

**NICOLAS LEYTE AND MARCELO LEYTE,
DEFENDANTS-PETITIONERS, VS. HON. VICENTE N. CUSI, JR., JUDGE,
FIRST BRANCH, COURT OF FIRST INSTANCE OF DAVAO, 16TH
JUDICIAL DISTRICT, RESPONDENT...**

G.R. No. L-31974. July 31, 1987

Ponente: CRUZ, J.

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CRUZ, J.:

The petitioners were sued for recovery of possession of a piece of land and were declared in default for failure to answer the complaint.[1] The case was heard ex parte on February 10, 1970, and on February 23, 1970, judgment was rendered in favor of the plaintiff, the private respondent here.[2] When they learned of the decision on March 21, 1970, the petitioners filed a motion for new trial on April 2, 1970,[3] but this was denied by the respondent judge, who held it was not the proper remedy.[4] The petitioners then asked for time to file a motion to lift the order of default but this request was denied, as so was their oral motion for reconsideration of the denial of the motion and the latter request.[5] They then came to us on certiorari claiming, among other grounds, grave abuse of discretion on the part of the respondent judge.[6] Pending consideration of the merits of the case, we issued a writ of preliminary injunction against the enforcement of the judgment of default upon the posting by the petitioners of a surety bond in the amount of P1,000.00.[7]

We find for the petitioners. The respondent judge erred in dismissing the motion for new trial as an im-proper remedy. It was in fact permitted by Rule 37 of the Rules of Court on the ground, among others, of fraud, acci-dent, mistake or excusable negligence. A motion to set aside the order of default under Rule 18, Section 3, of the Rules of Court was no longer available to the petitioners because it should have been filed before the judgment by default. As the judgment had already been rendered when the petitioners discovered that they had been declared in default, but before the said judgment had become final and executory, a motion for new trial under Section 1(a) of Rule 37 was clearly the appropriate remedy.[8]

Examination of the motion for new trial shows that it complied with the requisites of Rule 37. The motion is verified and contains allegations of the claimed grounds, viz., mistake and excusable negligence. It is supported by affidavits of merit to show that the peti-tioners have a good and valid defense against the com-plaint. Moreover, the records show that it was filed on time, on April 2, 1970, or 12 days after the peti-tioners learned of the judgment by default on March 21, 1970. It should, therefore, not have been summarily dismissed but instead admitted and considered by the respondent court.

This Court has repeatedly admonished against precipi-tate orders of default as these have the effect of denying the litigant the chance to be heard. While there are instances, to be sure, when a party may be properly de-faulted, these should be the exception rather than the rule and should be allowed only in clear cases of an obstinate refusal or inordinate neglect to comply with the orders of the court. Absent such a showing, the party must be given every reasonable opportunity to present his side and to refute the evidence of the adverse party in deference to due

process of law.

"x x x. We maintain fealty to the principle that courts should be liberal in setting aside orders of default for default judgment is frowned upon, and unless it clearly appears that the reopening of the case is intended for delay, it is best that the trial courts give both parties every chance to fight their case fairly and in the open, without resort to technicality." [9]

"Time and again the Court has enjoined trial judges to act with circumspection and not to precipitately declare parties in default, needlessly compelling the aggrieved party to undergo the additional expense, anxiety and delay of seeking the intervention of the appellate courts and depriving them of the much needed time and attention that could instead have well been devoted to the study and disposition of more complex cases and issues." [10]

While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses like this that do not really impair the proper administration of justice. If the Rules of Court are intended to ensure the orderly conduct of litigation, it is because of the higher objective they seek, which is the protection of the substantive rights of the parties.

WHEREFORE, the petition is GRANTED. The order of the respondent judge dismissing the motion for new trial is SET ASIDE and he is DIRECTED to resolve the said motion after proper hearing. The writ of preliminary injunction dated June 15, 1970, is made permanent. No costs.

SO ORDERED.

Teehankee, C.J., Narvasa, Paras, and Gancayco, JJ., concur.

[1] Rollo, pp. 9-13.

[2] Ibid., pp. 15-18.

[3] Id., pp. 19-23.

[4] id., p. 8.

[5] id., p. 4.

[6] id., pp. 1-7.

[7] id., pp. 58-59.

[8] id., p. 74.

[9] Pineda vs. Court of Appeals, 67 SCRA 229, cited in zenith Insurance Corp. vs. Purisima, 114 SCRA 62.

[10] Akut vs. Court of Appeals, 116 SCRA 213 citing Lope Gerian, et al. vs. Hon. Boncares, et al.

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