

FELIPE QUIRINO, PETITIONER AND APPELLANT, VS. PHILIPPINE NATIONAL BANK, ET AL., RESPONDENTS AND APPELLEES.*G. R. No. L-9159. May 31, 1957*

Ponente: MONTEMAYOR, J.

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On January 14, 1955, the Philippine National Bank filed a complaint in the Justice of the Peace Court of Vigan, Ilocos Sur, against several defendants, among them appellant Felipe Quirino who was duly served with summons but failed to appear and answer the complaint on the date, place and time set in said summons. On motion of plaintiff bank, appellant Quirino was declared in default on February 15, 1955, and on February 18, 1955, the plaintiff was allowed to introduce its evidence. On the same day, judgment was rendered in its favor and against the appellant. On February 25, 1955, appellant Quirino, learning of the judgment rendered against him, filed a "petition to lift order of default" with the Court of First Instance of Ilocos Sur. The bank filed a motion to dismiss the petition on the ground that it stated no cause of action. Acting upon said petition to dismiss, the Court, presided by Judge Francisco Geronimo, found the petition to be "not sufficient in form and substance, for the relief provided for in Rule 88 of the Rules of Court can only be availed of when the judgment from which the relief is sought has already become final." The lower court stated that the correct procedure followed for petitioner Quirino "should have been to file a motion in the Justice of the Peace Court of Vigan, asking for the setting aside of the Judgment by default and for a new trial in accordance with section 16, Rule 4, of the Rules of Court, and that should, said petition be denied, then petitioner will' appeal to the Court of First Instance." Consequently, the petition for relief was dismissed, without pronouncement as to costs. Defendant-petitioner is now appealing that order of dismissal direct to us.

We are in complete accord with the trial court and counsel for the appellee bank in the position taken by them. When the appellant filed his petition for relief before the Court of First Instance, the judgment against him by the Justice of the Peace had not yet become final and executory. Consequently, relief under Rule 38 of the Rules of Court was not in order for the reason that said relief is available only after a decision or a judgment from which relief is sought^{4s} final and executory. Such is our ruling in the case of *Veluz vs. Justice of the Peace Court of Sariaya*, 42 Phil. 557, wherein we said:

"* * * * Certainly there is no occasion for putting the aggrieved person to the trouble of presenting" the petition permitted by said sections, to the Court of First Instance during that time when the trial court, upon its authority, may correct any error, mistake, or injustice which he has committed. Said sections are only applicable after the judgment has become final and after the time has elapsed for perfecting an appeal. A judge has an inherent right, while his judgment is still in his control, to correct error, mistakes, or injustices. After the judgment has become final, he loses his right to change or modify it in the slightest decree, except for the purpose of correcting" clerical errors." (Italics supplied.)

Before seeking relief from a decision rendered by a court, it should be given an opportunity to correct any mistake or injustice committed whenever possible, and this naturally is possible where said judgment has not yet become

final. The law contemplates that relief may be sought and may be granted by the Court of First Instance where said relief is no longer available in the inferior court, because it has lost jurisdiction over the case by reason of the decision having become final. There is no reason for the law requiring the aggrieved party to go to the Court of First Instance for relief and dragging to the same court the winning party, causing unnecessary expense and loss of time to both when the same relief, could be sought and granted in the Justice of the Peace Court, the court of origin.

Defendant-appellant contends that the only relief available to him in the Justice of the Peace Court is that provided in

Section 14, Rule 4, which reads as follows-, "Sec. 14. Vacating dismissal and defaults.—Within two hours after the entry of a dismissal or default, as provided in the last two preceding sections, the court may set made such entry and allow the party against whom such dismissal or default had been entered to have a trial upon the merits of the cause, if such party appears and makes it manifest to the court that his failure to appear at the time and place designated in the summons was, by reason of fraud, accident, or mistake.";

and that after the expiration of said two hours, all. doors of relief are closed to him. But as the trial court and counsel for the appellee correctly maintain, even after the expiration of two hours after the rendition of the default judgment, within the period for appeal when the judgment has not yet become final, the aggrieved party may, under section 16 of the same Rule 4 of the Rules of Court, still ask for new trial. Section 16 provides:

"Sec. 16. New trial.—Within the time provided for perfecting an appeal from a judgment rendered by an inferior court and before an appeal is so perfected, the court may grant a new trial to correct an error or injustice it may have committed."

