

MARIA FLOR V. DIRIGE, PLAINTIFF AND APPELLEE, VS. VICTORIANO BIRANYA, DEFENDANT AND APPELLANT.

G.R. No. 22033. July 30, 1966

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

A forcible entry case dismissed, after trial, by the Justice of the Peace (Municipal) Court of Del Gallego, Camarines Sur. Plaintiff appealed to the Court of First Instance of Camarines Sur.[1]

On October 30, 1959, the registered mail containing the notice of the appealed case with the usual directive to answer the complaint within 15 days from receipt of such notice was received by Ciriaco Biranya for his father, defendant Victoriano Biranya. Defendant did not answer the complaint.

On July 8, 1960, the court, at plaintiff's behest, declared defendant in default, directed plaintiff to present his evidence on July 21st.

On July 21, 1960, on plaintiff's evidence, the court rendered judgment, ordering defendant to vacate the premises and to pay damages, attorneys' fees and expenses, and the costs.

On the same date, entry of final judgment was made by the Clerk.

On July 25, 1960, plaintiff received notice of judgment.

On February 24, 1961, defendant petitioned for relief to set aside the default order and the default judgment, and for a new trial.

On July 29, 1961, the trial court overturned the petition for relief. Ground therefor: from July 8, 1960 the date of the default order to February 24, 1961 when defendant moved for relief, the six-month reglementary period had elapsed.

Defendant went on to the Court of Appeals. But because solely errors or questions of law are involved, the case was certified to this Court.[2]

1. We must clear the first hurdle on the way. Defendant injects a new issue: He may not be declared in default because "the notice of the appealed case was sent to him and not to his lawyer." [3]

This problem we dispose of adversely to defendant in a four-step analysis. First, this point was never brought by defendant to the attention of the trial court. A rule of ancient respectability is that a question of law—not affecting the jurisdiction over the subject-matter—not raised in the lower court may not be considered for the first time on appeal. Because, being a procedural privilege, petitioner is deemed to have waived the same.[4] Second, nothing extant in the record indicates that defendant's attorney ever entered a formal appearance in the Justice of the Peace (Municipal) Court. It is not enough that the attorney appeared for him at the trial.[5] Without such formal appearance, counsel is not entitled to notice. Judicial administration cannot afford to suffer uncertainty because of

the uncertainty concerning the lawyer upon whom service is to be made.[6] Third, the claim that lack of notice to the lawyer renders the default order null and void as having been issued without jurisdiction, does not command assent. The question of whether or not notice was actually sent to defendant's lawyer is one of fact. Defendant should have ventilated this factual issue in the court a quo. He may not do so now.[7] Fourth, the controlling statute here is Section 7 Rule 40 of the 1940 Rules of Court. It provides that once the case is docketed on appeal, "it shall be the duty of the clerk of the court to notify the parties of that fact by registered mail, and the period for making an answer shall begin with the date of the receipt of such notice by the defendant." [8] This provision on notice to the parties "being express and specific, cannot be interpreted to mean that the notice can be given to the lawyer alone" [9] Accordingly, notice to the parties personally—not exclusively to their attorneys—is effective. This Court has since confirmed this rule.[10]

2. Properly justiciable is whether the petition for relief was filed within the six-month limit set forth in Section 3 of Rule 38 of the old Rules of Court, which in part reads:

"SEC. 3. When, petition filed; contents and verification.—A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six months after such judgment or order was entered, or such proceeding was taken; * * *"[11]

The same rule now obtains. Section 3 of Rule 38 of the new Rules of Court likewise reads:

"SEC. 3. Time for filing petition; contents and verification.—petition provided for in either of the preceding sections of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken; * * *"[12]

The foregoing legal precept is now to be applied on the following state of facts:

July 8, 1960—Date of order of default.
July 21, 1960—Judgment by default rendered.
July 21, 1960—Judgment entered.
July 25, 1960—Receipt of judgment by plaintiff.
February 22, 1961—Defendant learns of order and judgment.
February 24, 1961—Verified petition for relief from default order and judgment, filed. (

Defendant's position is that the six-month period should begin to toll from the alleged date of finality of default judgment, i.e., from August 24, 1960—30 days after July 25, 1960, the date when plaintiff received notice of the judgment dated July 21, 1960.

