MANILA ELECTRIC CO., PETITIONER, VS. HON. FATIMA GONZALES ASDALA, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 87, QUEZON CITY, AND GREAT MR. “T” FOOD, FORMERLY STYLED TO...

Ponente: COSICO, J.

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COSICO, J.:

This is a special civil action for certiorari with prayer for a temporary restraining order assailing the following issuances rendered by public respondent Hon. Fatima Gonzales-Asdala as Presiding Judge of the Regional Trial Court, Branch 87 of Quezon City in the case entitled, “Great Mr. “T” Food, represented by its Manager Romeo Duñgan v. Manila Electric Company, represented by Larry R. Apuada” docketed as Civil Case No. Q-04-54129, to wit:

> (1) Order dated June 9, 2005[1] which allowed herein private respondent Great Mr. “T” Food (“Great Mr. T”) to present its evidence ex parte; and
>
> (2) Order dated July 15, 2005[2] which denied the motion for reconsideration (“MERALCO”) of the above order.

Alleging that the aforesaid orders were issued by public respondent judge with grave abuse of discretion tantamount to lack or excess of jurisdiction, MERALCO is now before us mainly invoking the application of the liberal construction of the rules of procedure in the case at bar to warrant the annulment and setting aside of the above rulings.

The Facts

This petition stemmed from the institution of a civil action for Prohibition and Injunction with prayer for the issuance of writ of preliminary prohibitory injunction/temporary restraining order with damages filed by private respondent Great Mr. “T” against petitioner MERALCO before the Regional Trial Court of Quezon City.

As may be deduced from the pleadings submitted by the parties at the lower court, it appears that prior to the filing of the principal case, private respondent was operating under the name of Tony’s Bar and Grill and was then managed by a certain Mr. Alfonso Go to engage in the business of food and drink services. On September 24, 2004, private respondent was billed by MERALCO for deficiency charges/billings in the amount of P397,705.15 which allegedly represented adjustment charges owed by private respondent computed from the year 2000 up to the date of the present complaint. MERALCO averred that the deficiency amount of adjustment charges was due to a glitch in the company’s system that affected the decimal rate in the meter reading (for billing purposes) which caused it to appear that the customer consumed less electricity than what it actually used. Verily, private respondent refused to pay the additional charges contending that the same lacked factual and legal bases as it had paid the electric bills as assessed and evaluated by MERALCO’s representative. Private respondent argued that if there was a mistake in the preparation of the billings, the same should not prejudice the

latter considering that such mistake was caused by no fault of its own.

Thereafter, in a letter dated October 18, 2004 written by Mr. Larry Apuada of MERALCO, Commonwealth Branch, the company maintained its stand and made a final demand for the payment of P397,705.15 representing the billing adjustment charges from Great Mr. "T"; otherwise, MERALCO will cause the disconnection of its services to private respondent's premises.

Hence, on November 8, 2004, private respondent lodged the complaint[3] now pending before the Regional Trial Court, Branch 87 of Quezon City to prevent MERALCO from disconnecting its services to private respondent's business and likewise to prohibit the electric company from pursuing any proceeding in connection with matters which pertain to the collection of the additional amount of adjustment or billing charges. On this note, MERALCO filed its Answer with Compulsory Counterclaim which it later amended[4]. Thereafter, pre-trial ensued.

The pre-trial was originally set on February 24, 2005 but was reset to June 9, 2005. In the February 24, 2005 pre-trial hearing, petitioner's former counsel, Atty. Gonzalo S. Espa appeared in behalf of his client and submitted the party's pre-trial brief. Meanwhile, in the June 9, 2005 hearing, both herein petitioner and counsel failed to appear which prompted public respondent judge to issue the first assailed order herein which reads:

> "Considering the failure of the defendant to appear in today's pre-trial, as prayed for, the defendant is hereby declared in default and plaintiff is allowed to adduce evidence ex-parte and the application for preliminary injunction is now submitted for resolution."

