

STRACHAN & MACMURRAY, LTD., PETITIONER VS. THE COURT OF APPEALS AND JOSE ESPINOSA, RESPONDENTS.

G.R. No. L-23455. January 27, 1975

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court reverses the decision of the Court of Appeals which ordered the giving of due course to a dismissed appeal of respondent debtor from a money judgment by default rendered against him by the municipal court, and finds that his appeal was correctly dismissed by the court of first instance since he had lost his right of appeal as a party declared in default whose standing in court had not been restored.

The factual origin of the case is undisputed, as follows:

On January 18, 1963, petitioner Strachan & Macmurray, Ltd. as plaintiff filed against private respondent Jose Espinosa as defendant an action in the municipal court of Iloilo for recovery of a sum of money. When the case was called for hearing, respondent failed to appear or file his answer, despite due summons. He was declared in default and after petitioner presented its evidence, judgment of default was rendered against respondent.

On February 14, 1963 or eight days after the default order and judgment were rendered, respondent filed a petition to set aside judgment by default, claiming excusable negligence for his failure to appear at the trial and prayed that his answer be admitted by the municipal court. Said court denied the petition and on March 14, 1963, respondent filed a notice of appeal "from the judgment by default dated February 6, 1963 and the order denying the petition to set aside judgment by default dated February 18, 1963."

Petitioner, in opposition, filed a "motion to dismiss appeal" on the ground that the default judgment was not appealable. The municipal court however denied the motion on the ground that the appeal had been perfected and the records were transmitted to the Iloilo court of first instance and the case docketed as Civil Case No. 6273 thereof.

Petitioner filed anew with the court of first instance a motion to dismiss the appeal on the ground that "having been declared in default in the inferior court, defendant has no right to appeal, the judgment by default dated February 6, 1963 is not appealable and has long become final," and that "the mere filing of the motion to set aside the judgment by default does not entitle defaulting defendant to appeal the judgment by default. He can do so only after he has regained standing in court i.e., after the default order is lifted." [1]

The court of first instance overruled respondent's opposition and per its order of May 13, 1963 dismissed the appeal, ruling that "(A)fter reading the motion to dismiss defendant's appeal the court found that the motion is well taken. A default judgment cannot be appealed. (See *Manila Motor Co. vs. San Juan*, May 29, 1959, L-9163). The fact that the Municipal Court gave due course to the appeal did not make it a valid appeal. The right of appeal is determined by law. It is not dependent upon the will or discretion of the court," [2] and denied reconsideration per its order of June 1, 1963.

Respondent in turn filed a petition for certiorari with the Court of Appeals which the latter considered as also one for mandamus. The appellate court found, as the undisputed facts show, that respondent did not seasonably (two hours under the old Rules of Court and extended to one day after notice of default under Rule 5 section 13 of the Revised Rules of Court[3] which took effect on January 1, 1964) file with the municipal court a motion or petition to set aside the default order nor a petition for relief from judgment with the court of first instance as provided under Rule 38, section 1 of the Revised Rules of Court.[4]

The appellate court however bent backwards and ruled that the filing by respondent of an unseasonable petition to set aside the default order and judgment "should be considered as a motion for new trial in accordance with sec. 16 of Rule 4 of the [old] Rules of Court[5]" and that "this constitutes sufficient compliance of the law requiring a defaulting party to file a motion to set aside order of default to regain his legal standing in court." The appellate court thus rendered its appealed judgment of July 8, 1964 setting aside the court of first instance orders dismissing the appeal and instead ordering said court "to give due course to the appeal" of respondent.

Hence, the present petition for review by certiorari. Petitioner filed its brief in due course, whereas respondent failed to file any brief, and the case was thereafter deemed submitted for decision.

The Court finds merit in the petition. Respondent had indubitably lost his right of appeal since he admittedly did not seasonably file a motion to set aside the order of default nor did he timely file with the court of first instance a petition for relief from the default judgment of the municipal court. The appellate court's decision is bereft of any finding that respondent's failure to appear at the trial and to file his answer was due to excusable negligence, such as to warrant its ultra-liberal act of ordering the reinstatement of the appeal, despite respondent's failure to comply with the requirements of the Rules of Court. If at all, the very denial by the municipal court of such claim of excusable negligence by respondent stands unchallenged and unrefuted.

The Court thus finds that the authoritative precedent of *Luzon Rubber & Mfg. Co. vs. Estaris*[6] and other cases therein cited is controlling in the case at bar and calls for reversal of the appellate court's judgment under review. The rationale thereof is wholly applicable to the case at bar, *mutatis mutandis*, as follows:

"The main issue for determination in this appeal, as was in the respondent Court of Appeals, is not whether petitioner-appellant has timely appealed from the judgment by default of the City Court, but whether a party who has been declared in default in said court can still appeal from such judgment.

