

ROGELIO ABERCA, RODOLFO BENOSA, NESTOR BODINO, NOEL ETABAG, DANILO DELA FUENTE, BELEN DIAZ-FLORES, MANUEL MARIO GUZMAN, ALAN JASMINEZ, EDWIN LOPEZ, ALFREDO MANSOS, ALEX MARCELIN...

G.R. No. 166216. March 14, 2012

Ponente: MENDOZA, J.

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MENDOZA, J.:

Assailed in this petition is the July 31, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 43763 and its November 26, 2004 Resolution[2] reversing and setting aside the February 19, 1993 Decision[3] of the Regional Trial Court, Branch 107, Quezon City (RTC), in Civil Case No. 37487 entitled “Rogelio Aberca, et al. v. Maj. Gen. Fabian Ver, et al.” for sum of money and damages.

The Facts

The factual and procedural antecedents were succinctly recited by the CA as follows:

On 25 January 1983, several suspected subversives who were arrested and detained by the military filed a complaint for damages with the Regional Trial Court of Quezon City against Gen. Fabian Ver, then AFP Chief of Staff, and the following subordinate officers: Col. Fidel Singson, Col. Gerardo Lantoria, Col. Rolando Abadilla, Col. Guillermo Kintanar, Lt. Col. Panfilo Lacson, Maj. Rodolfo Aguinaldo, Capt. Danilo Pizarro, 1Lt. Pedro Tango, 1Lt. Romeo Ricardo, 1Lt. Raul Bacalso, M/Sgt. Bienvenido Balaba and “John Does.” The case was docketed as Civil Case No. 37487 and assigned to Branch 95.

In their complaint, the plaintiff-appellees alleged that they were arrested and detained by Task Force Makabansa, a composite group of various intelligence units of the AFP, on the strength of defective search warrants; that while under detention and investigation, they were subjected to physical and psychological harm, torture and other brutalities to extort from them confessions and other information that would incriminate them; and that by reason thereof, they suffered actual and moral damages.

Defendants-appellants, through their counsel, the then Solicitor General Estelito Mendoza, filed a motion to dismiss on the following grounds: (1) since the privilege of the writ of habeas corpus was then suspended, the trial court cannot inquire into the circumstances surrounding plaintiffs-appellees’ arrests; (2) the defendants-appellants are immune from liability for the reason that they were then performing their official duties; and (3) the complaint states no cause of action.

In an order dated November 8, 1983, the trial court granted defendants-appellants’ motion to dismiss and ordered the case dismissed.

Plaintiffs-appellees filed a motion to reconsider and set aside the order of dismissal. In an order dated May 11, 1984, the trial court declared the order of November 8, 1983 final.

Plaintiffs-appellees again filed a motion for reconsideration of the order dated May 11, 1984. In an order dated

September 21, 1984, the trial court denied the motion for reconsideration.

On March 15, 1985, plaintiffs-appellees went to the Supreme Court on a petition for review on certiorari, seeking to annul and set aside the orders of the trial court dated November 8, 1983, May 11, 1984 and September 21, 1984. The case was docketed as G.R. No. 69866.

While the case was pending in the Supreme Court, the so-called EDSA revolution took place. As a result, the defendants-appellants lost their official positions and were no longer in their respective office addresses as appearing in the record. Also, in the meantime, the case was re-raffled to Branch 107.

On April 15, 1988, the Supreme Court rendered a decision annulling and setting aside the assailed orders and remanded the case to the trial court for further proceedings.

However, trial could not proceed immediately because on June 11, 1988, the record of the case was destroyed when fire razed the City Hall of Quezon City. It was only on October 9, 1989 when plaintiffs-appellees sought a reconstitution of the record of the case. The record shows that the petition for reconstitution was set for hearing on October 27, 1989. However, there is nothing in the record to show that defendants-appellants or their counsel were notified. For lack of an opposition, the petition for reconstitution was granted in an order dated March 12, 1990.

On August 15, 1990, plaintiffs-appellees filed a motion praying that defendants-appellants be required to file their answer. However, the record as reconstituted did not show who are the lawyers of the defendants-appellants considering that Estelito Mendoza, who had represented them in his capacity as Solicitor General, was no longer holding that position. Furthermore, defendants-appellants were also no longer occupying the positions they held at the time the complaint was filed. Thus, in an order dated August 17, 1990, plaintiffs-appellees were directed to report to the trial court the addresses and whereabouts of defendants-appellants so that they could be properly notified.

