

**MIGUEL CAMPO, PETITIONER, VS. HON. HERMOGENES CALUAG,
JUDGE OF THE COURT OF FIRST INSTANCE OF QUEZON CITY, AND
DR. GREGORIO VENTURANZA, RESPONDENTS.**

G.R. No. L-21113. April 27, 1967

Ponente: REGALA, J.

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REGALA, J.:

Petition for certiorari, prohibition, and mandamus, with a prayer for the issuance of a writ of preliminary injunction, for the review and nullification of the Order of the Court of First Instance of Quezon City in Civil Case No. Q-6042 dated November 12, 1962; for the per-manent non-enforcement of the said order; and, for the issuance of an order directing the herein respondent judge to issue a writ of execution in the above-numbered civil case.

On October 4, 1961, Miguel Ocampo, the herein petitioner, filed with the Court of First Instance of Quezon City a complaint for damages against the herein respondent, Dr. Gregorio Venturanza. The case was docketed as Civil Case No. Q-6042 of the said court. To this complaint, respondent Venturanza, as defendant, filed a seasonable answer with counterclaim. A timely answer to this counterclaim was likewise filed by petitioner Ocampo.

In due time, the trial court scheduled Civil Case No. Q-6042 for hearing on the merits on February 19, 1962 and furnished the parties thereto with the corresponding notices of the same. The counsel for respondent Venturanza, Atty. Cornelio S. Ruperto, received a copy of the said notice on December 9, 1961.

When the case was called for trial on February 19, 1962, however, neither respondent Venturanza nor his counsel, Atty. Cornelio S. Ruperto, appeared. Consequently, the trial court, on motion of the herein petitioner, allowed the latter, as the party plaintiff, to present his evidence ex parte before the Clerk of Court who was then designated as commissioner.

On March 19, 1962, the trial court, herein respondent judge presiding, rendered judgment in favor of the petitioner and against respondent Venturanza, ordering the latter to pay the former the sum of P9,200.00 as "re-imbusement and damages," P1,000.00 for attorney's fees, plus costs. A copy of this decision was received by respondent Venturanza's counsel on March 27, 1962.

On April 30, 1962, or four days after the period for filing a motion for reconsideration against the above decision of March 19, 1962 had expired, the counsel for respondent Venturanza filed a motion for reconsideration of the same and for relief from the said judgment on the ground of excusable negligence. As the ground invoked was specified by the said counsel, the notice of hearing was received by his filing clerk who, however, was taken ill unexpectedly and, consequently, forgot all about the said notice. Herein petitioner opposed the said motion.

On June 5, 1962, the petitioner filed with the trial court a motion for the execution of its decision of March 19, 1962 on the ground that the same had since become final and executory. On July 10, 1962, the said court issued

an order (1) denying for lack of merit respondent Venturanza's motion for reconsideration and relief from judgment, and (2) granting the petitioner's motion for execution.

On July 30, 1962, respondent Venturanza filed with the lower court the following pleadings: (a) notice of withdrawal of Atty. Cornelio S. Ruperto as counsel for respondent; (b) an urgent motion to dissolve and set aside the order of July 10, 1962 insofar as it granted the petitioner's motion for execution; and (c) a notice of appeal.

On August 1, 1962, the date set for the hearing of respondent Venturanza's motion to dissolve and set aside the order of July 10, 1962, and of the opposition thereto interposed by the herein petitioner, the respondent judge, *motu proprio*, ordered orally in open session the setting aside of, not his order of execution of July 10, 1962, but of the decision of March 19, 1962 and, in the premises, reset the hearing on the merits of Civil Case No. Q-6042 for September 25, 1962. This order was subsequently handed down in writing under the order of November 12, 1962 subject of the present petition.

On April 22, 1963, this Court issued a writ of pre-liminary injunction enjoining the respondent judge herein from further proceeding with Civil Case No. Q-6042 until further orders.

The sole issue appreciable from the petition on hand relates to the power or jurisdiction of the herein respondent judge to set aside his decision of March 19, 1962 in Civil Case No. Q-6042 and having the said case reopened for another trial on the merits. More specifically, is his order of November 12, 1962 to the above effect sustainable in law and jurisprudence?

The issue should be resolved in the negative. We find for the petitioner.

It should be recalled that a copy of the decision of March 19, 1962 was received by Atty. Cornelio S. Ruperto, respondent Venturanza's counsel of record, on March 27, 1962. The latter, therefore, had only up to April 26, 1962 to move for its reconsideration or to perfect an appeal from the said decision (Section 3, Rule 41, Rules of Court). When, beyond this date, no motion for reconsideration was filed nor any appeal therefrom perfected, the finality of the said decision set in as a matter of course. Having thus become final, it was removed from the power or jurisdiction of the said court to further alter or amend, much less revoke. (*Arnedo v. Llorente and Liongson*, 18 Phil. 257; *Viquiera v. Baraña*, 78 Phil. 486) The only power retained by the trial court, after a judgment has become final and executory, is to order its execution. (*Bili v. Chunaco*, G. R. No. L-6630, February 29, 1956)

It is true, of course, that the lower court is conferred the power to extend reliefs from judgment under Section 2 of Rule 38 of the Rules of Court. But as the said rule itself recites, and as this Court has repeatedly held, such reliefs should be awarded only "when a judgment or order is entered, or any other proceeding is taken, through fraud, accident, mistake or excusable negligence." Neither the records of this case nor the respondents' arguments, however, establish the incident under consideration to be within the rule. On the contrary, no evidence of inexcusable negligence on the part of respondent Venturanza's counsel is more forceful and convincing than the ground invoked by the latter for setting aside the decision of March 19, 1962. The explanation that the said counsel failed to appear at the scheduled trial because the receiving clerk who received the notice for the same was taken ill unexpectedly and thus forgot all about it has already been assessed by this Court in the case of *Philippine Air Lines v. Hon. Francisco Arca, et al.*, G. R. No. L-22729, February 9, 1967 ?

"x x x the most hackneyed and habitual subterfuge employed by litigants who fail to observe the procedural requirements prescribed by the Rules of Court. The uncritical acceptance of this kind of common place excuses, in the face of the Supreme Court's repeated rulings that they are neither credible nor constitutive of excusable negligence (*Gaerlan v. Bernal*, L-4039, January 29, 1952; *Mercado v. Judge Domingo*, L-19457, December 17, 1966) is certainly whimsical exercise of judgment as to be a grave abuse of discretion."

To the respondent Judge's view that an innocent party ought not be made to suffer from the mistake of his attorney, suffice it to say that the rule is settled that clients are bound to and by such errors and negligence. (Montes v. Court of First Instance of Tayabas, 48 Phil. 640; Isaac v. Mendoza, G. R. No. L-2820, June 21, 1951; Vivero v. Santos, G. R. No. L-8105, February 28, 1956; 52 O. G. p. 1424; Flores v. The Philippine Alien Property Administrator, G. R. No. L-21741, April 28, 1960).

WHEREFORE, the petition at bar is granted. The order of the respondent Judge dated November 12, 1962, in Civil Case No. Q-6042, is hereby revoked and set aside and the said respondent Judge is hereby ordered to desist and refrain permanently from reopening or otherwise proceeding with the said civil case other than to issue the writ of execution accordingly with the decision in the said case dated March 19, 1962. Costs against respondent Venturanza.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Castro, JJ., concur.

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