Losing no time upon the receipt of a copy of the above-quoted order, Atty. Freddie M. Nojara, present counsel of petitioner filed a motion for reconsideration alleging the following grounds:

> "... the non-appearance of the defendant during the said hearing was due to circumstance beyond its control. This case was originally handled by Atty. Espa. It was he who actively handled the case from its inception. Atty. Espa, however, tendered his optional retirement effective May 31, 2005;
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> ... This case is one of the ten (10) cases unloaded to the undersigned counsel for handling. This was assigned to him on the first week of June. Atty. Espa had inadvertently stated in his memorandum that the status of this case was hearing on the application for preliminary injunction. The undersigned counsel, relying on the information of Atty. Espa, was under the impression that the pending incident was the application for the injunctive relief.
>
> x x x
>
> ... The failure of the (sic) undersigned counsel to attend the hearing was attributable to the inadvertence of the former handling lawyer, and hence, beyond his control.
>
> ... It was not the intention of the defendant to abandon its defense in the instant case. The defendant, in the past, had vigorously and consistently argued its position and defense which, to our mind, deserve much consideration;... In asking for reconsideration, defendant does not wish to be declared the winner but merely to be given the opportunity to present its evidence so that the Honorable Court may be able to decide the case on the merits rather than on procedural technicalities ..."[5]

As earlier adverted to, the aforesaid motion for reconsideration was denied by public respondent in her July 15, 2005 Order wherein the lower court remarked:

> "The record shows that on February 24, 2005, both plaintiff and defendant were notified in open court of the Pre-Trial scheduled June 9, 2005, Counsel for defendant's signature in the Minutes of the Session attests to that fact. This was re-confirmed by the Order to that effect received by the defendant through counsel on

> March 14, 2005, shown by the return receipt on record.
>
> However, despite notice, it is not just counsel on record who did not appear but also defendant's representative. Atty. Freddie M. Nojara's explanation therefore, deserves no consideration at all and his motion for reconsideration is DENIED, for lack of merit.
>
> SO ORDERED."

Not in agreement with the above rulings, MERALCO filed the instant petition. Pending resolution of the issues in the instant case, we required the parties to submit their simultaneous memoranda. However, only petitioner complied with this directive. As such, the petition shall be resolved on the basis of petitioner's pleadings and the records on hand.

The Present Petition

> The issues raised in this petition are as follows:
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> (1) Whether or not public respondent court erred grievously when it perfunctorily declared the petitioner in default and thereafter allowed private respondent to adduce its evidence ex parte; and
>
> (2) Whether or not public respondent court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ignored the explanation and motion for reconsideration filed by petitioner's counsel.

For this matter, petitioner lays stress that public respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction considering that the failure of petitioner's counsel to appear at the June 9, 2005 pre-trial hearing was beyond the latter's control and due to the inadvertence committed by the party's former counsel, Atty. Espa. Petitioner emphasizes that the rules of court should be liberally construed and that public respondent should not have been too technical so as to deprive MERALCO of the opportunity to fully ventilate its case.

This Court's Ruling

We resolve to deny the instant petition.

Section 5, Rule 18 of the 1997 Rules of Civil Procedure is unequivocal in stating that the non-appearance of defendant shall be cause to allow the plaintiff to present evidence ex parte and for the court to render judgment on the basis of such evidence.

For this matter, it is not amiss to note that as early as February 24, 2005, MERALCO was already made aware of the scheduled pre-trial hearing for June 9, 2005 when both the latter and private respondent were notified in open court of the same. Similarly, MERALCO was again notified of the said schedule when it received a copy of the February 24, 2005 Order setting the hearing of the pre-trial on June 9, 2005. Notwithstanding the foregoing notices, petitioner and counsel was a no show on the June 9, 2005 pre-trial hearing.

