

EMILIANA CRUZ, PETITIONER-APPELLANT, VS. ERNESTO OPPEN, INC., HON. CRISANTO ARAGON, AS JUDGE OF THE MUNICIPAL COURT OF MANILA AND THE SHERIFF OF MANILA, RESPONDENTS-APPELLEES.

G.R. No. L-23861. February 17, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Petitioner seeks a reversal of the order of the Court of First Instance of Manila dismissing her petition for relief under Rule 38 of the Revised Rules of Court. The pertinent proceedings in the courts below are:

On March 28, 1963, respondent judge of the City Court (formerly Municipal Court) of Manila rendered judgment by default^[1] against petitioner directing her, inter alia, to vacate Stall No. 78 of the Manila Cartimar Market, subject of the ejectment suit; to pay P71.00 for rentals in arrears and rentals at the rate of P2.70 a day from March 20, 1963 until the premises shall have been vacated. On May 22, 1963, petitioner moved to set aside the default order, decision and the writ of execution issued to enforce the judgment. Ground: Want of jurisdiction over her person. Because, so she avers, summons and copy of the complaint were served upon her salesgirl, Teresita Burce, who did not turn over said papers to her. On May 25, 1963, respondent judge denied the motion. On June 4, 1963, petitioner moved to reconsider and sought new trial, reiterating the jurisdictional ground. This time, she appended to the motion an affidavit of her salesgirl, Teresita Burce, which recites that certain papers which she came to know later as summons and complaint in said case were served upon her; that she "was not able to give said papers" to petitioner Emiliana Cruz; that she closed the store in the last week of March, 1963 upon instructions of petitioner; and that thereafter she went to Albay, by reason of which she was unable to pay "the balance of the March rental" with the P30 given her by petitioner for the purpose. On June 8, 1963, respondent judge again denied this motion.

On August 1, 1963, petitioner went to the Court of First Instance for relief from the city court's judgment of March 28, 1963.^[2] She asked that the decision and writ of execution be set aside and that trial on the merits be had. Respondents' answer to the petition - bearing date of October 14, 1963 - presented solely issues of law, principally (1) that the petition was time-barred; and (2) granting that the petition was filed within the reglementary period, the negligence of petitioner's salesgirl, Teresita Burce, is not excusable. Petitioner's reply of December 16, 1963 reasoned out that her petition for relief was timely and that the negligence of her salesgirl is one not "pertaining to petitioner herself" and that the latter's "failure to answer the complaint and air her side of the case before the respondent inferior court cannot be blamed on her entirely and absolutely."^[3] On June 8, 1964, re-spondent corporation filed a motion to resolve its answer to the petition, upon the averment that said answer partakes of a motion to dismiss. Copy of this motion, sent by registered mail, was received by petitioner counsel on June 25, 1964. On July 3, 1964, the Court of First Instance issued an order, which reads: "It appearing that the petitioner came to know of the judgment from which relief is sought on May 22, 1963; that she filed this petition only on August 1, 1963, or after a lapse of 71 days; and that the period of 60 days from the time the

petitioner learns of the judgment within which she may file a petition for relief is never interrupted, as prayed for, the petition is dismissed with costs against the petitioner."

A motion to reconsider was denied. Hence, this appeal.

The petition must be dismissed. And for a number of reasons.

1. Petitioner had notice of the judgment of the city court at the latest on May 22, 1963. For, in her motion filed on that date - May 22, 1963 - to set aside the default order, decision and writ of execution, she averred "[t]hat it was only a few days ago that defendant came to know of the case filed against her and she forthwith referred the matter to her undersigned counsel, who Immediately went to court and looked for the record of the case." [4] She filed the petition for relief on August 1 following. Between May 22 and August 1, 71 days elapsed. Her petition for relief is eleven (11) days late. Because, Section 3, Rule 38 of the Revised Rules of Court, requires, amongst others, that a petition for relief be filed "within sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside." Her failure to comply with this period peremptorily exacted by the rules warrants dismissal. [5]

2. But petitioner argues that the period consumed by the proceedings in the city court should be deducted from the 60-day period. Here is how she explains her case: She lodged with the inferior court her motion to set aside the order of default, decision and writ of execution on May 22. Respondent judge denied this motion on May 25. On June 4, she moved for reconsideration and new trial - which was denied on June 8. Notice of this denial was received by her counsel on July 3. Between July 3 and August 1, when her petition for relief before the Court of First Instance was filed - is only 29 days. Ergo, the 60-day time-limit has not expired.