Plaintiff contends, upon the other hand, that the said six-month period should start from July 8, 1960, the date of the default order, or, at latest, from July 21, 1960, the date of the rendition of the judgment. Because a default judgment is immediately final and executory.

The Court a quo, as mentioned, counted it from the date of the order of default.

Jurisprudence on this point has not yet shaped with precision.

In the following cases, it was held that the six-month period should start from the date of the default order:

In *Isaac vs. Mendoza*, L-2820, June 21, 1951, the facts are—

May 10, 1947—Date of order of default.

September 23, 1947—Judgment by default rendered.

December 9, 1947—Date petition to set aside judgment, filed.

Held: The petition must pray first for a revocation of the default order, and not merely ask that the judgment be set aside. But, granting that the prayer so included the revocation of the default order, counting from May 10, (the default order) to December 9 (the petition), "the petition was too late".

In *Gana, et al., vs. Abaya, etc., et al.*, 98 Phil., 165, 52 Off. Gaz., No. 1, pp. 231, 232, December 29, 1955, on which the court a quo anchored its ruling here, the dates considered were:

February 14, 1948—Date of order of default.

July 20, 1948—Defaulting party learned of default order.

July 28, 1948—Date of judgment by default.

August 31, 1948—Petition for relief filed.

This Court adjudged the petition out of time, stating that it was filed "six months and seventeen days after the order of default had been entered".

In *Prudential Bank & Trust Co. vs. Macadaeg, etc., et al.*, 56 Off. Gaz., No. 35, pp. 5432, 5434, May 25, 1959, the decision was based on the following:

August 23, 1955—Date of order of default.

November 22, 1955—Date petition for relief was filed (80 days after petitioner learned of the order).

December 20, 1955.—Order lifting order of default, issued.

It construed the *Isaac* and *Gana* cases on the one hand, and on the other, *Larrobis vs. Wislizenus, etc., et al.*, 42 Phil. 401, 404, which ruled that an interlocutory order (such as an order of default) "may be modified or rescinded, on sufficient grounds shown at any time before the entry of final judgment." In *Prudential*, we held that "the resultant principle appears to be that an order of default may be set aside at any time before final judgment, provided the petition for vacating it is made within six months after entry[13] of the order." Thus was the order lifting the order of default affirmed.

A second set of decisions declares that such period should commence from the date of the judgment:

In *Sambrano, et al., vs. Reyes, etc., et al.*, L-8350, May 23, 1956, the facts are:

September 18, 1953—Date of order of default.

December 3, 1953—Date of judgment by default.

May 24, 1954—Motion for relief filed.

The petition for relief was filed 8 months after the date of the order of default. But this Court said: "It is apparent, however, on close examination of the issues, that the respondent's petition for relief referred to the judgment of December 3, 1953, and therefore, the petition in May, 1954 was filed within the period of six months."

In *Salvatierra vs. Garlitos, etc., et al.*, 56 Off. Gaz., No. 15, pp. 3069, 3071-3072, May 23, 1958, the following dates were important:

June 8, 1955—Judgment by default was rendered, following an order of default (date thereof not mentioned).

January 31, 1956—Motion treated by this Court as a petition for relief under Rule 38, was filed.

Held: The motion is out of time because there was a "lapse of 7 months and 23 days", this Court stating that,

under Rule 38, the period must be counted from and "after the judgment or order was rendered."

