

**MIGUEL VIOLAGO AND SIMEON SINGALAWA, PETITIONERS, VS.
HON. PRESIDING JUDGE JOSE C. CAMPOS, JR., BRANCH XXX, COURT
OF FIRST INSTANCE OF RIZAL AND DALISAY T. ALDOVER,
RESPONDENTS.**

G.R. No. L-47334. May 31, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Dalisay T. Aldover filed an action against Miguel Violago, Simeon Singalawa and Times Surety and Insurance Company, Inc. for damages before the Court of First Instance of Rizal, in Pasay City. The case is docketed as Civil Case No. 5549-P and assigned to respondent Judge.

The defendants filed their answer with compulsory counterclaim within the reglementary period. Pre-trial was held on July 20, 1977 following which respondent Judge issued an Order setting the case for trial on the merits on August 12, 1977, at 9:00 in the morning.

On August 10, 1977, Atty. Abraham P. A. Gorospe filed his appearance for defendants Violago and Singalawa, with prayer that the hearing on August 12, 1977 be postponed and reset for September 12 or 16, 1977 at 10:00 in the morning.

When the case was called for hearing on August 12, 1977, defendants Violago and Singalawa and their new counsel failed to appear. Upon plaintiff's motion, respondent Judge declared them in default. Defendants Violago and Singalawa filed a motion for reconsideration but the same was denied. Hence, this petition for certiorari, praying that the Order of default (Annex "C"), "be annulled or set aside, and the Order denying the motion for reconsideration (Annex "F") dated October 20, 1977 be reversed."

Verification of the records of Civil Case No. 5549-P, entitled "Dalisay T. Aldover vs. Miguel Violago, Simeon Singalawa and Times Surety and Insurance Company, Inc." for damages shows that said case is still pending trial before the Court of First Instance of Rizal in Pasay City, Branch XXX, with respect to defendants Miguel Violago and Simeon Singalawa, while the case against defendant Times Surety and Insurance Company, Inc. was terminated by virtue of a compromise agreement which was approved on February 19, 1979.

From the facts stated above, herein petitioners (defendants in said Civil Case No. 5549-P) were not really in default because they have filed their answer to the complaint within the statutory period. Having answered the complaint, the failure of defendants to attend the court and to adduce evidence did not constitute default. Trial may proceed without them. (*Go Changjo v. Roldan Sy-Changjo*, 18 Phil 405)

"As long as the defendant answers he can never be in default and he should therefore not be declared in default (See *Rosario et al. v. Alonzo et al.* L-17330, June 29, 1963).

"As long as there has been an answer made by him, the mere non-appearance of the defendant at a hearing is not default, neither is failure to introduce evidence (*Siojo v. Tecson*, 88 Phil 531; *Ignacio v. Racho* and

Dolores, 78 Phil 557), BUT, certainly, the trial can proceed without him (Go Changjo v. Roldan Sy-Changjo, 18 Phil 405)."

From the foregoing, we conclude that herein petitioners had been unjustly deprived of their day in court.

WHEREFORE, the default order dated August 12, 1977 of respondent Judge in Civil Case No. 5549-P as well as the order denying the motion for reconsideration dated October 20, 1977 are hereby set aside and respondent is hereby directed to set the case for hearing with respect to defendants Miguel Violago and Simeon Singalawa and to render judgment accordingly.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

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