

**ERLINDO FLORES, PETITIONER, VS. HON. FELIPE V. BUENCAMINO
AND JOSE S. CANCIO, JR., RESPONDENTS.***G.R. No. L-43815. December 17, 1976*

Ponente: FERNANDO, J.

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It is understandable why a court, in its concern for the state of its docket, would take to task a party who fails to make his appearance at a pre-trial notwithstanding his being notified. Rightfully, he cannot be heard to complain if in most cases, in view of his absence, he is declared in default with the suit proceeding in its usual course. The assumption can rationally be indulged in that he has only himself to blame. There may be instances though where the demands of justice call for an opportunity being afforded him to present his side. He can then invoke his right to procedural due process. This is one of them. Petitioner, a defendant in an action for the recovery of a sum of money, private respondent being the plaintiff, was held liable by respondent Judge to pay the amount alleged to be due from him. He was not heard at all, as he was declared in default for non-appearance at a pre-trial conference and the proof against him offered ex parte before the clerk of court designated to receive such evidence. In this petition, he pointed out the injustice to which he would be subjected if the lower court decision were not set aside in view of his vigorous claim that not only had he paid in full, but also that he had paid in excess, an assertion that failed to elicit a forthright denial from private respondent. He could thus invoke the Lim Tanhu[1] doctrine, enunciated less than a year ago, with its stress on procedural rules not being "misused and abused as instruments for the denial of Substantial justice." [2] We find merit in the petition.

Petitioner was sued in the sala of respondent Judge, the second branch of the Court of First Instance of Pampanga, for a sum of money with private respondent as the plaintiff. [3] Through his then counsel, Rolando T. Cainoy, he filed his answer. [4] He lost the services of such counsel even before a pre-trial could be had as the latter accepted his appointment as Assistant City Fiscal of Olongapo City; petitioner then retained Attorney Crisostomo G. Banzon to represent him. [5] Thereafter, due to what he termed as either "excusable negligence and as an honest mistake," he was unable to appear at the pre-trial conference scheduled on June 6, 1975, resulting in a motion by private respondent as plaintiff for an order of default, which was thereupon granted by respondent Judge, who immediately allowed the presentation of the evidence from private respondent before his Clerk of Court. [6] There was a motion prepared by his new counsel for lifting such order of default with the supporting affidavits, but even before he could file the same, respondent Judge had already rendered its adverse judgment against petitioner solely on the basis of the evidence thus presented ex parte. [7] It did not prevent respondent Judge from thereafter denying such motion to lift order of default. [8] On March 15, 1976, the private respondent filed a motion for execution. [9] Hence this suit for certiorari, with petitioner stating that he has "a good and valid defense" consisting of the payments made as alleged in his answer, with the balance, so he contends, in his favor if there be proper accounting. [10] More specifically, it is his allegation that while his obligation was only in the total amount of P11,470.00, he had paid the sum of P18,164.62. [11] Thus, his insistence on his day in court.

Private respondent was required to comment. He did so in a pleading filed on October 21, 1976, thereafter

considered as his answer. The facts as alleged were admitted by him up to and including the denial of the motion to lift the order of default and the filing of a motion for execution now pending before respondent Judge. Insofar, however, as paragraph 10 of the petition is concerned, where it was asserted that in the answer filed against the claim of private respondent as plaintiff, it was alleged that there was "nothing to collect from" and owing to private respondent, as petitioner, had already settled his unpaid account and had actually paid the sum in excess, all that private respondent could say in his comment was the following: "That the allegation in paragraph 10 of the petition is self-serving, and if said petitioner has indeed paid his obligation to the herein private respondent he should have come during the pre-trial of the above case (Civil Case No. G-274) on June 6, 1975 but despite said due notice to him and to his counsel * * * they both failed to appear, hence, the Order of Default was entered against him." [12] What amounts to a damaging admission is that in the next paragraph, petitioner categorically maintained that if "given his day in court, he could vindicate his claim because he really has a good and valid and meritorious defense by virtue of the receipts of payments he made," specifying, as stated earlier, that actually the amount of P6,694.62 is owed to him by private respondent. [13] All that private respondent could state in his comment was that "petitioner was given all the opportunity or in short a day in court, but as stated herein he failed, by his own neglect, to appear at the pre-trial conference set by the lower court on June 6, 1975; * * *." [14] The most charitable way of viewing the matter for private respondent is that he was rather evasive.