In *Abao vs. Virtucio, et al.*, 109 Phil., 819, there was no default but non-appearance of defendant. This Court counted the time from December 8, 1958 "the date the judgment was taken against him (the aggrieved party)"; and the petition for relief filed on September 3, 1959 was adjudged "outside of the 6-month time."

The possibility that another parting point, to wit, from the date judgment becomes final, may be considered, is reflected in the following:

Samson vs. Dinglasa, 109 Phil., 803, was not a default case. Appeal having been denied because filed out of time, a petition for relief from the main judgment was filed. The dates:

November 15, 1956—Date of decision.

November 21, 1956—Knowledge (petitioner received a copy of the decision)

June 25, 1958—Petition for relief filed.

In denying relief, we said that "whether the period be computed from the time petitioner learned of the decision, or from the time it became final," the petition was filed out of time. We there added that the period must be "6 months after such judgment, order or proceeding has taken place".

And in *Follosco vs. Tuyay, et al.*, 92 Phil., 810; 49 Off. Gaz., No. 4, pp. 1413, 1417, we declared that "* * * whether we base the computation from the date the decision was entered, August 27, 1948 (N. B.: this is the date of judgment), or from the date it has become final October 13, 1949, or even from the date the court ordered the issuance of the final decree, February 2, 1950, the petitions for relief (filed by separate sets of oppositors on October 2, 1950, and November 23, 1950) were filed long after the period of six months prescribed by section 3, of Rule 38 had expired."

A fourth group of cases held that the period is to be made to commence from the entry of judgment:

Soriano vs. Asi, 100 Phil., 785; 53 Off. Gaz., No. 5, pp. 1461, 1462-1463, January 29, 1957, was not a default case. The order complained of was an order admitting a will to probate. The dates:

October 10, 1951—Date of order complained of.

November 9, 1951—Order "could be entered, at the earliest" on this date.

April 22, 1952—Petition for relief ("6 months and 2 days after" October 10, 1951) filed.

This Court commented: "The period of six months is incorrectly computed by the appellant from the rendition of the judgment or order complained of; it should be counted from the entry of such judgment or order. This is evident from section 3 of Rule 38." Thus, the petition was declared to have been filed within the period.

In *Delgado vs. Ceniza, etc., et al.*, 101 Phil. 740, there was no default. Defendants did not appear on the day of the hearing. They charged that they were not notified of the trial nor of the decision. Two dates were clear:

February 18, 1955—Date judgment was rendered.

January 19, 1956—Aggrieved party learned of the judgment
and on the same day filed a petition for relief.

We stated that "There appears nothing in the record to show when the judgment was actually entered." Therefore, this Court ordered that the case be remanded to the court below, "with instructions to grant the relief and reinstate the case for trial, if no entry of judgment was made, or to deny the petition for relief if entry of judgment had been made six months or more before January 19, 1956, the date when the petition for relief was filed."

In *Quijano vs. Tameta*, L-16473, April 20, 1961, there was no default, only non-appearance. This Court decided

on the basis of the following dates:

September 15, 1955—Date of judgment.

November 9, 1955—Judgment entered by Clerk.

May 24, 1956—Petition for relief filed.

The six-month period was counted from the date of entry of judgment; and this Court found the petition to have been filed—"six months and fifteen days"—beyond the required period.

Of critical importance is for us to ascertain which of the divergent views expressed in the decisions just cited should be adopted as the controlling doctrine. Is the six-month period to run from the date of the order of default? Or from the date of judgment? Or from the date of finality of judgment? Or from the date of entry of judgment? Solution is desirable. Because uncertainty in the state of the law is an unwholesome fact to live with. For, suitors may time and again seize upon the zig-zags of judicial pronouncements in the hope of advancing their cause. With this, litigations may be protracted. It is never too late for this Court to fashion and apply a precise formula, a clear-cut course to pursue when confronted with a situation like the present. That there should be a reliable expositor of a given law, the dictates of good sense suggest.