"The rule in this jurisdiction is that a defendant, who has been declared in default by the municipal or city court, in order to enable him to restore his standing in court, may avail himself of either of two remedies, i.e., (1) he may ask the court, within one (1) day after notice of the order of default, to set aside such order, by appearing and showing to the satisfaction of the court that his failure to appear was due to fraud, accident, mistake or excusable negligence under Section 13, Rule 5 of the Revised Rules of Court; or (2) he may, if he fails to avail himself of this remedy and the judgment has become final and executory, file a petition for relief in the Court of First Instance under Section 1 of Rule 38 of the Revised Rules of Court. He may also file a motion to lift the default judgment and ask for new trial, before the judgment becomes final and executory under Section 16 of Rule 5. Thus, a defendant who has been declared in default loses his standing in court, and without having regained the same, shall not be entitled to notice of subsequent proceedings, nor to take part in the trial. He shall not also be entitled to service of papers other than substantially amended or supplemental pleadings and final orders or judgments, unless he files a motion to set aside the order of default, in which event he shall be entitled to notice of all further proceedings regardless of whether the order of default is set aside or not. He cannot appeal from the judgment rendered by the court on the merits, unless he files a motion to set aside the order of default. He cannot file a notice of appeal, appeal bond and record on appeal nor claim the right to be heard or file a brief or memorandum on appeal. If he is not entitled to notice or to be heard in the suit, he cannot appeal as appellant nor appear and be heard as appellee because an appeal is a continuation of

the same case or suit commenced in the lower court. A proper motion to set aside the judgment by default under Section 13 of Rule 5, when denied, may give the defaulted defendant the right to appeal, but the appeal in that case would be from the order denying the motion and not from the judgment by default itself. The defendant can appeal from such judgment only after he has regained his standing in court.

"We notice, however, that herein petitioner has not availed itself of the provision of Section 13 of Rule 5 of the Revised Rules of Court by filing on time a motion to vacate the judgment by default, and, as such, it has not regained its standing in court to enable it to exercise its right to appeal from the judgment by default. . . .

"x x x x x x x x

"In affirming the order dated June 23, 1966, of the Court of First Instance of Manila dismissing the appeal taken therein by petitioner, the respondent Court of Appeals correctly ruled that:

Appellant, of course, insists that it has taken an appeal within the reglementary period from the judgment of the City Court dated January 18, 1966 as well as from its order of February 16, 1966. But the problem before us is not a question of whether or not appellant has timely appealed from the judgment by default of the City Court but whether a party who has been declared in default can still appeal from said judgment. It is well settled in our jurisdiction that a defendant who has been declared in default loses his standing in court and without having regained the same has no right to appeal from the judgment by default. (*Lim Toco vs. Go Fay*, 80 Phil., 1966; *Manila Motor Co., Inc. vs. San Juan*, G.R. No. L-9163, May 29, 1959.) Since appellant has not availed itself of the remedy provided for in Sec. 13, Rule 5 of the Rules of Court by filing on time a motion to vacate the judgment by default, it has not regained its standing in court to enable it to exercise its right to appeal from the judgment by default."

The Court further noted therein that the innovation of the Revised Rules of Court in "Section 2 of Rule 41 of the Revised Rules of Court which allows a party who has been declared in default to appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him pursuant to Rule 38, is not applicable to municipal or city courts. (Sec. 19, Rule 5.)"[7]

Finally, the fact that respondent has not even shown any good and meritorious defense to the suit against him such as to warrant the appellate court's mandamus to give due course to his dismissed appeal from the municipal court's judgment rendered over eleven years ago justifies the reversal of the appellate court's judgment reinstating the dismissed appeal and the termination of this long litigation. As was aptly stated in *Luzon Rubber*, supra, "it must be emphasized that the purpose of procedure is not to hinder and delay but to facilitate and promote the administration of justice."

ACCORDINGLY, the appealed judgment of the Court of Appeals is hereby reversed. Without costs, none having been prayed for.

Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

Castro, J., (Chairman), concurs in the result.

[1] Rollo, at pages 14-15.

[2] *Idem*, at page 15.

[3] "SEC. 13. Vacating dismissals and defaults — Within one (1) day after notice of an order of dismissal or default, as provided in the last two preceding sections, the court shall set aside such entry and allow the party against whom such dismissal or default had been entered to have a trial upon the merits of the cause, if such party appears and satisfies the court that his failure to appear at the time and place designated in the summons was by

reason of fraud, accident, mistake or excusable negligence." (Rule 5, Revised Rules of Court.) (Formerly Rule 4, section 14).

[4] "SEC. 1. Petition to Court of First instance for relief from judgment of inferior court. — When a judgment is rendered by an inferior court in a case, and a party thereto, by fraud, accident, mistake, or excusable negligence, has been unjustly deprived of a hearing therein, or has been prevented from taking an appeal he may file a petition in the Court of First Instance of the province in which the original judgment was rendered, praying that such judgment be set aside and the case tried upon its merits." (Rule 38, Revised Rules of Court.) (Same as Rule 38, sec. 1 of Old Rules)

[5] Now rule 5, sec. 16 of the Revised Rules of Court which identically reads: "SEC. 16. New trial. — Within the time provided for perfecting an appeal from a judgment rendered by an inferior court and before an appeal is so perfected, the court may grant a new trial to correct an error or injustice it may have committed."

[6] 52 SCRA 391, 397-400 (Aug. 31, 1973) per Antonio, J.

[7] 52 SCRA at p. 399, fn. 9, italics supplied.

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