

ROBERTO R. DAVID, PETITIONER, VS. JUDGE CARMELITA S. GUTIERREZ-FRUELDA, HONORABLE PRESIDING JUDGE, BRANCH 43, REGIONAL TRIAL COURT OF SAN FERNANDO, PAMPANGA, VICENTE L. PANLILIO...

G.R. No. 170427. January 30, 2009

Ponente: QUISUMBING, Acting C.J.

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QUISUMBING, Acting C.J.

The instant petition for certiorari under Rule 65 seeks to set aside the Orders dated July 15, 2005[1] and September 21, 2005[2] of the Regional Trial Court (RTC) of San Fernando, Pampanga, Branch 43 in Civil Case No. 13008. The RTC had declared petitioner Roberto R. David in default.

The proceedings antecedent to this case are as follows:

On September 17, 2004, private respondents filed a complaint[3] for accounting, reconveyance and damages with prayer for preliminary attachment against petitioner, his wife Marissa David, and the Register of Deeds of Pampanga. Private respondents alleged that petitioner fraudulently exceeded his special power of attorney to cause the conversion of their agricultural lands to those for residential, commercial and industrial purposes by registering in his name some of the lands, mortgaging others, failing to remit and account any money received from any transaction involving their lands, and absconding.

Service of summons failed as petitioner was abroad.[4] On January 24, 2005, the RTC ordered service by publication.[5] Thereafter, private respondents moved that petitioner be declared in default since he failed to answer within 60 days from date of last publication on March 19, 2005.[6]

On July 14, 2005, petitioner filed a motion for extension[7] of 15 days within which to file Answer, with opposition to the motion to declare him in default.

In its Order dated July 15, 2005, the RTC declared petitioner in default. The RTC noted that the period to file petitioner's Answer lapsed on May 19, 2005, 60 days after the last publication on March 19, 2005, and that petitioner failed to answer despite the "many opportunities" given to him. The RTC also denied petitioner's motion for extension to file Answer. The fallo of the Order reads:

WHEREFORE, the foregoing considered, defendant Roberto David [herein petitioner] is hereby declared in default and the plaintiffs [herein private respondents] are allowed to present evidence ex-parte, insofar as said defendant is concerned.

x x x x

The presentation of evidence against Roberto David may be held simultaneously with the presentation of evidence against Marissa David.

x x x x

SO ORDERED.[8]

Petitioner moved to lift the order of default and sought another extension of 15 days within which to file Answer. Petitioner stated that declarations of default are frowned upon, that he should be given the opportunity to present evidence in the interest of substantial justice, and that he has meritorious defenses.

The RTC denied the motion in its September 21, 2005 Order. The RTC ruled that while judgments by default are generally looked upon with disfavor, petitioner's motion to lift the order of default was fatally flawed under Section 3(b),[9] Rule 9 of the Rules of Court. The RTC noted that petitioner's motion was not under oath; unaccompanied by an affidavit of merit; and without any allegation that his failure to file Answer was due to fraud, accident, mistake or excusable negligence. The RTC also ruled that it was not sufficient for petitioner to merely allege that he has a meritorious defense. The dispositive portion of the RTC Order reads:

WHEREFORE, premises considered, the motion for reconsideration filed by defendant Roberto David is DENIED.

Let the pre-trial (for defendant Marissa David) and the ex-parte presentation of evidence by the plaintiff[s], in so far as defendant Roberto David is concerned, be set on October 7, 2005 at 10:00 o'clock in the morning.

SO ORDERED.[10]

Petitioner came directly to this Court. He alleges that:

I.

THE RESPONDENT JUDGE GRAVELY ABUSED HER DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DENYING THE LIFTING OF THE ORDER OF DEFAULT AND IN HOLDING THAT SUFFICIENT PERIOD OF TIME HAD BEEN GIVEN PETITIONER TO FILE ANSWER WHEN, INTER ALIA, COPIES OF THE COMPLAINT AND ALIAS SUMMONS WERE SENT BY REGISTERED MAIL AS EVIDENCED BY REGISTRY RECEIPT, IN CONTRAST TO A REGISTRY RETURN CARD AS PROOF OF SERVICE, NOTWITHSTANDING THE FACT THAT NO AFFIDAVIT SHOWING THE DEPOSIT OF A COPY OF THE SUMMONS AND ORDER OF PUBLICATION IN THE POST OFFICE, POSTAGE PREPAID, DIRECTED TO PETITIONER BY REGISTERED MAIL TO HIS LAST KNOWN ADDRESS WAS SHOWN BY PRIVATE RESPONDENTS.

II.

THE RESPONDENT JUDGE GRAVELY ABUSED HER DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DENYING THE LIFTING OF THE ORDER OF DEFAULT FOR SUPPOSED FAILURE OF PETITIONER TO FOLLOW TO THE LETTER SEC. 3(b), RULE 9 OF THE RULES OF COURT WHEN THE RESPONDENT JUDGE HERSELF FAILED TO FOLLOW TO THE LETTER THE MANDATE OF SECTION 15 OF RULE 14, TO SPECIFY, IN ANY ORDER GRANTING LEAVE FOR EXTRATERRITORIAL SERVICE, A REASONABLE TIME WHICH SHALL NOT BE LESS THAN SIXTY DAYS AFTER NOTICE, WITHIN WHICH DEFENDANT MUST ANSWER.[11]

Private respondents counter that the RTC did not commit grave abuse of discretion in denying petitioner's motion to lift order of default because the motion was not under oath; did not contain an allegation that petitioner's failure to file Answer was due to fraud, accident, mistake or excusable negligence; and was unaccompanied by an affidavit of merit showing that petitioner has a meritorious defense.[12]

The basic issue for our resolution is: Did the RTC commit grave abuse of discretion in denying petitioner's motion to lift order of default?

