

JUAN ONG, PLAINTIFF-APPELLEE, VS. ISABELO FONACIER, DEFENDANT-APPELLANT. ISABELO F. FONACIER, THIRD-PARTY, PLAINTIFF-APPELLANT, VS. FERNANDO A. GAITE, THIRD-PARTY DEFENDANT-APPE...

G. R. No. 20887. July 08, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

The present suit for a sum of money was filed on July 11, 1956 In the Court of First Instance of Camari-nes Sur by Juan Ong against Isabelo F. Fonacier. Plaintiff thereunder sought to recover from deferri ant some alleged loans of P3,000, P1,000, P100, P60 and P50 - or a total of P4,210 - plus P2,000 moral and actual damages and P1,000 attorney's fees.

Defendant Fonacier was declared in default on December 19, 1956. This notwithstanding, he filed on December 29, 1956 his answer, together with a motion for leave to file a third party complaint against Fernando Galte, Incorporating said third party complaint In his answer. Defendant further asserted a counterclaim against plaintiff Ong In the same answer.

At first the court, on January 7, 1957, denied the motion for leave to file third party complaint because defendant was in default. Subsequently, however, on March 6, 1957, upon defendant's motion, it lifted the order of default, admitted defendant's answer and granted leave to file the third party complaint.

The substance of defendant Fonacier's answer, third-party complaint and counterclaim is that he was the owner of iron lode mineral claims in Jose Panganiban, Camarines Norte; that on September 29, 1952 he designated Gaite nis agent to engage an, operator of said claims under a minimum royalty of P.50 a ton payable to him (Fonacier); that Gaite undertook to operate the mineral claims himself and did so from March to October of 1954; that under said arrangement it was agreed that a royalty of P.50 per ton would be payable to Fonacier by Gaite and Ong, jointly and severally; that the sums of money Ong delivered to Ponacier - alleged now to be loans - were payments of such royalties; that Gaite and Ong still owe Fonacier a balance of at least P2,237.25 and at most P8,850 on said royalties. In addition, attorney's fees of P2,000 and actual damages of P3,000 were claimed thereunder.

Gaite filed on August 10, 1957 an answer to the third party complaint, with a counterclaim thereon. Said counterclaim alleged that Ponacier and Gaite entered into a contract on December 8, 1954 known as "Revocation of Power of Attorney and Contract"; that Ponacier therein acknowledged that Galte has a share of 10% in the royalty from the mines in question; that Fonacier had received royalties in the amounts of P40,000 and P50,000 in which Gaite is entitled to a share of 10% or P9,000; that Fona-cier paid hlm.only P1,666.67 so far, leaving a balance of P7,333.33. Furthermore, Gaite asked for P15,000 actual damages, P10,000 moral damages and P5,000 exemplary damages.

Fonacier on September 24, 1958 filed his answer to Gaité's counterclaim. Alleged therein were that Gaité had sold to Fonacier for P20,000 his 10% participation in the royalties; that Fonacier had later sold to Larap Mines & Smelting Co. 90% of his royalty on the mines, including the 10% participation he bought from Gaité; that Fonacier paid Gaité only P1,666.67 for his purchase of Gaité's 10% participation in the royalty because Gaité failed to deliver to Fonacier a balance of about 13,045.45 tons of the 24,000 tons of iron sold by Gaité to Fonacier in their agreement entitled "Revocation of Power of Attorney and Contract" dated December 8, 1954.[1]

On September 26, 1958 Gaité (third party defendant) filed a motion to have Fonacier (third party plaintiff) declared in default as to Gaité's counterclaim on the ground that Fonacier's answer thereto was filed out of time, said dispute was the subject of L-11827, Gaité vs. Fonacier, then pending in this Court. In our decision therein promulgated July 31, 1961, Fonacier's contention of a balance of minerals still due to him was rejected.

Fonacier, on October 2, 1958, moved to declare plaintiff Ong in default as to Fonacier's counterclaim against Ong. On October 10, 1958, plaintiff Ong was declared in default for non-filing of responsive pleading to Fonacier's counterclaim. Plaintiff Ong moved on October 22, 1958 for reconsideration and setting aside of said order.

On November 2, 1958 Fonacier moved to declare Gaité in default as to the third party complaint. Fonacier also filed an opposition to Gaité's motion of September 26 above-stated and moved for leave to file an amended answer to Gaité's counterclaim, attaching said amended answer to the motion for leave.

