

FLORENTINO GONZALES, EDGARDO SANTOS, LEOPOLDO ROSETE, FELINA VICTORIA AND CRISTETA DELA CRUZ, PETITIONERS, VS. BALIKATAN KILUSANG BAYAN SA PANANALAPI, INCORPORATED, RESPONDENT.

G.R. NO. 150859. March 28, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For our review is the Court of Appeals' Resolution,[2] dated September 11, 2001, in CA-G.R. SP No. 66102 dismissing petitioners' petition on technical grounds as well as its Resolution,[3] dated November 20, 2001, denying petitioners' motion for reconsideration, for lack of merit.

Respondent is a cooperative doing business in Bunducan, Bocaue, Bulacan, while petitioners are members of the cooperative.[4]

Sometime in November 7, 1997, petitioner Florentino Gonzales obtained a loan of P150,000 with the other petitioners Edgardo Santos, Leopoldo Rosete, Felina Victoria and Cristeta dela Cruz as co-makers. Petitioners signed a promissory note binding themselves jointly and severally to pay the loan in monthly amortizations of P6,250 for two years starting November 7, 1997 up to November 7, 1999. When petitioner Gonzales failed to pay despite repeated written demands, respondent filed a case for sum of money and damages in the Municipal Trial Court of Bocaue. Summons were thereafter served and the case was set for hearing on September 29, 2000. On the scheduled hearing, defendants appeared but because they failed to file their answer to the complaint, the court declared them in default and thereafter allowed the presentation of respondent's evidence ex-parte on October 6, 2000.[5]

On January 23, 2001, the court a quo rendered its decision finding for the respondent and against the petitioners, the dispositive portion stating:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering the latter to pay jointly and severally to the former the sum of P128,953.45 with interest thereon at the rate of 11% per annum from the time demand was made until fully paid, a fine of two percent per month on the principal and interests due plus the amount of 25% of the amount due as and by way of attorney's fees and expenses of collection together with the costs of this suit.

SO ORDERED.[6]

Petitioners appealed to the Regional Trial Court of Bulacan, contending that the court a quo erred when it declared them in default as they were not notified of the respondent's motion to declare them in default, nor did the respondent show proof that summons were properly issued upon them to warrant the declaration of default.

The Regional Trial Court affirmed the decision of the MTC in this wise:

WHEREFORE, finding no cogent reason to reverse, alter or even modify the appealed decision, the same is hereby AFFIRMED [i]n toto.

SO ORDERED.[7]

Petitioners thereafter elevated the case to the Court of Appeals on a petition for review. The CA dismissed the petition in a Resolution, dated September 11, 2001, thus:

The instant petition for review is DISMISSED outright for the following reasons:

- The certification of non-forum shopping is not signed by all the petitioners...
- All relevant documents, particularly the parties' memoranda mentioned on page 9 of the petition, are not attached thereto, as required by Section 2 (d), Rule 42, 1997 Rules of Civil Procedure.

SO ORDERED.[8]

Likewise, the Motion for Reconsideration filed by petitioners was also dismissed, hence this appeal before us.

The issues raised by the petitioners are as follows:

- WHETHER OR NOT THE PETITIONERS SUBSTANTIALLY COMPLIED WITH THE CERTIFICATION ON NON-FORUM-SHOPPING AND ON ATTACHMENT OF CERTAIN RELEVANT DOCUMENTS.
- WHETHER OR NOT THE JUDGMENT BY DEFAULT IS VOID FOR LACK OF JURISDICTION OVER THE PETITIONERS WHO WERE NOT SERVED WITH SUMMONS PROPERLY.
- WHETHER OR NOT THE CASE SHOULD BE DISMISSED FOR LACK OF CAUSE OF ACTION AND OF JURISDICTION.[9]

On the first issue, petitioners contend that even if only petitioner Gonzales signed the Verification and Certification, the failure of others to sign was not fatal since Gonzales had already represented the other petitioners in the proceedings below and this was never opposed by the respondent. Gonzales avers there is substantial compliance.

This contention is without merit. As repeatedly held by this Court, the certificate of non-forum shopping should be signed by all the petitioners or plaintiffs in a case, otherwise, it would be deemed insufficient. The attestation contained in the certification of non-forum shopping requires personal knowledge by the party executing it, and the lone signing petitioner could not be presumed to have personal knowledge of the filing or non-filing by his co-petitioners of any action or claim it. To merit the court's consideration, petitioners must show reasonable cause for failure to personally sign the certification.[10] But in the present case, the Motion for Reconsideration filed below by petitioners did not satisfactorily explain the failure of the other petitioners to sign the certification of non-forum shopping nor did it cure the said defect, hence the petition was appropriately and validly dismissed by the Court of Appeals.[11]

If only for the proper edification of the parties, we now resolve the second and third issues raised herein. Petitioners contend that it is by service of summons that a court acquires jurisdiction over the person of a petitioner. Where there was no valid proof of service of summons on him, he could not be declared in default, according to petitioners.

