

**SPOUSES GEORGE BARRAZA AND YOLANDA
GATCHALIAN-BARRAZA, PETITIONERS, VS. HON. JOSE C. CAMPOS,
JR., PRESIDING JUDGE, BR. XXX, CFI-RIZAL, PASAY CITY, 7TH
JUDICIAL DISTRICT, AND REN...**

G.R. No. 50437. February 28, 1983

Ponente: GUERRERO, J.

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GUERRERO, J.:

The petition at bar evolved from a dispute between brother and sister over the use of the business name or style "GATCHALIAN - THE HOUSE OF NATIVE LECHON".

Alleging grave abuse of discretion amounting to lack of jurisdiction on the part of respondent Presiding Judge, spouses-petitioners, through the remedy of certiorari under Rule 65, Revised Rules of Court, prayed for the annulment of the latter's judgment by default dated January 29, 1979 rendered against them, as well as his Order declaring them in default dated December 1, 1978 in Civil Case No. Pq-6692-P entitled "Renato Gatchalian, plaintiff, versus Spouses George Barraza and Yolanda Gatchalian, defendants" for damages and injunction filed with the Court of First Instance of Rizal, Pasay City, Branch XXX.

The antecedent facts are as follows:

On October 3, 1978, private respondent filed a Complaint for damages based on defendants' (petitioners herein) use of plaintiff's (now private respondent) trade name and style of "Gatchalian - The House of Native Lechon and Restaurant", with prayer for preliminary injunction docketed as Civil Case No. Pq-6692-P in the Court of First Instance of Rizal, Pasay City, Branch XXX.

On October 17, 1978, petitioners were properly served with summons together with the corresponding complaint and annexes thereof.

On October 30, 1978, petitioners as defendants therein filed an "Urgent Ex-Parte Motion" for extension of time of 15 days within which to file an Answer which the Court granted in its Order dated November 2, 1978, which reads as follows:

"ORDER

Finding the reasons stated on the Urgent Ex-Parte Motion, filed by defendants through counsel, to be well taken, the same is hereby granted as prayed for. Wherefore, defendants are given an extension of fifteen (15) days or until November 18, 1978 within which to file their Answer.

SO ORDERED.

Pasay City, Philippines, November 2, 1978."

Instead of filing the Answer within the extended period of fifteen (15) days, defendants filed through their

counsel, Atty. Esmeraldo M. Gatchalian, a "Motion to Dismiss Complaint Together With Prayer for Preliminary Injunction" which was filed with the Court on November 17, 1978. Said motion moved for the dismissal of the complaint on the following grounds: (1) That the complaint states no cause of action; (2) That venue is improperly laid; and (3) That there is another action pending between the same parties for the same cause of action, namely: I.S. No. 78-28485 for Infringement of Trade Name before the Office of the City Fiscal of Manila. The same motion was set for hearing on November 20, 1978 at 9:00 o'clock in the morning, or soon thereafter at the convenience of the Court, notice thereof served to counsel for the plaintiff and the Clerk of Court.

On November 29, 1978, private respondent filed an "Ex-Parte Motion to Declare Defendants in Default" on the ground that the defendants failed to file an answer within the reglementary period allowed by the Rules of Court.

On December 1, 1978, the Court finding the reasons stated in the "Ex-Parte Motion to Declare Defendants in Default" filed by plaintiff, through counsel to be well-taken, granted said motion and allowed the plaintiff to present evidence ex-parte before Atty. Nieves de la Rosa who was designated as Hearing Commissioner, at a date to be set by the latter. The hearing before the commissioner was held on January 8, 1979 whereat plaintiff presented his evidence, testimonial and documentary, ex-parte.

On January 29, 1979, respondent judge rendered his decision in favor of the plaintiff, the dispositive portion of which reads:

"WHEREFORE, in view of the circumstances of this case and the law pertinent to it, by a preponderance of evidence submitted by Plaintiff and which evidence has supported the allegations in the complaint, judgment is hereby rendered in favor of the Plaintiff and against the Defendants:

- a) Ordering the Defendants to desist from the use of the business name "Gatchalian - The House of Native Lechon";
- b) Ordering the Defendants to pay the amount of P100.00 as actual damages;
- c) Ordering the Defendants to pay the amount of P1,000.00 as moral damages;
- d) Ordering the Defendants to pay the sum of P1,000.00 as exemplary damages;
- e) Ordering the Defendants to pay the sum of P500.00 as attorney's fees; and
- f) the cost of this suit.

SO ORDERED.

Pasay City, Philippines, January 29, 1979.

(Sgd.) JOSE C. CAMPOS, JR.

Judge"

Copy of the above decision was served on Atty. Esmeraldo Gatchalian, counsel for defendants, on February 15, 1979 as per registry return receipt.

On February 20, 1979, defendants through counsel moved for the reconsideration of the court's order dated December 1, 1978 declaring defendants in default and of the decision dated January 29, 1979 on the ground that: (1) defendants were denied of their rights of procedural due process and (2) defendants were also denied of their day in court. Plaintiffs opposed the motion for reconsideration. On March 9, 1979, the Court denied defendants' motion for reconsideration.

Upon an "Ex-Parte Motion for Issuance of Writ of Execution" dated March 29, 1979, the Court in its Order of

April 2, 1979 granted the motion and caused the issuance of a writ of execution.

On April 6, 1979, defendants through a new counsel, Atty. M. Castillo, filed an "Urgent Omnibus Motion" praying that the Order of the Court declaring the defendants as in default, the proceedings held on the strength thereof and the decision rendered in the case at bar be set aside and that the defendants be given three (3) days from receipt of the corresponding order within which to file their answer in the case at bar.

