

MARIANO ZABAT, JR., PETITIONER, VS. THE COURT OF APPEALS, AND MANOTOK REALTY, INC., RESPONDENTS.

G.R. No. L-36958. July 10, 1986

Ponente: CRUZ, J.

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CRUZ, J.:

This is an appeal by certiorari from a decision of the Court of Appeals sustaining the lower court which on separate dates: a) dismissed a complaint to quiet title for failure of the complainant and his counsel to appear at the scheduled pre-trial hearing; and b) upheld the counterclaim that the plaintiff should pay to the defendant rentals on the disputed land on the ground that the same belonged to the latter.[1]

The complaint was dismissed on October 26, 1976, and notice of the dismissal was served on the plaintiff on October 29, 1966.[2] The plaintiff filed a motion for reconsideration on February 28, 1967, which was denied on March 7, 1967.[3] Notice of the denial was served on him on March 15, 1967.[4]

The judgment on the counterclaim was rendered on June 19, 1967, and notice thereof was served on the plaintiff on June 27, 1967.[5] He filed a motion for reconsideration on July 27, 1967, which was denied on October 28, 1967.[6] Notice was served on him on November 11, 1967.[7]

On July 23, 1968, the plaintiff tried once more and filed what he called a petition to set aside the proceedings, including the judgment, etc. This was denied on July 27, 1968, and copy of the order of denial was received by him on August 3, 1968.[8]

The plaintiff now comes to us as petitioner and invokes due process. His claim is that he was deprived of his day in court when his complaint was summarily dismissed and his motions for reconsideration, including his petition to set aside the proceedings, were denied by the trial court.[9]

We hold that the dismissal of the complaint became final thirty days from notice on October 29, 1966, and therefore could not have been validly reconsidered almost four months later. This was not an interlocutory order but a final disposition of the complaint.

Besides, the grounds invoked by the plaintiff for non-appearance are not acceptable. Notice to the counsel is notice to the client.[10] As for the alleged asthma attack of the petitioner's counsel, this should have been established earlier, to be credible, instead of almost four months later.

While it is true, as noted by the Court of Appeals, that the trial court had acted rather precipitately in dismissing the complaint at the first hearing thereof,[11] we observe that the petitioner is himself not entirely without fault. It is significant that he failed to move for reconsideration of the dismissal during all of 122 days.

We reject the claim of the private respondent that the reglementary period for appealing the judgment on the counterclaim began on the date of the notification to the petitioner of the dismissal of his complaint.[12] The counterclaim was not ancillary to the main action and, in fact, could have been maintained separately.[13]

The private respondent could have filed an independent action for recovery of rentals on the basis of its claimed ownership of the land even if the petitioner had not filed his action to quiet title. Hence, the thirty-day period for appealing the judgment on the counterclaim began on June 27, 1967, and ended on July 27, 1967, date of the motion for reconsideration filed by the petitioner.

Notice of the denial of the motion for reconsideration of the dismissal of the complaint was served on the petitioner on March 15, 1967, and notice of the denial of his motion for reconsideration of the judgment allowing the counterclaim was received by him on November 11, 1967.[14] The record does not show that he did anything immediately thereafter. On the contrary, his petition to set aside the proceedings, which he submitted on July 25, 1968, was filed 16 months after the first denial and more than 7 months after the second denial.

As a petition for relief from judgment, it must necessarily fail for late filing. Such a petition should have been filed within 60 days after the petitioner learned of the judgment sought to be invalidated and in no case later than six months from entry of such judgment.[15] Moreover, there is no showing here of the existence of fraud, accident, mistake or excusable negligence as an indispensable ground for a petition of this nature.[16]

The petitioner himself concedes, however, that his petition does not come under Rule 38 but is "anchored more on the grounds of equity and the nullity of the proceedings." [17]

On the claimed nullity of the proceedings, we have already held that notice to the counsel was notice to the petitioner and that his absence at the pre-trial hearing was a valid ground for the dismissal of his complaint.[18]

The petitioner says that he should not have been declared in default on the counterclaim because he had already answered the same. He was not. The court simply continued the hearing ex parte to receive the evidence of the defendant conformably to established rules.[19] Consequently, the proceedings are not null and void as contended.

As for equity, which has been aptly described as "a justice outside legality," this is applied only in the absence of, and never against, statutory law or, as in this case, judicial rules of procedure. *Aequitas nunquam contravenit legis*. The pertinent positive rules being present here, they should pre-empt and prevail over all abstract arguments based only on equity.[20]

Decision of this case on the merits is precluded by the negligence of the petitioner in reacting seasonably to the dismissal of his complaint and to the judgment on the counterclaim. He was not denied due process for it was he who slept on his rights and failed to invoke them on time.

The rules have been promulgated precisely to insure an orderly procedure in the conduct of cases before the courts of justice. We frustrate that objective by departing from these rules.

WHEREFORE, this petition is dismissed, with costs against the petitioner.

SO ORDERED.

Abad Santos, (Chairman), Yap, Narvasa, and Melencio-Herrera, JJ., concur.

[1] Orig. Rec., pp. 29; 42-44; Rollo, p. 29.

[2] Ibid., p. 36.

[3] Id.

[4] Id., p. 72.

[5] Id.

[6] Id., p. 71.

[7] Id., p. 72.

[8] Id., pp. 54; 3.

[9] Rollo, pp. 5-22.

[10] Rule 13, Sec. 2, Rules of Court; Francisco v. Puno, 108 SCRA 427; PLDT vs. NLRC, 128 SCRA 402; Cubar v. Mendoza, 120 SCRA 768; Vda. de Mintu v. C.A., 98 SCRA 417; Jalover v. Ytoriaga, 80 SCRA 100; Estipona v. Navarro, 69 SCRA 285.

[11] Rollo, p. 32.

[12] Rollo, pp. 60-61.

[13] New York Life Ins. Co. v. Raufman (C.C.A. 9th, 1935), 78 F. 2d. 398, Cert. Den. (1935) 296 U.S. 626, 56 S. Ct. 149, 80 L. Ed. 445; Go v. Go, 95 Phil. 378.

[14] Orig. Rec., p. 72.

[15] Rule 38, Sec. 3, Rules of Court.

[16] Ibid.

[17] Rollo, p. 79.

[18] PLDT v. NLRC, 128 SCRA 402; Cubar v. Mendoza, 120 SCRA 768; Francisco v. Puno, 108 SCRA 427; Vda. de Mintu v. C.A., 98 SCRA 417; Jalover v. Ytoriaga, 80 SCRA 100; Estipona v. Navarro, 69 SCRA 285.

[19] Sec. 1, Rule 18, Rules of Court; Sec. 4, Rule 11, Id.; Saharon and Pacific Commercial Co. v. Tan Cuenco, 36 Phil. 556; Banares v. Florede-liza, 51 Phil. 786; Cayetano v. Ceguerra, 13 SCRA 73; Leus v. Martin, 77 Phil 657.

[20] National Federation of Sugar Workers v. Orejora, 114 SCRA 354.

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