

JOSE RI WING, PETITIONER, VS. JOSE O. VERA, JUDGE OF FIRST INSTANCE OF MANILA, GERONIMO LASALA, AND MARCIANA LEE, RESPONDENTS.*G.R. No. 46102. August 29, 1938*

Ponente: LAUREL, J.

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This is a petition for a writ of certiorari praying, for the reasons therein alleged, that the two orders hereinbelow to be referred to of the respondent judge be set aside and declared of no effect.

It appears that on December 19, 1936, the respondent, Marciana Lee, through her counsel, the respondent Geronimo G. Lasala, filed in the Court of First Instance of Manila against the petitioner herein a complaint for alimony, alleging the fact of marriage and abandonment without reasonable cause. The amount demanded was P500 a month, exclusive of attorney's fees and the costs of the suit. As the petitioner was outside of the Philippines at the time, service of summons was made by publication in a newspaper of general circulation designated by the trial court. The petitioner failed to appear and so, on March 3, 1937, the respondent judge, Hon. Jose O. Vera, issued an order of default and set the case for hearing. Evidence for the respondent, Marciana Lee, was presented and received. Thereafter, the respondent judge rendered judgment requiring the petitioner herein to furnish the respondent a monthly allowance of P200, and to pay the costs. The judgment having become final and executory, the respondent Marciana Lee, through her attorney and co-respondent herein, filed an ex-parte motion praying that a writ of execution be issued and served unto the corporations in which, it was claimed, the petitioner herein was a stockholder. Included in the motion was a bill of costs covering attorney's fees and other items. The issuance of a writ of execution was ordered by the respondent judge. Another motion for the execution of the judgment, with bill of costs annexed, was subsequently filed by the respondent attorney and granted by the respondent judge on December 28, 1937. (Exhibit I.) Certain of the petitioner's properties were attached by the city sheriff, but before they could be sold the petitioner herein and the respondent Marciana Lee moved for the final termination of the case, asserting the satisfactory and amicable settlement thereof and mutual willingness and desire to live together again." Opposition to this motion was registered by the respondent counsel who charged the agreement between the spouses to be both illegal and fraudulent and one made without his knowledge and consent. The motion, nevertheless, was granted. The order of execution was set aside and the sheriff directed to refrain from taking further steps in connection with said execution. Upon motion by the respondent attorney, however, the respondent judge, on February 28, 1938, reconsidered its previous order and fixed the fees to be paid to the respondent attorney at P1,000. (Exhibit N.) The order of February 28 reads in part as follows:

"* * * No hubo convenio entre la demandante y su abogado, Sr. Lasala, respecto al importe de los honorarios. Por tanto, el Juzgado es el que tiene que fijarlos. Estos honorarios del Sr. Lasala los fija el Juzgado en P1,000. Habiendo ya recibido, sin embargo, P250 de la misma Marciana Lee, el puede cobrar del demandado el resto de P750, mas P43.12. Estos P43.12 son el remanente de los P80.10 que el tambien reclama puesto que el ha recibido ya a cuenta de dichos P80.10, P46.98.

"Por tanto, se reconsidera la orden de este Juzgado de fecha 19 de febrero de 1938 en el sentido de que el demandado, no obstante la transaccion a que ha llegado con la demandante, debe pagar al abogado Sr. Geronimo Lasala la cantidad de P750 en concepto de honorarios, mas P43.12 en concepto de reembolso; y el Sheriff debera proseguir con la ejecucion de los bienes del demandado para hacer efectivas estas cantidades."

Reconsideration of the foregoing order was sought by the petitioner herein but was denied by the respondent judge. The instant petition for a writ of certiorari is directed against the orders of December 28, 1937 and February 28, 1938.

In *Mercado vs. Ostrand and Ruiz* ([1917], 37 Phil., 179), the question presented was "whether a judge of the Court of First Instance has jurisdiction, in an action by the wife against her husband for support and maintenance, to render a judgment requiring the husband, in addition to a judgment for a reasonable sum for the support and maintenance of the wife, an amount sufficient to cover costs and attorney's fees." This court answered the question in the affirmative and said:

"* * * That the husband, under the condition mentioned in the complaint, is under the legal obligation of supporting his wife is not denied. That being true, it would seem to be perfectly reasonable and just and within the sound discretion of the court if the husband makes it necessary for the wife to resort to the courts for the purpose of enforcing said legal obligation, that then and in that case he should be required to pay the expenses necessarily incurred by her for the purpose of enforcing her legal rights. Judicial costs and a reasonable amount for attorney's fees are necessary results of litigation. Admitting the premises that the husband, under the facts stated in the complaint, is under a legal obligation to support his wife, he is also under the legal obligation to pay such expenses as may become necessary for the wife to enforce her legal rights. * * *" (at p. 178.)

That the spouses can settle their case amicably is not to be denied. Reasons of public policy justify the adjustment and termination of marital disputes and the restoration of harmony in the conjugal dwelling. But this right cannot be made use of to deprive an attorney of the fees to which he is entitled. The inclusion of attorney's fees in a bill of costs may have been irregular, but the irregularity is not such as to defeat the attorney's claim. The respondent judge was within his powers when, notwithstanding the amicable settlement of the dispute between the spouses, he allowed reasonable fees to the respondent attorney.

The writ prayed for is hereby denied, with costs against the petitioner. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Concepcion, JJ., concur.

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