

**EFREN V. MENDOZA, PETITIONER, VS. HON. AGUSTIN MONTESA,
JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND ANGEL
GONZALES, RESPONDENTS.**

G.R. No. L-4159. December 28, 1951

Ponente: REYES, J.

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REYES, J.:

This is a petition for certiorari to annul an order of the Court of First Instance of Manila which sets aside its judgment against the defendant in Civil Case No. 4407, entitled "Efren V. Mendoza, plaintiff, versus Angel Gonzales, defendant," on the ground that the said defendant had been deprived of his day in court.

The judgment in question was rendered on August 11, 1949, after a hearing held in defendant's absence and of which he was not notified, and although notice of judgment was sent by registered mail five days later, addressed to defendant at Lingayen, Pangasinan, the said notice was never in fact received due, according to him, to his change of residence, from Lingayen to San Juan, Rizal.

On January 25, 1950, when the judgment was already in the process of being executed, defendant filed a petition for relief under section 2 of Rule 38, Rules of Court, supported by various affidavits of merit. The petition was granted over plaintiff's objection, the court having found that defendant had been deprived of his day in court. The judgment was, therefore, ordered set aside and the case set for hearing for the reception of defendant's evidence. It is this order that plaintiff now seeks to annul through his petition for certiorari on the ground that the same was rendered with grave abuse of discretion, considering that the petition for relief was not filed until after two months from August 21, 1949, when service of notice of the decision should be deemed completed under section 8 of Rule 27, Rules of Court.

It is now settled that petitions to set aside judgments under Rule 38 of the Rules of Court are addressed to the sound discretion of the court (I Moran, Comments on the Rules of Court, 3rd ed., p. 702), and it might well be for this reason that section 8 of said Rule specifically provides that the order of the court setting aside such judgment "is not appealable until a final judgment is rendered upon the merits in the principal case." The present petition for certiorari would circumvent this provision by subjecting the order to review before the principal case is decided on the merits.

The petition is, therefore, denied with costs.

Paras, C.J., Pablo, Bengzon, Padilla, Jugo, and Bautista Angelo, JJ., concur.

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