PANGASINAN FIVE STAR BUS CO., INC., PETITIONER, VS. SPOUSES LEON & LUISA BARREDO, RESPONDENTS.

G.R. NO. 152714. August 10, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 60791 affirming, on appeal, the Decision of the Regional Trial Court (RTC) of Valenzuela City in Civil Case No. 4509-2-94.

At around 10:30 a.m. on April 14, 1994, a Pangasinan Five Star Bus Co., Inc. passenger bus with plate no. NKP 484 driven by Emilio Credo bumped the rear portion of an owner-type jeep. The driver of the smaller vehicle, Leon Barredo, Jr., sustained serious injuries and was confined at the The Family Clinic Hospital for acute lumbosacral strain secondary to vehicular accident. He did not fully recover and eventually lost his job as a forklift operator with the Barber Dubai Shipping Agencies (PVT) Ltd. where he had been earning $518.00 a month.[2]

On November 14, 1994, the spouses Leon and Luisa Barredo filed a complaint for damages before the RTC of Valenzuela City against the bus company and Emilio Credo. The complaint was later amended.

After the defendants filed their Answer to the complaint, pre-trial was set on February 6, 13, 15, 22, 27 and 29, 1996, all at 8:30 a.m.[3] Several pre-trial conferences were held to give the parties the chance to settle the case amicably, to no avail. On May 2, 1996, or after more than a year, the court terminated pre-trial and set June 27 and July 11, 1996 as trial dates. However, this setting and subsequent ones were cancelled, as defendants manifested their willingness to settle the case amicably.[4]

Upon agreement of the parties, the RTC set the trial on April 22, 29 and May 8, 1997.[5] However, the trial set on April 22, 1997 did not proceed because the defendants and their counsel failed to appear. On plaintiffs' motion, the court issued an Order declaring the defendants "as in default" and allowed the plaintiffs to adduce evidence ex parte before the Acting Branch Clerk of Court.[6] Plaintiffs presented their evidence ex parte on April 23, 1997, and among the documentary evidence adduced were the following: the Employment Contract of Leon M. Barredo, Jr.;[7] receipts for costs of the repair of the vehicle of plaintiffs, hospitalization and medical expenses; and the medical certificate issued to the plaintiffs from Barredo, Jr. Thereafter, plaintiffs manifested that they were resting their case.

Barely a week thereafter, or on April 30, 1997, the RTC rendered judgment in favor of the plaintiffs. The dispositive portion reads:

> WHEREFORE, judgment is hereby rendered as follows:
>
> - Ordering the defendants, jointly and solidarily, to pay plaintiffs the sum of P70,000.00 as actual damages for the repair of the owner-type jeep and medical expenses;

- Ordering the defendants, jointly and solidarily, to pay plaintiff Leon Barredo, Jr. the sum of $36,080.00 in the concept of loss earnings for at least the next five (5) years of his gainful life;

- Ordering the defendants to pay the plaintiffs the sum of P100,000.00 as moral damages;

- Ordering the defendants to pay the plaintiffs the sum of P100,000.00 as exemplary damages;

- Ordering the defendants to pay the plaintiffs the amount of P1,000.00 as litigation expenses;

- Ordering the defendants to pay the plaintiffs the amount of P10,000.00 as attorney's fees, plus the costs.

SO ORDERED.[8]

The trial court declared that defendants and their counsel were considered "as in default" for their failure to appear at the trial on April 22, 1997."[9]

On May 14, 1997, defendants filed a Motion to Lift the Order of Default alleging therein that, since the pre-trial had been terminated as early as May 2, 1996, they could no longer be declared as in default due to their absence on the April 22, 1997 trial, and that, consequently, the order of the court declaring them as in default was void. They insisted that they were not notified of the setting on April 22, 1997; besides, their counsel's absence was excusable because he was suffering from a recurring fever aggravated by dry cough.[10]

The defendants further alleged that they had meritorious defenses: it was Leon Barredo, Jr. who was reckless and negligent, thus causing the accident. In any event, the defendant bus company was not directly liable to the plaintiffs because it had always exercised due diligence in the selection and supervision of its employees.

Meantime, defendants received a copy of the decision of the court on May 19, 1997. They filed an unverified motion for reconsideration thereof, maintaining that the absence of their counsel during the April 22, 1997 trial was beyond their control. They prayed that the decision of the trial court be set aside and, in the interest of justice, that they be allowed to cross-examine the witnesses of the plaintiff and adduce evidence in their behalf.[11] However, defendants failed to append to their motion any affidavit of merit.

