

**LUZON RUBBER & MANUFACTURING CO.,
PETITIONER-APPELLANT, VS. SIXTO ESTARIS AND THE HON. COURT
OF APPEALS, RESPONDENTS-APPELLEES.**

G.R. No. L-31439. August 31, 1973

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal by certiorari from the decision, dated November 3, 1969, of the Court of Appeals in case CA-GR. No. L-38806-R, affirming in toto the order, dated June 23, 1966, of the Court of First Instance of Manila (Branch XXII) in Civil Case No. 64753, dismissing the appeal taken by herein petitioner-appellant from the judgment by default, dated January 18, 1966, of the City Court of Manila (Branch VI).

The facts of this case, as gathered from the records, may be summarized as follows:

On December 6, 1965, the herein respondent-appellee Sixto Estaris, as plaintiff, filed with the City Court of Manila a com-plaint against herein petitioner-appellant Luzon Rubber & Manu-facturing Co., as defendant, for the recovery of sums of money. (Record on Appeal, pp. 1-6.)

On January 10, 1966, petitioner was duly served with summons requiring said party to file with the City Court, located at corner Arroceros and Hospital Streets, Manila, its answer to the complaint "in not less than two (2) days nor more than (5) days (Sec. 4, Rules of Court) after the service" of summons and to serve a copy of said answer, within the same period upon respondent Estaris, "otherwise judgment by default will be taken against you for the relief demanded in the complaint," and notifying petitioner that the case "will be tried on the 18th day of January 1966 at 8:30 o'clock in the morning." (Id., pp. 7-8.)

On January 15, 1966, which was a Saturday, petitioner, through its counsel, filed by registered mail a motion for extension of ten (10) days from January 15, 1966 within which to file his answer and for the postponement of the hearing scheduled on January 18, 1966 to some other date. (Id., pp. 8-9.) However, said motion for postponement never reached the City Court until January 24, 1966 when judgment was already rendered and promulgated on January 18, 1966 declaring petitioner in default, and ordering it to pay respondent Sixto Estaris the sum of P1,770.00 with interest thereon at the legal rate from December 6, 1965 until fully paid, plus the sum of P300.00 as at-torney's fees, with costs of suit. (Id., pp. 10-11.)

On January 26, 1966, petitioner received a copy of the aforesaid judgment by default rendered by the City Court to which its counsel filed on February 3, 1966 a motion for reconsideration, together with petitioner's answer, both dated February 1, 1966, and praying that the default judgment be reconsidered and set aside and that the case be re-set for hearing. In its motion for reconsideration, petitioner alleges, among others, that the default judgment has no legal basis, because it has seasonably filed a motion for postponement and for an extension of time to file its answer before the scheduled hearing of the case, and be-cause, as may be seen from its answer, petitioner has good and valid defenses against respondent Estaris' alleged causes of action. (Id., pp. 11-13.)

On February 16, 1966, the City Court issued an order denying petitioner's motion for reconsideration for lack of merit, stating, among others, that: "The more prudent step that should have been taken by counsel for defendant on the premises should have been to file said motion for postponement and extension to file answer with this Court personally or thru one of its employees, considering that his law office is only located at the Metropolitan Theater Bldg. which is only a walking distance to this Court." (Id., pp. 24-26.)

On March 3, 1966, petitioner appealed to the Court of First Instance of Manila the decision of the City Court of January 18, 1966, as well as its order of February 16, 1966 denying its motion for reconsideration. (Id., pp. 26-30.)

On May 27, 1966, respondent Sixto Estaris filed with said Court of First Instance a motion to dismiss petitioner's appeal for lack of jurisdiction on the grounds that (1) petitioner did not validly appeal from the judgment of the inferior court rendered against it by default, and (2) petitioner should have filed a formal petition for relief from judgment with the Court of First Instance of Manila, as prescribed by Section 1, Rule 38 of the Revised Rules of Court. (Id., pp. 31-32.)

