

**VICENTE VILLANUEVA, ET ALS., PETITIONERS AND APPELLANTS,
VS. JUANA ALCOBA, ETC., RESPONDENTS AND APPELLEES.***G. R. No. L-9694. April 29, 1957*

Ponente: CONCEPCION, J.

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This is an appeal from a decision of the Court of First Instance of Manila. The records were originally forwarded to the Court of Appeals, which, subsequently, certified the case to this Court for the reason that only questions of law are involved in the appeal.

In an action instituted by Vicente Villanueva, Anacleto Tiamson, Ignacio Moseoso, Arcadio Ilustre, Antonio Moreno, Prudencio Sanchez, Melanio Zapanta, Macario Quintero, Tan Tam and Evarista Placida Tabat, assisted by her husband, against defendants, Juana Alcoba and Teodorico Alcoba, in the Municipal Court of Manila, judgment was rendered absolving the defendants from the complaint and sentencing plaintiff Vicente Villanueva to reimburse the defendants in the sum of P1,011, plus P500, by way of attorney's fees. Notice of said judgment, dated March 17, 1952, was received, on May 7, 1952, by Rofiario de la Cruz, secretary-stenographer of plaintiffs counsel, Alfredo Gomez. No appeal having been taken within the reglementary period, said decision became final on May 22, 1952.

On June 6, 1952, the same plaintiffs commenced the present action in the Court of First Instance of Manila, with a petition for relief from said judgment upon the ground of excusable negligence. It is alleged in said petition that, after receiving the decision of the Municipal Court, on May 7, 1952, Rosario de la Cruz fell ill with influenza and so, after placing said decision in the filing cabinet of Atty. Gomez, she consulted a doctor, who advised her to go home and stay in bed; that, consequently,, she. forgot to advise Atty. Gomez about it; that he knew nothing about said decision until June 2, 1952, when copy of defendants' motion for a writ of execution was served upon him; that, accordingly, he went to the Municipal Court of Manila on June 3, 1952, and, upon examination of the record of the case, was surprised to find that notice of said decision had been served upon his aforementioned, secretary-stenographer, who had been bed-ridden for three (3) weeks, since May 7, 1952; that petitioners have a good and substantial cause of action, defendants having, in February, 1949, entered into a verbal contract with plaintiff Vicente Villanueva, as a licensed building contractor, whereby he undertook to administer and supervise the construction of a house for said defendants, at the corner of G. Tuason and Retiro streets, Quezon City, and, on their behalf, to secure and contract the carpenters and laborers, and to order the materials, necessary therefor, in consideration of a compensation, equivalent to 5 per cent of the total cost of the house when finally completed, to be paid by said defendants; that "there are strong facts to support" this allegations, for said decision of the Municipal Court says that the defendants had delivered, to plaintiff Vicente Villanueva, several amounts aggregating P19,561, thus refuting defendants' pretense to the effect that said plaintiff had agreed to construct the aforementioned house for the total sum of P10,000; that the actual cost of said house was P14,000 and 5 per cent thereof, or P700, is the compensation due therefor from the defendants to plaintiff Villanueva; that the defendants are, also, indebted to the other plaintiffs, in the amounts and for the causes specified after their respective names

viz:nona

Names

Sums

Cause

1. Anadeto Tiamson

P100.00 Painting

2. Ignacio Moscoso 90.00 Construction of fence

3. Arcadio Ilustre 296.00 Electric installations

4. Antonio Moreno

200.00 Services as watchman

5. Prudehcio Sanchez 550.00 Iron grills

6. Melanio Zapanta 465.00 Doors and window-panes

7. Macario Quintero 859.60 Florentine glasses for windows

8. Tan Tam 887.50

Lumber

9. Evarista Tabat 1,000.00 Loan

Annexed to the petition were: (1) an affidavit of Ro-sario de la Cruz, concerning the conditions under which she received copy of said decision of the Municipal Court and forgot to inform Atty. Gomez about it; and (2) an affidavit of Dr. Pedro Arenas, stating that Miss De la Cruz was under his "care" from May 7 to June 1, 1952, for influenza and rheumatic astheitis.