Petitioner's argument fails of its purpose. For, a doctrine which gained foothold through reiteration is that the 60-day period set forth in Rule 38 is absolutely fixed, inextendible, never interrupted, [6] and cannot be subjected to any condition or contingency. Because the period fixed "is itself devised to meet a condition or contingency"; the equitable remedy a Rule 38 "is an act of grace, as it were, designed to give the aggrieved party another and last chance and a petitioner for relief being "in the position one who begs, such party's privilege is not to impose conditions, haggle or dilly-dally, but to grab what is offered him." [7] So it is that neither the pendency of certiorari proceeding before this Court, as in *Palomares vs. Jimenez*, supra, nor the filing of a motion to reconsider the order, subject of the petition or relief after learning of it, is in *Rafanan vs. Rafanan*, supra, will toll the running of the limited period.

Petitioner here is in a worse position. Her motion to set aside the city court's default order, decision (which has become final) and writ of execution, was filed in the wrong court - the said inferior court which did not have jurisdiction to grant relief from judgment. That motion amounts to nothing; it is no petition for relief at all. Certainly, the time consumed in the proceedings therefor did not suspend the running of the 60-day period.

In the circumstances here presented, the Court of First Instance of Manila had no alternative but to dismiss the petition for relief.

3. The petition for relief from judgment in the Court of First Instance suffers from another infirmity. Petitioner's affidavit and that of Teresita Burce attached thereto do not show that if the judgment of the city court were overturned and a new trial ordered, probability exists that a different conclusion will be reached. On this point, all that the affidavits could say is that the premises were vacated in the last week of March, 1963; that petitioner gave Teresita Burce money P30.00 - to pay for the balance of the unpaid rental for that month; that Teresita was not able to pay as she "went to the province of Albay after closing the store." Apart from the fact that the excuse for nonpayment is puerile, there is the other fact that the amount given was short. For, the judgment calls for the

payment of P71,00, rentals in arrears up to March 19, and daily rentals of P2.70 from March 20, 1963. Since there is no denial of failure to pay in full rentals previously due, and that the balance of unpaid rentals for the month of March had not been paid, respondent corporation made a clear case for ejectment

4. Nor is there any showing of fraud, accident, mistake or excusable negligence which would authorize relief under Rule 38, Teresita Burce is of age. Her affidavit is to the effect that she receive the summons and copy of the complaint; that she failed to deliver them to petitioner, as she immediately proceed to Albay after she closed the store in the last week of March, 1963; and that since then, she has not communicated with petitioner. Citation of jurisprudential support is unnecessary for the view that this affidavit does not show excusable negligence.

5. Petitioner assails the order of the Court of First Instance of July 3, 1964 dismissing her petition for relief, as one issued without a hearing on the merits thereof.

That petition for relief recites the facts and the proceedings had in the city court, explains the bearing of the facts on the legal issues. Respondents' answer thereto concedes the facts but says that petitioner is not entitled to relief as a matter of law, Petitioner's reply to the answer rebuts the points of law raised. It is in this setting that on June 8, 1964 respondents filed their "Motion for Resolution of Answer Filed by Defendant Ernesto Oppen, Inc." This motion may not have been skillfully labeled in effect, however, it is a motion for judgment on the pleadings. No question of facts is involved. The court may make a decision upon the legal issues and on the basis of the pleadings and the reasons advanced by the parties.

Applicable then is Section 1, Rule 19 of the Revised Rules of Court (formerly Section 10, Rule 35 of the old Rules), which states that where an answer "admits the material allegations of the adverse party's pleading, the court may, on motion of that party direct judgment on such pleading." [8] On this point, then Justice Arsenio P. Dizon of the Court of Appeals now of this Court, analyzing the provisions of Section 10, Rule 35 of the old Rules of Court, observed [9] that "the rule does not state whether the motion for judgment on the pleadings may be considered ex-parte or only upon notice served on the adverse party," and concluded that a motion for judgment on the pleadings in which all the material averments of the complaint are admitted, "is one that may be considered ex-parte because, upon the particular fact thus presented and laid before the court, the plaintiff is entitled to the precise order applied for." Such is the situation here. No need there to set for oral arguments [10] respondents' motion of June 8.

