

CHINA BANKING CORPORATION, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND VICTORIANO ESCOLAR, RESPONDENTS.

G.R. No. L-39652. April 26, 1976

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

WE considered as a special civil action for certiorari this petition which seeks a reversal of the decision of the respondent Court of Appeals.

On May 25, 1966, herein petitioner commenced with the Court of First Instance of Manila a collection case against private respondent Victoriano Escolar entitled "China Banking Corporation versus Victoriano Escolar, doing business under the name and style 'Victor Electrical Manufacturer', Sy Hap Seng Company and Tomas Cua" (Civil Case No. 65600) for the recovery of the amount of \$82,941.23 representing the face value of an exchange sight draft issued by petitioner to Escolar and Cua to finance an importation allegedly by the latter and the interest stipulated in a trust receipt executed by them for the release of the imported goods from the local port.

In his answer filed on June 27, 1966, respondent Escolar disclaimed, among others, responsibility and pointed to Cua as the real importer. No answer was filed by Cua, who however, manifested in writing that he had initiated an insolvency proceedings in the Court of First Instance of Manila (Branch XXI). Upon the other hand, co-defendant Sy Hap Seng Company argued in its answer that it had no legal capacity to sue and be sued and that, against it, herein petitioner's complaint states no cause of action.

At the pre-trial hearing on January 10, 1967, defendant Sy Hap Seng Company reiterated its being not suable and prayed that the case against it be dismissed. The Court granted the prayer, but allowed plaintiff China Banking Corporation to amend its complaint, this time properly impleading Sy Hap Seng Company under its juridically recognized name and style of Koh Lliam and Company.

On February 1, 1967, however, petitioner opted to withdraw its claim against Koh Lliam and Company, on the theory that the obligation sought to be enforced is solidary.

The case was set for hearing on April 6, 1967, but reset for June 20, 1967 upon motion of respondent Escolar. On the last date mentioned, however, defendants Escolar and Cua as well as their respective counsels failed to appear. Whereupon the Court, on motion of the plaintiff, declared defendants in default, and plaintiff was permitted to present its evidence ex parte on June 21, 1967 at 2 o'clock in the afternoon.

Upon proper motion, the trial court set aside its order of default against Escolar and, at the instance of plaintiffs counsel, set the case for hearing on November 16, 1967.

No compromise having been reached at the hearing of November 16, 1967, the case was calendared for trial on December 18, 1967. Defendant Escolar's counsel moved for postponement. The motion was outrightly denied by the Court, and plaintiff was directed to present its evidence. But yielding to a motion for reconsideration filed on January 17, 1968 by defendant's counsel, the trial court, despite the vigorous opposition filed on January 17, 1968

by the plaintiff, reconsidered partially its order of December 18, 1967, and allowed defendant Escolar to present his evidence on March 13, 1968 in its order of February 8, 1968. However, for lack of material time, the Court reset it for April 23, 1968, which date was further moved to June 3 and 5, 1968 on the same ground of lack of material time.

On June 1, 1968, counsel for defendant Escolar filed an urgent motion for postponement of the scheduled hearing of the case on June 3 and 5, 1968 on the ground that "Mrs. Norita Cantillan; the only principal and material witness for defendant * * * has given birth at the Arellano Clinic and, consequently, cannot appear at the hearing of the case" (p. 66, ROA, p. 26, rec; (italics supplied). Attached to the motion was the medical certificate of the attending physician attesting to Mrs. Cantillan's having given birth to a baby girl at the Trinity General Hospital. However, on opposition of plaintiff's counsel, and for the further reason that the case has already been postponed several times, the trial court denied the motion and considered the case submitted for decision.

