

GELACIO E. TUMAMING, PLAINTIFF-APPELLEE, VS. MAURO GANZON ET AL., DEFENDANTS, MAURO GANZON, DEFENDANT-APPELLANT.

G. R. No. L-17456. October 22, 1966

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal brought to the Court of Appeals by the defendant from the orders of the Court of First Instance of Manila (Branch XIII) denying his motion for extension of time within which to file his answer to the complaint; refusing to set aside the order of default and admit the answer filed before the hearing of the case; and denying the petition for relief and to set aside the judgment of default. Inasmuch as only a question of law is involved, the appeal was certified to this Court.

The facts which gave rise to this appeal, as found by the Court of Appeals, follow: In the Civil Case No. 37784 of the Court of First Instance of Manila, entitled "Gelacio Tumaming, plaintiff, v. Basilio Rub, Filomeno Niza and Mauro B. Ganzon, defendants," summons was served on defendant Ganzon on January 30, 1959. On February 12, 1959, Ganzon filed an urgent ex parte motion for an extension of ten days within which to file a responsive pleading on the ground that his counsel has just been retained and needed a few days more to study the case and prepare such responsive pleadings as might be necessary. It should be noted that the original period for answering was to expire on February 14, 1959.

On February 21, 1959, the lower court denied the urgent ex parte motions for extension of time to file responsive pleading filed individually by defendants Mauro Ganzon and Filomeno Niza and at the same time declared them in default. This order of denial and declaring them in default was received by Ganzon and Niza on February 25, 1959 and on the same day a verified motion to set aside the order of default was filed together with their answers, but said motion was again denied by the trial court on February 28, 1959.

On March 4, 1959, Ganzon filed a motion for reconsideration of the order of February 28, 1959 and for the suspension of the trial scheduled for March 5, 1959 in order to be able to file a petition for certiorari; yet, on March 5, 1959 the trial court rendered a decision, based on the findings of a commissioner appointed by it, imposing upon the herein appellant a total liability of more than P47,000.00.

On March 17, 1959, defendant Ganzon, having been notified of the decision, filed his verified petition for reconsideration or relief, with the corresponding affidavit of merits. A portion of the petition reads:

"That the herein movant prays for reconsideration of or relief from the decision of March 5, 1959, on the ground of accident, mistake or excusable negligence;

"That the undersigned counsel was retained by the defendant Mauro B. Ganzon only on February 12, 1959, because he was attending to his cattle ranch in Zambales from January 27 to February 11, 1959, inclusive. He received news by letter from his daughter about the filing of the case on February 10, as he was in the

mountains of Zambales, and came home immediately thereafter to attend to it;

"The undersigned counsel instructed the defendant Mauro B. Ganzon to gather together all papers relating to the case and he came back with all papers ready on the afternoon on February 16, 1959;

"That the movant herein and his counsel never intended to delay the disposition of this case, otherwise they would have filed dilatory motions, such as a motion for particulars or a motion to dismiss;

"That the extensions sought to file an answer were dictated by the circumstances above mentioned, the need for time for counsel to study the case and the professional engagements of the undersigned counsel;

"That the herein movant has good and indubitable defenses, supported by documentary evidence, as shown by the attached affidavit of merits of the movant incorporating photostatic copies of various documents, including a promissory note of December 2, 1956, of the plaintiff himself;

"That this Honorable Court imposed excessive damages upon the movant, when, taking into account the movant's affidavit of merits, the plaintiff should be the one to pay damages to the movant herein;

"That justice and equity, the answer having filed already before trial was held and in view of the movant's valid and indubitable defenses, demand that the movant be heard in his defense."

On March 21, 1959, the trial court issued an order denying Ganzon's motion for reconsideration or relief. Hence this appeal.

It is contended that the trial court erred in exercising its discretion to deprive the defendant-appellant of his day in court and in *motu proprio* ordering trial before a commissioner.

