

**RIZAL COMMERCIAL BANKING CORPORATION, PETITIONER, VS.
HON. GUARDSON LOOD, JUDGE OF THE COURT OF FIRST INSTANCE
OF RIZAL, RAUL P. GARAY AND MARCELO. B. GARAY,
RESPONDENTS.**

G.R. No. L-42900. 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 an order granting a petition for relief from judgment.

The record shows that on October 4, 1966, the herein private respondents Raul Garay and Marcelo Garay executed two (2) promissory notes in favor of the herein petitioner, Rizal Commercial Banking Corporation, for the amounts of P13,000.00 and P3,000.00, payable by them jointly and severally within one (1) year from execution thereof, with interests thereon at the rate of 12% and 14% per annum, respectively, and an amount equivalent to 10% of the total amount due as attorney's fees in case of default. Upon its maturity demands were made for payment thereof and when the promissors failed to pay, the petitioner filed an action against the private respondents on February 24, 1970 before the Court of First Instance of Rizal, docketed therein as Civil Case No. 12888, for the collection of a sum of money. The private respondents jointly filed their Answer after a previous motion to dismiss was denied by the trial court and, thereafter, the case was set for pre-trial on various dates including September 28, 1973 on which last date the trial court, upon motion of the private respondents, cancelled further pre-trial, without prejudice to the filing of an amicable settlement, and set the hearing on the merits on November 12, 1973, later reset to December 3, 1973. On this latter date, the petitioner began presenting its evidence and Roberto V. Marquez, an employee of the petitioner bank took the witness stand and cross examination of said witness was deferred to February 22, 1974 to enable him to produce the records of the private respondents with the petitioner bank. The hearing, however, was reset, by agreement of the parties, to May 24, later postponed by the respondents to July 26 and reset further to September 30, the respondents manifesting that they would settle the case amicably. But, the hearing was again reset to November 18, then December 13, 1974. Before the hearing could proceed on the latter date, counsel for the herein private respondent, with the conformity of his clients, filed a motion to withdraw as counsel. The motion was granted and the hearing was reset to February 24, 1975 to enable the respondents to secure the services of new counsel. On this date, the private respondent Raul Garay filed an urgent motion to postpone the hearing but the same was vigorously objected to by the petitioner and consequently the motion was denied and the petitioner thereafter rested its case and submitted the case for decision. On April 7, 1975, a decision was rendered on the case, the dispositive portion of which reads:

WHEREFORE IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter to pay the former the sum of P13,000.00 from October 4, 1966 with interest at 12% per annum plus a sum equivalent to 10% of the amount due by way of attorney's fees, until

fully paid; furthermore, ordering the defendant to pay the plaintiff the sum of P3,000.00 with interest at the rate of 14% per annum from October 4, 1966 plus a sum equivalent to 10% of the amount due by way of attorney's fees, until the same amounts have been paid, and to pay the costs."[1]

On May 22, 1975, the respondents Garay filed a motion for extension praying that "they be granted an extension of thirty (30) days from 26th May 1975 within which to either (1) seek the reconsideration of the decision herein dated 7 April 1975 or (2) appeal the same, that is, file their notice of appeal, deposit their appeal bond, and submit their record on appeal." The respondents alleged therein that their "inability to attend to this case after the withdrawal of their previous counsel is due to the fact that defendant Marcelo B. Garay (father of the defendant Raul Garay) who is in charge hereof, has been ailing since late 1974, resulting in his hospitalization on 3 to 11 February and 21 February to 13 March, 1975.[2]

The herein petitioner opposed the motion on the grounds that the thirty (30) days period within which to perfect an appeal from the judgment rendered on April 7, 1975 had long expired and there is no more period to extend since copies of the decision of April 7, 1975 were sent to the respondents by registered mail and first notice was served upon the addressees on April 11, 1975, but who failed to claim the same from the post office; and that the motion for extension had not been set for hearing so that it was a mere scrap of paper which may be ignored. The petitioner prayed for the issuance of a writ of execution of the decision of April 7, 1975.[3]

On June 25, 1975, the herein respondents filed a Reply Opposition and Motion to set aside Decision claiming that their motion for extension of time had been filed, seasonably because the respondent Raul Garay was informed of the decision of April 7, 1975 only on or about May 26, 1975, while the respondent Marcelo received a copy of the decision not later than May 15, 1975, and they had at least until June 18, 1975 within which to do so. The herein respondents alleged therein the following:

"1. That defendant Raul Garay was never made aware of the decision herein until informed thereof by his father defendant Marcelo B. Garay on or about 26 May 1975;