In this regard, petitioners should be reminded of the provision in the Rules of Court that a defendant's voluntary appearance in an action shall be equivalent to service of summons.[12] Further, the lack of jurisdiction over the person of the defendant may be waived either expressly or impliedly. When a defendant voluntarily appears, he is

deemed to have submitted himself to the jurisdiction of the court. If he does not wish to waive this defense, he must do so seasonably by motion, and object thereto.[13]

As the records would show, summons and copies of the complaint were served on the petitioners and the case was set for hearing by the MTC on September 29, 2000, upon the motion of the respondent. The petitioners appeared before the court on the scheduled hearing, as evidenced by their signatures in the minutes. Their voluntary appearance cured the defect, if any, in the service of summons.[14]

Petitioners further contend that when the respondent orally move in open court for the declaration of default due to petitioners' failure to file an answer to the complaint despite their appearance in court, they were not notified thereof in contravention of the Revised Rules of Civil Procedure which states that "[i]f the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default..."[15]

Petitioners ought to be guided by Rule 15, Section 2, which provides that "[a]ll motions shall be in writing except those made in open court or in the course of a hearing or trial." Moreover, every written motion shall be set for hearing by the applicant, with the exception of motions which the court might act upon without prejudicing the rights of the adverse party.[16] As a general rule, a notice is required where a party has a right to resist the relief sought by the motion. Principles of natural justice demand that his right should not be affected without an opportunity to be heard.[17] Such, however, does not appear to be the situation here.

In this case, the motion to declare petitioners in default was, to reiterate, made in open court and in their presence. By their presence, notice to them is fairly constituted. What the law really eschews is not the lack of previous notice of hearing but the lack of opportunity to be heard.[18] Petitioners were not without such opportunity to contest the motion for and the order of default then and there at the trial court.

Besides, petitioners' failure to move for the lifting of the order of default serves as a waiver on their part to later question its propriety. The records showed that after the court a quo issued the default order, the petitioners did not file any pleading at all questioning its validity. As it was, they merely waited for the decision to be rendered, and when it was adverse to their interest, they began questioning it.[19]

Finally, there was no showing at all that petitioners ever questioned the jurisdiction of the MTC over them, except when the judgment in default was already rendered. To properly avail of the defense of invalid service of summons, petitioners should have questioned it and the MTC's exercise of jurisdiction over them from the very start.[20]

Petitioners' failure to object to the MTC's jurisdiction from the very beginning precludes them from raising it now as a ground to set aside the judgment by default. A defendant cannot be permitted to speculate upon the judgment of the court by objecting to the court's jurisdiction over its person if the judgment is adverse to it, and acceding to jurisdiction over its person if and when the judgment sustains its defenses.[21] Nor can they claim that they are not bound by the consequences of their own acts before the court. It would defeat the ends of justice and fair play if their stance is sustained after judgment had been duly rendered on the case.

WHEREFORE, the instant petition is DENIED. The assailed decisions of the Regional Trial Court and the Municipal Trial Court of Bocaue, Bulacan are hereby AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

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- [1] Also referred to as Balikatang Kilusang Bayan sa Pananalapi in some parts of the records.
- [2] Rollo, p. 37. Penned by Associate Justice Wenceslao I. Agnir, Jr., with Associate Justices Salvador J. Valdez, Jr., and Mariano C. Del Castillo concurring.
- [3] Id. at 43.
- [4] CA Rollo, p. 37.
- [5] Id. at 38.
- [6] Id. at 20.
- [7] Id. at 38.
- [8] Rollo, p. 37.
- [9] Id. at 75-76.
- [10] *Docena v. Lapesura*, G.R. No. 140153, 28 March 2001, 355 SCRA 658, 666-667.
- [11] Rollo, p. 43.
- [12] Revised Rules of Civil Procedure, Rule 14, Sec. 20.
- [13] *La Naval Drug Corporation v. Court of Appeals*, G.R. No. 103200, 31 August 1994, 236 SCRA 78, 86.
- [14] *Republic v. Ker & Company, Ltd.*, No L-21609, 29 September 1966, 18 SCRA 207, 214.
- [15] Rule 9, Sec. 3. Italics supplied.
- [16] Rules of Court, Rule 15, Sec. 4.
- [17] *E & L Mercantile, Inc. v. Intermediate Appellate Court*, No. L-70262, 25 June 1986, 142 SCRA 385, 390.
- [18] *Patricio v. Leviste*, G.R. No. 51832, 26 April 1989, 172 SCRA 774, 779.
- [19] CA Rollo, p. 38.
- [20] *Navale v. Court of Appeals*, G.R. No. 109957, 20 February 1996, 253 SCRA 705, 712.
- [21] *Supra*, note 13 at 87.

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