Instead of complying with the order of August 17, 1990, plaintiffs-appellees filed a motion to declare defendants-appellants in default. The trial court deferred resolution of this motion and instead, it issued an order on September 10, 1990 directing that a copy of the order dated August 17, 1990 be furnished to new Solicitor General Francisco Chavez to enable him to take action pursuant to Section 18, Rule 3 of the Rules of Court, and to former Solicitor General Estelito Mendoza to enable him to give notice as to whether he [would] continue to represent the defendants-appellants in his private capacity. As it said in its order, the trial court took this action "in view of the change in government and corresponding change in the addresses and circumstances of the defendants-appellants who may not even be aware of the decision of the Supreme Court in case G.R. No. L-69866 and of the reconstitution of records in this case xxx."

On October 1, 1990, former Solicitor General Mendoza filed a manifestation informing the trial court that his appearance as defendants-appellants' counsel terminated when he ceased to be Solicitor General and that he was not representing them in his private capacity. On his part, Solicitor General Chavez finally filed on December 11, 1990 a notice of withdrawal of appearance, citing *Urbano v. Go*, where the Supreme Court said that "the Office of the Solicitor General (OSG) is not authorized to represent a public official at any stage of a criminal case or in a civil suit for damages arising from a felony." The record does not show that defendants-appellants were furnished a copy of this notice of withdrawal or that they gave their conformity thereto.

In an order dated December 27, 1990, the trial court denied plaintiffs-appellees' motion to declare defendants-appellants in default, emphatically pointing out that defendants-appellants were not duly notified of the decision of the Supreme Court. In the same order, the trial court directed plaintiffs-appellees to comply with the order of August 17, 1990 within ten (10) days from notice, with a warning that the case [would] be archived and eventually dismissed if plaintiffs-appellees failed to furnish to the court the addresses of defendants-appellants. Plaintiffs-appellees moved to reconsider the order dated December 27, 1990 but in an

order dated February 1, 1991, the trial court denied the motion, stating that “without actual notice of the judgment of the Supreme Court xxx the defendants-appellants herein would not be aware that they should file a responsive pleading” and that, therefore, “to consider the defendants-appellants in default would be tantamount to lack of due process xxx.”

For failure of the plaintiffs-appellees to comply with the orders dated August 17, 1990 and December 27, 1990, the trial court dismissed the case without prejudice in its order dated March 7, 1991. Subsequently, however, in an order dated June 4, 1991, the trial court set aside the order of dismissal and reinstated the case. It also approved plaintiffs-appellees’ request to serve the notice to file answer or responsive pleading by publication.

In a compliance dated September 12, 1991, plaintiffs-appellees informed the trial court that the following notice was published in the Tagalog newspaper BALITA in its issues of August 29, 1991 and September 5, 1991:

xxxx

No answer was filed by defendants-appellants within the period stated in the notice. On motion of plaintiffs-appellees, the trial court in its order dated December 5, 1991 declared defendants-appellants in default and directed plaintiffs-appellees to present their evidence ex-parte.[4]

Ruling of the RTC

On February 19, 1993, the RTC handed down a decision in favor of the petitioners, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered, ordering the following defendants:

- 1) Maj. General Fabian Ver
- 2) Col. Fidel Singson
- 3) Col. Rolando Abadilla
- 4) Col. Gerardo Lantoria
- 5) Col. Galileo Kintanar
- 6) Lt. Col. Panfilo Lacson
- 7) Maj. Rodolfo Aguinaldo
- 8) 1Lt. Pedro Tango
- 9) M/Sgt. Bienvenido Balaba

to pay jointly and severally to EACH of the following plaintiffs:

- a) Rodolfo Benosa
- b) Manuel Mario Guzman
- c) Joseph Olayer
- d) Marco Palo
- e) Rolando Salutin

the amounts of FIFTY THOUSAND PESOS (P50,000.00) as temperate or moderate damages; ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00) as moral damages; and ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00) as exemplary damages. Likewise, they are ordered to pay jointly and severally the sum of TWO HUNDRED THOUSAND PESOS to the plaintiffs’ counsel.