After two postponements at the instance of Fonacier, the trial of the case was set for November 5, 1958. At said hearing, Ong and Gaité appeared but not Fonacier. Received by the court, however, at 10 A.M., November 5, 1958, was a telegraphic-motion for postponement on behalf of Fonacier. The same was in addition to a motion for postponement filed by Fonacier on October 13, 1958 which -not having been served on plaintiff Ong - was not acted upon nor set for hearing. The reason for the postponement sought was that Fonacier's counsel Atty, Mauro Castillo was to appear on the same date in a criminal case before the Court of First Instance of Manila.

Finding the foregoing not Justified, the trial court proceeded with the trial in the absence of Fonacier. Said trial was finished on that day, November 5, 1958, with the presentation of evidence by plaintiff Ong as to his complaint and by third party defendant Gaité in support of his counterclaim against Fonacier.

Deciding the case on January 6, 1959, the trial court held that plaintiff Ong loaned to Fonacier the amounts of P3,000, P1,000 and P60 - or a total of P4,060; and that Gaité is entitled to the share in royalties as claimed in the total amount of P7,333.33. The dispositive portion of the decision states:

"WHEREFORE, the defendant-third-party plaintiff is hereby ordered to pay the plaintiff the sum of P4,060.00 and the third-party defendant the sum of P7,333.33 with Interest at the legal rate from the filing of the action until payment and the costs. The third-party complaint is dismissed.

"SO ORDERED."

Fonacier filed on March 4, 1959 a petition to set aside the decision, which was denied by the court on July 10, 1959. Thereupon he perfected an appeal to this Court. At first the trial court refused to allow the appeal. In a petition for mandamus herein, we ordered the trial court to allow the appeal.[2] Subsequently, the records were elevated to the Court of Appeals. Said error was rectified when the Court of Appeals, by resolution of February 2, 1963, certified this appeal hereto as involving questions purely of law.

Appellant moved for reconsideration of said certification, seeking to raise questions of facts herein, alleging that Gaité's counterclaim Involves more than P200,000. Said motion was denied by this Court's resolution of February 26, 1963.[3] Gaité's counterclaim, as shown in the pleadings, demands only a total sum of P37,333.33.

Addressing ourselves now to the points of law involved herein, appellant contends that the lower court erred in trying the case in his absence; and, in not granting the postponement sought, violated his constitutional right to be heard. In this respect it must be stressed that postponements are matters within the sound discretion of the court. It was Fonacier's third motion for postponement that the court a quo denied, after having granted his first two motions for postponement, Fonacier had two counsels -Attys. Pedro Guevara and Mauro Castillo - so that the absence of one lawyer did not leave him without counsel in the case. Finally, the motion for postponement filed October 13, 1958, not having been served upon plaintiff Ong, was a scrap of paper which the court was not bound to consider, much less to grant (*Manafcil v. Revilla*, 42 Phil. 81; *Tan v. Dimayuga*, L-15241, July 31, 1962), Approval of motions for postponement, addressed to the sound discretion of the court, are not to be taken for granted (*Republic vs. Gumayan*, L-16780, May 31, 1961). Appellant had no reason to assume that his third motion for postponement would be granted (*PNB vs. Donasco*, L-18638, February 28, 1963). Fonacier, therefore, was given the right to be heard tout failed to appear at the time set for the purpose. Said failure was, as correctly found by the trial court, unjustified.

Appellant's second assertion is that the decision of the trial court was premature since the issues were not yet Joined in view of the pendency of unresolved motions, namely: (a) Gaifce's motion of September 26, 1958 to declare Fonacier in default on Gaites counterclaim; (b) Ong's motion of October 22, 1958 to set aside the order declaring plaintiff in default; (c) Fonacier's motion of November 2, 1958 to declare (Jaite in default on the third party complaint; and (d) Fonacier's motion of November 4, 1964 for leave to file amended answer to Gaites counterclaim. It should be observed that all of the parties had already filed responsive pleadings, as afore-stated, with the exception of plaintiff Ong, who had not answered Fonacier's counterclaim.

Said counterclaim, however, was in the nature of a compulsory counterclaim, it being necessarily connected with the subject matter of the complaint. It was, moreover, based on the very defenses pleaded in the answer and raised the same Issues as the answer. Thus no answer to Fonacier's counterclaim was needed to join the issues (*Navarro vs. Bello*, 54 Off.G. 6588).

Since issues are joined by the pleadings[4] - not by the motions - notwithstanding the pendency of the unresolved motions, the Issues were Joined in this case since pleadings and responsive pleadings had been filed. Appellant invokes *Principe vs. Eria*, 90 Phil. 684, but- In said case the issues had not been Joined because a responsive pleading - answer to the third party complaint - was not yet filed. Appellant's error lies In forgetting that motions are not pleadings.

