

BIA C. TENEFRENCIA, PLAINTIFF-APPELLEE, VS. ELAINE B. MANGAWANG, DEFENDANT-APPELLANT.

Ponente: REYES, JR., A. J.

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REYES, JR., A. J.:

In this ordinary appeal, defendant-appellant Elaine B. Mangawang seeks to nullify and set aside the 1 April 2004 Decision[1] of the Regional Trial Court of Manila, Branch 33 in Civil Case No. 01-100297, the fallo of which states:

“WHEREFORE, judgment is hereby rendered in favor of the plaintiff ordering the defendant to pay plaintiff the following:

- the amount of P8,000,000.00 representing the remaining unpaid balance of the purchase price of the subject properties plus interest of 6% until full payment is made.
- the amount of P100,000.00 for moral and another P100,000.00 for exemplary damages;
- ordering the defendant to pay plaintiff the amount of P50,000.00 as and for attorney’s fees.

SO ORDERED.

xxx xxx xxx.”

The antecedent facts: On 6 March 2001, plaintiff-appellee filed a Complaint for Specific Performance with Damages[2] before the trial court wherein she specifically alleges that: (1) she is the registered owner of two (2) parcels of lot covered by TCT No. 218156 and 218165 both situated in Sta. Ana, Manila; (2) she sold the said lots to herein defendant-appellant for P16 Million on 19 September 2000; (3) after paying P8 Million, defendant-appellant took possession of the subject properties; and (4) defendant-appellant reneged on her promise to settle the remaining unpaid balance of the consideration.

On 4 June 2001, defendant-appellant, instead of filing a responsive pleadings, interposed a Motion To Dismiss on the ground that the venue was improperly laid.

After the denial of her motion to dismiss and of its subsequent motion for reconsideration by the lower court, defendant-appellant elevated the case before this Court via petition for certiorari docketed as CA-GR SP. No. 69239.

During the 9 July 2002 hearing for the issuance of a Temporary Restraining Order, plaintiff-appellee moved to declare defendant-appellant in default. On the other hand, defendant-appellant reiterated her prayer for the outright dismissal of the Complaint.

In an Order dated 22 July 2002, the trial court denied the prayers of the litigants and instructed defendant-appellant to file a responsive pleading.[3]

Undeterred, defendant-appellant interposed a partial reconsideration of the 22 July 2002 Order theorizing that “if

and when an answer would be filed and she participates in the trial, her objection as to the correctness of venue (the subject matter of CA-GR SP No. 69239), which was not yet resolved at that time, would become moot and academic.”[4]

As defendant-appellant’s partial motion for reconsideration was also denied, the lower court calendared the case for pre-trial on 19 September 2002.

During the 19 September 2002, plaintiff-appellee manifested to the trial court that she will file a new motion to declare defendant-appellant in default.

On 3 January 2003, as plaintiff-appellee failed to lodge any motion to declare defendant-appellant in default, the trial court issued an Order [5] dismissing the Complaint.

On 17 January 2003, plaintiff-appellee filed an Urgent Motion for Reconsideration and To Reinstate the Case to the Active Calendar of this Honorable Court[6] wherein she categorically requested the Clerk of Court to “Kindly submit the foregoing motion for reconsideration and approval by the Honorable Court on the 24th day of January, 2003 at 8:30 in the morning.”[7]

The requested scheduled, which was only seven (7) days from the filing of the action, was granted by the lower court. During the 24 January 2003 hearing, defendant-appellant failed to appear as the latter received her copy of plaintiff-appellee’s motion only on 27 January 2003. Despite of the defendant-appellant’s absence, the trial court proceeded with the hearing and decreed the reinstatement of the case in an Order[8] issued on same day of 24 January 2003.

As defendant-appellant’s motion for reconsideration of the Order dated 24 January 2003 was denied by the trial court in another Order dated 17 February 2003,[9] she again elevated said Order before this Court, docketed as CA-GR SP. No. 157879.

On 24 July 2003, the trial court declared defendant-appellant in default and allowed plaintiff-appellee to proffer evidence ex-parte.

On 1 April 2004, the trial court issued the herein assailed decision, the fallo of which was quoted at the outset.

Aggrieved, defendant-appellant elevated the case before this Tribunal, theorizing:

“A.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ISSUING ITS ORDERS DATED 24 JANUARY AND 17 FEBRUARY 2003;

B.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DECLARING DEFENDANT-APPELLANT IN DEFAULT BEFORE THE ISSUE OF IMPROPER VENUE WAS FINALLY SETTLED;

C.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN AWARDING THE RELIEF PRAYED FOR BY PLAINTIFF-APPELLEE IN HER COMPLAINT FOR SPECIFIC PERFORMANCE.

