

SOCIAL SECURITY SYSTEM, PETITIONER VS. HON. NAZAR U. CHAVES, RTC, BR. 18, MISAMIS ORIENTAL, CAGAYAN DE ORO CITY AND SPS. JUANITO & AGUSTINA OBEDENCIO, RESPONDENTS.

G.R. No. 151259. October 13, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari seeks to reverse the Decision[2] dated February 29, 2000 and the Resolution[3] dated December 12, 2001 of the Court of Appeals in CA-G.R. SP No. 38152.

Private respondents, spouses Juanito and Agustina Obedencio, filed Civil Case No. 94-211 for Specific Performance at the Regional Trial Court of Misamis Oriental, Cagayan de Oro City, Branch 18. They prayed that the Social Security System (SSS) be ordered (1) to cancel the mortgage on the properties of the spouses; (2) to release the documents covering the said properties; and (3) to pay the spouses moral damages in the sum of P80,000; litigation expenses in the sum of P5,000; and attorney's fees in the sum of P20,000.

The petitioner filed its Answer with Counterclaim alleging that the private respondents had an unpaid obligation in the amount of P48,188.72 as of September 1, 1994.[4]

After the issues were joined, a pre-trial conference was scheduled on February 16, 1995. Atty. Rodrigo B. Filoteo, acting assistant branch manager of the SSS in Cagayan de Oro City and allegedly the only lawyer of the said branch, entered his appearance as counsel for the petitioner. He manifested that he had filed his pre-trial brief through registered mail. The hearing was, however, cancelled because the respondent judge was indisposed. The hearing of the case was reset on April 18, 1995. This time, Atty. Filoteo failed to attend because of an official mission to Zamboanga City from April 7 to May 8, 1995 involving SSS cases.

On motion of Atty. Alberto Bacal, counsel of the respondent spouses, respondent judge issued an Order dated April 18, 1995 declaring petitioner in default and allowed private respondents to present their evidence ex-parte.

The petitioner filed a Motion for Reconsideration praying for the lifting of the order of default. The motion was denied for lack of merit in an Order dated May 22, 1995. On August 16, 1995, the petitioner appealed the Order denying the Motion for Reconsideration to the Court of Appeals by way of a petition for certiorari.[5]

In its Decision of February 29, 2000, the Court of Appeals dismissed the petition.[6]

We deny the petition.

There is no question that it is the discretion of the trial judge to declare a party-defendant as in default for failure to appear at a pre-trial conference. The declaration of default for non-appearance at a pre-trial conference is sanctioned by Rule 20, Sec. 2 of the Rules of Court, thus:

- A party who fails to appear at a pretrial conference may be non-suited or considered as in default.

To be relieved of the effects of the order of default, Sec. 3, Rule 18 of the Rules of Court provides that the defendant must file a motion under oath to set aside the order of default; that he must show that his failure to appear at the pre-trial was due to fraud, accident, mistake or excusable neglect and accompany the motion with affidavit of merit.

A motion to lift order of default should be under oath, verified and accompanied with an affidavit of merit.

Aside from the requirements of Sec. 3, Rule 18 of the Rules of Court, the motion to lift the order of default must further show that the defendant has a meritorious defense or that something would be gained by having the order of default set aside. Otherwise, and if the motion is not accompanied by affidavits of merits, it may properly be denied.

A perusal of petitioner's motion to lift order of default shows that it is neither under oath nor accompanied by an affidavit of merit. There was no notice of hearing. There was also no showing, save in the instant petition, that it has meritorious defense or that something would be gained by having the order of default set aside. Thus, the trial Court correctly denied petitioner's motion.

WHEREFORE, the petition for certiorari is hereby DENIED DUE COURSE and DISMISSED.

SO ORDERED.[7]

On March 16, 2000, the petitioner moved for reconsideration, which was denied.

