

**FRUCTUOSO DE GUZMAN, PETITIONER, VS. THE HONORABLE
EMILIO RILLORAZA, JUDGE OF COURT OF FIRST INSTANCE OF
RIZAL, SECOND BRANCH, PASAY CITY AND EUSEBIO DE LA ROCA,
RESPONDENTS.**

G.R. No. L-4931. May 29, 1952

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

On September 9, 1948, EUSEBIO DE LA ROCA filed a complaint in the Court of First Instance of Rizal (Pasay City Branch), Civil Case No. 631, to collect a loan of P4,000.00 secured by a mortgage on the property described in Transfer Certificate of Title No. 27172, from FRUCTUOSO DE GUZMAN.

On September 30, 1948, defendant De Guzman filed an answer admitting that the loan of P4,000 was received by him in 1944, but in Japanese military notes and that the understanding between him and plaintiff was that it was to be repaid after September 14, 1945, in an amount to be determined according to the rate of exchange of the military notes with the genuine Philippine peso when the loan was contracted on September 14, 1944 and that as a matter of fact, prior to the institution of the suit, he had on various occasions offered to pay the debt of P4,000.00 at the rate of P30.00 Japanese military notes for every Philippine peso, which is P133.33, but plaintiff rejected the offer.

On May 27, 1949 notices of the hearing to be held on June 9, 1949, were said to have been sent to the parties. There is a statement initialed by one said to be the Court's mailing clerk at the bottom of the original copy of the notice of hearing that copies were sent by registered mail.

On June 9, 1949, the case was called for hearing. Neither plaintiff Roca nor his attorney appeared and upon motion of defendant De Guzman, the order of June 9, 1949, was entered dismissing the case. Copies of this order were supposed to have been sent to the attorneys of the parties on June 10, 1949 by registered mail. However, on the back of the original copy of the order of dismissal found in the record of the case, only the registry return receipt card for the copy sent to Atty. Evangelista for defendant, is attached. There is none for the attorney for the plaintiff.

On January 11, 1951, plaintiff Roca filed an ex parte motion asking for the reinstatement of his Civil Case No. 631 on the ground that neither he nor his attorney had been notified of the hearing on June 9, 1949. On the same day Judge Bienvenido Tan granted the motion and reinstated the case. The case as reinstated was subsequently set for hearing for February 4, 1951.

On February 24, 1951, defendant De Guzman filed a motion to set aside the hearing on the ground that the order of June 9, 1949, had become final, and therefore the court was without jurisdiction to reinstate the case.

On March 9, 1951, Judge Rilloraza reset the case for hearing to March 14, 1951, later transferred to another date and required defendant De Guzman to present evidence, if any, to show that Roca or his attorney had been

notified of the hearing of the case on June 9, 1949. On the date set however, defendant De Guzman did not as required by the court, present his evidence.

On July 12, 1951, Judge Rilloraza denied defendants motion to set aside the hearing. Said order of July 12th reads as follows:

"There being no proof presented by the defendant to show that the plaintiff and his counsel were duly notified of the hearing of this case on June 9, 1949, and there being no valid ground for disturbing the order under date of January 11, 1951, of the Honorable Bienvenido A. Tan, former presiding Judge of this Court, in effect reinstating the present case and ordering that the same be set for hearing, this Court is of the opinion that the defendant's motion, dated February 24, 1951, to set aside the hearing and the motion for reconsideration of the said defendant dated June 18, 1951, should be, as they are hereby, denied.

Let this case be set for hearing on the merits on August 14, 1951, at 8:00 o'clock in the morning.

IT IS SO ORDERED.

Pasay City, July 12, 1951.

(Sgd.) EMILIO RILLORAZA
Judge"

Dissatisfied with the said order, defendant De Guzman has brought the case here on certiorari, to have the order of the trial court of January 11, 1951, reinstating Civil Case No. 631, declared null and void, and to declare the order of dismissal of June 9, 1949, final and binding.

The important question involved herein is whether or not Roca's attorney was duly notified of the hearing of Civil Case No. 631 set for June 9, 1949. Respondent Roca insists that there was no such notification. Section 10, Rule 27 of the Rules of Court provides that proof of service by registered mail -

"x x x shall consist of an affidavit of the person mailing, together with the registry receipt issued by the mailing office if the letter has been registered. The registry return card shall be filed immediately upon receipt thereof by the sender, or in lieu thereof the letter unclaimed together with the certified or sworn copy the notice given by the postmaster to addressee."

Section 8 of the same Rule 27 provides that -

"x x x service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post-office within five (5) days from the date of the first notice of the postmaster, the service shall take effect at the expiration of such time."

