

**FILIPINAS FABRICATORS & SALES INC., FELIPE Y. PESTANO,
AND BENITO UNCHUAN, PETITIONERS, VS. THE HONORABLE CELSO
L. MAGSINO, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL
AND ATL...**

G.R. No. L-47574. January 29, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

By virtue of a dealership agreement, Filipinas Fabricators and Sales, Inc., (hereafter Filipinas) purchased on credit several products of Atlas Copco (Phils.), Inc., (hereafter Atlas). As of January 27, 1976, Filipinas had accumulated an outstanding balance of P620,266.70. To settle that account, Filipinas, with Felipe Y. Pestano and Benito Unchuan acting as sureties, entered into an agreement with Atlas on January 27, 1976, assigning with recourse in favor of the latter some of its accounts receivables from personal debtors amounting to P361,745.98, the same to be deducted from its outstanding balance. The parties further agreed to settle the balance in equal monthly installments and the total outstanding balance to earn 14% interest per annum, plus attorney's fees, expenses and costs in case of litigation. (pp. 8-9, Rollo)

On January 21, 1977, a collection suit against Filipinas and its sureties was commenced by Atlas before the then Court of First Instance of Rizal alleging that Filipinas' total outstanding balance of P139,295.95 became due and demandable when all the assigned accounts with recourse and the non-trade accounts had not been promptly paid; that with respect to the non-assigned accounts, Filipinas defaulted twice in the payment of monthly installments.

Filipinas and surety Felipe Y. Pestano were duly served with summons while that issued to surety Benito Unchuan was returned unserved.

On March 2, 1977, counsel for Filipinas, et al., requested a ten-day extension to file answer. However, before respondent Judge Celso L. Magsino could act on said motion, the petitioners filed on March 11, 1977, a motion for bill of particulars alleging insufficiency of the complaint and requested for a more precise statement of the matters alleged therein.

On March 15, 1977, the lower court resolved the petitioners' motion for extension and gave them ten (10) days from March 4, 1977 within which to file answer.

In its order dated April 6, 1977, the respondent court required the petitioners to set for hearing the motion for bill of particulars with notice to adverse party, "otherwise said motion shall be treated x x x as a mere scrap of paper." The petitioners received this order on April 20, 1977.

On April 21, 1977, summons was served on the other surety, Benito Unchuan and on that same day, private respondent Atlas filed an "ex-parte motion to declare defendants Filipinas and surety Pestano in default", with a prayer to present its evidence ex-parte.

In compliance with the order of the respondent court dated April 6, 1977, the petitioners filed a manifestation on April 26, 1977, setting the hearing of their motion on May 15, 1977.

In an order dated May 6, 1977, the respondent court held in abeyance the resolution of Atlas' ex-parte motion to declare Filipinas, et al., in default, pending expiration of Benito Unchuan's period within which to file answer.

On June 25, 1977, another "ex-parte motion to declare all the defendants in default" was filed by respondent Atlas alleging that petitioner Benito Unchuan's period to file answer had already expired on May 6, 1977, and therefore, "all the defendants (could) now be properly declared in default."

On August 10, 1977, respondent Judge Celso L. Magsino issued an omnibus order which reads:

"The motion for bill of particulars filed by the defendants through counsel which was set for hearing on May 15, 1977 which was a Sunday is denied for lack of merit considering that the matters sought to be alleged in the complaint are evidentiary in nature which may be presented at the trial.

"Acting on the ex-parte motion to declare defendants in default, it appearing that defendants failed to file an answer within the reglementary period, the Court declares defendants Filipinas Fabricators & Sales, Inc., Felipe Y. Pestano and Benito Unchuan in default. Plaintiff is authorized to present evidence ex-parte on November 4, 1977 at 8:30 in the morning." (p. 17, Rollo)

The petitioners' subsequent motion to set aside the above order with prayer to reconsider their motion for bill of particulars, was denied by respondent court on October 14, 1977, thus:

"Considering the motion to set aside the order of default with prayer to reconsider motion for a Bill of Particulars filed by defendants thru counsel and the opposition thereto, it appearing that the 'Motion for Bill of Particulars' filed on March 12, 1977 without any notice of hearing was a mere scrap of paper and did not produce any legal effect; that when herein defendants attempted on April 26, 1977 to cure the defect of its 'Motion for Bill of Particulars' by setting the motion for hearing, the plaintiff herein on April 25, 1977 had filed its motion to declare defendants Filipinas Fabricators & Sales, Inc. and Felipe Pestano in default, and the period granted to them to file their responsive pleading had already expired on March 14, 1977 without their having filed any responsive pleading, the Court denies the aforesaid motion to set aside the order of default for lack of merit." (p. 22, Rollo)

The present petition for certiorari seeks to set aside and annul both orders of the respondent court.