The claims of the rest of the plaintiffs are denied and thereby dismissed. Likewise, the case against the following defendants: Capt. Danilo Pizarro, 1Lt. Romeo Ricardo and 1Lt. Raul Bacalso is DISMISSED, and the said defendants are exonerated from any liability.[5]

Subsequently, respondents Col. Fidel Singson (Col. Singson), Lt. Col. Panfilo M. Lacson (Lt. Col. Lacson), and

Col. Rolando Abadilla (Col. Abadilla) filed their Omnibus Motion praying as follows: 1) that the order of default dated December 5, 1991 be reversed and set aside; 2) that the decision dated February 19, 1993 be reversed and set aside; 3) that the entire proceedings be declared null and void; and 4) that they be given fifteen (15) days from notice to file answer to the complaint and present their evidence. Col. Gerardo B. Lantoria (Col. Lantoria) filed his own Motion for Reconsideration.

On his part, respondent Maj. Rodolfo Aguinaldo (Maj. Aguinaldo) failed to file a timely notice of appeal so he filed a Petition for Relief from Judgment praying that the RTC set aside its decision and proceed to try the case based on the following grounds: 1) the decision was rendered without the benefit of notice in gross violation of his right to due process; 2) the reconstitution of the records of the case and further proceedings taken thereon were effected through fraud; and 3) his failure to move for a new trial or to appeal was due to mistake or excusable negligence.

The Omnibus Motion of Col. Singson, Lt. Col. Lacson and Col. Abadilla; the Motion for Reconsideration of Col. Gerardo Lantoria; and the Petition for Relief from Judgment of Maj. Aguinaldo were denied by the RTC.[6] Aggrieved, the said respondents elevated their case to the CA.

Maj. Aguinaldo argued that he was deliberately deprived of the opportunity to be heard and put up his defense, while Col. Singson, Lt. Col. Lacson and Col. Abadilla presented the following assignment of errors:

I

THE TRIAL COURT ERRED IN ALLOWING THE OFFICE OF THE SOLICITOR GENERAL (OSG) TO WITHDRAW AS COUNSEL WITHOUT THE REQUIRED NOTICE TO, AND/OR CONSENT/CONFORMITY OF APPELLANTS.

II

THE TRIAL COURT ERRED IN NOT SETTING ASIDE THE ORDER OF DEFAULT AND/OR THE JUDGMENT BY DEFAULT AND GRANTING NEW TRIAL.

III

THE TRIAL COURT ERRED IN HOLDING THAT THE OSG'S MISTAKES AND NEGLIGENCE ARE BINDING ON THE DEFENDANTS-APPELLANTS.

IV

THE TRIAL COURT ERRED IN HOLDING THE DEFENDANTS-APPELLANTS SINGSON, ABADILLA AND LACSON LIABLE FOR THE ALLEGED DAMAGES SUSTAINED BY THE PLAINTIFFS-APPELLANTS (SIC).[7]

The Ruling of the CA

On July 31, 2003, the CA rendered a decision reversing and setting aside the RTC decision and ordering the case remanded to the RTC for further proceedings. The dispositive portion of the CA decision reads as follows:

WHEREFORE, premises considered, the appeal is hereby GRANTED. The assailed decision dated February 19, 1993 is hereby REVERSED and SET ASIDE. Let the record be REMANDED to the trial court for further proceedings in accordance with the foregoing disquisition.

SO ORDERED.[8]

The CA ruled, among others, that the RTC committed four (4) errors in declaring the respondents in default and proceeding to hear the case. The RTC committed its first error when it abandoned the proper modes of service of

notices, orders, resolutions or judgments as the petitioners failed to comply with its order dated August 17, 1990, directing them to report the addresses and whereabouts of the respondents so that they could be properly notified.

The second error was the failure of the RTC to avail of substituted service after failing to effect personal service or service by mail. It perpetrated its third error when it authorized service by publication after dismissing the case for failure of the petitioners to furnish the current addresses of the respondents. The CA reasoned out that there was nothing in the rules which would authorize publication of a notice of hearing to file answer and for what was authorized to be published were summons and final orders and judgments. The fourth error was committed when the respondents were declared in default because they were not duly notified and, therefore, were denied due process.

The CA stated that since the RTC failed to notify the respondents of the proceedings undertaken, the latter were denied the chance to actively participate therein. It explained as follows:

Instead of observing the above precepts by according defendants-appellants every opportunity to ventilate their side of the controversy, the trial court failed not only to notify them of the proceedings undertaken relative to the resolution of the case but the chance as well to actively participate therein. It bears stressing that defendants-appellants were not informed of the reinstatement of the case against them when the High Tribunal set aside the orders of the trial court dated May 11, 1984, September 21, 1984 and November 8, 1983 dismissing the complaint instituted by plaintiffs-appellees. Likewise, defendants-appellants were not apprised of the reconstitution of the records of the case which were destroyed by the fire that razed the City Hall of Quezon City. In the same manner, they were not notified of the withdrawal of the OSG as their official counsel of record, much less was their consent thereto sought. Finally and most significantly, defendants-appellants were precluded the chance to file their respective answer or responsive pleadings to the complaint with the issuance of the order dated December 5, 1991 declaring them in default notwithstanding the defective service by publication of the court's notice requiring them to file such answer or responsive pleading.[9]