After a careful study of the case and the parties' submissions, we find that the RTC did not commit grave abuse of

discretion, nor did it err in denying petitioner's motion to lift the order of default.

Petitioner belabors his complaint on the alleged defects in the service of summons by publication. He ignores his voluntary appearance before the RTC when he filed two motions for extension to file Answer. His voluntary appearance was equivalent to service of summons.[13] It has cured any alleged defect in the service of summons.[14]

We also note that petitioner's motions were not motions to dismiss the complaint on the ground of lack of jurisdiction over his person. On the contrary, the motions invoked the RTC's jurisdiction while seeking the following affirmative reliefs: to grant extension, deny the motion to declare petitioner in default and lift the order of default. Thus, petitioner waived any defect in the service of summons by publication or even want of process because for the RTC to validly act on his motions, it necessarily acquired jurisdiction over his person.[15]

We proceed now to the issue of default. One declared in default has the following remedies:

- a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion under oath to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense (Sec. 3, Rule 18 [now Sec. 3(b), Rule 9]);
- b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;
- c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 [now Section 1] of Rule 38; and
- d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him (Sec. 2, Rule 41).

Moreover, a petition for certiorari to declare the nullity of a judgment by default is also available if the trial court improperly declared a party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration.[16] (Emphasis added.)

Petitioner used the first remedy. But the RTC denied his motion to lift the order of default.

We affirm the RTC's denial. Indeed, default orders are not viewed with favor.[17] But in this case, petitioner failed to comply with the basic requirements of Section 3(b), Rule 9 of the Rules of Court. The motion was not under oath. There was no allegation that petitioner's failure to file an Answer or any responsive pleading was due to fraud, accident, mistake, or excusable negligence. Petitioner merely stated that declarations of default are frowned upon, that he should be given the opportunity to present evidence in the interest of substantial justice, and that he has meritorious defenses. Unfortunately, his claim that he has meritorious defenses is unsubstantiated. He did not even state what evidence he intends to present if his motion is granted.[18]

Finally, we need to tackle two procedural matters. First, petitioner's failure to attach to the petition a copy of the motion to lift the order of default, a relevant document required by Section 3,[19] Rule 46 of the Rules of Court, is sufficient basis for us to dismiss the petition. For us to determine whether the RTC committed grave abuse of discretion in denying the motion and ruling that it did not comply with Section 3(b), Rule 9, we must examine the motion. As it happened, petitioner failed but private respondents submitted a copy of said motion.

Second, we must emphasize that the special civil action of certiorari under Rule 65 is within the concurrent original jurisdiction of this Court and the Court of Appeals. Resort to the higher courts should be made in accordance with their hierarchical order.[20] On this point, petitioner again failed to render due compliance.

WHEREFORE, the instant petition is DISMISSED for lack of merit, and we AFFIRM the Orders dated July 15, 2005 and September 21, 2005 of the Regional Trial Court of San Fernando, Pampanga, Branch 43 in Civil Case No. 13008.

Costs against the petitioner.

SO ORDERED.

Corona,[*] Carpio Morales, Tinga, and Brion, JJ., concur.

[*] Additional member in lieu of Associate Justice Presbitero J. Velasco, Jr. who is abroad on official business.

[1] Rollo, pp. 97-98.

[2] Id. at 93-96.

[3] Id. at 99-110.

[4] Id. at 114.

[5] Id. at 115.

[6] Id. at 126-127.

[7] Id. at 131-135.

[8] Id. at 98.

[9] SEC. 3 Default; declaration of. – ...

x x x x

(b) Relief from order of default.-A party declared in default may at any time after notice 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 negligence 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.

x x x x

[10] Rollo, p. 96.

[11] Id. at 23.

[12] Id. at 146-148.

[13] Rules of Court, Rule 14, Sec. 20. Voluntary appearance.-The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

[14] Cezar v. Ricafort-Bautista, G.R. No. 136415, October 31, 2006, 506 SCRA 322, 334.

[15] Villareal v. CA, 356 Phil. 826, 844 (1998).

[16] Cerezo v. Tuazon, G.R. No. 141538, March 23, 2004, 426 SCRA 167, 180.

[17] Delos Santos v. Carpio, G.R. No. 153696, September 11, 2006, 501 SCRA 390, 403; Acance v. Court of Appeals, G.R. No. 159699, March 16, 2005, 453 SCRA 548, 563.

[18] Velayo-Fong v. Velayo, G.R. No. 155488, December 6, 2006, 510 SCRA 320, 334-335.

[19] SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. - ...

x x x x

[The petition] ... shall be accompanied by a clearly legible duplicate original or certified true copy of the ... order ..., such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. ...

x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

[20] St. Martin Funeral Home v. NLRC, 356 Phil. 811, 823-824 (1998).

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