On September 25, 1968, the trial court rendered its verdict ordering herein private respondent Escolar and Cua to pay, jointly and severally, the plaintiff the sum of P176,433.07 with the stipulated interest at 10% on said amount to run from May 31, 1966 to the date of judicial demand until fully paid, plus P5,000.00 attorney's fees, and costs. The trial court likewise dismissed Escolar's counterclaim and cross-claim for lack of evidence,

Defendant Escolar appealed to the Court of Appeals for review of the decision of the trial court, contending that:

"1. The trial court erred in denying the appellant's motion for the postponement of the scheduled hearing of the subject of the case on June 3, 1968 and by reason of which appellant has been deprived of his right to present his evidence in support of his defenses, counterclaim and cross-claim.

"2. In any event, the trial court erred in not absolving the herein appellant from any liability and in not sentencing appellee to pay damages to the appellant" (p. 7, CA Decision, p. 23, rec.).

Acting only on Escolar's first assignment of error, respondent Court of Appeals ruled that private respondent Escolar was denied due process and ordered that the case be remanded to the trial court for further reception of Escolar's evidence.

Its motion for reconsideration having been denied by respondent Court of Appeals, petitioner now invokes OUR power of review.

The petition is meritorious.

I

Respondent Victoriano Escolar cannot claim that he was denied due process of law when his motion for postponement of the hearing set for June 3 and 5, 1968 was denied, not only because having been notified of such dates of hearing, he had no right to assume beforehand that said motion would be granted (Wack Wack Golf and Country Club, Inc. vs. Court of Appeals, et al., G. R. No. L-11724-25, November 23, 1959; 106 Phil. 501; Miranda vs. Municipality of Navotas, 2 Pail. 667; Quimsora vs. Suarez, 64 Phil. 907; Linus vs. Rovira, 61 Pail. 137; Sunico vs. Villapando, 14 Pail. 352), but also because said denial, as hereinafter shown, was proper under the circumstances.

It having been issued by the court in the exercise of its sound discretion, and absent the vitiating influence of patent and manifest abuse of discretion, such order of denial should not anymore be disturbed (People vs. Mendez, L-27348, July 29, 1969, 28 SCRA 881; Tropical Btfielding Specialties, Inc. vs. Nuevas, L-26968, January 31, 1969, 26 SCRA 708; Deluao vs. Casteel, L-21906, December 24, 1968, 26 SCRA 475; Geverola vs. Cusi, Jr., L-25031, September 25, 1968, 25 SCRA 134; Udan vs. Amon, L-24288, May 28, 1968, 23 SCRA 837;

Panganiban vs. Vda. de Sta. Maria, L-25529, February 22, 1968, 22 SCRA 708; Amante vs. Court of Agrarian Relations, L-21283, October 23, 1966, 18 SCRA 427; Caing vs. Republic, L-22394, July 9, 1966, 17 SCRA 625; Ong vs. Fonacier, L-20887, July 8, 1966, 17 SCRA 616; Crisologo vs. Dural, L-19885,, July 31, 1965, 14 SCRA 850; Philippine National Bank vs. Donasco, L-18638, February 28, 1963, 7 SCRA 409; Republic vs. Mambulao Lumber Co., L-18942, November 30, 1962, 6 SCRA 858; Cardenas vs. Camus, L-17191, July 30, 1962, 5 SCRA 639; Republic vs. Gumayan, L-16780, May 31, 1961, 2 SCRA 580; Blue Bar Coconut Co. vs. Hilario, L-12699, May 31, 1961, 2 SCRA 325; Hap Hong Hardware Co., Inc. vs. Philippine Milling Co., Inc., L-16778, May 23, 1961, 2 SCRA 68).

It is noteworthy that prior to the scheduled hearing on June 3, 1968, respondent thrice failed to appear at similarly scheduled hearings. For these previous omissions, herein petitioner had been authorized twice to present its evidence ex parte in both instances, however, the trial court reconsidered its order to give respondent Escolar a chance to interpose his defense. If Escolar had, indeed, meritorious defenses, he should have moved to present his lone witness, Mrs. Cantillan, during the last week of April or early May, 1968, long before she gave birth on May 31, 1968. Instead, respondent Escolar preferred, for the fourth time, to let the opportunity pass.

