

**AMPARO SANTOS, PETITIONER, VS. HON. FELISA DE LA FUENTE
SAMSON, JUDGE OF THE COURT OF FIRST INSTANCE OF
PAM-PANGA AND ANGELES CITY, FIFTH JUDICIAL DISTRICT,
BRANCH IV, AND ANGEL...**

G.R. No. L-46371. December 14, 1981

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Petition for certiorari and prohibition with preliminary in-junction, to annul and set aside the order denying the petitioner's motion to dismiss the complaint in Civil Case No. 2315 of the Court of First Instance of Pampanga, entitled: "Angel A. Reyes, Inc., plaintiff, versus Miss Amparo Santos, defendant," as well as the order declaring her in default, and all proceedings made subse-quent thereto; and to restrain the respondent Judge of First Instance from further conducting the trial of the said case.

The record shows that on January 17, 1976, the herein pri-vate respondent, Angel A. Reyes, Inc., a domestic corporation with principal offices at 1363 Quezon Boulevard Extension, Quezon City, filed a complaint for "Unlawful Detainer" against the herein peti-tioner, Amparo Santos, with the Court of First Instance of Pampanga, docketed therein as Civil Case No. 2315.[1] Summons and a copy of the complaint were served upon Amparo Santos on August 16, 1976, but she failed to file the required answer within the reglementary period. Upon motion of the plaintiff therein, Amparo Santos was declared in default on January 12, 1977 and the plaintiff was directed to present its evidence on January 20, 1977.[2]

Upon receipt of the order declaring her in default, the peti-tioner, Amparo Santos, filed a motion to dismiss the complaint on the ground that the Court of First Instance had no jurisdiction over the action for "unlawful detainer" which is within the compe-tence of the municipal court.[3] The plaintiff therein opposed the motion, claiming that the movant had no personality to ask for the dismissal of the complaint because she lost her status in court when she was declared in default, and that, assuming that the herein petitioner had not lost her standing in court, her motion to dismiss the complaint for lack of jurisdiction would not prosper as the complaint, although entitled one for "Unlawful Detainer", is for the cancellation and annulment of the contract of sale of real property which is within the jurisdiction of the court of first instance.[4] After the controversion of the issues, the respondent Judge issued an order on April 26, 1977, denying the motion to dismiss for lack of merit since the case was principally an annulment or cancellation of a contract of sale of real property.[5]

On May 3, 1977, the herein petitioner filed a motion to lift the order of default, alleging that she failed to file an answer by reason of fraud, mistake and/or excusable negligence in that after receiving the summons and a copy of the complaint, she went to see Angel A. Reyes at his office in 1363 Quezon Boulevard Extension, Quezon City, to confer with him regarding the case; that Angel A. Reyes, during their meeting, assured her that if she would update her accounts on the lots, he would not pursue the case anymore; that with that understanding, she continued to make payments on the lots, which the plaintiff received; and that the assurance of Angel A. Reyes

made her believe that it was no longer necessary for her to answer the complaint and realized her error quite too late when she received a copy of the order declaring her in default. She further claimed that she has a good and meritorious defense in that she had been faithfully and religiously paying her monthly installments for the lots in question for more than 12 years and she already paid the sum of P96,000.00 to the plaintiff although the contract price is only P57,500.00, and she is still paying for the said lots; that the acts of the plaintiff in cancelling unilaterally the contracts of purchase and sale, the forfeiture of the installment payments made, and the filing of the instant complaint are repugnant to public policy and do violence to existing laws; and that to allow all the parties herein to fully ventilate their respective sides of the question and to present their evidence will best serve the interests of substantial justice.[6] The plaintiff therein opposed the motion for the reason that the petitioner's failure to file an answer within the reglementary period is not excusable and the petitioner herein had really intended not to file an answer to the complaint.[7] The respondent Judge denied the Motion on May 24, 1977, stating that the negligence of the petitioner in failing to file an answer is not excusable since the motion to lift the order of default was filed after the lapse of four (4) months from the time she received a copy of the order declaring her in default; and that the herein petitioner wantonly disregarded established procedure.[8]