It appears that the motion to set aside the default order was filed, without delay, on February 25, 1959, before trial, and on the same day the said order was received. When a motion to set aside the order of default is made without any loss of time and before a date is set for the hearing of the case on its merits, and is accompanied by a sworn statement of merits and copies of the documents which constitute *prima facie* a just and valid defense, the refusal to set aside the order of default constitutes an abuse of discretion. (*Bañares v. Flordeliza*, 51 Phil. 786)

In the leading case of *Coombs v. Santos*, 24 Phil. 446, where a motion to set aside the order of default was denied by the trial court but reversed by this Court, it was held:

"A default judgment does not pretend to be based upon the merits of the controversy. Its existence is justified on the ground that it is the one final expedient to induce the defendant to join issue upon the allegations tendered by the plaintiff, and to do so without unnecessary delay. A judgment by default may amount to a positive and considerable injustice to the defendant; and the possibility of such serious consequences necessitates a careful examination of the grounds upon which the defendant asks that it be set aside.

"In *Watson v. R.R. Co.* (41 Cal., 17, 20), the court said: 'Applications of this character are addressed to the discretion - the legal discretion - of the court in which the default has occurred, and should be disposed of by it as substantial justice may seem to require. Each case must be determined upon its own peculiar facts, for perhaps no two cases will be found to present the same circumstances for consideration. As a general rule, however, in cases where, as here, the application is made so immediately after default entered as that no considerable delay to the plaintiff is to be occasioned by permitting a defense on the merits, the court ought to incline to relieve. The exercise of the mere discretion of the court ought to tend in a reasonable degree, at least, to bring about a judgment on the very merits of the case; and when the circumstances are such as to lead the court to hesitate upon the motion to open the default, it is better, as a general rule, that the doubt should be resolved in favor of the application.'

"It might be added that if plaintiff relies upon his judgment obtained by default and directs the attention of the

court to no real injury which would result to his interests by the reopening of the case, his objection too such action assumes, to say the least, the appearance of a technicality, which, in this liberal age, is not looked upon with favor. An examination of the authorities shows that were the application to set aside a default judgment is made immediately following its entry, it will receive much greater consideration than were a delay of months or even weeks has occurred."

And in the case of *Macaraig v. Dy Sun*, G. R. No. L-12497, March 23, 1959, in following the ruling of the *Coombs* case, this Court held:

"The granting of a motion to set aside an order of default rests in the discretion of the court, but 'It must be remembered that the only discretion conferred upon officers is a legal discretion, and when anything is left to any officer to be done according to his discretion the law intends it to be done with a sound discretion and according to law; and if a given case falls within both the letter and spirit of Section 113, supra (Rule 38, Rules of Court) a denial of the relief sought will amount to an abuse of such discretion* (*Coombs v. Santos*, 24 Phil. 446)xx"

Further, Section 7, Rule 11 of the Rules of Court, which gives the court the discretion to allow the filing of an answer even after the expiration of time to do so provides:

"Extension of time to plead. - Upon motion and on such terms as may be just the court may extend the time to plead provided in these rules.

"The court may also, upon like terms, allow an answer or other pleading to be filed after the time fixed by these rules."

and the discretion of the court in allowing an extension of time should be exercised to subserve the ends of justice, and its proper exercise tends toward giving defendant his day in court. Where a defendant's default appears to have resulted from no neglect or fault on his part, the court will exercise its discretion in relieving against it. (*Unson v. Abera*, 14 Phil. 146; *Mapua v. Mendoza*, 45 Phil. 424; *Maralit v. Lardizabal*, 54 Phil. 252)

Considering that the granting of the motion in this case would in no way prejudice the plaintiff (*Bañares v. Flordeliza*, supra) and deprive him of any substantial right, nor is there evidence of intent to unduly delay the case (*Castañeda v. Pestano*, G.R. No. L-7623, April 29, 1955), and the amount involved being P47,000.00, it is believed that the lower court should have set aside its order of default and, in not doing so, it gravely abused its discretion.

WHEREFORE, the orders appealed from are hereby set aside and the case remanded to the court of origin to allow the defendant to answer the complaint and present evidence in support of his defense. Costs at this instance against the plaintiff-appellee.

Concepcion, C.J., Reyes, J. B. L., Dizon, Makalintal, Bengzon, J. P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

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