Not satisfied, the petitioners come to this Court praying for the reversal and setting aside of the CA decision anchored on the following arguments:

I

IN REVERSING THE TRIAL COURT'S RULINGS DECLARING DEFENDANTS IN DEFAULT AND ALLOWING PLAINTIFFS TO PRESENT THEIR EVIDENCE EX-PARTE; AND IN NULLIFYING THE TRIAL COURT'S JUDGMENT BY DEFAULT, THE COURT A QUO ACTED CONTRARY TO LAW AND JURISPRUDENCE AND SO FAR DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO WARRANT THE EXERCISE BY THIS COURT OF ITS POWER OF SUPERVISION.[10]

II

IN HOLDING THAT THE TRIAL COURT ERRED IN DENYING RESPONDENTS' MOTION FOR NEW TRIAL TO SET ASIDE THE JUDGMENT AND PETITION FOR RELIEF FROM JUDGMENT, THE COURT A QUO ACTED CONTRARY TO LAW AND JURISPRUDENCE, AND SO FAR DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO WARRANT THE EXERCISE BY THIS COURT OF ITS POWER OF SUPERVISION.[11]

The Petitioners' Position

The petitioners claim that the RTC did not err in declaring the respondents in default and in allowing them to present evidence ex- parte; that the respondents were represented by the OSG from 1983 up to December 11, 1990 when the latter withdrew its appearance from the case; that after the respondents had appeared, thru the

OSG, by filing a motion to dismiss, the petitioners were under no obligation to track down the respondents' addresses since the Rules of Court provide that once a litigant is represented by counsel, all notices, motions and pleadings must be sent to him as counsel of record; that it is a matter of record that the OSG was furnished copies of all court orders and the petitioners' pleadings for the period it remained as the respondents' counsel of record or from 1983 until the OSG withdrew on December 11, 1990; that as counsel of record, the OSG was duty-bound to file the respondents' answer to the complaint within 15 days from notice that it was reinstated by this Court and the case was remanded to the RTC for further proceedings; and that despite having received copies of this Court's decision in G.R. No. 69866 on or about April 20, 1988 and despite having been duly notified of the finality of said decision by means of this Court's Entry of Judgment, the OSG did not file any answer or seek an extension of time to do so.

The petitioners further argue that as early as May 1988, when this Court's decision became final and executory and the respondents received notice thereof through their counsel of record, it was incumbent upon them to have answered the complaint within the period provided by the Rules of Court; that the RTC was not hasty in declaring the respondents in default for they were given several chances to file their answers even after their period to do so had already lapsed; that it was the respondents' failure to exercise ordinary prudence in monitoring the progress of this case that placed the petitioners in a difficult situation; that the respondents in this case cannot seize control of the proceedings or cause them to be suspended indefinitely by the simple expedient of not filing their answers or by feigning ignorance of the status of the proceedings; that the rule on service of summons by means of publication applies to service of summons by publication, not to notices to file answer by publication; that while service of summons by publication entails acquiring jurisdiction over the person of the defendant, it was already obtained over the respondents in this case by their voluntary appearance through counsel and their act of filing a motion to dismiss on substantive grounds; that substituted service was an exercise in futility because the respondents were no longer holding the positions they were holding at the time the petition was filed and, therefore, could not be reached at the addresses indicated on the complaint; that the only remaining option was to notify the respondents by publication; that the RTC did not err in holding that the respondents failed to establish the fraud, accident, mistake and/or excusable negligence that would warrant the grant of a new trial, or the setting aside of the judgment and/or petition for relief from judgment; that the negligence of the OSG is binding on the respondents in the same manner that its initial success in securing the dismissal of the case was binding on them; and that it would be highly unfair to allow the respondents, who reaped the benefits of the initial dismissal of the case and never complained then about the OSG, to suddenly complain that they were not bound by their counsel's handling or mishandling of the case.