Furthermore, as the court a quo stated in denying appellant's petition to set aside its decision, appellant, who failed to appear on the date set for hearing, failed to prosecute his pending motions. And, we may add, by proceeding to decide the case, the court a quo in effect denied all the afore-stated pending motions and considered the responsive pleadings as properly and reasonably filed. From all this It follows, contrary to appellant's view, that the issues were Joined and the decision was not premature .

There remains appellant's motion herein on May 19, 1963, entitled "Alternative Motion To Remand Case To CFI Or To Allow Correction And Completion Of The Record On Appeal, Etc", action on which was deferred until the case is taken up on the merits. Appellant seeks to add to the record on appeal one erratum and three annexes, allegedly tending to disprove and refute Ong's and Gaites claims against him. Since, as above-stated, questions of facts are not involved before Us, said additional matters are not necessary to the adjudication of the present appeal. The records before Us being sufficiently complete and correct for purposes of deciding the points of law herein raised, said motion is denied.

WHEREFORE, the appealed decision and order denying the petition to set It aside, are hereby affirmed, with

costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Zaldivar, and Sanchez, JJ., concur.

[1] Said dispute was the subject of L-11827, Gaite vs. Fonacier, then pending in this Court. In our decision therein promulgated July 31, 1961, Fonacier's contention of a balance of minerals still due to him was rejected.

[2] Fonacier vs. Surtida, L-15944, September 28, 1961.

[3] Rollo p. 86.

[4] The purpose of pleadings is to define the issues. McDaniel vs. Apacible, 44 Phil., 248, 255.

RESOLUTION AMENDING DECISION

Sept. 13, 1966

BENGZON, J.P., J.,:

Appellant Isabelo F. Fonacier filed on July 28, 1966 a motion for amendment of the decision rendered herein on July 8, 1966.

In our decision, the judgment of the court a quo, which is as follows, was affirmed:

"WHEREFORE, the defendant third-party plaintiff [Fonacier] is hereby ordered to pay the plaintiff [Ong] the sum of P4,060.00 and the third-party defendant [Gaite] the sum of P7,333.33 with interest at the legal rate from the filing of the action until payment and the costs"

Appellant-movant Fonacier raises two points, both relating to the computation of interest: (1) That interest as to plaintiff's award of P4,060.00 and for the filing of the counterclaim (August 10, 1957), as to third-party defendant award of P7,333.33; and (2) that interest should not be charged for the period from July 24, 1959 to January 22, 1962, because that represents the period during which the appeal was erroneously held in abeyance by the lower court on motion of third-party defendant Gaite.

Appellees were asked to comment on the above-stated motion. Appellee Gaite filed his reply thereto on August 4, 1966. Appellee Ong filed no reply or comment. And on August 12, 1966, appellant-movant filed a reply to appellee's objection.

As to the first point, the phrase "from the filing of the action" in the court a quo's decision, affirmed by US, should be deemed to refer to the filing of the complaint in regard to the plaintiff and to the filing of the complaint in regard to the plaintiff and to the filing of the counterclaim in regard to third-party defendant. Third-party defendant Gaite's counterclaim against Fonacier is the former's action against the latter. For purposes of removing any doubt, therefore, this Court is in favor of specifying herein the respective dates as prayed for by movant. Appellee has no objection on this.

As to the second point, Article 2209 of the Civil Code provides:

"Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum."

After the dates of the respective demands in court abovementioned, Fonacier incurred in delay, thereby being liable for interest. The delay occasioned by Fonacier's resistance of the suits against him, however, was aggravated by the court a quo's refusal, at appellee Gaite's instance, to allow his appeal, until this Court issued a writ of mandamus to compel it. It is only fair and equitable, therefore, that the period corresponding to said delay occasioned by the court's a quo's error in refusing to allow this appeal, should be excluded in the computation of interest.

Anent the remark of appellee Gaite that the interest should even be computed from 1954, the same cannot be considered herein, as appellees cannot now ask for a relief greater than that given them by the court a quo.

Premises Considered, the dispositive portion of this Court's decision of July 8, 1966 is hereby amended to read as follows:

"Wherefore, the decision appealed from is hereby modified, and defendant-third-party plaintiff Fonacier is hereby ordered to pay plaintiff Ong the sum of P 4,060.00 with interest at the legal rate counted from the filing of the complaint on July 11, 1956, until fully paid; and to pay third-party defendant Gaite the sum of P 7,333.33 with interest at the legal rate counted from August 10, 1957 when the counterclaim was filed, until fully paid, excluding in both instances the period from July 24, 1959 to January 22, 1962, during which the appeal was held in abeyance. In all other respects, the appealed judgment is hereby affirmed, with costs. So ordered."

It is so ordered.

Concepcion, C.J.. Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

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