

BIÑAN TRANSPORTATION COMPANY, INC., PETITIONER, VS. FIDEL IBAÑEZ, ETC., ET AL., RESPONDENTS.*G.R. No. L-1523. April 30, 1949*

Ponente: FERIA, J.

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This is a petition for certiorari against the respondents on the ground that the respondent judge acted without jurisdiction or with grave abuse of discretion in issuing the order of execution dated June 28, 1947, of a judgment rendered by the Court of First Instance of Laguna on March 22, 1943, which is null and void, according to the petitioner, because the latter had not been notified of the hearing of the case and of the rendition of said judgment or decision, and this allegation is denied under oath by the other respondent.

According to the facts appearing from the pleadings and their annexes, the record of the case having been lost or destroyed during the Philippine liberation, the Court of First Instance of Laguna, upon motion of the plaintiffs in said case, now respondents, and notice to the defendant, the petitioner herein, ordered the reconstitution of the pleadings and of the decision lost or destroyed and declared them reconstituted on December 20, 1946. The petitioner, alleging that she became aware of the rendition of the said decision only after its reconstitution, because she had not received notice of the trial and rendition of the said decision before that time, filed motions for new trial under Rule 37 and for relief under Rule 38, which were denied by the respondent Judge on the ground that they were filed after the period fixed by law had elapsed. The order of the respondent Judge granting the motion for the issuance of the writ of execution complained of, copy of which is attached as Annex 6 to the verified answer of said respondent, contained an uncontradicted recital of the dates in which attorneys for the petitioner were notified or became aware of the decision in question and filed their motions for new trial and relief under Rule 37 and 38, and said order reads as follows:

"The following petitions were heard before this Court on June 12, 1947, at 9:00 a. m., in accordance with the order of May 30, 1947:

"(a) Motion for reconsideration filed by Atty. Marcial G. Mendiola as counsel for the defendant Biñan Transportation Company dated May 19, 1947, praying to reconsider and set aside the order of April 15, 1947, which revokes a previous order of March 7, 1947, granting the defendant a new trial;

"(b) A petition addressed to the Clerk of Court dated May 1, 1947, filed by Atty. Simon Samaniego as counsel for the plaintiffs praying for the issuance of an alias writ of execution of the reconstituted decision dated March 22, 1943.

"At the hearing of the said petitions on June 12, 1947, Attorney Mendiola appeared and argued orally in support of his motion for reconsideration and upon his request he was given five days from said date within which to present the transcript of the proceedings of the reconstitution taken before Judge Juan P. Enriquez. Attorney Samaniego, for the plaintiffs, presented his written opposition dated June 12, 1947, objecting to the motion for reconsideration of Atty. Mendiola.

"Pending resolution of the aforementioned petitions, another petition for relief from effect of judgment dated May 20, 1947, was filed by Attys. Nabong and Sese as counsel for the defendants without notice of hearing.

"After a careful consideration of the aforementioned pleadings of the parties and the affidavits accompanying them, the Court hereby renders the following resolutions:

"(1) The motion for reconsideration of Atty. Mendiola dated May 19, 1947, is hereby denied in view of the fact that according to the affidavit of Judge Juan P. Enriquez dated March 24, 1947, before whom the decision of March 22, 1943, was reconstituted, counsel for the defendant Biñan Transportation Company, after reading the decision sought to be reconstituted and was advised that the decision tallies with the docket of the Court, offered no objection to the reconstitution of said decision which was then and there ordered reconstitution of said decision which was then and there ordered reconstituted with the knowledge of said counsel for the defendant Biñan Transportation Company. As declared in the order of April 15, 1947, which is hereby reiterated, the defendant Biñan Transportation Company by its counsel, Atty. Marcial G. Mendiola, was constructively served on December 20, 1946, with the decision rendered on March 22, 1943.

"(2) That the petition for relief from effect of judgment of Attorneys Nabong and Sese dated May 20, 1947, is likewise denied. As stated in the order of April 15, 1947, defendant Biñan Transportation Company was constructively served on December 20, 1946, with notice of the decision dated March 22, 1943. Petition for relief from judgment under section 2, Rule 38, of the Rules of Court must be filed within sixty days after the petitioner learns of the judgment and not more than six months after said judgment was entered (section 3, Rule 38). The petition for relief from judgment was filed on June 19, 1947, before which the defendant Biñan Transportation Company, thru counsel, learned of the decision, and more than six months after the said judgment was entered on March 22, 1943.

"(3) That the petition of Atty. Simon Samaniego for the issuance of an alias writ of execution is hereby granted in view of the fact that the decision of March 22, 1943, has long become final and executory. So ordered.

"Santa Cruz, Laguna, June 19, 1947."

