

FELIXBERTO W. FERRER, AS ADMINISTRATOR OF THE INTESTATE ESTATE OF THE SPOUSES ESTEBAN F. FERRER, SR. AND MIGUELA WENCESLAO, PLAINTIFF AND APPELLEE, VS. YANG SEPENG, DEFENDANT AN...

G.R. No. L-39373. September 30, 1974

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court holds that the trial court did not err in denying defendant-appellant's motion for new trial and therefore affirms the money judgment appealed from. The bare affidavit of defendant-appellant that his failure to appear at the scheduled trial was due to "stomach trouble" does not constitute a satisfactory showing of "accident, mistake or excusable negligence" which ordinary prudence could not have guarded against so as to justify the relief sought. His failure to submit an affidavit of merits showing the valid defense which he may prove in case a new trial is granted is fatal to his cause.

The case was certified to this Court as involving a pure question of law by resolution of August 2, 1974 of the Court of Appeals.

In the action below for recovery of a sum of money, trial on the merits was set for November 8, 1967. At the hearing, plaintiff-appellee and counsel appeared while only counsel for defendant-appellant was present. The trial proceeded and plaintiff introduced his documentary evidence supporting his claim against defendant, all of which were admitted without objection by defendant's counsel. After plaintiff rested his case, defendant's counsel moved for postponement on the ground that defendant was not present in court. The trial court denied the motion and declared the case submitted for decision. On the same day, it rendered judgment against defendant, as follows:

"WHEREFORE, judgment is hereby rendered ordering the defendant to pay the plaintiff the amount of P20,750.00 with interest thereon at the legal rate from October 3, 1966, until fully paid, P500.00 as attorney's fees, and the costs."

Three weeks thereafter on December 2, 1967, defendant filed a motion for new trial allegedly on the ground of "accident, mistake or excusable neglect" in that defendant "early in the morning of said November 8, 1967 had stomach trouble and consequently I was not able to go to the court for said trial" as per defendant's affidavit annexed to the motion.

Plaintiff duly opposed the motion for new trial for several grounds, which the appellate court summarized in its resolution, as follows:

"1.

That the alleged stomach 'trouble' does not constitute excusable negligence since it is merely one which could not physically prevent him from appearing in court;

"2.

That the motion for new trial did not allege any statement of fact constituting the valid defense which the defendant may prove if given the chance to introduce evidence;

"3.

Finally, because it is not in dispute that appellant is indebted to the late Esteban Ferrer Sr. in the amount of P20,750.00 as set forth in Exhibit A which appellant signed and did not deny as shown by the fact that appellant in his Answer did not deny the same under oath thereby giving rise to the presumption that he is deemed to have admitted it (Section 3 Rule 8, Rules of Court)."

The trial court per its order of December 14, 1967 denied the motion for new trial for the reasons stated in plaintiff's opposition.

Hence, defendant's appeal to the appellate court assigning as sole error "that the trial court erred in denying the motion for new trial."

In certifying the appeal to this Court as involving a pure question of law, the appellate court's division of five justices was divided with two dissenting justices opining that "the question of whether the stomach trouble of defendant-appellant was sufficient to prevent him from appearing in court is a question of fact" and that the appellate court should have retained the appeal.[1]

We find it unnecessary to tarry on this point of division in the appellate court. Defendant-appellant's bare averment of "stomach trouble" belatedly presented after three weeks, without any specific statement of its nature and gravity was patently inadequate to show to the trial court's satisfaction the existence of "accident, mistake or excusable neglect" which ordinary prudence could not have guarded against by reason of which his substantial rights have been materially affected, as required by the Rules of Court.[2]

But even if it were to be conceded that defendant-appellant did in fact suffer from serious stomach trouble which physically prevented him from appearing and giving his testimony at the scheduled trial, his failure to submit in addition an affidavit of merits showing the valid defense which he may prove as against plaintiff's case in case a new trial is granted is fatal to his cause.

The reason is fundamental and elementary. The rule requires that motions for new trial founded on fraud, accident, mistake or excusable negligence must be accompanied by affidavits of merits, i.e. affidavits showing the facts (not mere conclusions or opinions) constituting the valid cause of action or defense which the movant may prove in case a new trial is granted, because a new trial would serve no purpose and would just waste the time of the court as well as the parties if the complaint is after all groundless or the defense is nil or ineffective.[3]

The decisive undisputed fact is that no affidavit of merits to support his motion for new trial as required by Rule 37, section 2 was submitted by defendant-appellant. Such failure is fatal to his cause and is decisive on the question of law presented by his sole assignment of error.

The Court accordingly rules that the appeal has no merit since the failure to submit an affidavit of merits is fatal to appellant's cause and the trial court therefore committed no error in law in denying his motion for new trial.

WHEREFORE, the appealed judgment is hereby affirmed, with costs against defendant-appellant.

Makalintal, C.J., Castro, Esguerra, and Munoz Palma, JJ., concur.

Makasiar, J., is on leave.

[1] The three-member majority was composed of Gaviola, Santos and Serrano, JJ., with Castro and Chanco, JJ., dissenting.

[2] Rule 37, sections 1 and 2.

[3] Vide 2 Moran's Rules of Court, 1970 ed. pp. 224-225 and cases cited.

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