Fortunately for us, we may draw enlightenment from the very letter of the law. It says that a petition for relief must be filed within sixty (60) days after petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken.[14] The law does not say six months after the date of the default order. No mention there is made of the date of rendition of the judgment or order. Neither does it speak of the date of the finality of the judgment or order. It does say, in plain terms—six months after the judgment or order "was entered".

Taking a close look at the rule, quite obviously does it provide that, generally, entry of judgment sets the six-month period in motion. The word "enter" with reference to judgments has acquired a definite meaning in our procedure. There simply exists no ambiguity to warrant embroiled interpretation. We need not hammer out meaning from the word "entered". It is there. Section 2, Rule 36 chisels out the legal import of the word: "If no appeal or motion for new trial is filed within the time provided in these rules, the judgment or order shall be entered by the clerk. The recording of the judgment or order in the book of entries of judgments shall constitute its entry. The record shall contain the dispositive part of the judgment or order and shall be signed by the clerk, with a certificate that such judgment or order has become final and executory" [15]

But what about the alternative phrase "or such proceeding was taken", employed in Section 3, Rule 38 of both the old and new Rules? That could be taken to mean other proceedings which are not to be "entered". In such a case, the period must have to commence from the date of occurrence. Because, entry there is either unnecessary or inconsequential. One good example of a "proceeding" is a writ of execution.[16] And so is an order approving a compromise agreement[17] which right then and there writes finis to the controversy.

The view we take—in reference to judgments in general—fits the purpose of the statute, namely, stability of starting point. It resolves ambiguity as to date. There is a fixed date—the date of entry. The court's book of entries of judgments is an unerring guide.

Really, the statute means what it says. This is illustrated by a reading of the old law (Code of Civil Procedure, Act 190). Section 113 of this law provides that application for relief must be made "within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken". If the present statute has revised that language to show that relief from judgment or order must be filed within six months after the said judgment or order was entered—not when taken—and allowed a different six-month period to be reckoned from date taken only with respect to "other proceeding", then it is safe to conclude that our Rules mean what it says—"entered"—in

reference to final judgments or orders in general.

We therefore rule that a petition for relief from judgment must, amongst others, be filed within six months from the date judgment is entered. Rulings inconsistent herewith are hereby expressly overruled.

We draw the attention of the prevailing parties and their attorneys to the rule we have just fixed. Such rule is intended as a guide. They should see to it that, at the Proper time, the clerk of court performs his duty of making the entry of final judgment. And this, to avoid any confusion as to the parting point of the six-month period within which relief from judgment may be obtained.

Here, the final judgment was entered on July 21, 1960. Defendant's petition for relief was filed on February 24, 1961. Therefore, the six-month period has elapsed. Defendant's remedy is lost.

3. Another roadblock stands astride the route to defendant's petition for relief.

By statutory requirement,[18] a petition for relief "must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be". Notice to file answer within the 15-day period was sent to defendant. His son, Ciriaco Biranya, on October 30, 1960, received the registered letter containing that notice. Ciriaco Biranya deposed that, upon receipt of that registered letter, he "was attacked with a severe stomach ache" and was rushed from Del Gallego to Naga City; that by reason thereof he "forgot all about the letter and it was either misplaced or lost"; that he did not open said letter; and that he "came to remember" that he received the same only on February 22, 1961 when the Sheriff served upon his father a writ of execution; that they went to Naga to inquire from their lawyer what happened in the case; that their lawyer brought them to the capitol, borrowed the record and showed him his signature in the registry return card.