Notably, petitioner failed to provide any explanation for the non-appearance of its representative, Larry Apuada in the June 9, 2005 pre-trial hearing. In addition, while petitioner's counsel, Atty. Mojara offered an explanation for his non-appearance in court, such explanation, however, does not persuade considering that as legal counsel and lawyer, Atty. Mojara has the responsibility of monitoring and keeping track of the actual status of the cases handled by him. The fact that Atty. Mojara knew that there was a scheduled hearing for the case should have impelled him, at the very least, to browse the orders of the court so that he could ascertain for himself when the scheduled hearing was going to be held and know the subject matter of the same. Lawyers must be careful in handling cases, because their negligence in the performance of their duties binds their clients.[6] To our mind, if ever there was inadvertence committed by Atty. Espa in failing to state the correct status of the case, there was

likewise lack of due diligence on the part of present counsel in ascertaining the actual condition thereof.

Such being the case, it bears stressing that in pre-trial proceedings, both the parties and their counsel are mandated to appear before the court for pre-trial.[7] If the defendant fails to do so despite due notice and without any justifiable reason therefor, it may properly be declared as in default.[8]In view of the foregoing, we find petitioner's invocation on the liberality of construction of the Rules of Procedure as untenable. Suffice it to state that procedural rules are not to be disregarded or dismissed simply because its non-observance may have resulted in prejudice to a party's substantive rights.[9] Like all rules they are to be followed, except only when for the most persuasive of reasons it may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[10] In the instant case, petitioner failed to show any persuasive reason why it should be exempt from complying with the rules. Having failed to provide any plausible reason or explanation for its non-appearance together with its counsel in the June 9, 2005 pre-trial hearing, we find that public respondent was justified in declaring MERALCO in default and ordering an ex parte presentation of evidence by the plaintiff.

Nonetheless, it must be impressed, however, that a judgment of default against the petitioner who failed to appear during pre-trial does not imply a waiver of all of its rights, except the right to be heard and to present evidence to support its allegations.[11] Otherwise, it would be meaningless to request presentation of evidence every time the other party is declared in default.[12] If it were so, a decision would then automatically be rendered in favor of the non-defaulting party and exactly to the tenor of his prayer.[13] The law also gives the defaulting parties some measure of protection because plaintiffs, despite the default of defendants, are still required to substantiate their allegations in the complaint.[14]

On this note, while MERALCO was declared in default (should be as in default) and consequently lost its right to present its case and adduce evidence to prove its claims and defenses, the records show that before such default, petitioner was able to file an answer to refute private respondent's assertions in the complaint. In addition, it also appears that prior to the order of default, petitioner stated that it was able to submit a pre-trial brief. As such, petitioner's answer and pre-trial brief shall be considered by public respondent court in evaluating the evidence adduced therein in resolving the issues in the complaint. In the end, the burden of proof is still on the plaintiff to establish his case through a preponderance of evidence.[15] If he claims a right granted or created by law, he must prove his claim by competent evidence.[16] He must rely on the strength of his own evidence and not on the weakness of that of his opponent.[17]

WHEREFORE, premises considered, the instant petition is hereby DISMISSED.

SO ORDERED.

Sundiam and Dimaampao, JJ., concur.

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[1] Rollo at 12.

[2] Id. at 13.[3] Id. at 20-24.

[4] Id. at 46-54.

[5] Id. at 14-16.

[6] Jonathan Landoil International Co., Inc. v. Mangudadatu, 436 SCRA 559, 562 [2004][7] Peña v. Court of Appeals, 442 SCRA 90, 104[2004] and Jonathan Landoil International Co., Inc. v. Mangudadatu, supra. at 569.

[8] Peña v. Court of Appeals, supra. at 104.

[9] Social Security System v. Chavez, 440 SCRA 269, 276 [2004][10] Ibid.
[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] Ibid.[15] Id. at 277.
[16] Ibid.

[17] Ibid.

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