Hence, the instant recourse. As prayed for, a temporary restraining order was issued, restraining the respondent Judge from further proceeding with the trial of the case.[9]

Upon a review of the record of the case, We are convinced that the respondent Judge did not abuse her discretion in denying the petitioner's motion to dismiss the complaint. The record shows that the petitioner filed the said motion to dismiss immediately after her receipt of the order declaring her in default without first filing a motion to set aside the order of default. It is the rule that a party declared in default loses his standing in court and is not entitled to any notice of subsequent proceeding nor to take part in the trial until he files a motion to set aside the default order.[10] Petitioner, therefore, had no right to file the said motion to dismiss. Accordingly, the issue of whether or not the action is purely a possessory action and as such within the exclusive jurisdiction of the Angeles City Court, and, therefore, beyond the jurisdiction of the respondent Judge of first instance, not having been properly raised in the lower court, is academic.

However, We find that the respondent Judge erred in denying the petitioner's motion to lift the order of default. The record shows that upon receipt of the summons and copy of the complaint, the petitioner immediately went to see Mr. Angel A. Reyes, president and executive officer of the respondent corporation bearing his name, about the case. Mr. Reyes assured her that if she would update her accounts, he would not pursue the case anymore. Accordingly, the petitioner paid her accrued obligations to the plaintiff and did not file any answer to the complaint anymore, and was surprised when she received a copy of the order declaring her in default. Immediately thereafter, she took steps to vacate the order of default. Under the circumstances, the failure of the herein petitioner to answer the complaint within the reglementary period is excusable.

Besides, the petitioner appears to have a good and meritorious defense. She averred that the records of the respondent corporation are not in order and that she had been religiously and faithfully paying her account with the respondent corporation for twelve (12) years already and had paid to the corporation the amount of P96,000.00 although the total contract price for the two lots in question is only P57,500.00. If proven, such circumstances may defeat the plaintiff's claim.

While the motion to lift the order of default was filed four (4) months after the petitioner was declared in default, no judgment has been rendered in the case as yet so that the filing of the said motion was within the period prescribed by the Rules. Under Section 3, Rule 18 of the Rules of Court, a party declared in default may at any time after discovery thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure answer was due to fraud, accident, mistake or excusable neglect and that he has a

meritorious defense.

Considering that the failure of the petitioner to file her answer to the complaint within the reglementary period is excusable; and that the granting of the petitioner's motion to set aside the order of default would in no way prejudice the respondent corporation and deprive it of any substantial right, nor is there evidence of intent to unduly delay the case, the respondent Judge should have applied the Rules liberally and set aside her order of default. Courts should be liberal in setting aside orders of default for a default judgment is frowned upon, and unless it clearly appears that the re-opening of the case is intended for delay, it is best that trial courts give both parties every chance to fight their case fairly and in the open, without resort to technicality.[11]

WHEREFORE, the writ is granted and the order of the respondent Judge, dated January 12, 1977, declaring the petitioner Amparo Santos in default, and all proceedings made subsequent thereto are hereby ANNULLED and SET ASIDE. The petitioner, Amparo Santos, is hereby directed to file an answer to the complaint within fifteen (15) days from notice hereof. Costs against the private respondent Angel A. Reyes, Inc.

SO ORDERED.

Barredo, (Chairman), Abad Santos, De Castro, Ericta, and Escolin, JJ., concur.
Aquino, J., no part.

[1] Rollo, p. 18.

[2] Id., p. 52.

[3] Id., p. 22.

[4] Id., p. 24.

[5] Id., p. 35.

[6] Id., pp. 36-39.

[7] Id., p. 40.

[8] Id., p. 43.

[9] Id., p. 46.

[10] Sec. 2, Rule 18 of the Rules of Court.

[11] Pineda vs. Court of Appeals, L-35583, Sept. 30, 1975, 65 SCR 228, citing Tecson vs. Tecson, 93 Phil. 903.

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