Relief from judgment or order is premised on equity. It is granted only in exceptional cases. It is an act of grace. It is not regarded with favor. The sine qua non conditions for proper allowance include, amongst others, excusable negligence[19] and good and substantial defense.[20]

The registered letter in question was received by defendant. He authorized his son to get that letter. If the son forgot, how about the father? The son allegedly was attacked by a severe stomach ache. Nothing suggests how long that ailment persisted. Not even a medical certificate was produced. We cannot simply conclude that he (son Ciriaco Biranya) developed protracted amnesia. Mere forgetfulness of a party to an action is not a sufficient ground for vacating or setting aside a judgment by default.[21] And here, it is not merely the forgetfulness of the defendant father, but also of his son—from October 30, 1960 to February 22, 1961. Defendant failed to make a clear case of excusable negligence. He has not discharged his burden to "clear himself of the imputation of want of due diligence".[22] The relief he seeks will not prosper.

4. Even the merits of defendant's defense will not carry the day for him. He claims to be the owner of the controverted property. In support thereof, he cites in his relief petition, Annex B, the amicable settlement, and Annex C, the order of the Director of Lands. These documents, particularly Annex C, show that an ocular inspection by the lands inspector proves that the area claimed by defendant to be his is "entirely outside" the boundaries of the land now disputed. That this is so, is proven by the fact that, as early as November 28, 1950, the Torrens title of the land in question (Original Certificate of Title No. 246,[23] Camarines Sur) was issued in favor of Maria Flor V. Dirige, plaintiff. We thus remain bereft of a reasonable belief that if relief and new trial be granted, a different result will probably be reached.[24]

Upon the view we take of this case, the order of July 29, 1961 denying defendant's petition for relief should be as it is, hereby affirmed. Costs against defendant. So ordered.

Concepción C. J., Reyes, J. B. L., Barrera, Regala, Makalinta, Bengzon, J. P., Zaldivar and Ruiz Castro, JJ., concur.

Dizon, J. concurs in the result.

Order affirmed.

[1] Civil Case No. 4717, Maria Flor V. Dirige, plaintiff, vs. Victoriano Biranya, defendant.

[2] Sections 17(6) and 41, Judiciary Act of 1948, as amended.

[3] Appellant's Brief, p. 5.

[4] Section 19, Rule 48 of the 1940 Rules of Court; Section 18, Rule 46 of the new Rules of Court; Gala vs. Cui, et al., 25 Phil. 522, 527; Sarreal vs. Tan, etc., et al., 92 Phil., 689; 49 Off. Gaz., No. 2, pp. 499, 502.

[5] Esquivias vs. Sison, etc., et al., 61 Phil. 211, 213.

[6] Dezino vs. William S. Drozda Realty Co., 13 SW. (2nd), pp. 659, 661.

[7] Toribio vs. Decasa, et al., 55 Phil. 461, 465.

[8] Italics supplied.

[9] Ortiz vs. Mania, 93 Phil., 317.

[10] Valenzuela vs. Balayo, L-1874S, March 30, 1963.

[11] Italics supplied.

[12] Italics supplied.

[13] The words "entry" here and "entered" in the Gana case, obviously refer to the date the order of default was issued.

[14] Sec. 3, Rule 38, *supra*.

[15] This is a substantial reproduction of Sec. 2, Rule 35 of the 1940 Rules of Court Italics supplied. Cf. Sec 8, Bule 53' 1940 Rules, and Sec. 10, Rule 51, new Rules, on entry of judgments in appellate courts.

[16] Aquino, et al., vs. Blanco, etc., et al., 79 Phil. 647, 650.

[17] Bodiongan vs. Ceniza, etc., et al., 54 Off. Gaz., No. 35, pp. 58, 8062.

[18] Section 3, Rule 38, both of the old and new Rules of Court.

[19] Sections 1 and 3, Rule 38.

[20] Section 3, Id. See also Gordulan vs. Gordulan, L-17722, October 9, 1961.

[21] Martin, Rules of Court of thePhilippines, 1963 ed., p. 683, citing Lovell vs. Willis, 46 Mont. 581, 129 P. 1052; 43 LRA (N.S.) 930, Ann Cas. 1914B 587.

[22] C. J. S. 505.

[23] Exhibit C.

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