The Respondents' Position

The respondents counter that the CA did not commit a reversible error in reversing and setting aside the default judgment rendered by the RTC; that the petitioners failed to address four (4) errors committed by the RTC cited by the CA; that the respondents were deprived of the opportunity to file their answer or responsive pleadings to the complaint when the RTC issued a default order against them after a defective service of notice to file answer by publication; that the petitioners' invocation of the jurisprudence that a defaulting party has the burden of showing that he has a meritorious defense does not apply in this case; and that what should apply is the settled rule that once a denial or deprivation of due process is determined, the RTC is ousted of its jurisdiction to proceed and its judgment is null and void.

The Court's Ruling

The basic question is whether the constitutional right to procedural due process was properly observed or was unacceptably violated in this case when the respondents were declared in default for failing to file their answer

within the prescribed period and when the petitioners were allowed to present their evidence ex-parte.

Section 1, Article III of the 1987 Constitution guarantees that:

No person shall be deprived of life, liberty, or property without due process of law nor shall any person be denied the equal protection of the law.

Procedural due process is that which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. It contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property.[12]

Moreover, pursuant to the provisions of Section 5(5) of Article VIII of the 1987 Constitution,[13] the Court adopted and promulgated the following rules concerning, among others, the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts:

Rule 13

SEC. 5. Modes of service.—Service of pleadings, motions, notices, orders, judgments and other papers shall be made either personally or by mail.

SEC. 6. Personal service.—Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

SEC. 7. Service by mail.—Service by registered mail shall be made by depositing the copy in the office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. If no registry service is available in the locality of either the sender or the addressee, service may be done by ordinary mail.

SEC. 8. Substituted service.—If service of pleadings, motions, notices, resolutions, orders and other papers cannot be made under the two preceding sections, the office and place of residence of the party or his counsel being unknown, service may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery.

The above rules, thus, prescribe the modes of service of pleadings, motions, notices, orders, judgments, and other papers, namely: (1) personal service; (2) service by mail; and (3) substituted service, in case service cannot be effected either personally or by mail.

The Rules of Court has been laid down to insure the orderly conduct of litigation and to protect the substantive rights of all party litigants. It is for this reason that the basic rules on the modes of service provided under Rule 13 of the Rules of Court have been made mandatory and, hence, should be strictly followed. In *Marcelino Domingo v. Court of Appeals*, [14] the Court wrote:

Section 11, Rule 13 of the Rules of Court states:

SEC. 11. Priorities in modes of service and filing. — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

Section 11 is mandatory. In *Solar Team Entertainment, Inc. v. Judge Ricafort*, the Court held that:

Pursuant x x x to Section 11 of Rule 13, service and filing of pleadings and other papers must, whenever practicable, be done personally; and if made through other modes, the party concerned must provide a written explanation as to why the service or filing was not done personally. x x x

Personal service and filing are preferred for obvious reasons. Plainly, such should expedite action or resolution on a pleading, motion or other paper; and conversely, minimize, if not eliminate, delays likely to be incurred if service or filing is done by mail, considering the inefficiency of postal service. Likewise, personal service will do away with the practice of some lawyers who, wanting to appear clever, resort to the following less than ethical practices: (1) serving or filing pleadings by mail to catch opposing counsel off-guard, thus leaving the latter with little or no time to prepare, for instance, responsive pleadings or an opposition; or (2) upon receiving notice from the post office that the registered parcel containing the pleading of or other paper from the adverse party may be claimed, unduly procrastinating before claiming the parcel, or, worse, not claiming it at all, thereby causing undue delay in the disposition of such pleading or other papers.

If only to underscore the mandatory nature of this innovation to our set of adjective rules requiring personal service whenever practicable, Section 11 of Rule 13 then gives the court the discretion to consider a pleading or paper as not filed if the other modes of service or filing were resorted to and no written explanation was made as to why personal service was not done in the first place. The exercise of discretion must, necessarily, consider the practicability of personal service, for Section 11 itself begins with the clause "whenever practicable."

We thus take this opportunity to clarify that under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception. Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is mandatory. Only when personal service or filing is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. In adjudging the plausibility of an explanation, a court shall likewise consider the importance of the subject matter of the case or the issues involved therein, and the prima facie merit of the pleading sought to be expunged for violation of Section 11. This Court cannot rule otherwise, lest we allow circumvention of the innovation introduced by the 1997 Rules in order to obviate delay in the administration of justice.

x x x x

x x x [F]or the guidance of the Bench and Bar, strictest compliance with Section 11 of Rule 13 is mandated. [Emphasis supplied]

In the case at bench, the respondents were completely deprived of due process when they were declared in default based on a defective mode of service – service of notice to file answer by publication. The rules on service of pleadings, motions, notices, orders, judgments, and other papers were not strictly followed in declaring the respondents in default. The Court agrees with the CA that the RTC committed procedural lapses in declaring the respondents in default and in allowing the petitioners to present evidence ex-parte.