WE believe that the apparent dilatory scheme of respondent Escolar finally prompted the trial court to deny on June 3, 1968, Escolar's motion for continuance and deem the case submitted for decision, following OUR ruling in Guyon vs. Ubaldo, et al. (G.R. No. L-7650, December 28, 1955 [unreported] 98 Phil. 990) cited in Cruz vs. Malabayabas, et al. (G.R. No. L-11334, May 15, 1959, 105 Phil. 708), and Gutierrez vs. Medel (G.R. No. L-14455, April 26; 1962, 4 SCRA 1110).

The trial judge acted wisely, for as WE ruled in People versus Mendez, et al. (L-27348, July 29, 1969, 28 SCRA 881):

"A complainant is as much entitled to speedy justice as the accused-appellants themselves * * *."

After the trial court ordered the case submitted for decision, respondent Escolar did not make any move for four (4) more months before the trial court promulgated its decision on September 25, 1968.

In reversing the trial court's decision, respondent Court of Appeals relied on OUR ruling in the cases of De Guzman versus Hon. de Guzman, et al. (G.R. No. L-18585, June 29, 1962, 5 SCRA 458), Zubiri versus Zubiri (G.R. No. L-16745, December 17, 1966, 18 SCRA 1157), and Limon versus Candido (G.R. No. L-22418, April 28, 1969, 27 SCRA 1166).

The above-stated cases do not govern the instant case; because the facts of said cases are materially different from those obtaining in the case at bar.

In the De Guzman, Zubiri, and Limon cases, seasonable motions for reconsideration were filed by the aggrieved parties, whereas in the instant case, no motion for reconsideration of the order of June 3, 1968 and the decision of September 25, 1968 was ever filed. This cardinal omission – following a history of continuances, all sought by respondent Escolar – was not only an indication that no defense was actually forthcoming, but likewise deprived the court a quo of an opportunity to correct itself, assuming that correction was in order.

Moreover, in the invoked cases, the questioned dismissals or decisions were rendered by the trial court on their respective dates of hearing, whereas in the instant case, the decision was rendered four (4) months from the scheduled date of hearing. Escolar therefore still had those four more months to invoke such right to due process in a motion for reconsideration. In fact, this interim period, which Escolar chose to ignore and dissipate, shows that the trial court had been extremely patient with respondent Escolar in the apparent effort of the latter to delay if not derail the administration of justice. Such patience by the trial court, certainly, was more than what WE

required in the De Guzman case wherein WE pronounced:

"* * * (A) man who has filed a case in court should be given a reasonable opportunity to prepare for trial and to obtain due process of law and proper protection under the law" (De Guzman vs. De Guzman, *supra*, italics supplied).

Lastly, in the De Guzman, Limon, and Zubiri cases, the parties raised in their pleadings valid and meritorious defenses or causes of action, whereas in the instant case, respondent Escolar, in his, did not go beyond simply pointing out Cua as the real importer without, however, questioning his signature on the actionable documents showing that he is the one primarily liable, thereunder, and disclaiming liability in petitioner's complaint.

It will be a dangerous precedent if this COURT will yield to respondent Escolar's conclusions of fact, and on the basis of such unfounded and self-serving averments, render a verdict in his favor. Courts are to refrain from rendering judgments on the basis of a party's conclusions of fact. Courts are required to render verdicts based on their findings of facts (Juan Braga vs. Jose Millora, No. 1395, March 28, 1904, 3 Phil. 459, 465; Martinez vs. Martinez, 1 Phil. 647; Regalado vs. Luchsinger & Co., 1 Phil. 619).

II

Respondent Court of Appeals lent a sympathetic ear to Escolar's cry for due process because it felt

"that defendant-appellant's (Escolar's) motion for postponement of the hearing set for June 3 and 5, 1968 on the ground that the principal witness of the defendant had given birth * * * should not have been denied outrightly by the trial court. In fairness to the parties and in the interest of justice, the trial court could have set another date for the trial of the case without jeopardizing the interest of the plaintiff" (p. 8, CA Decision, p. 23, rec.).