Section 69, subsections (m) and (ee) of Rule 123, provides that it is to be presumed *juris tantum* that "the official duty has been regularly performed" and that "the law has been obeyed", and therefore the presumption is that the petitioner was notified of the dates of the trial of the case in which the decision impugned as void was rendered, and of the rendition of said decision; and that presumption may only be rebutted by evidence to the contrary presented at a hearing which may be granted by the Court upon motion for relief filed under Rule 38 of the Rules of Court. But the respondent Judge denied the motion for relief under said Rule because it was not filed within the period of time fixed by said Rule 38, according to the above quoted order of the Court.

If the Court has erred in denying said motion, the proper remedy would have been appeal according to a long line of decisions of this Court. Certiorari does not lie because there was appeal, and because the Court has jurisdiction either to grant or deny the motion of the petitioners, and it may only err but not exceed its jurisdiction or act with grave abuse of discretion if it denies the motion.

Petition is therefore denied with costs against the petitioner. So ordered.

Moran, C.J., Paras, Pablo, Bengzon, Briones, Tuason, Montemayor, and Reyes, JJ., concur.

DISSENTING

PERFECTO, J.:

On May 30, 1940, petitioner was sued in the Court of First Instance of Laguna for damages in the sum of P4,900. Answer to the complaint was filed on June 3, 1940. Hearing was finally set for January 5, 1942, but on account of the Japanese invasion, petitioner and its counsel were unable to attend the hearing on said date.

The hearing, nevertheless, actually took place on February 2, 1943, about which no notice was given to petitioner, who was also not notified as to the admission of amendments made to the complaint. On March 22, 1943, decision was rendered, but no notice thereof was served to petitioner.

On November 26, 1946, petition for the reconstitution of the records of the case was filed and was set for hearing and granted on December 20, 1946. Surprised at the fact that decision was rendered on March 22, 1943, notice of which had never been served to it, petitioner filed on January 22, 1947, a motion for new trial upon two grounds: That the trial court had no jurisdiction to hear and decide the case for lack of notice of the trial to petitioner and that it also had no jurisdiction upon the substantially amended complaint, no copy of the amendments having been served to petitioner. The motion was denied.

On June 19, 1947, petitioner filed a petition for relief from judgment, which was denied on June 19, 1947, the respondent judge issuing thereupon a writ of execution on June 28, 1947, by virtue of which a Chevrolet motor truck of petitioner was seized by the sheriff of Laguna.

Upon the above facts, petitioner prays that the decision rendered on March 22, 1943, and reconstituted on December 20, 1946, be declared null and void ab initio, for lack of jurisdiction.

Respondent answered stating, among others, that on December 20, 1946, an order was issued declaring as reconstituted the complaint, answer and decision in the aforementioned case; on January 10, 1947, motion for the issuance of a writ of execution, dated December 21, 1946, was granted; on January 27, 1947, a motion for new trial was filed by petitioner, and the motion, was granted in an order dated March 7, 1947, under the terms and conditions specified in said order; on March 24, 1947, plaintiffs filed a motion for reconsideration and on April 15, 1947, respondent judge issued an order setting aside the order of March 7, 1947, and declaring that petitioner was constructively served on December 20, 1946, with notice of the reconstituted decision; on May 20, 1947, petitioner filed a motion for reconsideration and a petition for relief from the effect of judgment, and both motion and petition were denied in an order issued on June 19, 1947, and, pursuant to the latter order, an alias writ of execution was issued on June 28, 1947.

Upon the undisputed facts in this case, it appears that petitioner was not notified nor served copy of the amendments to the complaint; that petitioner was not notified of the hearing of the case which took place on February 2, 1943; and that petitioner was not notified of the decision rendered on March 22, 1943. This lack of notice to petitioner deprived the trial court of jurisdiction to entertain the amended complaint; to hear the case on February 2, 1943, at petitioner's back; and to render the decision of March 22, 1943. Consequently, the decision was and is null and void ab initio, as correctly contended by petitioner.

If the decision was null and void, the trial court has no jurisdiction to order the issuance of either the original writ of execution or the alias writ of execution of June 28, 1947.

The contention of respondent judge to the effect that petitioner was constructively served notice of the decision on December 20, 1946, when petitioner was notified of the reconstitution of the complaint, the answer, and the decision, is devoid of merit, for the simple fact that notice of reconstitution is not a notice of decision. Both notices serve different purposes that cannot be confused or identified with one another.

Even in the false hypothesis that with the reconstitution of the decision complained of on December 20, 1946, petitioner was constructively notified thereof, that notice cannot give any validity to a decision which was and is null and void ab initio for having been rendered without giving petitioner his day in court, after the hearing which took place on February 2, 1943, of which petitioner was not notified and at which, consequently, he was not present.

No amount of discussion on legal technicalities may elude the inevitable consequences of the simple facts in this case, upon which it appears that petitioner has been denied the benefits of due process and of the equal protection of the laws. Petitioner is entitled to the relief sought for in the petition.

Consequently, we vote to grant the petition and to declare null and void the decision of March 22, 1943, and to set aside the writ of execution issued on June 28, 1947, with costs against respondents.

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