

LOPE GERIAN, LUCIO GERIAN, FRANCISCO GERIAN, LEOPOLDO GERIAN, CONSTANCIA GERIAN AND ANTONIETA GERIAN, PETITIONERS, VS. HON. ALEJANDRO R. BONCAROS AS JUDGE OF CFI OF NEGROS ORIEN...

G.R. No. L-48723. October 30, 1979

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The default orders issued by respondent judge are set aside as having no factual nor legal basis and having been issued arbitrarily and with grave abuse of discretion. Trial judges are enjoined to act with circumspection and not to precipitately declare parties in default, needlessly compelling the aggrieved party to undergo the additional expense, anxiety and delay of seeking the intervention of the appellate courts and depriving them of the much needed time and attention that could instead have well been devoted to the study and disposition of more complex and complicated cases and issues.

The factual background is undisputed.

Summons of the complaint filed (in the Negros Oriental court of first instance presided by respondent judge) by private respondents as plaintiffs against petitioners as defendants for recovery of possession and ownership of a portion of a certain parcel of land (said to be the subject of a partition agreement between them) was served on petitioners on January 8, 1977. The case was docketed as Civil Case No. 6629 of respondent judge's court.

Petitioners timely filed through counsel on January 13, 1977 their answer to the complaint and the same duly forms part of the records of the case. At the end thereof is a notation that copy thereof was furnished respondents through their counsel Atty. Reuben A. Espancho at his postal address at Dumaguete City, and according to respondent judge's Order of July 20, 1977 there was inserted further in long hand the phrase "by registered mail."

A "Motion to Take Deposition" for March 4, 1977 was there-after filed by petitioners' counsel on February 23, 1977 and served personally on the four private respondents but not on their counsel. And so, respondents' counsel, "not having as yet received a copy of (their) answer," as per their comment of September 20, 1978 submitted to this Court, filed in retaliation a motion to declare petitioners in default and to stop the intended deposition.

The motion for default and the motion to take deposition were jointly heard by respondent judge who thereafter issued his questioned Order of March 4, 1977 declaring petitioners in default and prohibiting them from proceeding with the deposition, further ordering that "plaintiffs [herein respondents] may present their evidence ex parte any time at their convenience upon notice to the Clerk of Court of this sala."

Petitioners' motion for reconsideration was "lengthily argued" before respondent judge on March 23, 1977 and denied on July 6, 1977 for petitioners' counsel's failure "to submit a memorandum citing a Supreme Court ruling reversing itself with respect to service of pleadings to counsel on record [that] it can be served to the parties themselves although such a party is, represented by counsel."

Petitioners filed on July 11, 1977 an Urgent Motion to Lift Order of Default "invoking liberal interpretation of the Rules citing Supreme Court decisions" but respondent judge instead issued his questioned extended Order of July 20, 1977 denying the same "for failure to comply with sec. 3, Rule 18 of the Revised Rules of Court [since] defendants [herein petitioners] have not shown good faith in their petition to lift the order of default."

Hence, the petition at bar. The same being obviously meritorious, the Court has dispensed with the filing of briefs or memoranda and sets aside the questioned orders.

1. To start with, there is no factual nor legal basis for a respondent judge's order of default on the ground that petitioners "failed to file their answer within the reglementary period even if an answer has already been attached to the records of this case but filed outside of the reglementary period for failure to serve a copy of the answer to plaintiffs [respondents] who are represented by a lawyer." [1] As noted above, the fact is that petitioners' answer was indisputably filed timely on the fifth day of the 15-day reglementary period. The failure of petitioners' counsel to submit proof of service of the answer on respondents (due apparently to counsel's stubbornness) did not constitute a legal ground for disregarding the answer which was timely filed and attached to the record and was already within the actual knowledge of respondents and their counsel. [2] Rule 18, section 1 provides for a default order only "if the defendant fails to file an answer within the time specified in these rules" - which is not the case here. If at all, respondent judge could have very well followed the standard practice of requiring petitioners to furnish anew respondents with a copy of the answer with proof of service.

