

SOLEDAD PEÑA DE LUZ, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF TACLOBAN, LEYTE, AND SIMEON D. LUZ, RESPONDENTS.

G. R. No. L-600. November 29, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

Petitioner seeks the annulment of the decision rendered by the Court of First Instance of Leyte on March 24, 1944, granting Simeon D. Luz divorce from her. As Simeon D. Luz was not included as one of the respondents, we issued on October 1, 1946, in compliance with section 5 of Rule 67, a resolution joining Simeon D. Luz as party respondent and requiring him to answer the petition within ten days from notice of the resolution. It appears from the record that Simeon D. Luz was duly served with copy of the resolution on October 4, 1946, and after the 10-day period therein granted elapsed on October 14, we allowed a period of more than twenty days to run during which, if he mailed an answer from his residence at Tacloban, Leyte, the same might have reached this court. No such answer having been received notwithstanding the expiration of said additional period, we now proceed to decide the case.

The facts are stated in our resolution of October 1, 1946, as follows:

"On September 26, 1940, Simeon D. Luz married Soledad Peña in Manila, where they established their conjugal abode. On July 11, 1941, their son Cesar was born,

"Alleging that on July 20, 1941, his wife abandoned him, by leaving him and going to her mother at Sinait, Ilocos Sur, and that all his efforts to make her return proved fruitless, Luz filed in the Court of First Instance of Leyte on September 22, 1943, a complaint seeking divorce under the provisions of Executive Order No. 141, issued on March 25, 1943, by the Chairman of the Philippine Executive Commission pursuant to the authority conferred upon him by the commander in chief of the imperial Japanese forces in the Philippines and with the approval of the latter, which repealed and superseded Act No. 2710 of the Philippine Legislature.

"Soledad Peña was served at Sinait with summons together with a copy of the complaint on January 20, 1944. On January 31, she filed a motion to dismiss the complaint on the ground of lack of jurisdiction of the court over the subject matter. The motion was denied in an order issued by Judge Froilan Bayona on April 1, 1944, copy of which was received by defendant's attorney on May 12, and on the same date said attorney deposited in the mail an answer to the complaint, addressed to the court in Leyte where it was received only on June 23, having been in transit for one month and eleven days.

"On August 19 the same attorney filed a petition praying for the wife's alimony pendente lite in the amount of P250 a month. As no order disposing of said petition had been yet received, defendant's attorney on October 2, 1945, filed an ex parte motion asking for a copy of any order that might have been issued concerning the alimony pendente lite prayed for. On October 23, 1945, Judge Fernando Hernandez issued an order denying the ex parte motion on the ground that the case had been decided since March 24, 1944, and that it does not appear that the decision has ever been set aside. Defendant's attorney received copy of the order on

November 7, 1945, and on the same date he filed a motion, accompanied with affidavits, praying that the decision be set aside, that defendant's answer to the complaint be admitted, and that defendant be granted alimony pendente lite, said attorney alleging under oath that it was only on said date that he happened to know about the existence of the decision in question. On February 9, 1946, defendant's motion was denied by Judge Fernando Hernandez.

"Upon receipt of said order of denial, defendant's attorney filed on March 1, 1946, a motion praying for trial on the merits, and insisting that the decision rendered on March 24, 1944, is a nullity, having been rendered without granting defendant her day in court. The motion was denied on April 33; hence, the petition now under our consideration.

"From the lower court's answer, signed by Judge Mariano C. Melendres, it appears that Atty. Emilio Benitez, now Judge of First Instance of Samar, on behalf of plaintiff, filed on February 24, 1944, a motion to declare defendant in default for failure to file her answer. On February 26, Judge Vicente de la Cruz postponed the consideration of the motion to declare defendant in default in view of the fact that the telegram that was received by the clerk of court at Tacloban from the Sheriff of Vigan is -not very clear and it may be said that the defendant has filed an answer and was mailed.'

"On March 18, 1944, three days after receipt of the sheriff's return to the effect that the defendant was summoned on January 20, Judge Froilan Bayona issued an order declaring defendant in default and authorizing plaintiff to adduce evidence.

"There is no question that when the motion to declare defendant in default was filed on February 24, the consideration of which was postponed on February 26, and finally granted on March 18, and when the decision was rendered on March 24, 1944, defendant's petition to dismiss sent from Ilocos Sur since January 31 was in transit and must have been received between the date of the decision and April 1, 1944, when the order denying it was issued."

* * * * *

It appears that when the lower court issued on March 18, 1944, the order declaring petitioner in default, it acted prematurely because the motion to dismiss the complaint on the ground of lack of jurisdiction, mailed on January 31, 1944, was still pending, perhaps still in transit, so much so that it continued pending even at the time when the decision was rendered on March 24, 1944, and remained so until it was denied on April 1, 1944. The decision was, therefore, also premature.

At the time said order of March 18, 1944, was issued, the lower court committed the error of assuming that, if Soledad Pefia's answer to the complaint or motion to dismiss, if any, were mailed from Ilocos Sur, it should have been received by the court, considering that the summons was served on her since January 20, 1944. The error lies in that the lower court failed to appreciate the fact, stated in the same order it issued, that the return of the service of summons was received by the clerk of the Court of First Instance of Leyte only on March 15, 1944, three days before the order of default was issued. Considering that according to section 1 of Rule 9, Soledad Pena had 15 days from January 20, 1944, within which to answer the complaint, if she so desired, and that it took 11 days of January, the whole month of February, and 15 days of March, 1944 (or a total of 55 days), for the return of the service of summons to travel from Ilocos Sur to Leyte, the lower court, with a more alert sense of reality, should not have expected to receive any pleading from Soledad Pena on March 18, if she did not mail it on January 20, the very day she received the summons. That defendants usually take the greater part of the 15-day reglementary period to prepare and file their answers or pleadings, is a fact so common for any court to ignore.

There can not be any question that the decision of March 24, 1944, complained of, was rendered without giving Soledad Pena her day in court. A decision rendered under such circumstances must be declared null and void and

the case, as a rule, ordered remanded to the lower court for further proceedings. In the present case, however, we will have to follow a different course, because the aforesaid Executive Order No. 141 issued on March 25, 1943, by the Chairman of the Philippine Executive Commission, pursuant to the authority conferred upon him by the commander in chief of the imperial Japanese forces of occupation, which gave life to said divorce case, was, at least, since the liberation of the Philippines, no longer of any force and effect (*Baptista vs. Castaneda*, 76 Phil., 446.)

Wherefore, the decision rendered by the Court of First Instance of Leyte on March 24, 1944, in divorce case No. 42, Simeon D. Luz, plaintiff, vs. Soledad Pena de Luz, defendant, is declared null and void and the complaint therein dismissed, without costs.

Moran, C. J., Paras, Feria, Pablo, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

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