A case, as noted at the outset, has, therefore, been made out for the grant of the relief sought. It is obvious that there is a denial of procedural due process.

1. As was held in the recent case of *Loauias v. Rodriguez*, [15] where there is a "failure of a litigant to be accorded his day in court, there can be a resort to this Tribunal. Its response has invariably been to assure that such a right be respected." [16] The opinion cited twenty-seven decisions starting from *Muerteguy v. Delgado*, [17] promulgated in 1912. Reference was likewise made to *Lopez v. Director of Lands*, [18] with its oft-quoted definition of Webster that procedural due process requires a law that hears before it condemns, proceeds upon inquiry, and renders judgment only after trial. In the proceeding before the lower court, there was no hearing before condemnation and there was no inquiry. In a realistic sense, it cannot truly be said that the judgment came after trial.

2. *Loquias* is a case involving failure to appear at a pre-trial but there was a failure to notify the parties. *Lim Tanhu v. Ramolete*, already referred to, also involved an absence of some defendants, thereafter declared in default for failure to be present at a pre-trial with a motion to have such order lifted to no avail. It is understandable, therefore, why petitioner would rely on it as authoritative. He is justified in doing so. The excerpt in full, from the opinion of Justice Barredo, from which the earlier pronouncement in the opening paragraph of this petition was taken, follows: "After careful scrutiny of all the above-related proceedings in the court below and mature deliberation, the Court has arrived at the conclusion that petitioners should be granted relief, if only to stress emphatically once more that the rules of procedure may not be misused and abused as instruments for the denial of substantial justice. A review of the record of this case immediately discloses that here is another demonstrative instance of how some members of the bar, availing of their proficiency in invoking the letter of the rules without regard to their real spirit and intent, succeed in inducing courts to act contrary to the dictates of justice and equity, and, in some instances, to wittingly or unwittingly abet unfair advantage by ironically camouflaging their actuations as earnest efforts to satisfy the public clamor for speedy disposition of litigations, forgetting all the while that the plain injunction of Section 2 of Rule 1 is that the 'rules shall be liberally construed in order to promote their object and to assist the parties in obtaining not only 'speedy' but more imperatively, 'just * * * and inexpensive determination of every action and proceeding.'" [19] It need not be reiterated that the liberal approach to be followed in interpreting procedural rules goes back to *Alonso v. Villamor*, [20] a 1910 decision. In the oft-quoted language of Justice Moreland: "Lawsuits, unlike duels, are not to be won by a rapier's thrust.

Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities." [21]

3. Nor did Justice Barredo stop there. He was equally emphatic on this point: "Another matter of practice worthy of mention at this point is that it is preferable to leave enough opportunity open for possible lifting of the order of default before proceeding with the reception of the plaintiff's evidence and the rendition of the decision. '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 and liberal examination of the grounds upon which the defendant may seek to set it aside.' (Moran, supra, 534, citing Coombs v. Santos, * * *.)" [22]

The merit of the petition, as noted at the outset, is quite obvious.

WHEREFORE, the petition for certiorari is granted and the order declaring petitioner in default, as well as the decision rendered thereafter on June 16, 1975 based on the evidence of private respondent as plaintiff submitted ex parte, are nullified and set aside. The case is remanded to the lower court to enable petitioner to present his evidence and the trial to proceed strictly in accordance with the law and procedural rules.

Barredo, Antonio, Aquino, and Martin, JJ., concur.

Concepcion, Jr., J., is on leave.

[1] L-40098, August 29, 1975, 66 SCRA 425.

[2] Ibid, 441,

[3] Petition, par. 3.

[4] Ibid, par. 4.

[5] Ibid, par. 5.

[6] Ibid, par. 6.

[7] Ibid, par. 7.

[8] Ibid, par. 8.

[9] Ibid, par. 9.

[10] Ibid, par. 10.

[11] Ibid, par. 11.

[12] Comment of Private Respondent, par. 6.

[13] Petition, par. 11.

[14] Comment, par. 7.

[15] L-38388, July 31, 1975, 65 SCRA 659.

[16] Ibid, 663.

[17] 22 Phil. 109.

[18] 47 Phil. 23 (1924).

[19] *Lim Tanhu v. Ramolete*, 66 SCRA 425, 441-442.

[20] 16 Phil. 315.

[21] *Ibid*, 322.

[22] 66 SCRA 425, 454.

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