"2. That defendant Marcelo G. Garay received his copy of the decision herein (without case number) not earlier than 15 May 1975, which fact must be now appear in the record of the case;

"3. That defendants' motion for extension dated 22 May 1975 is therefore seasonable, as they had at least until 14 June 1975 within which to do so;

"4. That as a necessary consequence, plaintiff's motion for execution is premature, the judgment herein not being final;

"5. That defendants have never received any order considering the case submitted for decision, and the statement in the decision to that effect will not be borne out by the record;

"6. That the failure of defendants to appear at the hearing of 24 February 1975 was, as shown in the hospital certificate dated 7 May 1975 submitted to the court on 23 May 1975, due to the fact that defendant Marcelo B. Garay underwent major surgery the previous day, 23 May 1975, for Cholecystectomy with operative Cholangiogram and Cardiac Monitoring Cdc, Sphincteroplasty;

"7. That defendant Marcelo B. Garay was thereafter in the intensive care unit of the Metropolitan Hospital for eleven days, hovering between life and death literally, and his wife and children, defendant Raul Garay among the latter, had to be with him, together immediately after the surgery and by turns later;

"8. That defendants were thus prevented from attending to this case at all;

"9. That the interests of justice demand that defendants should have their day in court, allowed to cross-examine plaintiff's witness, object to its documentary evidence, and present evidence in their defense;

"10. That it would not constitute abuse of discretion on the part of the court to set aside its decision herein, in the light of the foregoing, especially because defendants have a good defense, as may be seen from Pars. 8 to 13 of their answer;"

and prayed that (1) the decision dated April 7, 1975 be set aside, the defendants allowed to cross-examine plaintiff's witness, object to its documentary evidence, and present their evidence; (2) plaintiff's motion for execution be denied; and (3) in case of denial thereof, they be afforded ample time to seek relief in a higher tribunal.[4]

Acting upon the motion and the opposition thereto, as well as the Reply Opposition and Motion to Set Aside Decision the respondent Court issued an order on July 1, 1975, as follows:

"ORDER

"The Motion dated 22 May 1975 filed by the defendant praying for an extension of thirty (30) days within which to (1) seek the reconsideration of the Decision dated April 7 or (2) appeal the said decision, is hereby granted.

"The Motion To Set Aside Decision filed by the defendant is hereby denied. The Motion for Execution is held in abeyance until further orders."[5]

However, on July 23, 1975, the respondent Court issued another order giving due course to a petition for relief from judgment which order reads, as follows:

"ORDER

"The Petition for Relief from Judgment filed by the defendants dated 12 July 1975 appearing to be sufficient in form and substance, let a copy thereof be furnished the plaintiff which is hereby given ten (10) days from receipt of a copy thereof within which to file its answer thereto,"[6]

and on September 5, 1975, it issued the controverted order setting aside the decision of April 7, 1975, the dispositive portion of said order reads, as follows:

"WHEREFORE, IN VIEW OF THE FOREGOING, the petition is granted hereby setting aside the Decision dated April 7, 1975 for the purpose of allowing the defendants to present their evidence in their defense. Let hearing be set on any available date in the calendar of this Court. Consequently, motion of Attys. Umali & Tagle for defendants is granted."[7]

The herein petitioner filed a motion for the reconsideration of the order upon the grounds that: (1) petitioner was not furnished with a copy of the petition for relief despite its manifestation in the Supplemental Motion for Execution, filed on August 13, 1975,[8] so that the issues raised in the said petition for relief were never joined and no valid action could have been taken thereon; (2) the petition for relief was filed beyond the reglementary period for the filing of petitions for relief under Rule 38 of the Revised Rules of Court; (3) the petition for relief cannot be a substitute for the remedy of a motion for new trial or of an appeal, which were available to the herein respondents; (4) the said order was issued beyond the jurisdiction of the court since the order was in effect a revival of the case where the judgment had already become final and unappealable; (5) the evidence to be presented by the herein respondents in support of their defense is flimsy and will not alter the result already reached; and (6) the filing of the petition for relief is a dilatory tactic aimed at preventing an early recovery by the petitioner bank of its rightful claim against the respondents;[9] but the motion was denied by the respondent court.[10] A second motion for reconsideration was filed,[11] but the motion was again denied.[12] Hence, the present recourse. As prayed for, a temporary restraining order was issued on February 25, 1976, restraining the respondent Court from further proceeding with Civil Case No. 12888.[13]