On June 3, 1997, the RTC issued an Order[12] denying defendants' motions. It declared that, although defendants were erroneously declared as in default in its April 22, 1997 Order for failure to appear at the scheduled hearing on said date, the clear import of said Order was to consider defendants as having waived their right to be present and to allow the plaintiffs to present evidence ex parte. The RTC clarified that the April 22, 1997 Order merely allowed the plaintiffs to present their evidence in the absence of defendants. It also pointed out that in its Decision dated April 30, 1997 it stated that "the plaintiffs were just allowed to present their evidence ex parte in view of the non-appearance of the defendants and their counsel on said date of hearing."[13]

The bus company and Credo appealed the decision, as well as the June 3, 1997 Order of the RTC, to the CA. They alleged that the lower court gravely erred when it declared them as in default at the initial trial of the case; it acted with apparent bias and partiality, thereby depriving them of due process of law; and that it gravely erred in deciding the case based solely on the evidence presented by the Barredo spouses which, however, were not even formally offered. They insisted that the trial court acted with undue and suspicious haste when it rendered judgment barely a week after they were declared as in default.[14]

On July 6, 2001, the CA rendered judgment dismissing the appeal, holding that the trial court had already clarified its April 22, 1997 Order in its June 3, 1997 Order. The minutes of the proceedings before the Branch Clerk of Court on April 23, 1997 show that the Barredo spouses formally offered their evidence and rested their case thereafter.[15]

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The aggrieved parties filed a motion for reconsideration, which the appellate court denied on February 19, 2002.

Pangasinan Five Star Bus Co., Inc., now petitioner, forthwith filed the instant petition, seeking the reversal of the appellate court's ruling. The following issues are raised:

> I COULD THE TRIAL COURT DECLARE DEFENDANTS AS IN DEFAULT WHEN THE PROCEEDING WHICH DEFENDANTS FAILED TO ATTEND WAS JUST THE INITIAL HEARING OF THE CASE AND NOT A PRE-TRIAL CONFERENCE.
>
> II WITH THE ERRONEOUS DECLARATION OF DEFENDANTS AS IN DEFAULT BY THE TRIAL COURT, COUPLED WITH ITS PRECIPITATE AND HASTY ISSUANCE OF DECISION, DID DEFENDANTS-PETITIONER LOSE THEIR STANDING IN COURT, SUCH THAT THEY COULD NO LONGER TAKE PART IN FURTHER PROCEEDINGS IN THE COURT A QUO MUCH LESS ADDUCE EVIDENCE IN SUPPORT OF THEIR DEFENSES;
>
> [III] WHETHER OR NOT THE JUDGMENT BY DEFAULT ISSUED BY THE TRIAL COURT SHOULD BE ANNULLED FOR BEING NULL AND VOID THE SAME HAVING BEEN ISSUE (SIC) THROUGH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION, AND THE CASE REMANDED TO THE TRIAL COURT FOR FURTHER PROCEEDINGS, FOR RECEPTION OF DEFENDANTS' EVIDENCE.[16]

Petitioner reiterates its argument in the CA that the RTC erred in declaring it as in default because the April 22, 1997 setting was for the initial presentation of respondents' evidence, as plaintiffs therein. It claims that while the trial court had the discretion to consider it as having forfeited its right to cross-examine respondents or their witnesses, it retained the right to present evidence in support of its defense. Petitioner points out that the trial court rendered judgment on April 30, 1997, or barely a week after it was declared as in default and after respondents presented their evidence before the Branch Clerk of Court. Petitioner asserts that the trial court's April 22, 1997 Order declaring it as in default is void and did not divest it of its standing in court. Petitioner thus prays that the April 22, 1997 Order of the trial court and its Decision dated April 30, 1997 be declared void, and that the case be remanded to the trial court for it to adduce evidence.

In their Comment on the petition, respondents aver that petitioner raised factual issues which are improper in a petition for review on certiorari in this Court; worse, it merely reiterated its arguments in the CA to support the instant petition. They assert that the decision of the CA is in accord with law and the evidence on record, and that the decision of the trial court had become final and executory due to petitioner's failure to append an affidavit of merit in its May 14, 1997 Motion to Lift the Order of Default. They pointed out that respondent Leon Barredo, Jr. had not been able to recover from the injuries he sustained from the accident and remains bedridden.

We hold that the trial court's April 22, 1997 Order is partially void in that it erroneously declared petitioner as in default for its representative's failure to appear at the scheduled trial.

Under Section 2, Rule 20 of the Rules of Court,[17] a party who fails to appear at a pre-trial conference may be non-suited or considered as in default. If the defendant is declared as in default, the court may allow the plaintiff to present his evidence ex parte before the Branch Clerk of Court, and, thereafter, render judgment on the basis of the evidence of the plaintiffs. On the other hand, if the defendant is absent during the initial trial without any justifiable reason therefor, the defendant cannot be declared as in default for such absence. However, the court may allow the plaintiff to present his evidence before the Branch Clerk of Court ex parte. By the absence of the defendant, he waives, not only his right to cross-examine the plaintiff and his witnesses, but also to adduce evidence in his behalf.[18] However, the court, in the exercise of its judicial discretion, may allow the plaintiff to present his evidence ex parte before the Branch Clerk of Court without prejudice to the right of the defendant to

present his own evidence after the plaintiff shall have rested his case.

In this case, the pre-trial of the case had already been terminated on May 2, 1996. The court had set the trial of the case, by agreement of the parties, on April 22, 1997. Only the respondents, as plaintiffs, appeared at the scheduled trial of the case. The RTC thus erred in declaring the petitioner (defendant below), as in default for the failure of its representative and counsel to appear at the trial. This error in the April 22, 1997 Order was even admitted by the trial court in its June 3, 1997 Order.