The case of *Abadilla vs. Municipal Court of Manila*, G. R. No. 48262, *Lawyers' Journal*, August 31, 1937, p. 744, is in point. In said case, the plaintiff filed a complaint in the Municipal Court of Manila and defendant was summoned to appear on August 10, 1984 and answer the complaint. Defendant failed to appear on that date either personally or by counsel, and judgment of default against him was rendered. On August 31, 1984, defendant petitioned the reopening of the case and two days later, the Municipal Court set aside its decision and set the case for hearing. A motion for reconsideration was presented by the plaintiff but it was denied. When the case reached this Tribunal, we ruled that:

The Municipal Court "not having lost all control to change, alter or modify a judgment within its discretion, its previous decision might be set aside and a new trial or re-hearing granted. That is an inherent power of the courts as to decisions before they become final * * *."

In view of the foregoing, the appealed order of dismissal is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Jndencia, and Felix, JJ., concur.

DISSENTING OPINION

Reyes, A., J., :

Ten days after he had been declared in default and seven days after judgment by default had been taken against him in the justice of the peace court, the defendant Felipe Quirino (appellant herein) filed a petition for relief in the Court of First Instance to have the said judgment set aside under section 1 of Rule 38, which reads:

"Section 1. Petition to Court of First Instance for relief from judgment of inferior court.—When a judgment is rendered by an inferior court, and a party to the case, by fraud, accident, mistake or excusable negligence, has

been unjustly deprived of a hearing therein, or has been prevented from taking an appeal, he may file a petition in the Court of First Instance of the province in "which the original judgment was rendered, praying that such judgment be set aside and the case tried upon its merits."

The petition was filed within the time, fixed in section 3 of the same Rule but the Court of First Instance dismissed it as premature, and the majority of this Court sustain that ruling, declaring that relief under Rule 38 was not in order on the theory that the judgment by default had not yet become final so that the defendant could still file a motion in the justice of the peace court "asking for the setting aside of the judgment by default and for a new trial in accordance with section 16 of Rule 4."

I cannot subscribe to this view.

Relief from default in the justice of the peace court is governed by the following provision of the Rules of Court:

"Sec. 14. Vacating dismissals and defaults.—Within two hours after the entry of a dismissal or default, as provided in the last two preceding sections, the court may set aside such entry and allow the party against whom such dismissal or default had been entered to have a trial upon the merits of the cause, if such party appears and makes it manifest to the court that his failure to appear at the time and place designated in the summons was by reason of fraud, accident or mistake." (section 14, Rule 4.)

Note that the above section of Rule 4 limits the time for setting aside an entry of default (so that the case may be tried on the merits) to two hours after such entry. It is a mistake to suppose that after the lapse of those two hours, the defendant in default may still come to the justice of the peace court and ask for a new trial under section 16 of the same Rule, which says:

"SEC. 16. New trial—Within the time provided for perfecting an appeal from a judgment rendered by an inferior court and before an appeal is so perfected, the court may grant a new trial to correct an error or injustice it may have committed.

As will be noted, this section of Rule 4 does not speak of default, while on the other hand, it specifically refers to a case where an appeal may be perfected and is, therefore, not applicable where, as in the present case, an appeal is not allowed, it being settled doctrine that a defendant in default loses his standing in court and has no right to appeal from the judgment on the merits. (*Lim Toco vs. Pay* 80 Phil. 166; *Reyes vs. Catholic Archbishop of Manila, et al.*, supra; and *Tecson vs. Melendres*, 88 Phil., 70S). To apply section 16 of Rule 4 to the present case is to make a mockery of this time-honored doctrine and make a dead letter of section 14 of the same Rule.

Under the Ruling of the cases just cited, a defendant loses his standing in court once he is declared in default, and the only way he may regain such standing is through a petition for relief under section 14 of Rule 4 within two hours after the entry of default or under section 1 of Rule 88 if those two hours have already elapsed. Until the defendant has regained his standing in court through this procedure, he has no right to a new trial or to ask for a reconsideration of the judgment of default rendered against him.

