

VICTOR V. VIÑA, IN HIS CAPACITY AS ATTORNEY-IN-FACT OF ANNA MARIA MYRNA F. ANTONIO-OSIAS, PETITIONER, VS. REGIONAL TRIAL COURT OF QUEZON CITY (BRANCH 224) PRESIDED BY HON. TITA ...

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

This Petition for Certiorari and Mandamus[1] filed under the 1997 Rules of Civil Procedure ascribes grave abuse of discretion on the part of public respondent Regional Trial Court of Quezon City, Branch 224 (public respondent) for issuing the Orders[2] denying the Petition for Relief from Order of Dismissal[3] and the Motion for Reconsideration thereof, respectively, in Civil Case No. Q-08-62077.

The controversy has its progenitor in a Complaint for Declaration of Nullity/Cancellation of Deeds and Titles filed by petitioner Victor Viña (petitioner) in his capacity as attorney-in-fact of Anna Maria Myrna Antonio-Osias against private respondents, the spouses Napoleon and Annabelle Antonio, et al. (private respondents). During the pre-trial conference on 26 September 2012, petitioner and his counsel, Attorney Cesar Jimenea, Jr. (Atty. Jimenea) failed to appear. Ineluctably, counsel for private respondents moved for the dismissal of the instant case since petitioner and his counsel were likewise absent in the preliminary conference held six days earlier or on 20 September 2012. On even date, public respondent issued an Order dismissing with prejudice the instant case.[4]

Taking issue with the dismissal, Attorney Jimenea filed a Motion for Reconsideration professing that:

"With sincere apologies, upon verification, the undersigned was informed that an Order dated 06 August 2012 and Notice of Pre-Trial Conference dated 13 August 2012 were indeed issued by the Honorable Court and appear to have been received by the househelp of the undersigned.

Said househelp did not turn-over said order and notice to the undersigned or his secretary but inadvertently misplaced the same, apparently oblivious to their importance, being newly-hired by the undersigned."[5]

Finding no merit, public respondent denied the foregoing Motion in an Order dated 18 December 2012.

Unflustered, petitioner, through his new counsel, filed on 20 March 2013, a Petition for Relief from Order of Dismissal (Petition for Relief) on the ground of excusable negligence pursuant to the provisions of Rule 38 of the 1997 Rules on Civil Procedure. However, public respondent issued the first assailed Order denying the Petition for Relief. The second impugned Order likewise denied the Motion for Reconsideration thereof.

Perforce, petitioner comes to Us via the instant Petition propounding this solitary issue—

WHETHER OR NOT THE (PUBLIC) RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED ON THE MERITS OF THE PETITION FOR RELIEF WITHOUT "REQUIRING THE ADVERSE PARTIES TO ANSWER THE SAME WITHIN FIFTEEN (15) DAYS," AND WITHOUT HEARING THE PETITION IN VIOLATION OF RULE 38 OF THE 1997 RULES OF CIVIL PROCEDURE.

The Petition is impressed with merit.

First off, it bears stressing that a petition for certiorari should only be granted when grave abuse of discretion exists.[6] The term 'grave abuse of discretion' has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a 'capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.' The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.' Furthermore, the use of a petition for certiorari is restricted only to 'truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void.' From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross.[7]

In the case at bench, petitioner impugns two Orders of the public respondent. The first assailed Order dated 5 July 2013 enunciates, viz:

"After a thorough review of the contentions of the parties in this case, this Court finds no cogent reason to grant the (petitioner's) prayer in his Petition for Relief from the Order of dismissal. The record clearly shows that the subject Order of dismissal on September 26, 2012 is sanctioned under Sections 4 and 5, Rule 18 of the Rules of Court and also under the New Guidelines for Litigation in Quezon City Trial Courts (A.M. No. 11-6-10-SC). This Court also finds no fraud, accident, mistake or excusable negligence in the failure of the (petitioner's) former counsel to attend to (sic) the Notice of Pre-trial Conference which was allegedly misplaced by the counsel's househelp. Hence, the provisions of Rule 38 of the Rules of Court may not (be) applied to give the (petitioner) the remedy of a new trial. 'A petition for relief from judgment under Rule 38 is allowed only in exceptional cases.'"[8]

Upon the other hand, the second challenged Order dated 11 November 2013 annunciates:

"The Court did not err in denying the (petitioner's) Petition and for not issuing an Order requiring the (private respondents) to answer. While the assailed Order did not categorically state the insufficiency of the Petition for Relief as to form and substance, a close review of the said Petition reveals that it lacked sufficiency as to form and substance. The Petition failed to indicate the timeliness of the Petition and the reason/s for not availing of the other remedies. Further, the Court can not be erred in denying the Petition because the same did not raise new issues. It is noted that the issues raised in the subject Petition were already passed upon by the Court in its Order dated December 18, 2012."[9]

After a judicious scrutiny of these two Orders vis-à-vis the factual milieu of the case, We find that public respondent committed grave abuse of discretion in issuing them.

Apropos to the resolution of this Petition are Sections 1, 3, 4 and 6 of Rule 38 of the 1997 Rules of Court, viz:

"SECTION 1. Petition for relief from judgment, order, or other proceedings. — When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

SEC. 3. Time for filing petition; contents and verification. — A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be.

SEC. 4. Order to file an answer. — If the petition is sufficient in form and substance to justify relief, the court in which it is filed, shall issue an order requiring the adverse parties to answer the same within fifteen (15) days from the receipt thereof. The order shall be served in such manner as the court may direct, together with copies of the petition and the accompanying affidavits.

