

BENJAMIN M. GARCIA, PETITIONER, VS. THE COURT OF APPEALS AND CARMEN G. TAN, RESPONDENTS.

G.R. No. 107107. December 14, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court to set aside the Resolution of the Court of Appeals in C.A. G.R. SP No. 28502.

Petitioner is the defendant in Civil Case No. 0-91-9179 of the Regional Trial Court, Branch 98, Quezon City, presided by Judge Cesar T. Paralejo. The complaint filed by private respondent prayed for the rescission of a lease contract and for an order requiring petitioner to return the sum of P132,000.00 to private respondent and to pay her P70,000.00 in damages.

The initial hearing of the case was set on January 22, 1992, at 8:30 A.M. Petitioner's counsel failed to appear on the said date of hearing due to high fever and excruciating pain in the chest. Petitioner's counsel sent instead his secretary to inform the court and the opposing counsel of his condition and at the same time to request for the resetting of the hearing. The counsel for private respondent objected to the postponement of the hearing, arguing that petitioner's counsel failed to present a medical certificate. The trial court declared petitioner as in default and allowed the ex-parte presentation of evidence by private respondent.

On February 4, 1992, the trial court rendered a decision in the case based on the evidence presented ex-parte by private respondent. A copy of the decision was received by petitioner's counsel on February 26, 1992.

On February 12, 1992, or 22 days after the initial hearing, petitioner's counsel filed a Motion for Reconsideration and/or to Lift Order of Default, attaching thereto a notarized, medical certificate and the affidavit of his secretary, which narrated the steps taken to postpone the hearing held on January 22, 1992.

On March 10, 1992, petitioner filed a manifestation, adopting his aforesaid motion to lift the order of default as his motion for reconsideration of the Decision itself.

On March 30, 1992, the trial court issued an order denying the motion for reconsideration. A copy of the order was received by defendant on April 7, 1992.

On April 20, 1992, petitioner filed a Notice of Appeal.

On June 26, 1992, the trial court issued an order disapproving the appeal for having been filed out of time, and granted the motion of private respondent for the issuance of a writ of execution.

The Court of Appeals dismissed petitioner's petition for certiorari, seeking to annul the Decision and the corresponding Order dated June 26, 1992. The Court of Appeals noted that petitioner's appeal was filed out of time.

In the instant petition, petitioner contends that his motion for reconsideration of the Decision should be considered as having been filed as of February 12, 1992. He claims that since he filed on March 10, 1992, a manifestation adopting his earlier motion to lift the default order as his motion for reconsideration of the Decision, he had until April 21, 1992 within which to appeal. Furthermore, he avers that the January 12, 1992 hearing was only the initial hearing of the case, that the request for postponement was the first he ever asked, and that there was a valid ground for said request (Rollo, pp. 5-13).

We do not agree with petitioner.

Petitioner received a copy of the Decision of the trial court on February 26, 1992. Therefore, he had only up to March 12, 1992, within which to appeal therefrom.

On March 10, 1992, with only two days left for the perfection of his appeal, petitioner filed a manifestation, asking that his motion for reconsideration of the order declaring him as in default filed on February 12, 1992, be treated as his motion for reconsideration of the Decision.

Inasmuch as petitioner received a copy of the order denying his motion for reconsideration on April 7, 1992, he had only up to April 9, 1992 within which to perfect his appeal. When petitioner filed his Notice of Appeal on April 20, 1992, the Decision had long become final and executory.

Petitioner advances the outlandish theory that the time to perfect his appeal never started to run even after his receipt of the copy of the Decision on February 26, 1992 because he had filed a motion for reconsideration of the order declaring him as in default on February 12, 1992. He urges that the period for appeal started to run only on April 6, 1992, when he received a copy of the order, denying his motion for reconsideration of the Decision (Rollo, p. 20).

The motion which petitioner filed on February 12, 1992 was not for the reconsideration of the Decision but for the reconsideration of the order declaring him in default.

He could not have sought in that motion for a reconsideration of the Decision because he was served a copy thereof only on February 26, 1992. Likewise, he moved that said motion be treated as a motion for reconsideration of the Decision only on March 10, 1992.

The trial court was quite liberal in granting petitioner's motion to treat the motion filed on February 12, 1992 as a motion for reconsideration of the Decision itself because by no stretch of the imagination can the motion for reconsideration of the order of default - which involves only the non-appearance of petitioner's counsel at the hearing - be treated as a motion for reconsideration of the Decision - which naturally involves the merits of plaintiff's cause of action.

The motion for reconsideration of the Decision is deemed to have been filed only on March 10, 1992 or on the thirteenth day from receipt of the copy of the Decision.

WHEREFORE, the petition is DENIED. The Resolution of the Court of Appeals appealed from is hereby AFFIRMED.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Bellosillo, JJ., concur.

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