A review of the records discloses that after the Court rendered its April 15, 1988 Decision in G.R. No. 69866, annulling the RTC orders dated November 8, 1983, May 11, 1984 and September 21, 1984 and ordering the remand of the case to the RTC for further proceedings, the RTC issued an order[15] dated August 17, 1990 directing the petitioners to report the addresses and whereabouts of the respondents so that they would be properly notified of the proceedings. This directive was issued by the RTC considering that the respondents' counsel of record, the OSG, could no longer represent them and because the respondents were no longer holding official government positions because of a change in government brought about by the 1986 EDSA Revolution. This order was likewise made in response to the motion[16] filed by the petitioners praying that the respondents be

required to file their answer.

Instead of complying with the RTC's directive to report the respondents' addresses and whereabouts, the petitioners filed a motion^[17] dated September 4, 1990 to declare the respondents in default. On December 27, 1990, the RTC denied the petitioners' default motion because the respondents were not duly notified of the April 15, 1988 Decision of this Court and the OSG no longer wanted to represent them. The RTC likewise ordered the petitioners to comply with its August 17, 1990 Order, otherwise, the case would be archived and eventually dismissed. On February 1, 1991, the RTC denied the petitioners' motion for reconsideration and on March 7, 1991, it issued an order dismissing the case without prejudice.

Surprisingly, on June 4, 1991, the RTC issued an order^[18] setting aside its March 7, 1991 Order and reinstating the case. It directed the petitioners, among others, to cause the publication of a notice on the respondents to file answer or responsive pleading. After the petitioners complied with the publication requirements, the RTC issued the order dated December 5, 1991 declaring the respondents in default and directing the petitioners to present evidence ex-parte.

As correctly observed by the CA, the RTC's August 17, 1990 Order was an attempt to serve a notice to file answer on the respondents by personal service and/or by mail. These proper and preferred modes of service, however, were never resorted to because the OSG abandoned them when the petitioners failed to comply with the August 17, 1990 RTC order requiring them to report the addresses and whereabouts of the respondents. Nevertheless, there was still another less preferred but proper mode of service available – substituted service – which is service made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. Unfortunately, this substitute mode of service was not resorted to by the RTC after it failed to effect personal service and service by mail. Instead, the RTC authorized an unrecognized mode of service under the Rules, which was service of notice to file answer by publication.

Considering the fact that the OSG could no longer represent the respondents, the RTC should have been more patient in notifying the respondents through personal service and/or service by mail. It should not have simply abandoned the preferred modes of service when the petitioners failed to comply with its August 17, 1990 order with the correct addresses of the respondents. More so, it should not have skipped the substituted service prescribed under the Rules and authorized a service of notice on the respondents to file answer by publication.

In view of the peculiar circumstances surrounding the case, the RTC should have instead directed the petitioners to exert diligent efforts to notify the respondents either personally or by registered mail. In case the preferred modes were impractical, the Court should have required the petitioners to at least report in writing why efforts exerted towards personal service or service by mail failed. In other words, a convincing proof of an impossibility of personal service or service by mail to the respondents should have been shown first. The RTC, thus, erred when it ruled that the publication of a notice to file answer to the respondents substantially cured the procedural defect equivalent to lack of due process. The RTC cannot just abandon the basic requirement of personal service and/or service by mail.

At any rate, the Court is of the view that personal service to the respondents was practicable under the circumstances considering that they were well-known persons who used to occupy high government positions.

To stress, the only modes of service of pleadings, motions, notices, orders, judgments and other papers allowed by the rules are personal service, service by mail and substituted service if either personal service or service by mail cannot be made, as stated in Sections 6, 7 and 8 of Rule 13 of the Rules of Court. Nowhere under this rule is service of notice to file answer by publication is mentioned, much less recognized.

Furthermore, the Court would like to point out that service by publication only applies to service of summons stated under Rule 14 of the Rules of Court where the methods of service of summons in civil cases are: (1) personal service;^[19] (2) substituted service;^[20] and (3) service by publication.^[21] Similarly, service by publication can apply to judgments, final orders and resolutions as provided under Section 9, Rule 13 of the Rules of Court, as follows:

SEC. 9. Service of judgments, final orders or resolutions. –Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party. [Emphasis supplied]

As correctly ruled by the CA:

Its third error was when it authorized service by publication after initially dismissing the case for failure of plaintiffs-appellees to furnish the current address of defendants-appellants. There is, however, nothing in the Rules that authorizes publication of a notice of hearing to file answer. What is authorized to be published are: (1) summons, and (2) final orders and judgments.