The appeal is meritorious.

Section 4, Rule 15 of the 1997 Rules of Civil Procedure read:

“Section 4 – Except for motions which the court may act upon without prejudicing the rights of the adverse

party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

xxx.” (Emphasis, supplied)

In the case at bar, it is undisputed that defendant-appellant received plaintiff-appellee’s motion to revive the case three (3) days late of the scheduled hearing. Thus, the trial court has no authority whatsoever to hear the case and issue the first assailed Order dated 24 January 2003 because “without such notice of hearing and proof of service, the motion is a mere scrap of paper.”[10]

Neither the Court concurs with the reasoning of the trial court that the flaw in the issuance of the 24 January 2003 Order was deemed cured when it hears defendant-appellant’s motion for reconsideration on 17 February 2003.

It bears noting that plaintiff-appellee’s Urgent Motion for Reconsideration and To Reinstate the Case to the Active Calendar of this Honorable Court[11] was filed on 17 January 2003 and she asked the trial court to hear the case on 24 January 2004 or just seven (7) days after the filing. This is clearly violative of the ten (10) day grace period mandated by Section 5, Rule 15 of the 1997 Rules of Civil Procedure, to wit:

“xxx xxx xxx.

Section 5 – Notice of hearing – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.”

xxx.” (Emphasis, supplied)

Quite significantly, it must be stressed that plaintiff-appellee's failure to comply with the reglementary period mandated by the above provision of law is the very reason why defendant-appellant failed to appear during the scheduled hearing. There is, therefore, compelling reason to construe plaintiff-appellee’s Urgent Motion as nothing but a mere scrap of paper. As aptly elucidated by the Former Associate Justice of the Supreme Court Jose Y. Feria, an authority in Remedial Laws, to quote:

“xxx xxx xxx.

In *Andrada vs. Court of Appeals* (60 SCRA 379), the Supreme Court ruled that a notice addressed to the clerk of court requesting him to ‘set the foregoing motion for the consideration and approval of this Honorable Court immediately upon receipt hereof,’ does not comply with the requirements of Section 5 of Rule 15 and that 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.

xxx.”[12] (Emphasis, supplied)

Viewed that the plaintiff-appellee’s Urgent Motion is a mere scrap of paper, the same is not entitled to any judicial cognizance; and, to conduct a hearing so as hear defendant-appellant’s motion for reconsideration of the 24 January 2003 Order is procedurally flawed considering that its basis (plaintiff-appellee’s Urgent Motion) is nothing but a scrap of paper.

Finally, it is wrong for plaintiff-appellee to argue that her Urgent Motion is a non-litigated motion.

The general rule is that all written motions shall be set for hearing except when the motion is non-litigated, e.g., those which may be acted upon by the court without prejudicing the rights of the adverse party.[13]

Here, it must be noted that plaintiff-appellee's Urgent Motion seeks the revival of the Complaint. From this fact alone, it can be concluded beyond doubt that the said pleading is a litigated motion.

Examples of motions which are non-litigated are: (1) motion for extension of time to file a pleading; (2) a motion for extension of time to file an answer; and (3) a motion for extension of time to file a record on appeal.[14] From these examples, one can infer that the rights of the other party are not indeed affected.

But, when a party moved for the reinstatement of the Complaint, as in this case, the movant, in effect, is asking for the revival of the legal controversy which at that time is non-existent. The revival of the case creates legal obligations and problems to the other party, hence, any motion of this nature must necessarily be a litigated one.

Fittingly, the Court holds and so rules that respondent Judge committed grave error in issuing the Orders 24 January 2003 and 7 February 2003 and in rendering the herein assailed decision dated 1 April 2004.

WHEREFORE, premises considered, the appeal is GRANTED and let the records of case be REMANDED to the lower court for further proceedings. No costs.

SO ORDERED.

Abdulwahid and Perlas-Bernabe, JJ., concur.

[1] Records, pp. 362-364.

[2] Records, pp. 1-6.

[3] Records, p. 210.

[4] See: Defendant-Appellant's Brief, p. 5, Rollo, p. 24.

[5] Records, p. 234.

[6] Records, pp. 236-239.

[7] Records, p. 237.

[8] Records, p. 241.

[9] See: RTC Order dated 17 February 2003, Records, p. 274

[10] Jose Feria and Maria Concepcion S. Noche, Civil Procedure: Annotated, Vol. 1, 2001 Edition, p. 407.

[11] Records, p. 236.

[12] Ibid

[13] Florenz D. Regalado, Remedial Law: Compendium, Vol. 1, 6th Edition, 1997, p. 235.

[14] Feria, Ibid., p. 404.

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