2. Neither was there factual nor legal basis for respondent judge's order denying the motion to lift his default order on the ground that petitioners had not complied with the requirement of Rule 18, section 3 and shown that the failure to answer "was due to fraud, accident, mistake or excusable neglect and that [defendant] has a meritorious defense."

The first requirement of a showing of fraud, accident, mistake or excusable neglect is not applicable, because petitioners had timely filed their answer. Petitioners had after the filing of their motion for reconsideration duly filed an affidavit of merit and personally served the same on respondents' counsel. [3] Indeed, even such a requirement was not called for, since their answer, timely filed, duly sets forth from a mere perusal thereof special and affirmative defenses which uphold their right to their day in court. In brief, the case below, from principal petitioner-defendant Lope Gerian's viewpoint is one wherein respondents-plaintiffs, his own children from a first marriage would "deprive their own father of his share in the common property (parcel No. 2), naturally, any proposal towards that end could always meet the disapproval of defendants, but if plaintiffs would only want to get their respective shares legally due them, defendants would not lose time to approve." [4]

3. It is time that trial judges adhere to the time-honored injunction to refrain from procedural technicalities and get down to the business of hearing and deciding cases on their merits, instead of handing down default orders on flimsy grounds as in the case at bar and needlessly compelling the aggrieved party to undergo the additional expense and anxiety and delay in having to come up to this Court to set aside a baseless default order and depriving this Court of the much needed time and attention that it could well have devoted to the disposition of more complex and complicated cases and issues.

As the late Chief Justice Moran well put it: "the Rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding. If a technical and rigid enforcement of the rules is made, their aim would be defeated. The general object of procedure is 'to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is created 'not to hinder and delay but to facilitate and promote the administration of justice.' And in proceeding to apply justice, courts must strive 'to assist the parties in obtaining just, speedy, and inexpensive determination' of their rival claims. The procedure, there-fore, must be not only just and speedy but also as inexpensive as pos-sible, for expensive litigations are sometimes equivalent to denial of justice." [5]

The Court has time and again as in the recent case of *Mercader vs. Bonto*[6] enjoined trial judges to act with circumspection, and not to misuse and abuse the rules of procedure as instruments for the denial of substantial justice and equity. It has ever cautioned them that this Court "frowns upon such application of procedural rules with pedantic rigor" and that "default is not a mechanical gadget for the acceleration of judicial litigations" and reminded them that they should not act precipitately in declaring a party in default "because judgments by default are never looked upon with favor."

The Court has thus invariably stricken down the hasty *ex parte* judgments of trial courts who have shown more a misplaced adeptness in technical virtuosity rather than faithful adherence to the cardinal principle of liberally applying the procedural rules with the end of administering plain and simple justice and giving a party his day in court. The shortcomings of counsel in the observance of the Rules which serve as an aid for the orderly presentation and disposition of cases may well be taken care of by appropriate disciplinary action against such counsel rather than imposing upon the hapless party-litigant the capital penalty of a default order and judgment. If respondent judge had but applied the uniform and consistent doctrinal jurisprudence of the Court rather than dissipated his time and attention with procedural trivialities (to the extent of holding extensive hearings and writing extended orders to justify his wrongful denial of petitioners' motion to lift his baseless default order) and done his clear duty of trying and deciding the case on its merits, both his docket and this Court's docket would have been less by one - and multiplied by similar cases, such savings in wastage of the courts' time, efforts and energies could conceivably amount to hundreds, if not thousands, of cases that should never have at all reached the appellate courts on procedural technicalities.

ACCORDINGLY, the questioned default orders are set aside and the case is ordered remanded to respondent judge for prompt hearing and determination on the merits. With costs against respondents jointly and severally. This decision shall be immediately executory upon promulgation.

SO ORDERED.

Makasiar, Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

[1] Rollo, p. 25.

[2] *Mendez vs. Seng Kiam*, 106 Phil 109, 116 (1960); *Rosario vs. Alonzo*, 8 SCRA 397, 399 (1963).

[3] Petitioners' Reply, Rollo, p. 48.

[4] Petitioners' Answer below, Rollo, p. 23.

[5] 1 Moran's Rules of Court 1970 ed., 103-104.

[6] L-48564, August 20, 1979, per Makasiar, J. and cases cited therein.

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