

**SAMUEL S. SHARRUF, PETITIONER, VS. FRANK BUBLA, ARSENIO SOLIDUM, PRESIDING JUDGE, COURT OF FIRST INSTANCE OF MANILA, BRANCH XVII, RESPONDENTS.***G.R. No. L-17029. September 30, 1964*

Ponente: DIZON, J.

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This is a verified petition for certiorari, with a prayer for a preliminary injunction filed by Samuel S. Sharruff against Frank Bubla and the Hon. Arsenio Solidum, Judge of the Court of First Instance of Manila, Branch XVII, to set aside the latter's orders of March 14 and April 11, 1960 in Civil Case No. 33461 denying petitioner's motion for new trial, for lack of merit, and his motion for reconsideration thereof, respectively, and his order of June 3, 1960 disallowing petitioner's appeal from the order of denial of March 14, 1960 on the ground that the order aforesaid was already final and executory, and ordering its execution.

On August 15, 1957 respondent Bubla, a non-resident alien, through his counsel and legal representative, William Quasha & Associates, filed a complaint with the respondent court to compel petitioner to render an accounting in connection with a written contract entered into between them (Civil Case No. 33461). Petitioner filed an answer denying the material allegations of the complaint and setting forth therein a counterclaim for damages, but on September 17, 1958 his counsel filed a motion to withdraw his appearance for the reason that he had been unable to get in touch with him. The court granted the motion.

When the case was called for pre-trial on September 27, 1958, petitioner failed to appear, and the court set the case for trial on the merits on December 1, 1958. Notice thereof was sent to petitioner at his address of record. After several postponements, the hearing of the case was reset for March 6, 1959, but petitioner again failed to appear either personally or thru counsel, despite notice sent to him at his address of record. Instead of proceeding with the trial of the case—as His Honor could have done—he directed respondent Bubla's counsel to exert efforts to notify petitioner of the trial of the case on April 23, 1959. Upon petitioner's failure to appear when the case was finally called for trial on that date, the court received Bubla's evidence which consisted of Bubla's deposition taken before the Philippine Consul, Philippine Embassy at Sydney, Australia, and documentary evidence relative to their contract, management and operation of the theatrical venture and stipulation as to accounting. On the basis thereof, the respondent court found that the following facts had been established:

"From the evidence in the record, it appears that the plaintiff, Frank Bubla, is a resident of 11 Shipley Street, South Yarra, Melbourne, State of Victoria, Commonwealth of Australia, and was an entrepreneur managing a theatrical troupe under the name of 'Bubla Continental Revue' in 1954, while the defendant, Samuel S. Sharruff, was then the operator and manager of the 'Riviera Night Club' at Dewey Boulevard, Manila. Exhibits 'A' to 'K' of plaintiff's deposition show that plaintiff and defendant entered into a series of agreement by correspondence whereby the former undertook to provide the latter with the so-called 'Bubla Continental Revue' for the purpose of presenting two nightly floor shows in said night club for a consideration of P2,500.00 monthly, 'net and free of income tax,' as well as three daily stage shows at the Manila Grand Opera House (Exhibits 'E', 'A-3'

and 'A-46'), for another P2,500.00 a month. Subsequently, plaintiff and defendant reduced the terms of their agreement to a formal contract (Exhibit 'P').

"The 'Bubla Continental Revue', comprising of six members excluding the plaintiff, who was unable to enter this country because his visa was not approved, arrived in Manila sometime in September, 1954, and from September 29, 1954 to January 15, 1955, it performed floor shows at the 'Riviera Night Club' twice nightly, and three or four stage shows daily at the Manila Grand Opera House, under the management and sponsorship of herein defendant (Exhibits 'A-28', 'A-36', 'A-42', 'A-43' and 'A-46'). In the meantime, plaintiff authorized defendant to pay the salaries of the members of said theatrical troupe and requested an accounting of the expenditures incurred as well as payment of whatever amount was due plaintiff by virtue of their contract (Exhibit 'P'). However, despite such demands (Annex 'A', Exhibits 'II', 'III', 'IV' and 'V'), defendant failed to render any accounting, and to pay to plaintiff such amount as was due him, thereby compelling the latter to engage the services of his lawyers for P5,000.00 for the purpose of instituting this action." And on June 9, 1959, it rendered judgment as follows:

"WHEREFORE, judgment is hereby rendered ordering the defendant Samuel S. Sharruf, as follows:

'a) To render to the plaintiff, Frank Bubla, an accounting of the gross receipts from the theatrical performances of the 'Bubla Continental Revue' at the 'Riviera Night Club', Manila Grand Opera House and in other places in the Philippines, covering the period of four (4) months under defendant's management, less authorized expenditures and advances;

'b) To pay such sum as may be due the plaintiff as a result of such accounting, with interest thereon at the legal rate from January 31, 1955, until fully paid;

'c) To pay to plaintiff the amount of P2,000.00 by way of attorney's fees; and

'd) The costs of suit."

On February 5, 1960 copy of the above-quoted decision was served upon petitioner. On March 7, 1960, he filed a motion for new trial on the ground of mistake and/or excusable negligence, which motion was denied by the court in its order of March 14, 1960, as follows:

"Inasmuch as the Motion for New Trial and to set aside the decision in this case is not supported by affidavits of merit, as required by the Rules, the same is hereby denied. Moreover, it appears from the record that the decision was rendered on June 9, 1959, whereas the Motion for New Trial was filed only on March 7, 1960, more than six months after the rendition of such judgment, as provided in Section 3, Rule 38 of the Rules of Court . . ."

On March 18, 1960, petitioner filed an urgent motion for reconsideration which was denied by the court on March 19, 1960. Four days later, petitioner filed another motion for reconsideration raising as additional grounds therefor that the decision rendered in said case was null and void for want of notice to him of the hearing thereof and that respondent Bubla had no legal capacity to sue before our courts. Said motion was denied on April 11, 1960. In another order of June 3, 1960, the respondent court disallowed petitioner's appeal from its order of March 14th, on the ground that it was not filed within the reglementary period for appeal, and ordered the issuance of a writ of execution.

Upon the facts before Us, we find no sufficient reason to grant the writ prayed for.

The granting or denial of a motion for new trial is a matter addressed to the sound discretion of the trial court. In this case where petitioner's motion was based on mistake and/or excusable negligence, the lower court found that the same was not supported by any affidavit of merit. Even if we were to agree with petitioner that, in this connection, his answer to the complaint may be taken into account, the allegations made therein do not appear to

satisfy the rule as to proof of mistake or excusable negligence. Consequently, the respondent court committed no error in denying said motion.

Petitioner insists that the respondent court acquired no jurisdiction over the person of respondent Bubla. We find this to be without merit. It is settled law in this jurisdiction that a court may acquire jurisdiction over the person of a party either by his voluntary appearance in court demanding affirmative relief or by having him served with summons within the territorial jurisdiction of the Philippines. Bubla was the plaintiff in Civil Case No. 33461 filed against the herein petitioner. By filing his complaint, therefore, Bubla submitted voluntarily to the jurisdiction of the respondent court and the latter acquired such jurisdiction even if, as matter of fact, Bubla had never been able to enter the Philippines.

Petitioner's claim that the decision of the respondent court in Civil Case No. 33461 is void because of lack of notice of trial served on him is likewise untenable. The record shows that petitioner had a registered address in the record of said case at which repeated notices of trial were addressed to him. Aside from this, it also appears that the respondent court, instead of proceeding to receive the evidence of the plaintiff on March 6, went out of its way and deemed it wise to reset the trial for April 23 of the same year, directing Bubla's counsel to exert efforts to notify petitioner. But this notwithstanding, the latter failed to appear on the aforesaid date, for which reason the respondent court received Bubla's evidence and subsequently rendered judgment in his favor.

WHEREFORE, the petition for certiorari under consideration is dismissed, with costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

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