The petition primarily questions the propriety of the motion for bill of particulars and simultaneously, declaring the petitioners to be in default. The petitioners strongly urge that the filed motion for bill of particulars had definitely suspended the period within which to answer, citing Section 1 (b), Rule 12 of the Revised Rules of Court which provides:

"Stay of period to file responsive pleading. - After service of the bill of particulars or of a more definite pleading, or after notice of denial of his motion, the moving party shall have the same time to serve his responsive pleading, if any is permitted by these rules, as that to which he was entitled at the time of serving his motion, but not less than five (5) days in any event."

The petitioners state that, under the above provision, they were still allowed at least five (5) days from receipt of the order denying their motion for bill of particulars within which to file answer and, to find them in default within this period is really premature and highly irregular for being contrary to the Rules; thus, the respondent court, in declaring the petitioners in default before the lapse of the five-day period, had acted clearly in excess of its jurisdiction and with grave abuse of discretion.

We agree with the petitioners' premise that a filed motion for bill of particulars renders the running of the

reglementary period to answer, suspended. This statement is, of course, accurate only if the filed motion is sufficient in form and substance, meaning, it complies with the general requirements of motions under Sections 4 and 5 of Rule 15 of the Revised Rules of Court, which explicitly require a motion to be accompanied by a notice of hearing, to be served by the movant on the adverse parties concerned at least three (3) days before the hearing, and to state therein the exact time and place of hearing. Section 6 of the same Rule further commands that "no motion shall be acted upon by the court, without proof of service of the notice thereof except when the court is satisfied that the rights of the adverse party or parties are not affected." These requirements under Rule 15, as we have often held, are mandatory, and the failure of the movant to comply with them renders his motion fatal. (*New Japan Motors, Inc. v. Perucho*, 74 SCRA 14, 19 [1974]. See also *Omico Mining Industrial Corporation v. Vallejos*, 63 SCRA 285 [1975]; and *Sacdalan v. Bautista*, 56 SCRA 175 [1974]).

The petitioners' motion for bill of particulars filed on May 12, 1977, did not contain the notice of hearing and proof of service required by the Rules. This kind of motion, as we have already held in several cases (*Firme v. Reyes*, 92 SCRA 713, 715 [1979], citing therein several cases), is nothing but "a mere scrap of paper." It presents no question which merits the attention and consideration of the court. In fact, it is not even considered a motion. A defective motion of this kind does not interrupt the running of the period within which to file answer. As the motion filed by the petitioners was nothing but a useless scrap of paper which did not affect at all the running of the reglementary period to answer, the petitioners, who had not filed their answer to the complaint of respondent Atlas, should, as early as May 14, 1977 (the last day of the extended period to answer), have been declared in default.

The petitioners also argue that, in denying the motion for a bill of particulars in the omnibus order of August 10, 1977, upon the ground that "x x x the matters sought to be alleged in the complaint [were] evidentiary in nature which may be presented at the trial", the respondent court had in effect clearly entertained the defective motion. Therefore, when the respondent court subsequently treated it as "a mere scrap of paper" in its subsequent order of October 14, 1977, it committed a serious error.

The argument has no merit. As we earlier stated, a motion without notice of hearing is nothing but a piece of paper filed in court, which should be disregarded and ignored. Even without the respondent court stating in the questioned orders its other reasons for throwing out the petitioners' defective motion, the default order would still be valid. The additional finding that the matters which the petitioners wanted to be alleged in the complaint were merely evidentiary shows that even equitable considerations are lacking in the instant petition.

Significantly, the fact that the court had taken cognizance of the defective motion first, by requiring the parties to set it for hearing and second, when it denied the same for lack of merit in its omnibus motion, did not cure the defect nor alter the nature of the defective motion. In *Andrada v. Court of Appeals* (60 SCRA 379, 382), we held: "[T]he subsequent action of the court thereon does not cure the flaw, for a motion with a notice fatally defective is a 'useless piece of paper.' "

Even on the assumption that the respondent court's omnibus order was irregular for denying the petitioners' defective motion and at the same time declaring them in default, still, we find the default order valid. The petitioners, who admit in paragraph 6 of their petition that a copy of the omnibus order denying the motion for bill of particulars was received on August 30, 1977, again failed to file their answer within five (5) days from receipt thereof.

IN VIEW OF THE FOREGOING, the petition for certiorari is hereby DISMISSED for lack of merit. The questioned orders are AFFIRMED.

SO ORDERED.

Fernan, (Chairman), Bidin, and Cortes, JJ., concur.

Feliciano, J., no part.

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