Upon service of an order of said Court of First Instance, dated June 9, 1952, requiring them to answer the petition within fifteen (15) days, respondents filed on July 24, 1952, a motion to dismiss, upon the ground that the petition fails to show either excusable negligence or a good cause of action against said respondents. By an order dated August 2, 1952, the court denied this motion for the reason that, until such time as respondents shall have complied with said order of June 9, 1952, the aforementioned 'motion to dismiss appears to be, for all intents and purposes premature and cannot be considered." Thereupon, or on August 6, 1952, respondents filed an answer, (1) alleging that "they are without knowledge or information sufficient to form a belief as to the truth of the allegations" in the petition relative to the circumstances under which notice of the decision of the municipal court was served upon counsel for the petitioners the alleged illness of Miss De la Cruz, her failure to notify said counsel and how he came to know about said decision; (2) denying the other allegations of the petition; (3) reiterating, by way of special defense, the grounds relied upon in said motion to dismiss; and (4) praying that the petition be dismissed.

When the case was called for hearing on the merits, on August 8, 1953, petitioners—according to respondents

herein and the decision of the Court of First Instance, although petitioners question the accuracy thereof—submitted "the case for judgment on the pleadings, without presenting any evidence." At any rate, the Court then issued an order giving "counsel for respondents * * * five (5) days to file his opposition to the petition for relief from judgment." It would appear that the term "opposition" in this order was used to mean "memorandum," and was so understood by the parties, for, prior thereto, respondents had already opposed the petition by filing, first, their aforementioned motion to dismiss, and, then, their answer contesting said petition, and, on the last day of the period granted in said order, or on August 13, 1953, respondents filed a "memorandum" stating therein the reasons why the petition should be dismissed. Soon thereafter, or on August 20, 1953, the court issued an order holding "that petitioners have not satisfactorily established their right to the relief sought," and, accordingly, dismissing the petition, with costs against them. The case is now before us, upon a record on appeal filed by the petitioners.

In their brief as appellants, petitioners assign ten (10) errors allegedly committed by the Court of First Instance of Manila. The first five (5) assignments of error refer to a question of procedure and the last five (5) to the substance of the issue in the present action.

The procedural question involved in the first five (5) assignments of error is this: Petitioners-appellants maintain that, in issuing the order appealed from, the lower court prevented them from introducing evidence in support of their petition and thus in effect, deprived them of their day in court. This pretense is predicated, mainly, upon the theory "that the lower court erred in holding: 'that when this case was called on August 8, 1953, counsel for the petitioners submitted this case for judgment.'" In this connection, petitioners say in their brief:

"Right from the start, this contention of respondents-appellees is decidedly false—a deliberate falsehood because the Record on Appeal does not show that the hearing on August 1, 1953 much less the hearing on August 8, 1953 are final in character. Indeed no. Certainly, neither does the Order dated August 8, 1953 show that petitioners-appellants expressly waived introduction of their evidence, nor was in this case ever set for reception of evidence as imagined by respondents-appellees. For this reason, we single out the proceedings on August 8, 1953, which took place immediately before the issuance of the Order of Dismissal dated August 20, 1953, appearing as Paragraph 7, Record on Appeal, as a challenge to the contention of respondents-appellees, to wit:

(Title and Heading' Omitted)

'Counsel for respondent (appellees) is hereby given five (5) dt'ys to file his opposition (Memorandum) to the petition or relief from judgment.

SO ORDERED.

Manila, Philippines, August 8, 1953.

(Sgd.) Alejanuko J. Panlilio

Judge

(Petitioners brief, p. 11).

We cannot understand how appellants' counsel could have made the foregoing assertions, which are completely and absolutely refuted by the following facts, namely:

- (a) On page 40 of the record on appeal, petitioners say "on August 20, 1953, after the petition was finally set for hearing on August 8, 1953, the Lower Court issued the following Order, * * *."
- (b) On August 8, 1953, no evidence was introduced. Instead, counsel for respondents was given five (5) days to file his opposition—which, petitioners admit, refers to memorandum—to the petition for relief from judgment.

Generally, memoranda are not filed until after the presentation of evidence, or when the parties have decided not to introduce any.

(c) After the opening paragraph in said memorandum, respondents said:

"When the case was finally set for hearing, first on August 1, 1958, and then on August 8, 1953, plaintiffs merely submitted their petition to the Court for decision, without introducing any evidence whatsoever."¹ (Record on Appeal, p. 31.)

