

VICTORY LINER INC., PETITIONER, VS. COURT OF APPEALS AND VIRON TRANSPORTATION COMPANY, RESPONDENTS.

G.R. No. 125034. July 30, 1998

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a Petition for Review on Certiorari under Rule 65 of the Revised Rules of Court, seeking to reverse and set aside the Decision of the Court of Appeals[1] in CA-G.R. SP No. 37543 affirming the Order of Default dated May 26, 1995 and the subsequent Order of June 9, 1995 of the Metropolitan Trial Court of Manila, Branch 4,[2] in Civil Case No. 144592-CV.

From the records on hand, it appears that:

On June 22, 1994, private respondent Viron Transportation Company brought an action against the herein petitioner Victory Liner, Inc., for Damages arising from a vehicular accident of May 6, 1994, docketed as Civil Case No. 144592-CV before the Metropolitan Trial Court of Manila, Branch 4.

Petitioner having filed its Answer to the Complaint on March 27, 1995, pre-trial of the case was scheduled on April 27, 1995, but was reset to May 23, 1995, at 2:00 o'clock in the afternoon, upon motion of the petitioner.

On May 23, 1995, Atty. Atilano B. Lim appeared for petitioner, without any representative from defendant Victory Liner, Inc.. He arrived at the sala of Presiding Judge Leonardo P. Reyes, after the Court had adjourned its session. Consequently, petitioner was declared as in default and the private respondent, Viron Transportation Company, was allowed to present its evidence ex-parte.

On May 24, 1995, petitioner Victory Liner, Inc. presented a Motion to Lift Order of Default on the alleged ground, that:

“The undersigned counsel’s failure to come on time on 23 May 1995 was due to a heavy traffic at the junction of Abad Santos Avenue and Rizal Avenue caused by a vehicular accident between a delivery truck and a Baliwag Transit bus, and further aggravated by the fact that counsel has to locate this Honorable Court sala, he arrived in Court at 2:30 o'clock after the Court already adjourn.”[3] [Underscoring, supplied]

Two days after the filing of the said motion or on May 26, 1995, to be precise, Presiding Judge Leonardo P. Reyes denied the same; ruling, thus:

“DEFENDANTS were declared as in default when they and their counsel failed to appear, despite due notice, at the pre-trial conference on May 23, 1995 at two o'clock in the afternoon. Through counsel, Atty. Atilano Huaben B. Lim, they now want the default order lifted and/or reconsidered. The Court is not inclined to agree. Primarily, the main justification cited by the counsel for his late arrival: heavy traffic, is unacceptable. Secondly, counsel’s alleged unfamiliarity with this Court’s sala is equally unacceptable. Thirdly, defendants were also absent, hence, even if counsel’s late presence would be considered, still the pre-trial conference will not push through. The presence of parties and counsels at the pre-trial is required. In this

particular case, there is no showing that a special power of attorney had been executed in favor of counsel. Fourthly, this case has been pending for sometime and unless expedited, it will be relegated to memory's bin. WHEREFORE, for all the foregoing, defendants' motion to lift order of default is hereby DENIED.

SO ORDERED"[4]

On June 7, 1995, petitioner filed a Motion for Reconsideration but to no avail. It was denied on June 9, 1995, by an Order which stated, that:

"The Court finds no compelling reason to disturb its Order dated May 26, 1995. Hence, defendants' motion for reconsideration is hereby regrettably DENIED."

Aggrieved, petitioner went to the Court of Appeals on a Petition for Certiorari. However, on May 22, 1996, the Court of Appeals dismissed the petition, affirmed the questioned Orders and authorized the plaintiff (private respondent herein) to proceed with the presentation of evidence ex parte.[5]

Undaunted, petitioner has come to this Court via the present petition; posing the following questions:

I.

HAS THE COURT COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION, AND THEREFORE AN (sic) REVERSABLE ERROR, IN AFFIRMING THE MAY 26, 1995 AND JUNE 9, 1995 ORDERS OF THE METROPOLITAN TRIAL COURT OF MANILA, BRANCH 4, WHICH TOTALLY DEPRIVED PETITIONER'S RIGHT TO ITS DAY IN COURT AND THE OPPORTUNITY TO FULLY PRESENT ITS CASE ON THE MERITS AND NOT BY MERE TECHNICALITIES?

II.

HAS THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION IN ADOPTING THE COURT A QUO'S BASELESS SPECULATION OR PRESUMPTION THAT THE UNDERSIGNED COUNSEL HAS NO 'SPECIAL AUTHORITY' ON 23 MAY 1995 PRE-TRIAL?

The pivotal issue for determination is: whether the Court of Appeals acted with grave abuse of discretion in upholding the assailed Orders of the lower court declaring petitioner as in default and denying the latter's motion for reconsideration.