The unrefuted fact, however, is that respondent Escolar's motion was not verified nor accompanied by an affidavit of merit summarizing the probable testimony of ins lone witness, Mrs. Cantillan. Neither was the medical certificate by Mrs. Cantillan's alleged attending physician under oath.

Our Rules of Court is explicit that:

"A motion to postpone a trial on the ground of illness of a party or counsel may be granted if it appears upon affidavit that the presence of such party is indispensable and that the character of such illness is such as to render his non-attendance excusable" (Section 5, Rule 22, Rules of Court, italics supplied).

Interpreting the above-quoted provision, this COURT held:

"Where the motion to postpone based on illness is NOT verified, denial of the motion is fully sanctioned by Section 5, Rule 22, of the Rules of Court" (Philippine National Bank vs. Macapanga Producers, Inc., et al., G.R. No. L-10465, September 11, 1958 [unreported], 104 Phil. 1054, italics supplied.)

OUR ruling above finds anchor in American authorities:

"The affidavit should contain a statement that the facts to which it is claimed the absent witness would testify cannot be proved by any other witnesses who are available, or by the exercise of diligence, could have been made available to the applicant at the trial. It has been held to be insufficient to state merely that the party has no other witnesses, or that there are no other witnesses in attendance or in the state. Further, an allegation that there is no other witness whose testimony can be so readily procured has been held to be insufficient" (17 C.J.S. 263).

As far back as the cases of Fabillo versus Tiongko (43 Phil. 317), Natividad versus Marquez (38 Phil. 608), and Pellicina vs. Gonzales (6 Phil. 50, cited by Francisco in his Civil Procedures Annotated and Commented, Vol. II. 1966 Edition, p. 57), WE emphasized:

"Thus, a defendant filed a motion for postponement on the ground that he was gravely ill. In support of said motion was an UNSWORN STATEMENT of a doctor .who certified that he was rendering medical services to the defendant for amoebic dysentery. * * * It was held that the action of the trial judge was NOT reversible error" (Emphasis supplied.)

To the same effect was OUR uniform ruling in *J. M. Tuazon & Co. versus De Leon, et al.* (G.R. No. L-16668, January 31, 1962, 4 SCRA 275), and the earlier case of *Yu Tiong Tay versus Barrios* (79 Phil. 597).

III

Finally, this COURT, in ITS desire to see for ITSELF the alleged defenses of respondent Victoriano Escolar, called the present case for hearing in the morning of January 2, 1976. In said hearing, WE granted respondent's prayer of ten (10) days from January 2, 1976 within which to submit memorandum in lieu of oral argument and to specifically state therein whether he (Escolar) submitted an affidavit of merit stating the nature and particulars of his defenses in the action instituted against him with reference to the adverse order of June 3, 1968 of the trial court declaring the evidence for the defense closed and the case submitted for decision pursuant to which the court below rendered the verdict of September 25, 1968.

There has been no compliance by respondent Escolar to submit said memorandum within the period prayed for and granted.

It has, therefore, become all the more apparent that respondent Escolar was only delaying the proper administration of justice in the case at bar.

WHEREFORE, THE APPEALED DECISION AND RE-SOLUTION DATED OCTOBER 3, 1974 AND OCTOBER 29, 1974, RESPECTIVELY, OF RESPONDENT COURT OF APPEALS ARE HEREBY SET ASIDE AND THE ORIGINAL JUDGMENT OF THE TRIAL COURT DATED SEPTEMBER 25, 1968 IS HEREBY AFFIRMED, WITH COSTS AGAINST RESPONDENT ESCOLAR.

Teehankee, (Chairman), Esguerra, Munoz Palma, and Aquino, JJ., concur.

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