6. Concededly, the order of July 3, 1964 dismissing the petition was issued without hearing the parties on oral arguments. But the proceedings did not end there. For, petitioner moved to reconsider that order. In that motion for reconsideration, she has had the opportunity to present, and in fact did present, her written arguments once again on the legal issues. She set her aforesaid motion to reconsider for hearing on August 15, 1964. She has had opportunity to be heard. She cannot complain. Unfortunately for her, it was denied on that same day.

In this factual environment, it cannot be said that petitioner was denied her day in court. Lack of original notice to set the motion to resolve for hearing was cured by the fact that she was heard on her motion for reconsideration.

She was not, therefore, prejudiced by the fact that respondents' motion to decide the case was not set for hearing.

7. At all events, if the Court of First Instance erred in revolving respondent corporation's motion for resolution of its answer without setting it for hearing under the circumstances here stated, it was harmless error; [11] it does not affect the substantial rights of petitioner; petitioner will not fare any better if the case were to be return to the inferior court for a new trial; the appealed orders need not be disturbed. For, the law does not require useless ceremony. [12]

For the reasons given, the orders under review are hereby affirmed.

Costs against petitioner.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Civil Case No. 107594, entitled "Ernesto Oppen, Inc., Plaintiff, vs. Emiliana Cruz, Dependant."

[2] Civil Case No. 54655, entitled "Emiliana Cruz, Petitioner, vs. Ernesto Oppen, Inc., Hon. Crisanto Aragon, as Judge of the Municipal Court of Manila (Branch IV), and the Sheriff of Manila, Respondents."

[3] Record on Appeal, p. 40.

[4] Record on Appeal, p. 4.

[5] See: Prospero vs. Robles, L-16870, May 31, 1963; Quijano vs. Tameta, 59 O.G. No. 4, pp. 545-546; Smith, Pell & Co., Ltd. vs. Philippine Milling Co., 57 O.G. No. 15, pp 2701, 2702; Samson vs. Dinglasan, L-15326, October 25, 1960; Maniego vs. Manalo, 104 Phil. 1023, 1026; J. M. Tuason & Co., Inc. vs. De la Cruz, 92 Phil. 832, 833. In Gordulan vs. Gordulan, L-17722, October 9, 1961, it was held that "[rule] 38 is a special remedy and the requirements therein are considered as conditions sine qua non to the proper allowance of relief."

[6] Palomares vs. Jimenez, 90 Phil. 773, 776; Rafanan vs. Rafanan, 98 Phil. 162, 164-165; Gana vs. Abaya, 98 Phil. 165, 167; Quijano vs. Tameta, supra; Smith, Bell & Co., Ltd. vs. Philippine Milling Co., supra; Mercado vs. Domingo, L-19452, December 17, 1966.

[7] Palomares vs. Jimenez, supra

[8] Emphasis supplied.

[9] Rub vs. Bayona, 50 O. G. No. 3, pp, 1212, 1213-1214.

[10] In Remonte vs. Bonto (1966), 16 Supreme Court Reports, pp. 257, 260-61, we said: "The purpose of the law in requiring a three-day notice of hearing of a motion, to wit: 'to avoid surprises upon the opposite party and to give to the latter time to study and meet the arguments of the motion' (J.M. Tuason & Co. vs. Magdañal, G. R. L-15539, January 30, 1962), has been sufficiently complied with. For, plaintiffs have had the chance to present - and in fact virtually did present - their objection to the motion to dismiss, De Borja, et al. vs. Tan, et al., 93 Phil. 167, 171. Hearing the motion to dismiss has thus become a superfluity, a surplusage. The ends of justice have been subserved. And the court's failure to note that, on the date of hearing of said motion plaintiffs had no notice thereof, descends to the level of error without prejudice and may well be overlooked. Section 2, Rule 1; Case, et al. vs. Jugo, 77 Phil. 517, 522."

[11] Section 5, Rule 51, Revised Rules of Court.

[12] Remonte vs. Bonto, supra.

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