

LORENZA FABIAN, ET AL., PETITIONERS, VS. HON. EULOGIO MENCIA, ETC., ET AL., RESPONDENTS.*G.R. No. L-15714. April 23, 1962*

Ponente: DIZON, J.

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In the Justice of the Peace Court of Caloocan, Rizal, Pedro Interior filed suit (Civil Case No. 2009) against Lorenza and Albano Fabian to collect the sum of P925.51, with 12% thereon from October 24, 1954 until full payment, plus P200.00 as attorney's fees, the first amount being the alleged unpaid balance of the purchase price of gasoline and other articles taken on credit by said defendants from the plaintiff. Judgment for the latter having been rendered after due trial, the defendants appealed to the Court of First Instance of Rizal (Civil Case No. 4054), where they filed their answer with a counterclaim.

After several postponements, the case was called for trial on March 10, 1958, on which date the plaintiff rested his case. Thereafter, upon motion of defendants' counsel, the continuation of the trial was set for June 17. On that date defendants again moved for postponement, but the motion was denied in view of plaintiff's opposition. The case was therefore considered submitted for decision.

On September 6, 1958 the court rendered judgment finding that, according to plaintiff's evidence, the total value of the gasoline and other articles taken on credit by the defendants amounted to P1,087.41, while the receipts showing payments made by them gave the total sum of P1,858.47. For this reason the court dismissed the case, with costs against the plaintiff.

The plaintiff received notice of the judgment on October 7, 1958. Eleven days thereafter (October 18) he filed a pleading entitled "PETITION FOR RELIEF FROM JUDGMENT" which, for all legal purposes—as admitted by said plaintiff himself in his motion for reconsideration (Annex G to the petition for certiorari)—was a motion for new trial because the grounds relied upon therein were: that the decision was contrary to the evidence because it failed to consider and give due weight to a portion of plaintiff's evidence; that plaintiff's counsel, in not presenting certain material evidence, committed excusable negligence resulting in prejudice to plaintiff's case. As a matter of fact, the principal relief prayed for in the petition was for the court to give plaintiff a chance "to amplify his evidence" (Annex A attached to the Petition for Certiorari). On December 8, 1958 the court denied said petition, notice of the denial having been served on the plaintiff on December 15 of the same year.

On December 27, 1958 the plaintiff filed another pleading entitled "URGENT MOTION FOR NEW TRIAL" (Annex D, Petition for Certiorari) based on the same allegations or grounds relied upon in his previous petition for relief from judgment. On January 6, 1959 the court denied said motion on the ground that the decision had already become final and executory. Notice of the order of denial was received by the plaintiff on January 22, 1959.

On January 26, 1959 the plaintiff filed a motion for reconsideration claiming that his petition for relief from judgment was, in law and in fact, a motion for new trial and, as such, suspended the running of the period of appeal; that, consequently, when the "urgent motion for new trial" was filed, the decision had not yet become final

and executory. Over the opposition of the defendants, the court, in its order of May 4, 1959, granted the motion for reconsideration, set aside the decision, and set the case for new trial on July 31, 1959. Thereupon the present petition for certiorari, with preliminary injunction, was filed upon the theory that the court had acted either without jurisdiction or with grave abuse of discretion in issuing the last order, because the decision of September 5, 1958 had already become final.

In accordance with Rule 17, section 4, a second motion for new trial may be allowed only if based on a ground not existing when the first motion was made, and may be filed within the period of appeal excluding therefrom the time during which the first motion had been pending. This provision implements or emphasizes those of Rule 26, section 8, of the Rules of Court concerning Omnibus motions.

In the light of this provision, and considering Interior's own contention that the petition for relief from judgment filed on October 18, 1958 was really a motion for new trial, it seems clear that his second motion for new trial was out of order because it was based on exactly the same grounds relied upon in the previous petition and was a mere reiteration of the latter. Its filing, therefore, did not suspend the running of the period of appeal. (*Rili, et al. vs. Chunaco et al.* 48 O. G., p. 614; *Sawit vs. Rodas, et al.*, 73, Phil., 310). As a result, when Interior filed his motion for reconsideration on January 26, 1958, the decision had already become final, as shown by the following:

As notice of judgment was received by Interior on October 7, 1958, it is clear that he had already consumed or used up eleven days of the period of appeal when he filed his petition for relief (new trial) on October 18, 1958. The period was suspended from that date until notice of the order of denial was received by Interior on December 15, 1958. The period of appeal, therefore, started running again on December 16, 1958 and expired nineteen days thereafter, that is, on January 3, 1959. Consequently, the motion for reconsideration that was granted by the respondent judge was filed (January 26, 1959) out of time.

WHEREFORE, the writ is granted, with the result that the order of May 4, 1959 mentioned heretofore is annulled. With costs against respondent Pedro Interior.

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

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