

BHAGWAN RAMNANI, PETITIONER, VS. COURT OF APPEALS, HON. BUENAVENTURA J. GUERRERO, AS REGIONAL TRIAL COURT JUDGE OF MAKATI, METRO MANILA, BRANCH 133, SPOUSES CENON G. DIZON AND J...

G.R. No. 101789. April 28, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

On March 13, 1990, the spouses Juliette Dizon and Cenon Dizon filed a complaint in the Regional Trial Court of Makati against the spouses Josephine Anne Ramnani and Bhagwan Ramnani for the collection of a sum of money representing the alleged unremitted value of jewelry received by Josephine from Juliette on consignment basis.[1]

Josephine Ramnani submitted an answer with counterclaim[2] in which she alleged inter alia:

- (a) That although she did receive pieces of jewelry worth P934,347.00 from Dizon, the latter had likewise received from her jewelries worth P1,671,842.00, including cash and unpaid checks in the amount of P159,742.50;
- (b) That she paid Dizon P50,000; and
- (c) That Dizon still owes her P787,495.00;

The trial court set the case for pre-trial on August 14, 1990,[3] but the Ramnanis did not appear. Consequently, they were declared in default.[4] On September 12, 1990, they filed a motion to lift the order of default, but this was denied on November 20, 1990.[5]

On October 26, 1990, conformably to the default order, evidence of the Dizon spouses was received ex parte. On January 28, 1991, Judge Buenaventura J. Guerrero rendered judgment against the Ramnanis, holding them liable to the plaintiffs in the amounts of P884,347.00, representing the principal obligation plus legal interest thereon from March 13, 1990, until fully paid; P100,000.00 as moral damages; and P20,000.00 as exemplary damages. They were also required to pay P50,000.00 as attorney's fees, and the costs of the suit.[6]

The Ramnanis filed a motion for reconsideration on the ground that a "personal obligation contracted by the wife without the consent of the husband (was) being made enforceable against the spouses' conjugal partnership despite absence of any allegation and proof that the same redounded to the benefit of the family as required by Article 121 of the Family Code." [7] The motion was denied on April 11, 1991.[8]

On April 29, 1991, Bhagwan Ramnani filed a petition for certiorari before the respondent Court of Appeals imputing error to the trial court:

- (1) in denying the motion to lift order declaring petitioner as in default despite a clear showing of a meritorious defense;

(2) in not considering petitioner's reason for failure to attend pre-trial as excusable neglect.

In a decision dated May 10, 1991, the Court of Appeals dismissed the petition, holding that certiorari was not the proper remedy.[9]

The respondent court said:

Petitioners alleged that the respondent court erred and committed grave abuse of discretion and/or acted in excess of jurisdiction in assigning its Branch Clerk of Court as the hearing commissioner for the purpose of the ex parte reception of plaintiffs' evidence (par. 19, Petition); that the questioned Decision failed to specify whether defendants are solidarily or only jointly liable (par. 20, Petition); and that petitioner had a valid and meritorious defense (par. 21, Petition). These are matters that could very well be ventilated in an ordinary appeal. It should be stressed that the writ of certiorari issues for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. It cannot be legally used for any other purpose (*Silverio vs. Court of Appeals*, 141 SCRA 527). Mere error of judgment cannot be a proper subject of the special civil action for certiorari (*Zapata vs. NLRC*, 175 SCRA 56). Further, it is a settled rule that certiorari cannot be made a substitute for and perform the function of an appeal (*People vs. Cuasmas*, 172 SCRA 415).

The petitioner has come to this Court to challenge that decision. He avers that the Court of Appeals erred in upholding the refusal of the trial court to set aside the order of default and the default judgment thereafter issued.

The basic rule is found in Section 2, Rule 20, viz: "A party who fails to appear at a pre-trial conference may be non-suited or considered as in default."

As held in *Lina v. Court of Appeals*,[10] the remedies available to a defendant in the regional trial court who has been declared in default are:

- a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has a meritorious defense; (Sec. 3, Rule 18)
- b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;
- c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and
- d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him. (Sec. 2, Rule 41)

The first remedy was adopted by the petitioner but his motion to lift the order of default was denied. According to the trial court:

Defendants' non-appearance is in-excusable. It is unbelievable their former lawyer did not explain to them the mandatory character of their appearance. Their invocation of the deteriorating health of defendant Josephine necessitating her trip abroad for appropriate medical treatment, is unavailing. There is no medical certificate to attest such illness. Besides, at the time of the hearing of the motion on October 19, 1990, counsel for the defendants admitted that Josephine had not yet arrived from the States, despite their averment in their motion she would "only be back late September or early October of this year." This only indicates her light regard of her duty to appear in court. Moreover, the other defendant Bhagwan Ramnani did not submit any other plausible explanation for his absence in the pre-trial.

