

RAMON S. OROSA, JOSE S. OROSA, LIZA O. TRINIDAD, MYRNA D. DESTURA AND ALFREDO S. MENDOZA, PETITIONER, VS. COURT OF APPEALS, BERTAN PRESS AND ANTONIO J. BERTOSO, RESPONDENT.

G.R. No. 118696. September 03, 1996

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a petition for review on certiorari under Sec. 1, Rule 45, of the Rules of Court assailing the decision of respondent Court of Appeals dated 18 October 1994 in CA-G.R. SP No. 33854 as well as its resolution dated 20 January 1995 denying reconsideration thereof.

Private respondents Bertan Press and Antonio J. Bertoso filed a complaint for a sum of money against petitioners Ramon S. Orosa, Jose S. Orosa, Liza O. Trinidad, Myrna D. Destura and Alfredo S. Mendoza before the Regional Trial Court of Manila, docketed as Civil Case No. 92-63476. Accordingly, the trial court issued the corresponding summons to be served upon petitioners.

Per sheriff's return dated 8 February 1993 summons was served on 6 February 1993 upon petitioners Ramon S. Orosa, Jose S. Orosa, Liza O. Trinidad, and Myrna D. Destura through their secretary Maribel Viernes, and upon petitioner Alfredo S. Mendoza through his employee Juan (Jun) Besana.

On 24 February 1993 petitioners filed a motion for additional time to file answer. However, upon urgent ex-parte motion by private respondents on 5 March 1993, the trial court issued its Order of 8 March 1993 declaring petitioners in default for failure to answer within the reglementary period. On 30 March 1993 petitioners filed a motion for reconsideration and at the same time filed their answer. On 22 March 1994 the trial court denied the motion for reconsideration and expunged petitioners' answer from the records.

On 19 April 1994 petitioners filed a petition for certiorari under Rule 65 of the Rules of Court before respondent Court of Appeals which rendered the assailed decision of 18 October 1994 dismissing the petition and denying the motion for issuance of a writ of preliminary prohibitory injunction and/or temporary restraining order.[1] A motion for reconsideration was filed but the same was likewise denied in the resolution of 20 January 1995.

Petitioners assail respondent Court of Appeals for grave abuse of discretion in affirming the lower court's alleged gross misinterpretation of Secs. 7 and 8, Rule 14, of the Rules of Court, and in declaring them in default.

Petitioners argue that there was no valid service of summons on them as there is no showing that earnest efforts were exerted to serve summons on them personally, hence, jurisdiction was never acquired over them by the lower court. Secs. 7 and 8 provide -

Sec. 7. Personal service of summons. - The summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive it, by tendering it to him.

Sec. 8. Substituted service. - If the defendant cannot be served within a reasonable time as provided in the

preceding section, service may be effected (a) by leaving copies of the summons at the defendant's dwelling house or residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

Admittedly, the sheriff's return dated 8 February 1993 is bereft of any particulars on the impossibility of personal service on petitioners within a reasonable time. However, they are deemed to have waived any flaw in the court's jurisdiction arising from a defective service of summons. For, instead of entering a special appearance questioning the propriety of the service of summons, hence, the exercise of jurisdiction by the trial court over petitioners, they filed a motion for additional time to file answer on 24 February 1993, which was beyond the reglementary period. In effect, they voluntarily submitted to the jurisdiction of the court. Consequently, whatever defect there was in the mode of service of summons was deemed waived and the court acquired jurisdiction over the persons of petitioners by their voluntary submission thereto.[2]

Finally, petitioners contend that they were served with summons only on 9 February 1993 when they actually received the same so that their motion for additional time to answer was filed within the 15-day reglementary period.

This contention of petitioners must fail. As between the sheriff's return which clearly indicates that the summons was served on 6 February 1993 and petitioners' allegation that they actually received the summons only on 9 February 1993, because it was only then that it was delivered to them by their employees, the sheriff's return has more probative value. The certificate of service of summons by the sheriff is prima facie evidence of the facts set out in such certificate. To overcome the presumption arising from the sheriff's return, the evidence must be clear and convincing.[3] But petitioners failed to overcome this presumption. Hence, there is no question that the motion for additional time to file answer was submitted beyond the period fixed by law. The granting of a motion to file an answer after the prescriptive period had expired is a matter addressed to the sound discretion of the trial court, and once this discretion is exercised by the denial of the motion this Court will not interfere therewith unless it can be shown that the trial court has gravely abused its discretion, something which petitioners failed to do in the instant case.

It is settled that parties and counsel should not assume that courts are bound to grant the time they pray for.[4] After all, a motion that is not acted upon in due time is deemed denied. Thus, for failure of petitioners to file their answer within the reglementary period, the order declaring them in default is valid, and conforms fully with Sec. 1, Rule 18, of the Rules of Court which provides, "[I]f the defendant fails to answer within the period specified in these rules, the court shall, upon motion of the plaintiff and proof of such failure, declare the defendant in default x x x x

In affirming the decision of the trial court declaring petitioners in default, respondent Court of Appeals did not commit any abuse of discretion, much less grave. Consequently, the petition for review on certiorari cannot be granted.

Resultantly, the instant petition is DENIED. The decision of respondent Court of Appeals dated 18 October 1994 as well as its resolution of 20 January 1995 is AFFIRMED. Costs against petitioners.

SO ORDERED.

Kapunan and Hermosisima Jr., JJ., concur.

Vitug, J., see dissenting opinion.

Padilla (Chairman), J., joins Vitug in his dissenting opinion.

[1] Decision penned by Associate Justice Delilah Vidallon-Magtolis, concurred in by Associate Justices Antonio

M. Martinez and Fermin A. Martin Jr.

[2] Boticano v. Chu, G.R. No. 58036, 16 March 1987, 148 SCRA 541.

[3] Vargas and Co. v. Chan Hang Chiui 29 Phil. 446 (1915).

[4] The Phil. British Co., Inc. v. De los Angeles, Nos. L-33720-21, 10 March 1975, 63 SCRA 50.

DISSENTING OPINION

VITUG, J.,

With all due respect, I cannot share the view that there was, in this case, a valid service of summons. The Sheriffs return would indicate that a substituted service under Section 8, Rule 14, of the Revised Rules of Court, was made on 06 February 1994; however, it was, as theponencia itself so expressed it, "bereft of any particulars on the impossibility of personal service on petitioners within a reasonable time." The rule enunciated in Keister vs. Navarro (77 SCRA 209) could thus apply; to wit:

"Service of summons upon the defendant is the means by which the court may acquire jurisdiction over his person. In the absence of a valid waiver, trial and judgment without such service are null and void. This process is solely for the benefit of the defendant. Its purpose is not only to give the court jurisdiction of the person of the defendant, but also to afford the latter an opportunity to be heard on the claim made against him.

"The summons must be served to the defendant in person. It is only when the defendant cannot be served personally within a reasonable time that a substituted service may be made. Impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the fact that such efforts failed. This statement should be made in the proof of service. This is necessary because substituted service is 'in derogation of the usual method of service. It has been held that this method of service is' in derogation of the common law; it is a method extraordinary in character, and hence maybe used only as prescribed and in the circumstances authorized by statute.' Thus, under the controlling decisions, the statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by the statute is considered ineffective.

"Indeed, the constitutional requirement of due process requires that the service be such as may be reasonably expected to give . the desired notice to the party of the claim against him."

The fact that the defendants later submitted a motion for additional time within which to file their answer to the complaint should not be deemed a waiver of the defective service of summons except only from the date of such submission or voluntary appearance since it was only then when jurisdiction over their persons could be deemed to have been lawfully acquired by the court.

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