Hence, petitioner through the Office of the Solicitor General (OSG) now assails the Decision and Resolution of the appellate court, alleging that,

THE COURT OF APPEALS, BY ISSUING THE ASSAILED DECISION HAS DECIDED A QUESTION OF SUBSTANCE WHICH WAS NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT CONSIDERING THAT:

- Rules of Procedure should be liberally construed pursuant to Section 2, Rule 1 of the Rules of Court in order to protect the substantive rights of the parties.
- Petitioner has the right to have its day in court in order to present its meritorious defense against the unfounded and baseless claim of respondent spouses.[8]

The core issue particular to this case is whether the default order of the lower court should be lifted, so that substantial justice would prevail over technical rules.

Seeking relief from Section 2, Rule 1 (now Section 6[9]), and Section 2, Rule 20 (now Section 4, Rule 18[10]) of the Revised Rules of Court, and invoking our pronouncements in *Rinconada Telephone Company, Inc. v. Buenviaje*,^[11] *Balagtas Multi-Purpose Cooperative, Inc. v. Court of Appeals*,^[12] and *Alonso v. Villamor*,^[13] the petitioner asserts that although respondent judge has the discretion to declare a defendant in default for failure to appear during pre-trial conference, the strict, rigid and arbitrary application thereof denied the petitioner a reasonable opportunity to present its meritorious defense, refute the evidence of the private respondents, present his own, and exercise his right to due process. The petitioner contends that the rules should be liberally construed in order to protect the substantive rights of the parties.

Citing further *Lim Tanhu v. Ramolete*^[14] and *Lucero v. Dacayo*,^[15] petitioner suggests that its Motion for Reconsideration was in substance legally adequate, whether or not it was verified with an affidavit of merit since the form of the motion by which the default was sought to be lifted is secondary and the requirements of Section 3, Rule 18[16] of the Rules of Court need not be strictly complied with, unlike in cases of default for failure to answer. In sum, petitioner begs for the liberal construction of the rules.

Petitioner further avers that contrary to the unsubstantiated claim of private respondents, their obligation amounting to P48,188.72 as of September 1, 1994, remains outstanding. This is evidenced by the statement of account prepared by the SSS Real Estate Loans Department. Consequently, petitioner concludes, private respondents had yet no legal right to demand from petitioner the release of the mortgage over their property.

Private respondents, in turn, insist that petitioner violated Section 2, Rule 20, (now Sections 4 and 5 of Rule 18[17]) of the Revised Rules of Court and Sections 4 and 5, Rule 15 as amended on July 1, 1997.[18]

Sadly, the records reveal that petitioner failed to comply not only with one rule. Other than failing to appear during pre-trial, petitioner does not deny that its Motion for Reconsideration to lift the order of default lacked verification, notice of hearing and affidavit of merit. If not accompanied by affidavits of merit, the trial court has no authority to consider the same. [19] A motion to lift an order of default is fatally flawed and the trial court has no authority to consider the same where it was not under oath and unaccompanied by an affidavit of merit. In effect, the petitioner failed to set aside the order of default and must suffer the consequences thereof.[20]

Procedural rules are not to be disregarded or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules they are to be followed, except only when for the most persuasive of reasons 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.[21] Here, the petitioner has not shown any persuasive reason why he should be exempt from abiding by the rules. Accordingly, the order declaring the petitioner in default and the denial of the motion to lift the order of default are juridically unassailable.

We must stress, however, that a judgment of default against the petitioner who failed to appear during pre-trial or, for that matter, any defendant who failed to file an answer, does not imply a waiver of all of their rights, except their right to be heard and to present evidence to support their allegations. Otherwise, it would be meaningless to request presentation of evidence every time the other party is declared in default. If it were so, a decision would then automatically be rendered in favor of the non-defaulting party and exactly to the tenor of his prayer.[22] The law also gives the defaulting parties some measure of protection because plaintiffs, despite the default of defendants, are still required to substantiate their allegations in the complaint.[23]

In the instant case, private respondents claim that they had fully paid their obligation with the SSS. They allege that they already paid P63,000, an amount that exceeded their supposed accountability of P56,427. In their prayer in Civil Case No. 94-211 for Specific Performance filed before the Regional Trial Court, they ask that petitioner be ordered to cancel the mortgage on their properties, to release the documents covering the said properties and to pay them damages, litigation expenses and attorney's fees.