A satisfactory showing by the movant of the existence of fraud, accident, mistake or excusable neglect is an

indispensable requirement for the setting aside of a judgment of default or the order of default. After going over the pleadings of the parties and the decision of the respondent court, we find that the motion to lift the order of default was properly denied for non-compliance with this requirement.

The defendants were less than conscientious in defending themselves and protecting their rights before the trial court. They did not pay proper attention and respect to its directive. The petitioner has not shown that his and his wife's failure to attend the pre-trial hearing as required was due to excusable neglect, much less to fraud, accident or mistake.

The petitioner insists, however, that they had a meritorious defense which the trial court should not have disregarded. A meritorious defense is only one of the two conditions. Even if it be assumed for the sake of argument that the private respondents did owe Josephine Ramnani P900,000, as alleged in the counterclaim, that circumstance alone is not sufficient to justify the lifting of the order of default and the default judgment. The obvious reason is that a meritorious defense must concur with the satisfactory reason for the non-appearance of the defaulted party. There is no such reason in this case.

The appropriate remedy is an ordinary appeal under Section 2 of Rule 41 of the Rules of Court providing in part as follows:

A party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him in accordance with Rule 38.

In questioning the dismissal of its petition by the respondent court, the petitioner invokes the case of *Pioneer Insurance and Surety Corporation v. Hontanosas*,^[11] where the Court sustained the challenge to an order of default in a petition for certiorari rather than in an ordinary appeal, which was held as not an adequate remedy.

That case is not applicable to the present petition. Certiorari was allowed in that case because the petitioner was illegally declared in default. The Court held that, first, the petitioner could not be compelled to attend an unnecessary second pre-trial after it had indicated at the earlier pre-trial that there was no possibility of an amicable settlement; second, the pre-trial was premature because the last pleading had not yet been filed at the time; and third, there was insufficient notice of the pre-trial to the petitioner. In the case at bar, no such irregularities in the pre-trial have been alleged by the petitioner.

As we held in *Pure Foods Corporation v. NLRC*:^[12]

It must emphatically be reiterated, since so often is it overlooked, that the special civil action for certiorari is a remedy designed for the correction of errors of jurisdiction and not errors of judgment. The reason for the rule is simple. When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correctible through the original civil action of certiorari.

Even on the supposition that certiorari was an appropriate remedy, the petition would still fail because it has not been clearly shown that the trial court committed grave abuse of discretion in refusing to set aside the default order and the default judgment. We have held in many cases, including *Pahilanga v. Luna*,^[13] that:

It is within the sound discretion of the court to set aside an order of default and to permit a defendant to file his answer and to be heard on the merits even after the reglementary period for the filing of the answer has expired, but it is not error, or an abuse of discretion, on the part of the court to refuse to set aside its order of default and to refuse to accept the answer where it finds no justifiable reason for the delay in the filing of the

answer. In motions for reconsideration of an order of default, the moving party has the burden of showing such diligence as would justify his being excused from not filing the answer within the reglementary period as provided by the Rules of Court, otherwise, these guidelines for an orderly and expeditious procedure would be rendered meaningless. Unless it is shown clearly that a party has justifiable reason for the delay the court will not ordinarily exercise its discretion in his favor.

The above doctrine is applicable to the inexcusable neglect of the herein petitioner and his wife to appear at the pre-trial hearing duly scheduled and of which they were properly notified.

We must, however, moderate the award of damages by the trial court as we feel it is rather harsh upon the petitioner. In the exercise of our discretion, we hereby reduce the moral damages to P20,000.00 and the attorney's fees to P10,000.00, and disallow the exemplary damages. The rest of the award is approved.

WHEREFORE, the challenged decision is AFFIRMED as above modified, with costs against the petitioner. It is so ordered.

SO ORDERED.

Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

[1] Rollo, p. 25.

[2] Ibid., pp. 8-9.

[3] Id., p. 26.

[4] id.

[5] id.

[6] id., p. 27.

[7] id., p. 11.

[8] id.

[9] id., pp. 24-29; Ordoñez-Benitez, J., ponente, with Melo and Cui, JJ., concurring.

[10] 135 SCRA 637.

[11] 78 SCRA 447.

[12] 171 SCRA 415.

[13] 164 SCRA 725.

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