On June 18, 1966, petitioner interposed its opposition to the motion to dismiss appeal alleging, among others, that the Court of First Instance has acquired appellate jurisdiction to hear and decide the case, because (1) upon the expiration of the one-day period provided in Section 13, Rule 5 of Revised Rules of Court, the aggrieved party may still ask for a new trial on the same grounds under Section 16, Rule 5 of the Revised Rules of Court (citing *Abadilla vs. Bernabe and Woods*, 61 Phil., 1056); (2) even after the expiration of the period for perfecting an appeal (Sec. 2, Rule 40, Revised Rules of Court), the aggrieved party may seek to vacate the order of dismissal or judgment by default pursuant to Sections 1 and 3 of Rule 38 of the Revised Rules of Court on the ground of fraud, accident, mistake or excusable negligence; (3) the filing of a petition for relief is not a condition sine qua non for vacating judgments by default rendered by an inferior court; a mere motion for reconsideration and/or for new trial is sufficient provided the same is filed within the reglementary period for perfecting an appeal; and (4) there is no legal basis for declaring petitioner in default considering that, as early as January 15, 1966, it filed with the inferior court its motion for postponement and for an extension of time to file its answer, and the date of mailing its pleading by registered mail is considered as the date of filing under the Rules. (Id., pp. 42-45.)

On June 23, 1966, the Court of First Instance of Manila, finding the motion to dismiss to be well founded, issued an order dismissing petitioner's appeal, without any pronouncement as to costs, and ordering the return of the records to the City Court of Manila. (Id., pp. 46-48.)

On June 30, 1966, petitioner moved for a reconsideration of the said order of June 23, 1966 alleging that its appeal was filed within the reglementary period, because it had received the order denying the motion for reconsideration of the order dismissing its appeal from the judgment of the City Court on February 28, 1966, instead of February 18, 1966 and that its appeal on March 3, 1966 was well within the period provided for by law. (Id., pp. 48-50.) Said motion for reconsideration was again denied on July 6, 1966. (Id., pp. 53-54.)

On July 19, 1966, petitioner moved for a reconsideration of the order of July 6, 1966 which respondent Estaris opposed. (Id., pp. 55-59.) Action on this motion for reconsideration was deferred by an order of July 23, 1966, until petitioner's counsel had presented evidence to correct the disputed return of the sheriff regarding the date when the petitioner received notice of the order of the City Court dated February 16, 1966. (Id., pp. 59-60.)

On September 7, 1966, the lower court issued an order reiterating its order, dated June 23, 1966, dismissing the appeal taken by the petitioner from the judgment of the City Court, on the ground that the petitioner not having regained his standing in Court as a result of the order of default, has no right to appeal from the judgment by default rendered by the City Court. (Id., pp. 60-63.) Moreover, the defendant did not file a petition with said

Court for relief under Section 1 of Rule 38 of the Revised Rules of Court.

On October 10, 1966, the petitioner appealed from the Order of September 7, 1966 to the Court of Appeals (CA-G.R. No. 38806-R), which, in turn, rendered a decision, dated November 3, 1969, affirming in toto the judgment of the lower court, with costs against the appellant. A reconsideration of this decision having been denied on December 16, 1969, the petitioner interposed the present appeal, con-tending that the respondent Court of Appeals erred:

- In holding that the one-day period prescribed in Section 13, Rule 5 of the Revised Rules of Court for filing a motion to vacate an order of default should be computed from the date defendant "learns" or "has knowledge" of said order, instead of from the date defendant is served with "notice" thereof personally or by registered mail;
- In holding that the herein petitioner has lost its remedy under Section 13, Rule 5 of the Revised Rules of Court because of its alleged failure to file on time a motion to vacate the judgment by default; and
- In affirming the order of the Court of First Instance of Manila, dated September 7, 1966, dismissing the appeal taken by petitioner from the order of the City Court of Manila denying its motion to vacate the judgment by default rendered against petitioner.

The main issue for determination in this appeal, as was in the respondent Court of Appeals, is not whether petitioner-appellant has timely appealed from the judgment by default of the City Court, but whether a party who has been declared in default in said court can still appeal from such judgment.