The petitioner contends that in issuing the order of September 5, 1975, which granted the petition for relief from judgment and set aside the Decision of April 7, 1975, and the orders dated October 16, 1975 and January 28, 1975, which denied the motions for reconsideration of the controverted order of September 5, 1975, the respondent Court acted without or in excess of its jurisdiction and there being no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law, the orders complained of should be annulled and set aside. In support thereof, the petitioner argues that the remedy of relief from judgment is available only to a party who had no opportunity to seek a new trial under Rule 37 or to interpose an appeal under Rule 41 due to causes mentioned in Section 2 of Rule 38 of the Revised Rules of Court, and not to a party, like the respondents in this case, who were given and had the opportunity to seek a new trial, or reconsideration, or to appeal from the judgment and had in fact sought a new trial which was denied by the respondent Court.

There is merit in the petition. The herein private respondents have, indeed, filed a pleading denominated Reply, Opposition and Motion to Set Aside Decision which amounts to a motion for new trial under Rule 37 and which was denied by the respondent Court, so that the remedy of relief from judgment under Rule 38 of the Revised Rules of Court may not be availed of by the private respondents upon the denial of said motion. It is a well-known rule that the relief provided for by Rule 38 of the Revised Rules of Court is of equitable character and is allowed only in exceptional cases where there is no other available or adequate remedy. It is not regarded with favor and the judgment would not be voided where the party complaining has or, by exercising proper diligence, would have had an adequate remedy at law or by proceedings in the original action, by motion, petition or the like to open, vacate, modify, or otherwise obtain relief against the judgment.[14] Instead of filing a petition for relief, what the respondents Garay and their counsel should have done in the court below was to appeal from the denial of their motion to set aside the decision.

Besides, it appears that the herein petitioner had not been furnished with a copy of the petition for relief from judgment despite its manifestation contained in its Supplemental Motion for Resolution filed on August 13, 1975, and the order of the respondent Court, dated July 23, 1975, directing that the petitioner should be furnished with a copy of the petition for relief, such that the petitioner had been deprived of the opportunity to controvert the petition. For lack of notice, the order in question is defective.

Furthermore, reading the allegations of the herein private respondents as to their good and convincing evidence to support their defense, quoted in the disputed order of the respondent Court, dated September 5, 1975, it would appear that the said respondents have no real defense. The said respondents have admitted their liability and there is little, if any, prospect that their evidence if presented and considered, can alter or reverse the conclusion already reached by the respondent Court in its decision rendered on April 7, 1975. The private respondents merely claim that their obligation is subject to extension or renewal and that the herein petitioner had not given them notice that it would no longer extend the period for the payment thereof. Demand for payment, however, was made in a letter to the private respondents on May 30, 1969, receipt of which was acknowledged by the respondent Raul Garay in his Reply dated June 7, 1969. Petitioner's counsel again wrote the said petitioners reiterating payment of the obligation, and when the said private respondents failed to pay, the present action was initiated in court. Private respondents cannot, therefore, plead lack of notice that the petitioner was no longer extending the period for the payment of the obligation. As previously ruled, "if the defendant has no real defense to the action or intends only a technical plea, there would be no justice in permitting the case to be reopened and subject plaintiff to further delay and expense for the mere purpose of rendering judgment in regular manner.[15]

WHEREFORE, the petition is granted and the orders issued by the respondent Court on September 5, 1975, October 16, 1975, and January 28, 1976, in Civil Case No. 12888 of the Court of First Instance of Rizal, entitled: "Rizal Commercial Banking Corporation, plaintiff, versus Raul P. Garay and Marcelo B. Garay, defendants,"

should be, as it is hereby, ANNULLED and SET ASIDE. The respondent judge is hereby directed to issue a writ for the execution of the Decision rendered on April 7, 1975. The temporary restraining order heretofore issued is hereby made permanent. With costs against the private respondents Raul P. Garay and Marcelo B. Garay.

SO ORDERED.

Barredo, (Chairman), Aquino, Abad Santos, De Castro, Ericta, and Escolin, JJ., concur.

[1] Rollo, pp. 15-18.

[2] Id., p 19.

[3] Id., pp. 21-22.

[4] Id., pp. 23-25.

[5] Id., p. 26.

[6] Id., p. 27.

[7] Id., p. 33.

[8] Id., p. 30.

[9] Id., pp. 37-43.

[10] Id., pp. 49.

[11] Id., p. 50.

[12] Id., p. 65.

[13] Id., p. 85.

[14] Palomares vs. Jimenez, 90 Phil. 773.

[15] Coombs vs. Santos, 24 Phil. 446'

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