Petitioners did not question, in the lower court, the accuracy of this statement.

(d) The order appealed from states:

"The defendants filed their answer and hearing of the petition was set. When however, the case was called on the date scheduled, counsel for petitioner formally announced to the Court that he was submitting the case for judgment on the pleadings without presenting any evidence. Whereupon, counsel for defendants asked leave of Court to file a memorandum, in support of his already filed motion to dismiss, and his request was granted." (Record on Appeal, p. 42.)

Neither did petitioners challenge, in the lower court, the truth of this paragraph.

(e) When petitioners filed their original record on appeal, respondents objected to its approval, alleging, among other grounds that:

"Petitioners should include in the Record on Appeal a statement that when the Petition was finally set for hearing, petitioners waived the presentation of evidence and merely submitted their petition." (Id., p. 47.)

Instead of denying the correctness of this averment, petitioners confirmed the same by stating, in their reply to respondents opposition to the approval of said record on appeal:

"As to Objection No. 5:

5. That the 'statement that when the petition was finally set for hearing the petitioners waived their evidence and submitted

their petition', sought to be included by the respondents is not in order. This being a matter of form, and not of substance, the same, should be disregarded.

Fundamentally, the fact remains, that the petitioners waived the presentation of evidence and merely submitted their petition under the following doctrines:" (Id., p. 50; underscoring supplied.)

(f) Said opposition of the respondents having been sustained, petitioners sought a reconsideration of the order to this effect, insofar as it requires them to state in the record on appeal that "petitioners waived the presentation of evidence and merely submitted their petition" (Record on Appeal, p. 57). The only reason given by petitioners for their objection to this clause was that the same "is argumentative and has no place in a Record on Appeal." Thus, they implicitly conceded the accuracy of said clause.

(g) When said reconsideration was denied, petitioners filed a second petition for reconsideration alleging that "what actually took place on August 8, 1953 was this:" "While Atty. Garcia, the respondent's counsel who personally appeared for the petitioners were waiting for the case to be called, the Deputy Clerk, Miss Lily Barican, suggested that the parties simply submit the case. Taking a hint from this suggestion, as the presiding judge might not then be physically in a position to hear the case, the undersigned counsel readily agreed, having in mind that the health of the judge might be impaired should we insist that a hearing on the motion be held then and there. Atty. Garcia, unsatisfied with the procedure of merely asking the parties to submit the case without hearing, insisted that we see the judge in his chamber. Both attorneys were led to the chamber by Miss Barican.

In the chamber, Atty. Gareia asked the undersigned counsel if he were waiving the presentation of evidence. Undersigned counsel replied in the negative, stating that they would present evidence if the Court still so required or deemed it necessary tlmt, they did so if it could not determine tile truth of the allegations in their verified petition as purported by the accompanying papers. There after, Ally. Garcia merely sought permission to submit a memorandum to which the undersigned counsel readily agreed. Accordingly, Atty. Garcia submitted a memorandum dated August 13, 1953." (Record on Appeal, pp. 60-61; italics supplied.)

Even if this version of petitioners were literally correct, it results that they agreed to "simply submit the case," unless the court "required or deemed it necessary" that they present evidence. Since, the Court did not require, or deem it necessary, that evidence be presented, it, accordingly, follows that petitioners had agreed to "simply submit the case" for decision on the pleadings.

Again, the petition, in the case at bar, was filed under Rule 38 of the Rules of Court. Section 1 thereof provides that "when a judgment is rendered by an inferior court, and a party to the case, by * * * excusable negligence * * * has been prevented from taking an appeal, he may file a petition in the Court of First Instance * * * praying that such judgment be set aside and the case tried upon the merits." Pursuant to section 6 of said Rule, "once the answer is filed * * * the court shall hear the case, and is after such hearing, the court finds that allegations of the petition are not true, the petition shall be dismissed; but if it finds said allegations to be true, it shall order the judgment, order or proceeding complained of to be set aside : * * * and shall try the principal case upon its merits."

It is clear from these provisions that in proceedings for relief from judgment under said Rule 38, there may be two (2) hearings, namely: (1) a hearing to determine whether the judgment or order complained of should be set aside, and (2) if the decision thereon is in the affirmative, a hearing on the merits of the principal case.

