

LISINIO B. HERRERA, PLAINTIFF-APPELLEE, VS. FAR EASTERN AIR TRANSPORT INC., DEFENDANT-APPELLANT.

G.R. No. L-2587. September 19, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

Appellee commenced this action in the Court of First Instance of Cebu against the appellant to recover from the latter the value of a sack alleged to contain clothing and jewelry amounting to P3,590. He alleged in substance that on December 11, 1945, he bought a ticket from the appellant on one of its planes leaving Manila for Cebu on December 12, 1945; that he deposited said sack at the Manila office of the appellant, which issued to him the corresponding baggage check for said, sack; that when he arrived in Cebu he found that said sack was not on board the plane; and that it was not delivered to him by appellant notwithstanding his repeated requests therefor.

The defendant was served with summons on October 27, 1946. On November 19, 1946, upon motion of the plaintiff, the court issued an order declaring the defendant in default. On November 21, 1946, Judge Higinio B. Macadaeg rendered judgment in favor of the plaintiff and against the defendant, ordering the latter to deliver to the former the sack or baggage in question or, in default thereof, to pay to the plaintiff the sum of P3,590, plus the costs.

On November 26, 1946, having been informed that an order of default had been entered but before having received a copy of said order, the defendant thru counsel filed an urgent petition to set aside the order of default and to admit defendant's answer, alleging:

"1. That on November 10, 1946, the answer to the complaint in the above-entitled case was delivered by Atty. Alberto J. Francisco, his assistant attorney who prepared said answer, to the office messenger, Felix Juele, for service to the Clerk of that Court by registered mail;

"2. That the following day, Atty. Alberto Francisco became ill and was not able to attend office until November 24, 1946, for which reason he was not able to verify the next day whether the said answer had in fact been sent by registered mail to Cebu City on November 10, 1946, as directed;

"3. That the undersigned had been taken completely by surprise when he was informed that an order of default had been taken against defendant and that trial of the case had proceeded without notice whatever to defendant. The undersigned had believed in good faith all the while that said answer had been mailed since November 10, and had already been received by the Clerk of that Court according to the natural course of events;

"4. That upon receiving this unpleasant information, an investigation was conducted and it was discovered that the said office messenger, due to his volume of work, had inadvertently misplaced the envelope containing the answer in one of his drawers and failed to mail the same on November 10. It was only on November 22, when he became aware of his omission that he sent said answer to the Clerk of that Court by air mail;

"5. That the failure to serve the answer on time was caused by mistake and excusable negligence;

"6. That defendant has a good and valid defense to the complaint, to wit:

"a. That the baggage alleged by the plaintiff in the complaint to have been lost is a personal baggage of the plaintiff, which he carried by himself aboard the plane³ and for the loss of which defendant cannot be held liable;

"b. That granting that said baggage is not personal defendant cannot be held liable for its loss because the plaintiff did not comply with the rules and regulations promulgated by the defendant with respect to the delivery of cargoes by passengers and shippers to the agents of the defendant;

"c. That conceding without admitting that the defendant is liable for the loss of the said baggage,, its liability cannot exceed P200.00, because in its contract with the shippers and passengers, the defendant has limited its liability to not more than P200.00 per ticket of freight sold.

"WHEREFORE, premises considered, and invoking the sound discretion of this Honorable Court to grant relief under Section 2, Rule 33 of the Rules of Court in conjunction with Rule 1, section 2 of said rules, it is respectfully prayed that the order of default entered against herein defendant be set aside; that defendant's answer to the complaint be admitted; and that a day be set for the trial of the above-entitled case.

"Manila for Cebu City, November 26, 1946.

(Sgd.) VICENTE J. FRANCISCO

Attorney for the defendant,
209 General Solano, Manila."

Said petition was supported by the affidavits of Atty. Alberto J. Francisco and Felix Juele. After receiving copies of the order of default and of the decision of the trial court, the defendant amended said urgent petition by including a prayer that the judgment rendered on November 21, 1946, be also set aside.

The answer filed by the defendant contained the same special defense as that set forth in its motion to set aside the order of default.

The trial court denied the relief prayed for by the defendant under section 2 of Rule 35, on the grounds (1) that in its opinion the affidavits supporting the petition did not satisfy that degree of excusable negligence contemplated by the Rules of Court; and (2) that the defendant by its own acts and conduct had proven itself undeserving of the benefit of the discretion of the court because it had not lived up to its duties with the public in that it had not properly attended to plaintiff's complaint for the loss of his baggage.

Section 2 of Rule 35 provides that when a judgment or order is entered against a party in a Court of First Instance thru mistake or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment, order, or proceeding be set aside.

The sworn allegation is not rebutted that on November 10, 1946, that is to say, within the reglementary period, "Atty. Alberto J. Francisco delivered the answer to the office messenger Felix Juele for service to the clerk of court by registered mail; that said messenger inadvertently misplaced the envelope containing the answer in one of his drawers and failed to mail it until November 22, when he became aware of his omission and when he sent said answer to the clerk of court by air mail; that Atty. Alberto Francisco became ill on November 11 and was not

able to go to his office until November 24, for which reason he was not able to verify whether the said answer had in fact been sent by registered mail to Cebu on November 10, 1946.

The sole question to determine is whether under these facts and circumstances, in relation to the nature of plaintiff's cause of action and the defense, defendant is entitled to the relief under section 2 of Rule 38 above cited. There is room for a difference of opinion on whether the neglect committed by the messenger was excusable or not; and if plaintiff's cause of action appeared to be indisputable, or if the defendant appeared to have no good defense, we would not feel warranted in disturbing the order appealed from. But in the present case the plaintiff seeks to re cover from the defendant the value of the alleged contents of a sack which as a passenger he left with the defendant, claiming that said sack contained not only clothing and shoes valued at P1,700 but also a set of diamond ring and earrings valued at P1,800. It is apparent that the alleged contents of said sack were easily susceptible to exaggeration, and the interests of justice would require that the evidence of the plaintiff to prove said contents and their value be subjected to the scrutiny of the adverse party to avoid such exaggeration and the consequent possible injustice to the defendant. Without intending to express any opinion on the merits but merely to illustrate the point, we may call attention to the fact that it is not customary for a prudent passenger to place diamond ring and earrings in a sack, containing clothing and shoes for transportation in the baggage room.

We are satisfied that under the circumstances defendant's neglect may be considered excusable, that its purpose in seeking a reopening of the case is not to delay, and that a new trial, may produce a different result.

The order of default and the judgment rendered thereon, as well as the order appealed from, are set aside, and the case is remanded to the court of origin for further proceedings, without any finding as to costs in this instance.

Moran, C.J., Paras, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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