

[1] pp. 38-60, rollo.

[2] p.1, Id.

[3] p. 28, Id.

[4] pp. 23, 34, Id.

[5] p. 47, Id.

[6] p. 45, Id.

[7] p. 48, Id.

[8] pp. 48-50, Id.

[9] pp. 51-53, Id.

[10] pp. 54-57, Id.

[11] p. 58, Id.

[12] p. 63, Id.

[13] pp. 42-43, Id.

[14] p. 44, Id.

[15] p. 45, Id.

[16] p. 46, Id.

[17] pp. 39, 52, Id.

[18] p. 47, Id.

[19] pp. 49-58, Id.

[20] p. 59, Id.

[21] p. 72, Id.

[22] p. 96, Id.

[23] Arambulo vs. Court of Appeals, et al., G.R. No. L-15669, Feb. 28, 1962; People vs. Carreon, G.R. No. L-17920, May 30, 1965; Lizo vs. Carandang, 73 Phil. 649; Royal Shirt Factory, Inc. vs. Co Bon Tic, 94 Phil. 994.

[24] Sec. 20, Rule 20, Rules of Court.

CONCURRING OPINION

AQUINO, J.:

The trial court wanted the petitioner to present its evidence because it assumed that if it did not do so the municipal court's judgment against it would be revived. That assumption is erroneous.

The municipal court's judgment is revived only "if the appeal is withdrawn, or dismissed for failure to prosecute" (Sec. 9, Rule 40, Rules of Court). Here, the complaint was dismissed because the plaintiff or private respondent was nonsuited.

Because of that nonsuit, the municipal court's decision remains vacated or set aside by reason of petitioner's appeal (Sec. 9, Rule 40). It would not be revived.

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