Referring to the present case, it is obvious that, at the hearing held on August 8, 1953, the court was not supposed to receive evidence on the truth of petitioners' allegations relative to the alleged debts of respondents herein. This matter affects already the merits of the principal case, which is not to be inquired into until the Court has decided, after the first hearing, to set aside the judgment or order complained of. Otherwise, the second hearing above referred to would be useless.

At any rate, the truth of petitioner's allegations concerning the service of notice to Miss De la Cruz, her illness, and their counsel's lack of knowledge of the judgment of the municipal court, were assumed in the order appealed from. The latter merely rejects the conclusions drawn therefrom by the petitioners. Hence, the first five (5) assignments of error are clearly devoid of merit.

As above stated, the other assignments of error refer to the merits of the petition, as regards which the order appealed from has the following to say:

"From the facts stated, the only question left for the Court to decide, for the proper determination of the case, is whether the failure of the secretary-stenographer to notify in time her lawyer-principal of the receipt of the decision, constitutes, excusable neglect, so as to secure as sufficient ground for the instant petition of relief, from judgment Granting her claim to be true, that immediately after receiving¹ the decision, she fell ill of influenza and had to leave the office without waiting¹ for her employer, why did she not take the precaution of leaving" a note to her employer informing him of what had taken place at the office during his absence? A responsible, careful employee, in her place, would have done so. Infuenza, is hot a serious ailment. It does not deprive one of his or her mental faculties. Her lack of diligence nnder the circumstances does not constitute excusable neglect. But, under the facts stated, not the secretary-stenographer alone appear to have been careless, but petitioners' counsel himself is shown to have failed to execute the necessary expected diligence required of him under the circumstances. Knowing-, as he was expected to know, that his secretary was not

coming to the office, why did he not take the trouble to go over the folders of Ms cabinet to find out what had been done to the cases? Why did he not make it a point to visit the secretary and inquire from her what had taken place during' his absence?" (Record on Appeal, pp. 43-44.)

Petitioners maintain that, contrary to these findings of the trial court, there was, under the allegations of the pleadings, excusable negligence on their part; but, even if such pretense were well-taken—on which we need not, and do not, express any opinion—the order appealed from should not be disturbed.

In order that a judgment may be set aside upon the ground of "excusable negligence," the petition, pursuant to Rule 38, section 3, of the Rules of Court—which is based merely upon established jurisprudence in this jurisdiction¹ must be accompanied by, at least, an affidavit of merits, stating what evidence is available to the petitioner to establish its alleged cause of action, or defense, against the respondents, which evidence must be such as to warrant the reasonable belief that the result of the case would probably be otherwise, if a new trial were granted. No such affidavit of merits has been submitted by petitioners herein. The sworn statements of Miss De la Cruz and Dr. Arenas, annexed to the petition, do not partake of the nature of affidavits of merits, for said annexes refer, not to the merits of petitioners' ordinary civil action against respondents herein, but to the alleged "excusable negligence" of the former in failing to appeal from the decision of the municipal court within the reglementary period. Worst still, the record indicates prima facie the weakness of petitioners' evidence on the merits of their aforementioned action against respondents. Indeed, the former had ample opportunity to present, and did present, said evidence—which, judging by the nature of the allegations of the petition, specially paragraph (10) thereof, must have been purely testimonial before the municipal court, and the same not only found said evidence, either insufficient or unworthy of credence, and, accordingly, absolved the respondents from the complaint, but, also, sentenced petitioner Vicente Villanueva to pay to respondents herein the sums stored at the beginning of this decision.

Wherefore, the order 'appealed from is hereby affirmed, with costs against the petitioners.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

[1]Coombs vs. Santos, 24 Phil., 446; Daipan vs. Sigabu, 25 Phil., 184; Mapua vs. Mendoza, 45 Phil., 24; McGrath vs. Del Kosario, 49 Phil., 359; Bank of the P.I. vs. Koster, 47 Phil., 594; Bacon vs. Sampang, 50 Phil., 756; Phil. Guaranty Co. vs. Belando, 58 Phil., 410; Paz vs. Inandan, 75 Phil., 608.

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