The rule in this jurisdiction is that a defendant, who has been declared in default by the municipal or city court, in order to en-able him to restore his standing in court, may avail himself of either of two remedies, i.e., (1) he may ask the court, within one (1) day after notice of the order of default, to set aside such order, by appearing and showing to the satisfaction of the court that his fail-ure to appeal was due to fraud, accident, mistake or excusable neg-ligence under Section 13, Rule 5 of the Revised Rules of Court;[1] or (2) he may, if he fails to avail himself of this remedy and the judg-ment has become final and executory, file a petition for relief in the Court of First Instance under Section 1 of Rule 38 of the Revised Rules of Court.[2] He may also file a motion to lift the default judgment and ask for new trial, before the judgment becomes final and executory under Section 16 of Rule 5.[3] Thus, a defendant who has been declared in default loses his standing in court, and without having regained the same, shall not be entitled to notice of subsequent proceedings, nor to take part in the trial.[4] He shall not also be entitled to service of papers other than substantially amended or supplemental pleadings and final or-ders or judgments, unless he files a motion to set aside the order of de-fault, in which event he shall be entitled to notice of all further proceedings regardless of whether the order of default is set aside or not.[5] He cannot appeal from the judgment rendered by the court on the merits, unless he files a motion to set aside the order of default.[6] He cannot file a notice of appeal, appeal bond and record on appeal nor claim the right to be heard or file a brief or memorandum on appeal.[7] If he is not entitled to notice or to be heard in the suit, he cannot appeal as ap-pellant nor appear and be heard as appellee because an appeal is a con-tinuation of the same case or suit commenced in the lower court.[8] A proper motion to set aside the judgment by default under Section 13 of Rule 5, when denied, may give the defaulted defendant the right to appeal, but the appeal in that case would be from the order denying the motion and not from the judgment by default itself. The defendant can appeal from such judgment only after he has regained his standing in court.[9]

We notice, however, that herein petitioner has not availed itself of the provision of Section 13 of Rule 5 of the Revised Rules of Court by filing on time a motion to vacate the judgment by default, and, as such, it has not regained its standing in court to enable it to exercise its right to appeal from the judgment by default. Thus, it appears that while on January 18, 1966, the City Court of Manila rendered judgment by default against petitioner,

and the latter received notice thereof on January 26, 1966, it was only on February 3, 1966 when petitioner filed a motion for reconsideration of the judgment by de-fault. On February 16, 1966, the City Court denied said motion, and the counsel of petitioner was notified thereof on February 28, 1966. On March 3, 1966, petitioner's counsel gave notice of petitioner's intention to appeal to the Court of First Instance of Manila from the decision rendered on January 18, 1966, as well as the order of February 16, 1966, denying defendant's motion for reconsideration, and at the same time filed the corresponding appeal bond; and on March 12, 1966, the City Court approved its appeal.

In affirming the order dated June 23, 1966, of the Court of First Instance of Manila dismissing the appeal taken therein by petitioner, the respondent Court of Appeals correctly ruled that:

"Appellant, of course, insists that it has taken an appeal within the reglementary period from the judgment of the City Court dated January 18, 1966 as well as from its order of February 16, 1966. But the problem before us is not a question of whether or not appellant has timely appealed from the judgment by default of the City Court but whether a party who has been declared in default can still appeal from said judgment. It is well settled in our jurisdiction that a defendant who has been declared in default loses his standing in court and without having regained the same has no right to appeal from the judgment by default. (*Lim Toco vs. Go Fay*, 80 Phil., 1966; *Manila Motor Co., Inc. vs. San Juan*, G.R. No. L-9163, May 29, 1959.) Since appellant has not availed itself of the remedy provided for in Sec. 13, Rule 5 of the Rules of Court by filing on time a motion to vacate the judgment by default, it has not regained its standing in court to enable it to exercise its right to appeal from the judgment by default." (Underscoring ours.)

Petitioner also contends that, since the judgment of default was never served upon its lawyer, the period within which to file the motion to vacate the same has not started to run, so that when its counsel filed the motion to vacate the judgment on February 3, 1966, it was still within the reglementary period.

The foregoing contention of petitioner, which was also presented before the respondent Court of Appeals, is without merit. In passing upon the contention, said respondent Court of Appeals correctly ruled that:

"The records do not lend support to the argument of defendant-appellant. The date appearing on the motion for reconsideration of the appellant's counsel is February 1, 1966. So that by the sheer weight of logic and reason this judgment of default against his client must have come even on an earlier date than February 1, 1966. The one (1) day period from February 1, 1966, the date of notice, is February 2, 1966. Appellant's counsel did not file a motion to vacate the default judgment on this date but on February 3, 1966 when the one (1) day period has already prescribed. Evidently appellant has lost its remedy under Sec. 13, Rule 5 of the Rules of Court." (Italics ours.)