Section 2, Rule 20 of the Revised Rules of Court, provides:

"Failure to appear at pre-trial conference - A party who fails to appear at a pre-trial conference may be non-suited or considered as in default." [Underscoring, supplied]

In *Development Bank vs. Court of Appeals*,[6] this Court ratiocinated:

"Consistently with the mandatory character of the pre-trial, the Rules oblige not only the lawyers but the parties as well to appear for this purpose before the Court, and when a party fails to appear at the pre-trial conference (he) may be non-suited or considered as in default. The obligation to appear denotes not simply the personal appearance, or the mere physical presentation by a party of one's self, but connotes as importantly, preparedness to go into the different subject assigned by law to a pre-trial. And in those instances where a party may not himself be present at the pre-trial, and another person substitutes for him, or his lawyer undertakes to appear not only as an attorney but in substitution of the client's person, it is imperative for that representative or the lawyer to have "special authority" to make such substantive agreements as only the client otherwise has capacity to make. That "special authority" should ordinarily be in writing or at the very least be "duly established by evidence other than the self-serving assertion of counsel (or the proclaimed representative) himself. Without that special authority, the lawyer or representative cannot be deemed capacitated to appear in

place of the party; hence, it will be considered that the latter has failed to put in an appearance at all, and he may therefore “be non-suited” or considered as in default, notwithstanding his lawyer’s or delegate’s presence.” [Underscoring, supplied]

After a careful study and a thorough examination of the pertinent pleadings and supporting documents, we are of the opinion, and so find, that the court a quo and the Court of Appeals erred not in not lifting the order of default under attack.

As correctly found by the trial court of origin and concurred in by the respondent court, petitioner failed to indubitably show that a Special Power of Attorney was executed to enable its lawyer to represent it during the pre-trial of the case below. Although petitioner’s counsel maintained that he was duly armed with a Special Power of Attorney when he proceeded to the sala of Judge Leonardo P. Reyes, counsel failed to present any convincing proof to buttress his submission. Basic and well-established is the rule that the party alleging has the burden of substantiating his allegation by preponderance of evidence.[7] Any declaration or assertion not so substantiated is, at best, a self-serving statement or declaration which is inadmissible in evidence for being hearsay.[8]

So also, factual findings and conclusions by the trial court, as a rule, are entitled to great weight and should not be disturbed on appeal, for the simple reason that the lower court was in a better position to analyze and assess the probative value of the evidence adduced during the trial.[9] Thus, absent a clear showing to the contrary, the findings by the trial court are accorded great respect by this Court.

Therefore, even assuming arguendo that counsel for petitioner was only late in arriving for the scheduled pre-trial conference, the pre-trial could not have proceeded just the same, in view of the absence of competent evidence that the lawyer of petitioner was duly authorized by a special power of attorney to represent the petitioner at the pre-trial of the case below.

Petitioner further argues that “the right to due process demands that technicalities of the rules or law should not be resorted at the optimum possible to commit injustice, rather, that defendant, herein petitioner, should have been at least accorded warning and last chance.”[10]

In *Pedrosa vs. Hill*,[11] this Court said:

“Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party’s substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.”

In this case under scrutiny, petitioner did not come forward with the most persuasive of reasons for the relaxation of the aforestated rules in point. We agree with the trial court that a heavy traffic was an unacceptable basis for the lifting of the challenged order of default. A contrary rule would result in a “heavy traffic” or clogging of cases which this Court, as the ultimate dispenser of justice, abhors.

Neither are we impressed with petitioner’s contention that the trial court decided the case with undue haste just because it promulgated subject Orders two (2) days after receipt of petitioner’s motions. It bears stressing that the issue raised was simple. Petitioner’s failure to appear or be properly represented at pre-trial, despite due service of notice, was too glaring to be ignored.

WHEREFORE, the petition is DISMISSED, and the decision of the Court of Appeals in CA - G.R. SP No. 37543 is AFFIRMED. No pronouncement as to costs.
SO ORDERED.

Narvasa, C.J., (Chairman), Romero, and Kapunan, JJ., concur.

[1] Special Ninth Division, composed of Associate Justices Corona Ibay-Somera (Acting Chairman and the Ponente), Celia Lipana-Reyes and Oswaldo D. Agcaoili (in lieu of J. Imperial who is on leave) as members.

[2] Presided by Judge Leonardo P. Reyes.

[3] “Annex 2,” Rollo, 31.

[4] “Annex 3,” Rollo, p. 33.

[5] Rollo, pp. 10-13.

[6] 169 SCRA 409 (1989).

[7] Catapusan vs. Court of Appeals, 264 SCRA 450 (1996).

[8] Ricardo J. Francisco, Handbook on Evidence. 1984 Edition, p. 124.

[9] Sulpicio Lines, Inc. vs. Court of Appeals, 246 SCRA 376 (1996).

[10] Petition ; Rollo, 5.

[11] 257 SCRA 373 (1996).

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