

JOSE B. GAMBOA, PETITIONER, VS. HON. JOSE TEODORO, SR., JUDGE OF THE COURT OF FIRST INSTANCE OF OCCIDENTAL NEGROS, THE PHILIPPINE NATIONAL BANK, JOSE V. BUENAVENTURA, PEDRO H. P...

G.R. No. L-8276. May 17, 1955

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for a writ to compel the respondent court to allow a record on appeal tendered by the plaintiff in civil case No. 2865 entitled "Jose B. Gamboa, plaintiff, vs. Philippine National Bank, Jose V. Buenaventura, Pedro H. Pilar and Felix Peronilla, defendants," the allowance of which was denied by the respondent court in its order of 18 September 1954, and for a writ to enjoin the respondent court from hearing or proceeding with the trial of the case between the plaintiff and the defendant, Philippine National Bank until further order from this Court. The last writ prayed for" was issued after the filing and approval of a bond for P1,000. By the allowance of the record on appeal the plaintiff seeks to secure a reversal of the order of the respondent court entered on 16 August 1954 which denied the admission of an amended complaint after the original complaint had been dismissed on 25 March 1954 as to the three individual defendants for lack of cause of action as to or against them.

The fact that the notice of appeal, the appeal bond and the record on appeal were filed within the reglementary period is not disputed.

The order of the respondent court dismissing the complaint against the three individual defendants on the ground that it states no cause of action against them is appealable, because it is not interlocutory but final. The fact that the case between the plaintiff and the defendant Philippine National Bank is to be tried does not mean that, in so far as the three individual defendants are concerned, there is something left to be done, because as to them the order dismissing the complaint is not interlocutory but final and appealable. The rule that "No interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other,"[1] does not apply to the order of dismissal of the complaint against the three individual defendants for lack of cause of action, because such order is not interlocutory but final and appealable. The plaintiff could have amended his complaint once as a matter of course at any time before a responsive pleading was served.[2] However, the Philippine National Bank having filed its answer in which a counterclaim is set up against the plaintiff, the latter could not have amended it without leave of court because a responsive pleading had already been filed.[3] If the plaintiff was of the belief and opinion that in the original complaint he had pleaded facts sufficient to constitute a cause of action against the three individual defendants, he could have appealed from the order of dismissal because the same was not interlocutory but final. And the fact that the case was to be tried between the plaintiff and the defendant Philippine National Bank because there was a cause of action against the latter and because of the counterclaim filed by it against the former, did not make interlocutory the order of dismissal of the complaint as to or against the three individual

defendants.[4] If, on the other hand, the plaintiff was convinced that the order of dismissal of the complaint against the three individual defendants was correct, he could amend the complaint by pleading facts sufficient to constitute a cause of action against them without altering the original complaint against the defendant Philippine National Bank. There is nothing in the Rules of Court which prevents the plaintiff from making such amendment as against the three individual defendants. True, the amendment must be with leave of court and upon motion of the plaintiff. Leave of court implies discretion. As a rule a discretionary power cannot be controlled by mandamus. But that is not the point at issue here. The respondent court in the exercise of its discretion denied the admission of the amended complaint. The order denying admission of the amended complaint is final. From this order the plaintiff wants to appeal. And to that effect he filed a notice of appeal, an appeal bond and the record on appeal which the court below refused to allow. Hence this petition that seeks to compel the respondent court to allow the record on appeal. Whether the respondent court gravely abused its discretion in refusing to admit the amended complaint; whether the amended complaint states facts sufficient to constitute a cause of action against the three individual defendants, are not passed upon in this opinion. The only point decided is that the order denying the admission of the amended complaint being final and appealable, the respondent court cannot disallow, or refuse approval of, the record on appeal filed by the plaintiff within the period as provided for in the Rules of Court.

The writ prayed for is granted. The respondent court is directed to approve or allow the record on appeal filed by the plaintiff. The writ of preliminary injunction heretofore issued is dissolved and the trial of the case between the plaintiff and the defendant Philippine National Bank upon the original complaint, answer and counterclaim set up by the bank may proceed to its final stage or conclusion. No costs shall be taxed.

Pablo, Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion, and Reyes, J. B. L., JJ., concur.

[1] Section 2, Rule 41.

[2] Section 1, Rule 17.

[3] Section 2, Rule 17.

[4] Section 2, Rule 41.

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