It should be noted that when the judgment of the City Court was sent to petitioner, no appearance of its counsel had as yet been received by said court. Without any record before it of any attorney appearing for said party, it certainly was in accordance with Section 2 of Rule 13 of the Revised Rules of Court for said court to serve the judgment upon the party affected thereby. It would be an absurdity to hold otherwise. The spirit and context of the provision of Section 2, Rule 13, of the Rules, that the appearance of an attorney shall be filed with the court and served upon the parties affected thereby clearly indicate that the appearance of an attorney must be made in writing. The reason for such requirement is to enable the officers concerned to effectively serve processes on the attorney of record. No such written appearance was made prior to the service of judgment by default. Moreover, as found by the Court of Appeals, on February 1, 1966, the counsel of petitioner had already received copy of the judgment by default, but it was only on February 3, 1966 that said counsel filed a motion for reconsideration, hence, beyond the one-day period provided for by Section 13 of Rule 5 of the Revised Rules of Court. Although notice given to a party and not to his attorney is not sufficient notice in law, the objection to that defect may be waived.^[10] The filing by petitioner's counsel of the motion for reconsideration shows that, although he was not

officially served with a copy of the judgment, he re-ceived said copy from his client at least on February 1, 1966, the date of his motion for reconsideration, which sought precisely to reconsider the judgment by default of January 18, 1966. Moreover, this lack of service to him of the judgment was never raised in issue by the coun-sel of petitioner either before the City Court or with the Court of First Instance where he appealed from the decision and order of the City Court denying petitioner's motion for reconsideration.

Considering the aforecited circumstances and the fact that petitioner has not shown its good and meritorious defense, We find no merit in petitioner's petition. It must be emphasized that the purpose of procedure is not to hinder and delay but to facilitate and pro-mote the administration of justice.

WHEREFORE, the appealed decision is hereby affirmed, with costs against the petitioner-appellant.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Makasiar, and Esguerra, JJ., concur. Barredo, J., took no part.

[1] "SEC. 13. Vacating dismissals and defaults. - Within one (1) day after notice of an order of dismissal or default, as pro-vided in the last two preceding sections, the court shall set aside such entry and allow the party against whom such dismissal or default had been entered to have a trial upon the merits of the cause, if such party appears and satisfies the court that his fail-ure to appear at the time and place designated in the summons was by reason of fraud, accident, mistake or excusable negligence." (Rule 5, Revised Rules of Court.)

[2] "SECTION 1. Petition to Court of First Instance for relief from judgment of inferior court. - When a judgment is rendered by an inferior court in a case, and a party thereto, by fraud, accident, mistake, or excusable negligence, has been unjustly de-prived of a hearing therein, or has been prevented from taking an appeal, he may file a petition in the Court of First Instance of the province in which the original judgment was rendered, praying that such judgment be set aside and the case tried upon its merits." (Rule 38, Revised Rules of Court.)

[3] "SEC 16. New trial. Within the time provided for perfect-ing an appeal from a judgment rendered by an inferior court and before an appeal is so perfected, the court may grant a new trial to correct an error or injustice it may have committed." (Rule 5, Revised Rules of Court.)

See also *Punzalan v. Papica, et al.*, 107 Phil. 246.

[4] "SEC. 2. Effect of order of default. - Except as provided in section 9 of Rule 13, a party declared in default shall not be en-titled to notice of subsequent proceedings, nor take part in the trial." (Rule 18, Revised Rules of Court.)

[5] "SEC. 9. Service upon party in default. - No service of papers other than substantially amended or supplemental pleadings and final orders or judgments shall be necessary on a party in default unless he files a motion to set aside the order of default, in which event he shall be entitled to notice of all further proceed-ings regardless of whether the order of default is set aside or not."

[6] *Lim Toco v. Go Fay*, (1948) 80 Phil. 166, 176, citing 1 Freeman, *Judgments*, 5th Ed., 738-739, and *Velez v. Ramos*, 40 Phil., 787, affirmed in *Carballo v. Encarnacion* (1953) 92 Phil. 974, 976.

[7] *Lim Toco v. Go Fay*, *Ibid.*, at pp. 168-169.

[8] *Ibid.*, pp. 169-170.

[9] *Manila Motor Co. v. San Juan*, *supra*.

It must be noted that Section 2 of Rule 41 of the Revised Rules of Court which allows a party who has been declared in default to appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him pursuant to Rule 38, is not applicable to municipal or city courts. (Sec. 19, Rule 5.)

[10] *National Lumber v. Velasco*, 106., 1098.

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