

VICENTE UY CHAO, PLAINTIFF AND APPELLANT, VS. DE LA RAMA STEAMSHIP CO., INC., DEFENDANT AND APPELLEE.

G.R. No. L-14495. September 29, 1962

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Plaintiff-appellant seeks in this appeal to set aside the order of the Court of First Instance of Manila of July 22, 1958, dismissing the complaint in Civil Case No. 35269, and the order of August 4, 1958, denying his motion for reconsideration of the dismissal.

The action, commenced on February 11, 1958, is for collection of a sum of money for certain purchases made by appellee from appellant during the period between October 1 and December 1, 1941, plus interest at the rate of 12% per annum, attorney's fees and costs. Appellee moved to dismiss on the ground that the cause of action had prescribed. Appellant opposed the motion, pleading that the running of the ten-year prescriptive period had been interrupted by the debt moratorium statutes (Executive Orders No. 25 and 32 and Republic Act No. 342). In the written arguments submitted by the parties in connection with the motion the issue was raised as to whether the interruption was only up to July 26, 1948, the date of enactment of Republic Act No. 342, which lifted the moratorium granted by the previous statutes except with respect to pre-war debtors who had filed war damage claims, as to whom the moratorium was extended for eight years after such claims were settled, or the interruption was up to May 18, 1953, when this Court, in the case of *Rutter vs. Esteban*, 93 Phil., 68; 49 Off. Gaz. 1807, declared the further operation of the said act unreasonable and oppressive and hence unconstitutional and void. The issue is one of law, but carried with it the factual question of whether or not appellee was a war sufferer and had filed a war damage claim with the United States-Philippine War Damage Commission.

On March 25, 1958 the court a quo denied the motion to dismiss on the ground, among others, that the issue was evidentiary in nature and that "it cannot be determined with certainty from the allegations of the complaint whether or not the action has already prescribed." On April 7, 1958 appellee filed a motion to reconsider the order of denial, to which motion a written opposition was presented by appellant. On June 13, 1958, ruling that it was incumbent upon appellant, as plaintiff, to prove that his debtor was a war sufferer who had filed a war damage claim, the court set the motion for reconsideration for hearing on July 19.

On July 10, 1958 appellant served upon appellee a written request for admission, under Rule 23, that it was a war sufferer and had filed such war damage claim. On July 14 appellee moved to strike the request for admission on the ground that it was improper at that stage of the case, as no answer to the complaint had yet been submitted. The motion to strike was accompanied by a request that it be heard on July 19, 1958, the same date set for the hearing of appellee's motion for reconsideration.

On July 22, 1958 the court issued the following order, which is now the subject of review:

"When this case was called for hearing for the reception of evidence of plaintiff that defendant is a war sufferer and had presented a claim with the United States-Philippine War Damage Commission, plaintiff presented as

his only evidence a request for admission dated July 10, 1958 and confessed that it has no other evidence to support the fact in issue. It is even contended that the burden of proving such fact lies on the defendant's prescription according to plaintiff being a matter of defense. Plaintiff, however, loses sight of the fact that it is he who claims that, and would benefit if, the period of prescription does not run between 1948 when Republic Act 342 became effective and the promulgation of the Rutter case in 1953. Having claimed the exemption, and being to his advantage, the burden of proof lies on plaintiff to establish the fact in issue (*David vs. Barreto*, G. R. No. L-10882, prom. May 21, 1957). However, it cannot be proven by the failure of defendant to answer the request for admission under Rule 23, which is applicable only after the pleadings are closed; and in the present case, defendant has not presented any pleading, but merely a second motion to dismiss.

"Wherefore, in accordance with the *David* case and plaintiff not having shown that defendant falls within the purview of Republic Act 342, the complaint is dismissed without pronouncement as to costs. So ordered.

The issue now before us concerns the correctness of the dismissal of the complaint, considering, on one hand, its failure to allege that defendant-appellee was a war sufferer and, on the other hand, the pendency, at the time motion to dismiss was heard and resolved, of a request for admission by appellee precisely of that fact not alleged in the complaint.

Rule 23, Section 1, provides:

"SECTION 1. Request for admission.—At any time after the pleadings are closed, a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth therein. Copies of the documents shall be delivered with the request unless copies have already been furnished."

Appellee's position, sustained by the court below, is that the complaint must be tested on the strength of its allegations alone when the motion to dismiss was presented; that since it appears therein that the cause of action arose in 1941 it had already prescribed when the complaint was filed in 1958; that the debt moratorium which interrupted the period of prescription was that provided for in Executive Order No. 32, which was lifted by Republic Act No. 342 on July 26, 1948; and that the exception in said act with respect to pre-war debtors who were war sufferers and had filed war damage claims, as to whom the moratorium remained in force, cannot be availed of by appellant against the plea of prescription because it was neither alleged nor proved that appellee was a war sufferer.

As a rule the sufficiency of the complaint, when challenged in a motion to dismiss, must be determined exclusively on the basis of facts alleged herein. The allegations, however, although showing that the cause of action accrued in 1941, seventeen years before the complaint was filed, do not indubitably establish the validity of the plea of prescription, for they do not necessarily rule out the possibility that appellee was a war sufferer and had filed a war damage claim. This possibility was recognized by the trial court when it declared that the issue required presentation of evidence and consequently set the same for hearing on July 19, 1958. If appellee had complied with appellant's request for admission the issue of fact would have been resolved, one way or the other; but appellee ignored it and filed a motion to strike instead, and the court ruled in effect that appellee's stand was correct on the ground that the request for admission was premature, the pleadings not having yet been closed as provided in section 1 of Rule 23.

The purpose of the rule governing requests for admission of facts and genuineness of documents is to expedite trial and to relieve parties of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry. Federal Rules of Civil Procedure, U.S.C.A. Title 28, Section 723c, p. 624. The reason for the requirement that such request must be made after the pleading are closed is that the questions of fact involved in a case are required into only when it reaches the stage of proof. But where this stage,

as to any particular relevant fact, is accelerated by a motion to dismiss which cannot be fairly resolved without evidence thereon being received, the purpose of the rule comes into play. In so far as that fact is concerned the issue is already joined and the pleadings may be deemed to be closed within the meaning of Rule 23. To hold otherwise would be to substitute technicality for substance and hamper an expeditious inquiry into the facts, contrary to the principle of liberal construction of the rules "in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding" (Section 2, Rule 1).

Furthermore, the fact that in dismissing the complaint the court below did not make a definite finding as to whether or not appellee was a war sufferer and had filed a war damage claim, leaving the question still dangling and unresolved, shows that the ground of the motion to dismiss does not appear to be indubitable, for which reason the court would have been justified in allowing an amendment of the complaint so as to include therein the necessary allegation on that question of fact, or deferring the determination of the motion until the trial, as prescribed in Section 3 of Rule 8.

The orders appealed from are set aside and the court a quo is directed to give due course to appellant's request for admission by requiring appellee to comply, within a period to be fixed by said court but not less than 10 days from notice, with the procedure laid down in Section 2 of Rule 23. Costs against appellee.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and Regala, JJ., concur.

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