However, we find that the portion of the April 22, 1997 Order allowing respondents (as plaintiffs) to present their evidence ex parte before the Branch Clerk of Court is correct.

Contrary to the contention of petitioner, the trial set on April 22, 1997 was for the presentation of the evidence of the parties. The Order of the court on February 18, 1997 postponed the setting to April 22, 29 and May 8, 1997. There is no showing in the records that the setting on April 22, 1997 was only for the reception of the evidence of respondents, and that the setting on April 29, 1997 was for petitioner and its co-defendant to present their evidence. The trial court did not specifically declare in its April 22, 1997 Order that petitioner had thereby waived its right to adduce its evidence for failure to appear during the April 22, 1997 trial date. Indeed, there was no need for the trial court to do so, for one is deemed to have waived the right to adduce evidence by an unexplained absence. Petitioner's unexplained absence raises no other logical conclusion, that is, it was no longer interested to adduce evidence in its behalf. Petitioner's claim that its counsel was absent due to "fever aggravated by dry cough," even if true, is not excusable. It bears stressing that it was represented by a law firm, and that a member of such firm could have appeared before the RTC to ask for postponement on that ground. At the very least, the lawyer handling the case could have informed the Branch Clerk of Court and requested for the postponement of the hearing of the case. And even assuming that its counsel was indisposed, petitioner should have seen to it that its representative attended the trial and requested for such postponement. The absence of petitioner's representative and counsel at the trial on April 22, 1997 was thus inexcusable.

We note that petitioner even failed to append to its two motions, motion to lift order of default and motion for reconsideration of the trial court's decision, the required affidavits to support its claim that the absence of its representative and its counsel on April 22, 1997 was excusable and that it has meritorious defenses. While petitioner was not required to append to its motion to set aside the order of default on the ground that it was improper for the trial court to do so, it was nevertheless required to append the required affidavits to the motion for reconsideration on the ground of excusable negligence. The failure of the petitioner to append the requisite affidavits rendered the motion pro forma and the decision final and executory. As we held in Philippine Commercial and Industrial Bank v. Judge Rodolfo Ortiz:[19]

Two more points need be dealt with before this opinion is ended.

> It is true that when fraud, accident, mistake or excusable negligence is invoked as ground of a motion for new trial, it should "be proved in the manner provided for proof of motions," i.e., by "affidavits or depositions" unless the court should direct that "the matter be heard wholly or partly on oral testimony or depositions." It is also required that "affidavits of merits" be attached to the motion. A motion for new trial grounded on fraud, accident, mistake or excusable negligence should thus ordinarily be accompanied by two (2) affidavits: one, setting forth the facts and circumstances alleged to constitute such fraud, accident, mistake, or excusable negligence; and the other, an affidavit of merits, setting forth the particular facts claimed to constitute the movant's meritorious cause of action or defense. The reason for the first is quite obvious: it is to enable the court to determine if the movant's claim of fraud, etc., is not a mere conclusion but is indeed borne out of the relevant facts. The reason for the second is equally evident: it would be useless, a waste of time, to set aside the judgment and reopen the case to allow the movant to adduce evidence when he has no valid cause of action or

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> meritorious defense.
>
> Where, therefore, a motion for new trial on the ground of fraud, etc., is unaccompanied by either or both affidavits, the motion is pro forma a scrap of paper, as it were, and will not interrupt the running of the period of appeal. x x x[20]

Petitioner even failed to append to its petition a copy of its Answer to the Complaint and Amended Complaint of the respondents.

Considering the foregoing, the Court finds it unnecessary to still resolve the other issues raised by petitioner.

WHEREFORE, the petition is DENIED. Costs against the petitioner.

SO ORDERED.
Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Eloy R. Bello, Jr. and Perlita J. Tria Tirona (all retired); rollo, pp. 19-27.

[2] Rollo, p. 20.

[3] Id. at 30-31.

[4] Id. at 20.

[5] Id. at 32.

[6] Id. at 33.

[7] Exhibits "D," "D-1" to "'D-4"; Invoices Nos. 0331 and 0332 of the C.M. Motor Works (Exhs. "B, "B-1" to "B-3"; Medical Certificate (Exhs. "C," "C-1" to "C-4"; Receipt of Medical Expenses) Exhs. "E," "E-1" to "E-5."

[8] Records, p. 256.

[9] Id. at 253-254.

[10] Id. at 268-271.

[11] Id. at 273-276.

[12] Id. at 272.

[13] Id.

[14] CA rollo, pp. 32-33.

[15] Id. at 106.

[16] Rollo, p. 158.

[17] Revised under Section 5, Rule 18 of the 1997 Rules of Civil Procedure.

[18] Santiago v. Conde, 105 Phil. 298, 303 (1959).

[19] G.R. No. L-49223, May 29, 1987, 150 SCRA 380.

[20] Id. at 390.

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