

SEGUNDO AMANTE, PETITIONER, VS. HON. DELFIN VIR. SUNGA, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF CAMARINES SUR, BRANCH NO. I, AND VIGAAN AGRICULTURAL...

G.R. No. L-40491. May 28, 1975

Ponente: ANTONIO, J.

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ANTONIO, J.:

This case raises in issue the validity of the Order dated February 14, 1975 of respondent Judge of the Court of First Instance of Camarines Sur, Branch I, setting aside its Order of December 6, 1974, granting petitioner an extension of fifteen (15) days from December 9, 1974 within which to file his answer to the complaint in Civil Case No. 7799 (Vigaan Agricultural Development Corporation vs. Segundo Amante) and declaring the petitioner in default, notwithstanding the fact that said party had already filed his answer.

It appears that the petitioner, on December 2, 1974, filed a written motion with the trial court requesting for an extension of fifteen (15) days from December 9, 1974, within which to file his answer. Although it is not disputed that a copy of said motion was furnished the counsel for the plaintiff, the said pleading appears to have been addressed only to the Clerk of Court, with the request that said official submit the motion to the Court for its consideration and resolution immediately upon receipt thereof.

On December 6, 1974, the trial court granted the motion. Petitioner, however, on December 10, 1974, filed a "Motion for Bill of Particulars". Copy of this motion was appropriately addressed to the counsel of plaintiff, informing him that petitioner will submit the said motion to the Court for its consideration and resolution at 8:30 a.m. on December 23, 1974.

In the meantime, on December 11, 1974, private respondent corporation, as plaintiff in said case, filed a motion to set aside the trial court's Order of December 6, 1974, alleging that the notice in petitioner's motion of December 2, 1974 was defective for non-compliance with Section 5 of Rule 15 of the Revised Rules of Court, and praying that the defendant be declared in default.

The aforecited motions of the petitioner and of the corporation were set for hearing on February 7, 1975. On said date, after the respondent corporation showed to the petitioner its Articles of Incorporation, the latter agreed to withdraw his Motion for Bill of Particulars, leaving the private respondent's motion for resolution by the Court.

On the same date (February 7, 1975), petitioner filed his answer with counterclaim to the complaint. The court a quo however, on February 14, 1975, on the basis of its opinion that the notice in the motion of petitioner for the extension of the period within which to file an answer was defective because of its alleged failure to comply with the requirements of Section 5 of Rule 15 of the Revised Rules of Court, set aside its Order of December 6, 1974, declared petitioner in default and authorized the Clerk of Court to receive the evidence of the plaintiff.

In view of the legal issue involved, this Court considered the Comment of respondent corporation as its Answer.

As the matter was already amply discussed in the pleadings, this case was deemed submitted for decision.

We grant certiorari and set aside the trial court's Order of February 14, 1975.

1. The motion for extension of time within which a party may plead is not a litigated motion where notice to the adverse party is necessary to afford the latter an opportunity to resist the application,[1] but an ex parte motion "made to the court in behalf of one or the other of the parties to the action, in the absence and usually without the knowledge of the other party or parties." [2] As "a general rule, notice of motion is required where a party has a right to resist the relief sought by the motion and principles of natural justice demand that his rights be not affected without an opportunity to be heard . . ." [3]

It has been said that "ex parte motions are frequently permissible in procedural matters, and also in situations and under circumstances of emergency; and an exception to a rule requiring notice is sometimes made where notice or the resulting delay might tend to defeat the objection of the motion." [4]

Section 1 of Rule II of the Revised Rules of Court authorizes the trial court to permit the submission of an answer even after the time fixed in the rules for its presentation. The granting of extension to plead is a matter addressed to the sound discretion of the court. [5] In some cases the court allowed the defendant to file his answer "even after the time fixed for their presentation." [6] Thus We have set aside orders of default where defendant's failure to answer on time was excusable. [7]

In the case at bar, respondent private corporation was not deprived of any substantial right by reason of the alleged defect of notice in petitioner's motion praying for an extension of the time to plead. There are motions that may be heard and granted ex parte, and a motion for extension of time to file an answer belongs to such class. [8] It was, therefore, error for the court a quo to set aside its Order granting extension to petitioner within which to file his pleading.

2. Moreover, petitioner had filed a Motion for Bill of Particulars on December 10, 1974, and under the Rules "after service of the bill of particulars ... or after denial of his motion, the moving party shall have the same time to serve his responsive pleading, if any is permitted by these rules, as that to which he was entitled at the time of serving his motion, but not less than five (5) days in any event." (Section 1[b], Rule 12, Revised Rules of Court.) The pendency of the motion for a bill of particulars, therefore, interrupts the period within which to file a responsive pleading, and movant should have, after notice of the denial of his motion, the same time to serve his answer "as that to which he was entitled at the time of serving his motion." [9]

It is true that petitioner, on February 7, 1975, withdrew his Motion for a Bill of Particulars, but on the same date he also filed his answer.

In the attendant circumstances, We cannot perceive how the interests of justice was served and promoted by the precipitate action of the trial court. A default judgment does not pretend to be based on the merits of the controversy. Its existence is justified by expediency. It may, however, amount to a positive and considerable injustice to the defendant. The possibility of such serious consequences necessarily requires a careful examination of the circumstances under which a default order was issued. And when no real injury would result to the interests of the plaintiff by the reopening of the case, the only objection to such action would, therefore, be solely on a technicality. On such an infirm foundation, it would be a grievous error to sacrifice the substantial rights of a litigant. For the rules should be liberally construed in order to promote their objective in assisting the parties in obtaining just, speedy and inexpensive determination of their cases.

WHEREFORE, the default order of February 14, 1975, as well as the Order of March 14, 1975, denying petitioner's motion for reconsideration, is hereby set aside, and this case is ordered remanded to the court of origin

for further proceedings. Costs against private respondent.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., JJ., concur.

[1] Sturz vs. Fisher, 36 N.Y.S. 893 15 Mis. 410, 25 N.Y. Civ. Proc. 202, 2 N.Y. Ann. Code, 365 60 C.J.S. 5.

[2] Hunderford vs. Cushing, 2 Wis. 411, 60 C.J.S. 5.

[3] McDonald vs. Severy, 59 P. 2d 98, 6 Cal. 2d 629; Petition of Volpe, 66 N.E. 2d 146; Dougherty vs. Manhattan Rubber Mfg. Co., 29 S.W. 2d 126, cited in 60 C.J.S. 15.

[4] 60 C.J.S. 16.

[5] Maralit and Lota vs. Lardizabal, 54 Phil. 252.

[6] Ibid.

[7] Bustamante vs. Alfonso, 98 Phil. 158; Herrera vs. Far Eastern Transport, Inc., L-2587, Sept. 19, 1950; Castaneda vs. Pestano, 96 Phil. 890.

[8] Moya vs. Barton, 76 Phil. 831; Ballecer vs. Bernardo, 18 SCRA 291; Sec. 2, Rule 13, Revised Rules of Court.

[9] Woodcraft Work Ltd. vs. Mascoso, et al., 92 Phil. 1021; Agcanas, et al. vs. Mercado, 7 SCRA 688.

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