SEC. 6. Proceedings after answer is filed. — After the filing of the answer or the expiration of the period therefor, the court shall hear the petition and if after such hearing, it finds that the allegations thereof are not true, the petition shall be dismissed but if it finds said allegations to be true, it shall set aside the judgment or final order or other proceeding complained of upon such terms as may be just. Thereafter the case shall stand as if such judgment, final order or other proceeding had never been rendered, issued or taken. The court shall then proceed to hear and determine the case as if a timely motion for a new trial or reconsideration had been granted by it."

Here, petitioner asserts that the Petition for Relief was timely filed and sufficient in form and substance. This being so, it should not have been dismissed outright.

Anent the timeliness of the filing of the Petition for Relief, the record reflects that petitioner averred:

"3.

In an Order dated December 18, 2012, which was received on January 24, 2013, the Honorable Court denied the said Motion for Reconsideration, finding 'no reasonable ground to warrant the relief sought for by the (petitioner).'"

Does the foregoing averment show petitioner's sufficient compliance with Section 3, Rule 38 of the Rules of Court?

We rule in the affirmative.

In his Affidavit of Merit,[10] petitioner claimed that it was Atty. Jimenea who received the 18 December 2012 Order on 24 January 2013 and that he merely learned of it sometime in February 2013. With this hard fact, whether We commence the counting of the 60-day period as provided under said Section 3 from February 2013 or from 24 January 2013, the Petition for Relief filed on 20 March 2013 indubitably nestled within the prescribed period.

To Our mind, the Petition for Relief is sufficient in form and substance. It clearly complied with the requisites set forth in Section 3 as to form. With respect to substance, it sufficiently avowed:

"5.

Considering that the December 18, 2012 Order arose from the failure of the petitioner's former counsel to attend to (sic) the Notice of Pre-Trial Conference which was allegedly misplaced by the counsel's househelp, this Petition is being filed under the provisions of Rule 38 of the 1997 Rules on Civil Procedure, which allows an order to be set aside on the ground of excusable negligence.

6.

Section 1 of Rule 38 provides that, 'When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.'

7.

While it had been settled that 'A client is bound by the mistakes of his lawyer,' the Supreme Court had also recognized that 'there are factual considerations necessitating a different outcome.'

8.

In *Amil vs. Court of Appeals*, the Supreme Court held that 'an exception to the principle that a client is bound by the mistakes of his counsel is one wherein the negligence of the latter is so gross that the former was deprived of his day in court, as a result of which he is deprived of property without due process of law.'

9.

Likewise, in *Legarda vs. Court of Appeals*, the Supreme Court also gave leeway to the party by ordering the restoration of her property that was already sold at public auction resulting from the failure of her counsel to file an answer and lack of vigilance in protecting her interests in subsequent proceedings.

10.

In the present case, it is beyond argument that not only had the petitioner's former counsel been remiss of (sic) his duty to his client. He was grossly negligent as shown by the fact that when he set the Motion for Reconsideration for hearing, he still failed to attend on the date he himself chose."^[11]

Given the foregoing, public respondent should have ordered the adverse parties to file their Answer and thereafter set the case for hearing. Pursuant to Section 6, it is only upon finding that the allegations therein are untrue during such hearing that the court may dismiss the petition.

Here, public respondent capriciously dismissed the Petition by peremptorily stating, inter alia, that "the issues raised in the subject Petition were already passed upon by the Court in its Order dated December 18, 2012."^[12] Petitioner having alleged that he was oblivious of the subject proceedings, it behooves public respondent to inquire as to its truthfulness. At this juncture, it bears emphasis that We are not unaware of the rule that the counsel's negligence binds the client.^[13] Nonetheless, this is not absolute and admits of exceptions, i.e., "1) where [the] reckless or gross negligence of counsel deprives the client of due process of law; 2) when [the rule's] application will result in outright deprivation of the client's liberty or property; or 3) where the interests of justice so require."^[14] Whence, public respondent should have probed whether such purported negligence of counsel does not truly fall under the said exceptions and should have given petitioner to prove otherwise.

With this discourse, We find and so rule that the public respondent committed grave abuse of discretion in issuing the assailed Orders. It is settled that, except for the most persuasive of reasons, strict compliance of the rules of procedure, is enjoined to facilitate the orderly administration of justice.^[15]

WHEREFORE, the Petition is hereby GRANTED. The Orders dated 5 July 2013 and 11 November 2013 of the Regional Trial Court of Quezon City, Branch 224, in Civil Case No. Q-08-62077 are REVERSED and SET ASIDE. The instant case is REMANDED to the court a quo for further proceeding pursuant to Sections 4 and 6 of Rule 38 of the 1997 Rules of Civil Procedure.

SO ORDERED.

Ybañez, and Manahan, JJ.,

[1] Rollo, pp. 3-11.

[2] Dated 5 July 2013 and 11 November 2013; Id., pp. 12-13 and 14.

[3] Id., pp. 20-25.

[4] Rollo, p. 43.

[5] Id., p. 20.

[6] See *Lopez v. Irvine Construction Corp.*, G.R. No. 207253 (20 August 2014).

[7] *Rio v. Colegio de Sta. Rosa-Makati*, G.R. No. 189629 (6 August 2014), citing *Yu v. Hon. Reyes-Carpio*, 652 SCRA 341, 348 (15 June 2011).

[8] Rollo, p. 12.

[9] Id., p. 14.

[10] Rollo, pp. 26-28.

[11] Rollo, pp. 21-22.

[12] See Id., p. 14.

[13] See *City of Dagupan v. Maramba*, G.R. No. 174411 (2 July 2014).

[14] Ibid.

[15] See *Saint Louis University, Inc.*, G.R. Nos. 162299 and 174758 (26 March 2014).

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