Xxx xxx xxx

The above-quoted provision cannot be used to justify the trial court's action in authorizing service by publication. Firstly, what was published was not a final order or judgment but a simple order or notice to file answer. Secondly, even granting that the notice to file answer can be served by publication, it is explicit in the Rule that publication is allowed only if the defendant-appellant was summoned by publication. The record is clear that defendants-appellants were not summoned by publication.

On this point, the petitioners argue that the publication was a valid and justified procedure because following the ruling of the RTC, it was “an extra step to safeguard the interest of the defendants done pursuant to the inherent power of the courts to control its proceedings to make them comfortable to law and justice.” The petitioners further argue that “the defendants in a civil case cannot seize control of the proceedings or cause them to be suspended indefinitely by the simple expedient of not filing their answers or by feigning ignorance of the proceedings. All these could have been avoided had the defendants not been so inexplicably complacent and utterly lacking in ordinary prudence.”

The Court is not convinced.

As already discussed above, the basic rules on modes of service of pleadings, motions, notices, orders, judgments, and other papers are mandatory in nature and, therefore, must be strictly observed. The Court is not unaware of the inherent power of courts to control its proceedings. Nonetheless, the exercise of such inherent power must not violate basic court procedures. More importantly, it must not disregard one's basic constitutional right to procedural due process.

This was precisely the reason for the RTC's denial of the petitioner's default motion in its August 17, 1990 Order, and for the eventual dismissal of the case in its December 27, 1990 Order.

It must be noted that as the RTC orders stated, the respondents were not notified of the April 15, 1988 Decision of this Court, which ordered the re-opening and remanding of this case to the RTC. They were neither notified of the reconstitution proceedings that took place pertaining to the burned records of the case. The RTC further stated that the respondents were no longer holding their official government positions and that they were no longer represented by the OSG on account of the change in government. In other words, the respondents had no counsel of record and no notice of subsequent proceedings. In short, due process was absent.

Next, the court records got burned during the June 11, 1988 fire that hit the Quezon City Hall where the records were kept. On March 12, 1990, the RTC granted the petitioners' petition for reconstitution. Again, the records do not show that the RTC initiated extra efforts to notify the respondents about the reconstitution proceedings. The entire records of this case tend to show that the respondents were completely out of the picture until after the promulgation of the RTC decision.

On countless occasions, the Court ruled that, generally, judgments by default are looked upon with disfavor and are frowned upon as contrary to public policy. An example here would be the case of *Regalado P. Samartino v. Leonor B. Raon*,^[22] where the Court stated:

The trial court should not have been too rash in declaring petitioner in default, considering it had actual notice of valid reasons that prevented him from answering. Well-settled is the rule that courts should be liberal in setting aside orders of default for default judgments are frowned upon, unless in cases where it clearly appears that the reopening of the case is intended for delay. The issuance of orders of default should be the exception rather than the rule, to be allowed only in clear cases of obstinate refusal by the defendant to comply with the orders of the trial court.

Suits should as much as possible be decided on the merits and not on technicalities. In this regard, we have often admonished courts to be liberal in setting aside orders of default as default judgments are frowned upon and not looked upon with favor for they may amount to a positive and considerable injustice to the defendant and the possibility of such serious consequences necessitates a careful examination of the grounds upon which the defendant asks that it be set aside. Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that this Court is empowered to suspend its operation, or except a particular case from its operation, when the rigid application thereof tends to frustrate rather than promote the ends of justice. We are not unmindful of the fact that during the pendency of the instant petition, the trial court has rendered judgment against petitioners. However, being the court of last resort, we deem it in the best interest that liberality and relaxation of the Rules be extended to petitioners by setting aside the order of default issued by the trial court and the consequent default judgment; otherwise, great injustice would result if petitioners are not afforded an opportunity to prove their claims.

Finally, the Court finds unacceptable the petitioners' contention that 1) the respondents were well represented by counsel from 1983 up to December 1990 and that the respondents were properly notified of the entire proceedings through their counsel; 2) the respondents' counsel was negligent for failing to file an answer within the prescribed period; and 3) the negligence of the OSG binds the respondents.

