

PHILIPPINE NATIONAL BANK, IN ITS CAPACITY AS JUDICIAL ADMINISTRATOR OF THE IN-TESTATE ESTATE OF THE LATE MACAUYAG (MORO), PLAINTIFF-APPELLEE, VS. SEGUNDO FERNANDEZ, DEFENDANT-AP...

G.R. No. L-20086. July 10, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The Court of First Instance of Manila denied defendant's petition for relief from judgment in Civil Case No. 37757. The matter is before Us on appeal from the order of denial.

The proceedings which took place below are as follows:

September 13, 1958 - Plaintiff filed a complaint for recovery of P10,000.00 from defendant, plus interest, on the strength of a promissory note signed by the latter and dated February 16, 1948.

October 1, 1958 - Defendant moved to dismiss on the ground that the action had prescribed. Plaintiff opposed, and the Court denied the motion by order dated October 14, 1958.

October 22, 1958 - Plaintiff moved to have defendant declared in default and to set the case for reception of plaintiff's evidence.

November 7, 1958 - Defendant moved ex-parte for extension of time within which to file his answer to the complaint.

November 8, 1958 - The Court issued an order denying plaintiff's motion for default, "there being no showing that defendant has received a copy of the order of this Court denying the motion to dismiss."

November 12, 1958 - Defendant filed an answer.

November 17, 1958 - Plaintiff filed an ex-parte motion for reconsideration praying that the order of November 8 be set aside and another one be issued declaring defendant in default.

November 19, 1958 - The Court issued the following order:

"Finding the reasons adduced by Attorney Ramon de los Reyes to be well-taken, the Order of this Court of November 8, 1958 is hereby reconsidered and set aside.

The defendant Segundo Fernandez is declared in default, it appearing that he had filed an extension of time to file his answer on November 7, 1958 which is 5 days after the expiration of the reglementary period required by law and his answer filed on November 12, 1958."

January 22, 1959 - The court heard the case for plaintiff ex-parte and on the same date decided it, as follows:

"IN VIEW OF THE FOREGOING, this Court hereby renders judgment condemning the herein defendant to

pay the sum of P10,000.00, value of the pro-missory note, plus interest at 6% per annum from the filing of this complaint and 10% of the total amount due as attorney's fees and to pay the costs."

April 7, 1959 - Defendant filed with the trial court a verified petition for relief from judgment, which plaintiff opposed. The petition was denied on April 11, 1959.

Defendant seasonably appealed to the Court of Appeals, which certified the case to Us on the ground that the issues involved are purely legal.

Appellant's main point is that when appellee filed its motion for reconsideration ex-parte on November 17, 1958, appellant was not in default and hence was entitled to notice of said motion so as to be able to oppose it and be heard on his opposition. Rule 26, Section 6 (of the old Rules) provided that "no motion shall be acted upon by the Court, without proof of service of the notice thereof."

Appellee answers this argument by emphasizing the fact that appellant was actually in default by reason of his failure to file his answer within the reglementary period. The following circumstances are cited: Summons was served on appellant on September 20, 1958. He filed his motion to dismiss eleven (11) days later, or on October 1, 1958. Only four (4) days then remained of the 15-day period within which to answer. The four days started to run again on October 29, 1958, when appellant received copy of the order denying his motion to dismiss, and expired on November 2, 1958. Therefore, appellee submits, appellant was already in default by five (5) days when he filed, on November 7, 1958, a motion for extension of time within which to answer and when he did file his answer on November 12. Such being the case, appellee continues, appellant was not entitled to notice of the motion for reconsideration, for under Rule 27, Section 9 (old Rules of Court) "no service of papers shall be necessary on a party in default except when he files a motion to set aside the order of default, in which event he is entitled to notice of all further proceedings."

Technically appellant's position appears well-founded. As of November 12, 1958 when he filed his answer, or even as of November 17, 1958, when appellee filed its motion for reconsideration, the effective order which defined the standing of appellant was that of November 8 denying appellee's motion to declare appellant in default. In other words, by express court order appellant was not in default when he filed his answer to the complaint on November 12, 1958. As a matter of fact, however, the ground on which that order was based was erroneous, and it was to show such error that appellee filed his motion for reconsideration on November 17, 1958. To be sure, appellant had a right to be heard on the matter, but such hearing would not alter the fact, which appellant does not now dispute, that his answer was really filed late.

In any event, this being an appeal from an order denying relief from judgment, it is pertinent to inquire whether or not appellant has a meritorious defense. This is the reason why the Rules require that a petition for such relief be accompanied by an affidavit of merits. We have examined appellant's answer to the complaint and found that the only defense alleged therein which has any relevance is that of prescription; but then the answer itself shows that the defense is untenable, for it admits that appellant received from appellee written demands for payment before the prescriptive period of ten years expired, and according to Article 1155 of the Civil Code prescription of actions is interrupted when there is a written extra-judicial demand by the creditor. We therefore see no point in granting the reliefs sought by appellant.

WHEREFORE, the order appealed from is affirmed, with costs.

Reyes, Bengzon, JP, Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, JJ., did not take part.

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