

HEIRS OF SATURNINA AKUT, NAMELY: MARTE, JR., ANACLETA, ENRIQUE, FELIZARDO, LOURDES AND DANIEL, ALL SURNAMED RACERO; AND DR. DOMINGO SURPOSA, PETITIONERS-APPELLANTS, VS. COURT OF...*G.R. No. L-45472. August 30, 1982*

Ponente: TEEHANKEE, J.

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The Court sets aside respondent appellate court's* minute resolutions dismissing petitioners' appeal from an order of default issued by the trial court in the case below for late filing (by six days) of petitioners-defendants' answer to the complaint (which the trial court refused to set aside on the mistaken notion that it had no authority nor discretion to set aside the default order) on the procedural ground that "an order of default is merely interlocutory and not appealable" instead of granting the substantive relief, to which petitioners are clearly entitled, of setting aside the default orders and reinstating them to their original standing before the trial court.

On March 8, 1975, respondent Insular Life Assurance Co., Ltd. as plaintiff filed a complaint against herein petitioners as defendants in the Court of First Instance of Misamis Oriental (and docketed as Civil Case No. 465) claiming ownership of a parcel of land situated at Bo. Macabalan, Cagayan de Oro City and to declare as null and void Original Certificate of Title No. RO-359 issued in the name of petitioners-defendants Heirs of Saturnina Akut, namely: Marte, Jr., Anacleta, Enrique, Felizardo, Lourdes and Daniel, all surnamed Racero, and also Transfer Certificate of Title No. T-17656 in the name of their co-petitioner Dr. Domingo Surposa.

Petitioners were served with summons on April 1, 1975 except for Dr. Domingo Surposa who was served with summons on April 2, 1975. After the expiration of the 15-day reglementary period for petitioners to file their answer, respondent Insular Life filed on April 23, 1975 a motion to declare petitioners in default. The next day, or on April 24, 1975, petitioners filed their answer.

On May 5, 1975, petitioners filed a motion to set the hearing of respondent's motion to declare them in default and another motion asking the trial court to accept and give due course to their answer.

On July 14, 1975, the trial court (presided by Judge Tago M. Bantuas) issued an order declaring petitioners "in default for their failure to file answer within the reglementary period and without further standing in the case," denying their motion to admit answer, and ordering that the case "be calendared for the ex-parte reception of evidence for the plaintiff at the next available [calendar] date." The trial court denied reconsideration per its Order of November 10, 1975 ruling that "the denial of a motion to lift order of default is merely interlocutory, there being no judgment rendered as yet." But petitioners timely perfected their appeal to respondent Court of Appeals from the default orders by record on appeal. In its resolution dated November 11, 1976, respondent appellate court however, *motu proprio*, dismissed the appeal, "it appearing that the appeal in this case being from an order declaring appellants in default which is interlocutory and not appealable x x x." The motion for reconsideration was denied per its Resolution of December 10, 1976; hence the present petition to set aside respondent appellate

court's dismissal of their appeal and to set aside the order of the trial court declaring them in default for failure to file their answer within the reglementary period and to restore their original standing in the trial court.

The Court finds merit in the petition. In essence, the case presents an old conflict of form against substance, and procedural nicety against substantial justice. The trial court itself had allowed petitioners-defendants' perfection of their appeal by record on appeal from the questioned default orders which it itself had termed as "interlocutory" but which it itself refused to set aside on the patently erroneous notion that he had no authority nor discretion to do so, notwithstanding timely motion to set aside the default order, complete with annexes and affidavits of merits (apart from their answer which had been filed long before the issuance of the default order) as expressly authorized under Rule 18, section 3 of the Rules of Court.[1] Assuming that petitioners had technically erred in questioning the default orders in the form of an appeal (as duly forwarded to the Court of Appeals by the trial court), the substance remained and the question could have been treated as a special civil action of certiorari (which petitioners would have availed of, had the trial court disallowed their appeal) and such procedural nicety should not bar the granting of substantial justice and the granting of the relief sought by petitioners-defendants.

The real and substantive issue in the case at bar is whether or not the trial court acted with grave abuse of discretion in declaring petitioners in default and in denying their motion to set aside the order of default. In their motions of May 5, 1975 (motion to set the hearing of respondent's motion to declare them in default and another motion asking the lower court to accept their answer filed since April 24, 1975) which were duly supported by affidavit of merits, petitioners aver that their failure to file their answer to the complaint within the 15-day reglementary period was due to accident, mistake or excusable negligence citing as reasons their failure to get the services of counsel on time and the fact that two of the petitioners (Marte, Jr. and Enrique) were then sick. Petitioners further maintain that they have a valid and meritorious defense since the property in litigation was registered in their name under Original Certificate of Title No. RO-359, that they have been in actual and continuous possession of the land since time immemorial and that the subsequent sale of said property and the issuance of the corresponding Transfer Certificate of Title No. 17656 in favor of their co-petitioner Dr. Do-mingo Surposa is valid and legal.

