

CONSUELO V. CALO, DOING BUSINESS UNDER THE NAME AND STYLE CVC LUMBER INDUSTRIES ASSISTED BY HER HUSBAND MARCOS M. CALO, PETITIONERS, VS. CRISANTO ARAGON, MUNICIPAL JUDGE, BRANCH...

G.R. No. L-19356. November 30, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

On November 20, 1961, respondent Adolfo B. Benavides, as assignee of Ajax International Corporation, filed with the Municipal Court of Manila (Branch IV) a complaint (docketed as Civil Case No. IV-93062) against petitioners Consuelo V. Calo (doing business under the name and style, CVC Lumber Industries) and her husband Marcos M. Calo, seeking recovery of the sum of P3,620.65 with interest, plus 25% as attorney's fees, as unpaid value of merchandise purchased by petitioners from Ajax International Corporation.

On December 4, 1961, respondent Benjamin B. Pineda (as Special Sheriff of Manila) served on petitioners at 44 Mayon, Quezon City (thru one Gracia Esmero, alleged niece of petitioners) a copy of the complaint and the summons, calling attention to the scheduled date of hearing of the case on December 12, 1961 (See Annex D). Despite said service and notice, however, petitioners failed to answer the complaint or appear at the hearing.

On December 13, 1961, the court rendered a decision which reads:

"DECISION

"Judgment by default is hereby rendered, ordering the defendants (herein petitioners) to pay the plaintiff (herein respondent Benavides) the sum of P3,620.65, representing the outstanding balance on the principal and accrued interest as of September 15, 1961, with 1% interest per month from September 16, 1961 until fully paid; plus 25% of the total amount due as and for attorney's fees; and the costs of the suit.

"So ordered."

Copy of said decision was received by petitioners on January 2, 1962.

On January 5, 1962, petitioners filed a petition for relief and/or set aside said decision, alleging that there is no basis for declaring them in default; that they were never validly served with summons and copy of the complaint that they are residents of Butuan City and so, the court, had no jurisdiction over their persons; that they have a good and valid defense, because assuming that they have an obligation to respondent Benavides, it can be offset by their claim against the latter, in that although it is true that they ordered some merchandise from Ajax International Corporation, there was no complete delivery of the goods ordered; and that the failure of said corporation to completely deliver the goods caused petitioners damages in the sum of not less than P3,000.00 so that their refusal to pay respondent Benavides' claim is based on just and legal grounds. They therefore prayed that the judgment declaring them in default and ordering them to pay the plaintiff the sum of P3,620.65 be set aside and a new one entered ordering the Clerk of Court to make proper service of summons on them. Attached to

said petition was petitioners' affidavit of merit.

In the meantime, or on December 26, 1961, the court issued a writ of execution of its decision against petitioners.

On January 10, 1962, petitioners filed an urgent ex-parte motion to set aside said order of execution on the ground that the decision rendered on December 13, 1961, even if valid, has not yet become final and executory because a copy thereof was received by them only on January 2, 1962, and they filed on January 5, 1962 a petition for relief therefrom which has not yet been acted upon. They likewise reiterated their petition to set aside said decision attaching thereto an affidavit of Gracia Esmero, to the effect that she never received any copy of the complaint and summons in question and that she is not a niece of petitioners.

On January 11, 1962, respondent Sheriff served on petitioners at 44 Mayon, Quezon City, a writ of execution and immediately seized petitioners' car described as Cadillac, with Plate No. H-14561, Agusan 1961. He also set the sale thereof at public auction for January 21.

Whereupon, on January 12, 1962, petitioners filed with us the present petition for certiorari, prohibition, and mandamus, with prayer for preliminary injunction to restrain and prohibit respondents, their representatives, or other persons acting on their behalf from enforcing the decision in question and from selling at public auction their aforementioned car. In due time, we issued the preliminary injunction prayed for, upon petitioners' filing a bond of P500.00.

We agree with petitioners that the decision (dated December 13, 1961) as well as its order of execution (of December 26, 1961) should be revoked.

There is no dispute that upon receipt by petitioners (on January 2, 1962) of said decision of the trial court, they (on January 5, 1962) did reasonably file a petition for relief and/or (to) set aside the same, upon the grounds mentioned in said petition, attaching thereto the required affidavit of merit; and that on January 10, 1962, petitioners did, likewise, file an urgent ex-parte petition to set aside the aforementioned order of execution calling attention to the fact that the decision was not yet final or executory a petition for relief having been filed in due time, but the trial court, instead of acting on said petitions (as it should have), chose to ignore them entirely, as a result of which, petitioners' car was seized by respondent Sheriff on January 11, 1962 and set to for sale at public auction for January 21. Such actuation on the part of the trial court, is to our mind, a clear abuse of discretion amounting to lack of jurisdiction on its part, depriving, as it did, petitioners of their day in court or the opportunity to be heard so essential to due process of law (Martinez, et al. vs. Villacete, et al., L-18695, August 31, 1962, citing Evans vs. Workmen's Compensation Commission, 111 Phil., 1002), thereby entitling petitioners to the remedies prayed for in the instant petition before us.

Wherefore, the writs prayed for are granted and the case is hereby ordered remanded to the court a quo for further proceedings, consistent with this decision. Without pronouncement as to costs. It is so ordered.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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