

MARIANO A. DE CASTRO, PETITIONER, VS. CEBU PORTLAND CEMENT CO., RESPONDENT.*G.R.No. 47516. April 13, 1941*

Ponente: LAUREL, J.

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This is a petition for a writ of certiorari to review the decision of the Court of Appeals dated May 22, 1940, in CA-G. R. No. 4111, affirming that of the Court of First Instance of Manila and imposing double costs upon the appellant herein.

On May 18, 1938, the herein appellee, Cebu Portland Cement Co., instituted an action against the appellant, Mariano A. de Castro, for the recovery of a sum of money representing the latter's account for purchases of cement. On July 27, 1938, plaintiff-appellee moved to declare the defendant-appellant in default for failure to appear or answer notwithstanding service of summons on him on May 23, 1938. Accordingly, on July 30, 1938, the defendant-appellant was adjudged in default and the court set August 15, 1938, for the formal reception of plaintiff's evidence. On August 20, 1938, the trial court rendered judgment sentencing the defendant-appellant to pay P4,717.30 and the interest thereon at 12 per cent per annum from May 18, 1938, until payment, with costs.

On September 3, 1938, the defendant-appellant filed an exception and motion for a new trial, which was denied on September 10, 1938. On Appeal to the Court of Appeals, where the cause was registered as case CA-G. R. No. 4111, the decision of the trial court was affirmed and double costs imposed upon the defendant-appellant. Hence, this petition for review by certiorari.

In his first assignment of error, the defendant-appellant impugns the jurisdiction of the trial court over his person and advances the theory that the service of process was fatally defective due to the alleged minority, ignorance, and general incompetency of the house-boy upon whom summons and copy of the complaint were served, as well as his status as a mere transient in defendant-appellant's residence. Upon this point the Court of Appeals, in its decision of May 22, 1940, found that "esta nueva teoria no la estimamos atendible, pues consta en autos que el Sheriff hizo lo que debia, de acuerdo con las disposiciones de la ley, dejando la copia de la demanda y la papeleta de emplazamiento en poder de una persona con capacidad y discrecion suficiente para recibirlas en la casa morada del demandado. No habiendo pruebas en autos acreditativas de que el citado funcionario no ha cumplido debidamente con su deber, tiene que regir la presuncion establecida a su favor por el articulo 334, No. 14, delCodigo de Procedimiento Civil. Por otra parte, el demandado no dio ningun paso en el Juzgado de Primera Instancia de Manila para probar que el individuo Eusebio Rodriguez, residente en la casa No. 93 de la Calle Doroteo Jose Manila, que era la del demandado no fuera persona apta para recibir el citado emplazamiento."

But, without going into an extended discussion of defendant-appellant's pretended nullity of the service of summons upon him, the presence of several circumstances of record indicate that any alleged defect of jurisdiction over the person of the defendant-appellant arising from defective or even want of process, had been waived by him: (1) his admission that he knew of the proceedings against him in the Court of First Instance of

Manila since August 15, 1938, in paragraphs 2 and 3 of his answer to the motion for execution dated September 9, 1938, and his failure thereafter and before the rendition of the appealed judgment to make an appearance and object to the court's jurisdiction over his person; (2) the circumstance that when he made his first appearance in the trial court, instead of assailing the court's authority over his person, he filed a motion for new trial on the ground that the decision was contrary to law and the weight of the evidence; and (3) his failure to raise the question of jurisdiction in the Court of First Instance and at the first opportunity. Upon general principles, defects in jurisdiction arising from irregularities in the commencement of the proceedings, defective process or even absence of process, may be waived by a failure to make reasonable objections. (15 C. J. 808-809; 4 C. J. 521; Machan vs. De la Trinidad, 3 Phil., 684; Vergara vs. Laciapag, 28 Phil., 439; U. S. vs. Inductivo, 40 Phil., 84; Soriano vs. Ramirez, 44 Phil., 519.)

In his last assignment of error, the defendant-appellant contends that his motion for new trial, taken in conjunction with his answer to plaintiff-appellee's motion for execution, should have been construed by the trial court as a petition under section 113 of Act No. 190 and relief granted accordingly. The two pleadings here adverted to were filed by the defendant-appellant within the reglamentary period for perfecting an appeal. The judgment not having become final, section 113 of Act No. 190 could not have been invoked by the defendant-appellant, for the reason that said section is only applicable when the judgment from which relief is sought has become final. (Anuran vs. Aquino, 8 Phil., 29.) But, even if we were to concede that defendant-appellant's contention were correct, still the granting or the refusal of a motion to set aside a default, judgment and a motion for new trial is a matter that rests largely upon the discretion of the trial court. We cannot say that upon the facts the trial court has abused its discretion.

The writ prayed for is hereby dismissed, and the judgment appealed from affirmed, with costs against the petitioner. So ordered.

Imperial, Diaz, Moran, and Horrilleno, JJ., concur.

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