Under these undisputed circumstances, the Court finds petitioners to be entitled to relief from the order of default and to have their full day in court, which they seek now instead of asking petitioners to needlessly wait until the trial court shall have rendered a default and ex-parte judgment against them, as illogically contended by respondent in its comment. This is but in accordance with established doctrine that "(A) motion to set aside the order of default filed prior to the rendition of the judgment on the merits should be considered with liberality since it is presented promptly and without unnecessary delay and not much inconvenience may be caused either to the Court or to the adverse party there being as yet no judgment on the merits." [2]

The Court accordingly has departed on many occasions from the general rule and entertained or considered as petitions for certiorari where the appeal was found not to be the adequate remedy because the order which was sought to be reviewed was merely of interlocutory or peremptory character, and the appeal therefrom could be interposed only after final judgment and would therefore be of no avail.[3] Certiorari is an extraordinary writ to be employed in the absence of other remedy to correct instances in which the judge against whom the remedy is sought has acted without jurisdiction, in excess of jurisdiction or clearly in grave abuse of discretion.[4] It is a convenient mode of exercising a wholesome control over inferior tribunals.

As early as 1902, this Court, speaking through Chief Justice Cayetano Arellano, in the case of Luis R. Yangco vs. Wm. J. Rhode,[5] ruled that "(I)t is true that an interlocutory order such as that rendered by the respondent judge in the present case is not appeal-able during the course of the trial, but only after a final judgment has been rendered therein; but it is none the less true that it can not be the intention of the law, when prohibiting an appeal

against interlocutory orders, to give executory force to all kinds of inter-locutory orders which the judge may see fit to make in the course of a trial, and still less when the effect would be to cause irreparable damage, such as that alleged by the petitioner in the present case, by reason of the insolvency of the person in whose favor the granting of alimony has been ordered, and which allegation has not been objected to or denied by the respondent. It is indeed a wise rule of procedure which refuses to permit the interruption of a trial by means of incidental appeals; but, if the judge incidentally in the course of a trial proceeds without or in excess of his jurisdiction, this rule which prohibits an appeal does not leave the party aggrieved without remedy."

The controlling principle ignored by respondent court is that it is within sound judicial discretion to set aside an order of default and to permit a defendant to file his answer and to be heard on the merits even after the reglementary period for the filing of the answer has expired. This discretion should lean towards giving party-litigants every opportunity to properly present their conflicting claims on the merits of the controversy without resorting to technicalities. Courts should be liberal in setting aside orders of default, for default judgments are frowned upon, and unless it clearly appears that the reopening of the case is intended for delay, it is best that trial courts give both parties every chance to fight their case fairly and in the open, without resort to technicality.[6] In the case at bar, considering that there were several defendants (now petitioners) in the case, and they had yet to confer as to who would be the lawyer to represent them and they had yet to raise money to pay for his services, coupled with the fact that two of them were then sick, the failure or delay in filing their answer (by six days) can hardly be said to be inexcusable.

As above stated, the record shows that petitioners had already filed their answer long before the trial court issued the default order. The trial court should have fully appreciated this fact in favor of petitioners since such filing of an answer, although late by six days, practically negated substantial prejudice to respondent-plaintiff. Moreover, petitioners' answer shows that they have a prima facie meritorious defense. They should, therefore, be given their day in court to avoid the danger of committing a grave injustice if they were denied an opportunity to introduce evidence in their behalf.

Our ruling in *Mercader vs. Bonto*[7] and the copious precedents therein cited that "considering that the late filing of defendants' answer was due to excusable negligence and that they appear to have a meritorious defense; that defendants filed an answer before they were declared in default; and that the late filing of the answer did not in any way prejudice or deprive the plaintiff of any substantial right, nor was there intention to unduly delay the case, WE hold that the respondent judge committed an abuse of discretion in declaring the defendants in default and in refusing to set aside the order of default" is fully applicable to the case at bar.

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 and complicated cases and issues.[8]

ACCORDINGLY, the questioned resolutions of November 11, 1976 and December 10, 1976 of the Court of Appeals, as well as the trial court's orders of July 14, 1975 and November 10 1975 declaring petitioners-defendants in default, are hereby set aside. Petitioners' answer in the case below is ordered admitted and the case is hereby ordered remanded to the trial court for trial and determination on the merits. With costs against private respondent.

Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ. concur. Makasiar, J., on official leave. Vasquez, J., no part.

* Third Division, then composed of Justices Conrado M. Vasquez, Buenaventura de la Fuente and Venicio Escolin.

[1] "SEC. 3. Relief from order of default. - A party declared in default may at any time after discovery thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable neglect and that he has a meritorious defense. In such case the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice." (Rule 18, Rules of Court).

[2] I Moran's Rules of Court, 1979 ed., p. 532, cit. Combs v. Santos, 34 Phil 446; see Flores v. Buen-camino, 74 SCRA 332; cit. Lim Tanhu v. Ramolete, 66 SCRA 425.

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