We note, though, that petitioner had earlier filed an answer stating that the private respondent spouses had an unpaid obligation amounting to P48,188.72 as of September 1, 1994. Likewise, before the petitioner was declared in default its counsel, Atty. Filoteo, had manifested that he had filed his pre-trial brief by registered mail. We also note that when the respondent judge issued the default order, it allowed private respondents to present their evidence ex parte. With the pre-trial brief and answer of petitioner, the trial court could then proceed to evaluate the evidence like receipts, if any, of the private respondents against the allegations of the petitioner, to determine the private respondents' outstanding obligation, a crucial factual question in this case. The petitioner's averment that the private respondents' outstanding balance is P48,188.72 as of September 1, 1994 should be weighed against the private respondents' own evidence that they had fully paid their obligation to petitioner.

In a civil case, the burden of proof is on the plaintiff to establish his case through a preponderance of evidence. If he claims a right granted or created by law, he must prove his claim by competent evidence. He must rely on the strength of his own evidence and not on the weakness of that of his opponent.[24] The private respondents cannot

railroad the release of the mortgage through a default order. The determination of the accurate outstanding balance of the private respondents should first be resolved before the release of the subject mortgage can be demanded. In this case, when the evidence during trial proves unsatisfactory and inconclusive as to the full payment of private respondents' obligation to SSS, then the mortgage should not yet be cancelled prematurely.

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated February 29, 2000, and the Resolution dated December 12, 2001 of the Court of Appeals, are AFFIRMED. The case is REMANDED to the Regional Trial Court of Misamis Oriental, Cagayan de Oro City, Branch 18, for further proceedings.

SO ORDERED.

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

[1] Referred to as "Nazario" in the Petition.

[2] Rollo, pp. 26-34. Penned by Associate Justice Ruben T. Reyes, with Associate Justices Candido V. Rivera, and Eriberto U. Rosario, Jr. concurring.

[3] Id. at 36-40.

[4] Id. at 37.

[5] CA Rollo, p. 2.

[6] Supra, note 25 at 33.

[7] CA Rollo, pp. 52-54.

[8] Rollo, pp. 10-11.

[9] Rule 1, SEC. 6. Construction.—These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. (2a)

[10] Rule 18, SEC. 4. Appearance of parties.—It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. (n)

[11] G.R. Nos. 49241-42, 27 April 1990, 184 SCRA 701.

[12] G.R. No. 138520, 16 September 1999, 314 SCRA 676.

[13] No. 2352, 26 July 1910, 16 Phil. 315.

[14] No. L-40098, 29 August 1975, 66 SCRA 425.

[15] No. L- 23718, 13 March 1968, 22 SCRA 1004.

[16] Rule 18, SEC. 3. Relief from order of default.—A party declared in default may at any time after discovery thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable neglect and that he has a meritorious defense. In such case the order of default may be set aside on such terms and conditions as the judge may impose in the

interest of justice. [Now Section 3 (b), Rule 9.]

[17] Rule 18, Sec. 4, *supra*, note 10.

SEC. 5. Effect of failure to appear.—The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof. (2a R20)

[18] Rule 15

SEC. 4. Hearing of motion.—Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice. (4a)

SEC. 5. Notice of hearing.—The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. (5a)

[19] *Mediserv, Inc. v. China Banking Corporation*, G.R. No. 140755, 17 April 2001, 356 SCRA 616, 625, citing *The Phil. British Co., Inc. v. De los Angeles*, Nos. L-33720-21, 10 March 1975, 63 SCRA 50, 59.

[20] *Ibid.*, citing *Santos v. Samson*, No. L-46371, 14 December 1981, 110 SCRA 215.

[21] *Cometa v. Court of Appeals*, G.R. No. 141855, 6 February 2001, 351 SCRA 294, 306.

[22] *Heirs of Anastacio Fabela v. Court of Appeals*, G.R. No. 142546, 9 August 2001, 362 SCRA 531, 540.

[23] *Id.* at 539-540.

[24] *Javier v. Court of Appeals*, G.R. No. 101177, 28 March 1994, 231 SCRA 498, 504.

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