The petitioners do not deny the fact that on May 15, 1985, they filed a petition for certiorari before this Court questioning the RTC orders granting the respondents' motion to dismiss and denying their motion for reconsideration. They do not question the fact that while their petition was pending in this Court, the 1986 EDSA Revolution took place which resulted in the removal of the respondents from their respective high government offices and the replacement of then Solicitor General Estelito Mendoza (Sol. Gen. Mendoza). There is likewise no dispute that subsequently, on April 15, 1988, this Court rendered its decision annulling the subject RTC orders and remanding the case to the RTC for further proceedings. The case was then re-raffled to another branch.

Clearly from the above circumstances, there was no longer any lawyer-client relationship between the OSG and the respondents at the time the decision of the Court dated April 15, 1988 was promulgated because, admittedly, after the 1986 EDSA Revolution, the respondents were no longer occupying their respective government positions and Sol. Gen. Mendoza, who represented them, was no longer the Solicitor General.

In fact, in compliance with the RTC's order dated September 10, 1990,^[23] former Solicitor General Mendoza submitted a manifestation^[24] that his legal representation for the respondents was deemed terminated when he

ceased to be the Solicitor General and that he was not representing the respondents in his private capacity. For his part, on December 11, 1990, the incumbent Solicitor General at that time, Solicitor General Francisco Chavez (Sol. Gen. Chavez), filed a notice of withdrawal of appearance for the respondents citing the case of *Urbano v. Chavez*,^[25] where the Court ruled that the OSG is not authorized to represent a public official at any stage of a criminal case or in a civil suit for damages arising from a felony. The records do not show any proof that the respondents were furnished a copy of this notice of withdrawal or whether or not they gave their conformity thereto.

Contrary to the petitioners' position, while it is true that Sol. Gen. Chavez filed a notice of withdrawal only on December 11, 1990, the respondents were in effect no longer represented by counsel as early as April 15, 1988 when the Court's decision was rendered, or much earlier, right after the 1986 EDSA Revolution due to the change in government. The Court cannot subscribe to the petitioners' argument that there was negligence or mistake on the part of the OSG considering that Sol. Gen. Mendoza ceased to hold office due to the EDSA Revolution while Sol. Gen. Chavez withdrew his representation because of the prohibition in *Urbano v. Chavez*. Definitely, Sol. Gen. Mendoza's cessation from holding office and Sol. Gen. Chavez's withdrawal of representation in the unique scenario of this case are not equivalent to professional delinquency or ignorance, incompetency or inexperience or negligence and dereliction of duty. Hence, there is no negligence of counsel in this case. After the 1986 EDSA Revolution, the respondents were practically left without counsel.

As a final point, this Court commiserates with the petitioners' plight and cry for justice. They should not be denied redress of their grievances. The Court, however, finds Itself unable to grant their plea because the fundamental law clearly provides that no person shall be deprived of life, liberty and property without due process of law.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and Perlas-Bernabe, JJ., concur

[1] Rollo, pp. 52-63 (Penned by Associate Justice Oswaldo D. Agcaoili and concurred in by Associate Justice Perlita J. Tria-Tirona and Associate Justice Rosalinda Asuncion-Vicente).

[2] Id. at 67-69.

[3] Id. at 97-123.

[4] Id. at 52-56.

[5] Id. at 122-123.

[6] Id. at 200-205.

[7] Id. at 58-59.

[8] Id. at 63.

[9] Id. at 61-62.

[10] Id. at 31.

[11] Id. at 35.

[12] *Luzon Surety Co., Inc. v. Jesus Panaguiton*, G.R. No. L-26054, July 21, 1978, 84 SCRA 148,153

[13] Section 5. The Supreme Court shall have the following powers.

x x x x x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court. [Emphases supplied]

[14] *Marcelino Domingo v. Court of Appeals*, G.R. No. 169122, February 2, 2010, 611 SCRA 353, 364-365.

[15] *Rollo*, p. 127.

[16] *Id.* at 125-126.

[17] *Id.* at 129.

[18] *Id.* at 135-136.

[19] 1997 Rules of Civil Procedure, Section 6, Rule 14.

[20] 1997 Rules of Civil Procedure, Section 7, Rule 14.

[21] 1997 Rules of Civil Procedure, Sections 14, 15 &16, Rule 14.

[22] G.R. No. 131482, July 3, 2002, 383 SCRA 664, 672-673.

[23] *Rollo*, p. 130.

[24] *Id.* at 132.

[25] G.R. No. 88578, March 19, 1990, 183 SCRA 347, 358.

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