In the present case, the only competent evidence or data we have on the alleged proof of service of the notice of the hearing is a note signed by one said to be the mailing clerk of the trial court, at the foot of the original notice of hearing to the effect that a copy was sent by registered mail. The note does not even state to whom copy was sent by registered mail. It is therefore clear that the proof of service or completeness of service of notice of the hearing set for June 9, 1949, claimed by petitioner, falls far short of the requirements of the Rules of Court. In the memorandum of petitioner De Guzman filed in support of his petition for certiorari, page 11 thereof, he states that he did not attend the hearing set by the trial court wherein he was given a chance by the court to prove that Roca or his attorney was duly notified of the hearing of June 9, 1949, not because there was no evidence to substantiate his claim, but because he believed that the trial Judge had no jurisdiction to take cognizance of the case; but that had he appeared he could have easily proven due notice to respondent's attorney by presenting as evidence a letter of one Jesus Alvarez, Chief, Domestic Mail Division, Bureau of Posts addressed to the Clerk of Court to the effect that according to the post office records, a certain registered letter No. 388 mailed by the trial court on June 3,

1949, addressed to Atty. Gavino S. Abaya, was returned unclaimed on July 5, 1949, because it was unclaimed by the addressee despite the three notices sent to him on June 3, 6, and 9, 1949 respectively. Assuming that this were valid proof of service of the notice of hearing of June 9, 1949, the fact is that De Guzman did not introduce that evidence in court after he had been given an opportunity to do so. That was the reason why Judge Rilloraza in his order of July 12, 1951, said that there was no such proof and for that reason denied the petition to set aside the hearing, and in effect ratified the order of reinstatement.

The petitioner next contends that assuming that respondent Roca were entitled to relief, he should have followed the procedure outlined in Section 3, Rule 38 of the Rules of Court by filing his petition for relief not more than six months after the order of dismissal of June 9, 1949, accompanied with affidavits showing the reasons relied upon, and facts constituting petitioners good and substantial cause of action as the case may be; however, the motion for reinstatement of his case was filed by respondent about one year and six months after the order of dismissal. To decide this contention we have to consider another angle of the case. A pertinent question suggests itself. Was Roca notified of the order of dismissal of June 9, 1949? As already stated at the beginning of this decision (par. 5) copy was supposed to have been sent to the attorneys of the parties, but only the registry return receipt card from De Guzman's attorney appears in the record. There is no proof that notice of the order of dismissal was ever served on respondent Roca nor his attorney. We do not know for sure if Roca or his attorney was duly notified thereof at any time. Of course, he must have come to know sometime that his case was dismissed, but he might have too obtained this knowledge only shortly before he filed his motion for reinstatement of his case, so that the order of dismissal never became final, in which case, there is no need for him to invoke the provisions of Rule 38 regarding relief from judgment or order. In making the foregoing considerations and in taking the view that the order of dismissal has not become final, and that consequently, the trial court had the right to reinstate the case, we may, in some measure, have been influenced by the circumstances surrounding this case (Civil Case No. 631) is may be gleaned from the original record thereof received from the trial court. That herein respondent Roca as plaintiff in Civil Case No. 631 had a substantial cause of of action, and that his claim was meritorious, cannot be doubted. The record shows that on September 14, 1944, De Guzman obtained a loan of P4,000.00 in Japanese military notes from De la Roca, payable one year thereafter or on September 14, 1945, payment being secured by a mortgage on a parcel of land. Long before Roca filed a complaint to collect the debt and foreclose the mortgage in 1948, De Guzman anticipated the action for collection, and filed a complaint against Roca (Civil Case No. 7480 of the Court of First Instance of Rizal) on September 14, 1945, on the very day the payment of the loan became due, seeking to repudiate the deed of mortgage in favor of Roca, claiming that he signed the same without knowing its contents. He admitted that he had received the loan of P4,000.00. The court found that De Guzman was duly Informed of the contents of the deed of mortgage, because the very witnesses to the document were his torn son and son-in-law who understood English, and that furthermore, the contents of the deed of mortgage were translated to him in Tagalog before he signed it. The only reason given by the court in not granting the counterclaim of Roca for the payment to him of the P4,000.00 was the existence of the moratorium law, Executive Orders Nos. 25 and 32 of 1944 and 1945 respectively.

Again, in the answer filed by petitioner to the complaint of Roca in Civil Case No. 631 for the collection of the debt of P4,000.00, De Guzman admits having contracted the loan of P4,000.00 but in Japanese military notes, but claims that on several occasions prior to the filing of the complaint, he had offered to pay the loan according to the rate of exchange of the Japanese military notes prevailing on September 14, 1944, which according to him was P30.00 Japanese military notes for every genuine Philippine peso, but that plaintiff refused to accept the offer, and that at this rate, the P4,000.00 will be equivalent to P133.33 which he was willing to pay plaintiff "if and when the debt moratorium provided in Executive Order No. 25 as amended by Executive Order 32, is lifted." We repeat that the case of respondent-plaintiff Roca against petitioner-defendant in Civil Case No. 631 would appear to be

meritorious, deserving of every proper presumption that could be indulged in in his favor to justify the reinstatement of his case, so that he may have his day in court.

In view of the foregoing, we find that the order of January 11, 1951, reinstating Civil Case No. 631, is valid. The petition for certiorari is hereby denied, with costs against the petitioner.

Paras, Feria, Pablo, Bengzon, Tuason, Bautista Angelo, and Labrador, JJ., concur.

Padilla, Reyes, and Jugo, JJ., did not take part.

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