As precedents for the rule they now want to adopt, the majority cite the cases of *Veins vs. Justice' of the Peace of Sariaya* (42 Phil. 557) and *Abadilla vs. Municipal Court of Manila* (G. R. No. 43282, *Lawyer's Journal*, August 31, 1957, p. 744!). But these cases are hardly in point.

The *Veluz* case was not one of default as this Court took pains to point out in its decision, for not only had defendants therein appeared and answered the complaint but the cause had thereafter been set down for trial several times. What happened is that on the last day set for trial the defendants failed to appear and the justice of the peace rendered judgment against them after hearing the plaintiff and his witnesses. Within an hour after the rendition of the judgment and after the plaintiff and his witnesses had left, the defendants filed a motion to set

aside the judgment under section 55 of Act 190 (now section 14, Rule 4) without serving copy thereof upon the plaintiff, and the latter upon learning of the same, filed his written opposition contending, among other things, that the judgment rendered by the justice of the peace was not a judgment by default as erroneously stated in his decision, so that, defendants' only remedy was by appeal to the Court of First Instance. Notwithstanding this opposition, however, the justice of the peace granted the motion and set aside his judgment. On the theory that the justice of the peace had exceeded his jurisdiction, the plaintiff petitioned this Court for a writ of certiorari to annul the order granting the motion. But this Court denied the writ, holding that until a decision becomes final it is under the control of the court; that it does not require statutory authority for a court to correct its error or mistakes during the time it has control over its decisions; and that since in actions of forcible entry and detainer the judgments of the justice of the peace do not become final for a period of five days (section 88, Act 190), the justice of the peace may, during that period, correct or modify such judgments or grant a new trial if he discovers that an error or mistake has been committed. The case thus is authority for the proposition that a justice of the peace court has the inherent power to revoke or modify its judgment before the same has become final; but it in no way supports the view herein taken by the majority that a defendant who has been declared in default in the justice of the peace court may still, notwithstanding the fact that he has already lost his standing in court, file therein a motion other than that which, by express provision of the Rules (section 14, Rule 4), is authorized to be filed within two hours after the entry of default. Defendant's remedy after the lapse of those two hours is to ask for relief in the Court of First Instance in accordance with Rule 38, and that is precisely what the defendant in the present case did. To require him to file his motion in the justice of the peace court where he has already lost his legal standing would be to order him to do that which he is barred from doing.

In the other case cited by the majority—*Abadilla vs. Municipal Court of Manila*, *supra*—it appears that the defendant was summoned to appear on August 10, 1934 to answer the complaint in the municipal court of Manila, but having failed to appear personally on that day—although he did send an answer to the complaint—judgment by default was rendered against him on that same day. On August 21, 1934 he petitioned the court for the re-opening of the case and two days later the municipal judge entered an order setting aside his decision and again setting the case for hearing. The question presented was whether the municipal judge exceeded his jurisdiction when he set aside his decision beyond the time—two hours—permitted under section 55 of Act 190 (now section 14 of Rule 4). Answering the question in the negative, this Court held that section 55 of Act 190 did not apply and that the facts disclosed were closely enough analogous to those found in the case of *Veluz vs. Justice of the Peace of Sariaya*, *supra*, to require that a similar ruling be made. "In other words," we there said, "the court not having lost all control to change, alter, or modify a judgment within its discretion, its previous decision might be set aside and a new trial or rehearing granted. That is an inherent power of the courts as to decisions before they become final, and the same rule would apply here." Needless to say, this case only reiterated the doctrine laid down in the *Veluz* case that before the judgment of an inferior court has become final that court has the inherent power to revoke or modify it. And since this the court may do *motu proprio*, it is immaterial whether a petition for that purpose has been made or not. It follows that like the *Veluz* case the case of *Abadilla vs. Municipal Court of Manila*, *supra*, is no authority for holding that a defendant who has already been declared in default and as a consequence has lost his legal standing in court has still the right to file therein a motion to have the order of default stricken off otherwise than as authorized in section 14 of Rule 4.

For the foregoing reasons I vote to reverse the order complained from.

Reyes, J. B. L., J., concurs.

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