Opposition having been filed by the plaintiff, the Court denied defendants' Omnibus Motion in its Order of April 25, 1979.

Defendants now come before Us on a Petition for Certiorari with a prayer for issuance of a writ of preliminary injunction or restraining order to restrain the execution of the decision dated January 29, 1979, particularly the sale of the petitioners' properties scheduled April 26, 1979 at 10:00 o'clock a.m. and after hearing to render the preliminary injunction permanent with the annulment of all the proceedings held and conducted by the respondent judge from the declaration of default, the rendition of the decision based thereon, the levy, etc. and enjoining said respondent judge to rule and decide the petitioners' motion to dismiss or, in the alternative, to allow the petitioners to file their answer.

In Our Resolution of June 29, 1979, We gave due course to the petition after requiring comment of the respondents.

The principal question to be resolved herein is whether the Order of respondent Judge dated December 1, 1978 declaring defendants, now the herein petitioners, in default for failure to file their answer within the reglementary period provided by law, was issued without or in excess of jurisdiction and with grave abuse of discretion. The applicable provisions of the Revised Rules of Court state:

"Rule 11, Section 1. — Time to answer.— Within fifteen (15) days after service of summons the defendant shall file his answer and serve a copy thereof upon the plaintiff, unless a different period is fixed by the court.

Section 7. Extension of time to plead. — Upon motion and on such terms as may be just, the court may extend the time to plead provided in these rules.

The Court may also, upon like terms, allow an answer or other pleading to be filed after the time fixed by these rules.

Rule 16. Section 1. — Grounds. — Within the time for pleading a motion to dismiss the action may be made on any of the following grounds: . . .

Section 4. Time to plead. — If the motion to dismiss is denied or if determination thereof is deferred, the movant shall file his answer within the period prescribed by Rule 11, computed from the time he received notice of the denial or deferment, unless the court provides a different period.

Rule 18, Section 1. Judgment by default. — If the defendant fails to answer within the time specified in these rules, the court shall, upon motion of the plaintiff and proof of such failure, declare the defendant in default. Thereupon, the court shall proceed to receive the plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant. This provision applies where no answer is made to a counterclaim, cross-claim, or third-party complaint within the period provided in this rule.

Section 2. Effect of order of default. — Except as provided in section 9 of Rule 13, a party declared in default shall not be entitled to notice of subsequent proceedings, nor to take part in the trial."

Under the facts of the case at bar, respondent judge had granted petitioners an extension of fifteen (15) days to file their answer, or up to November 18, 1978. Instead of filing the answer, petitioners filed a Motion to Dismiss the

Complaint on November 17, 1978, one (1) day before the expiration of the period as extended by the court. This is clearly allowed under Section 1, Rule 16, Rules of Court. A motion to dismiss is the usual, proper and ordinary method of testing the legal sufficiency of a complaint. The issue raised by a motion to dismiss is similar to that formerly raised by a demurrer under the Code of Civil Procedure. (*Zobel vs. Abreu*, 98 Phil. 343). A motion to dismiss under any of the grounds enumerated in Sec. 1, Rule 8 (now Sec. 1, Rule 16) of the Rules of Court, must be filed within the time for pleading, that is, within the time to answer. (*J.M. Tuason vs. Rafor*, L-15537, June 30, 1962, 5 SCRA 478)

Private respondents' argument that although a motion to dismiss interrupts the running of the period within which to file an answer, this refers to the original period of fifteen (15) days within which to file the responsive pleading and not to the extension of time within which to file the answer, is without merit. There is nothing in the Rules which provide, directly or indirectly, that the interruption of the running of the period within which to file an answer when a motion to dismiss the complaint is filed and pending before the court, refers only to the original period of fifteen (15) days and not to the extension of time to file the answer as granted by the court. It may be true that under Section 4 of Rule 16, if the motion to dismiss is denied or if the termination thereof is deferred, the movant shall file his answer within the time prescribed by Rule 11, computed from the time he received notice of the denial or deferment, unless the court provides a different period.

This Section 1 of Rule 11 in relation to Section 4 of Rule 16 allows the defendant to file his answer not only within the original fifteen (15) days period but also within "a different period (as) fixed by the court."

Without resolving petitioners' Motion to Dismiss the Complaint, respondent Judge declared defendants in default in his Order of December 1, 1978. This is clearly in contravention of the Rules for under Section 3, Rule 16, the court after hearing may deny or grant the motion or allow amendment of pleading, or may defer the hearing and determination of the motion until the trial if the ground alleged therein does not appear to be indubitable. And it is only from the time that the movant receives notice of the denial or deferment of the motion to dismiss that the period within which he shall file his answer is computed, which period is prescribed by Rule 11, unless the court provides a different period.

In *Simeon Mandac, plaintiff and appellant, vs. Eustaquio Gumarad and Regino Lagundino, defendants and appellees*, L-2202, Aug. 31, 1950, 87 Phil. 278, We ruled: "It appearing that the motion to dismiss was filed before the expiration of the period for filing defendants' answer as extended by the court, there was no legal reason for declaring defendants in default."

In *Epang vs. Ortin de Layco*, L-7574, May 17, 1955, 97 Phil. 24, the Supreme Court speaking through Justice J.B.L. Reyes, said: "The petitioner having filed a motion to dismiss, he was entitled to have that motion resolved before being required to answer, since a motion to dismiss interrupts the time to plead. It follows, therefore, that the petitioner was incorrectly declared in default, and the holding of the trial of the case on the merits in his absence, without notice to him of the day of the hearing, was a denial of due process. Consequently, the decision of the Court of Industrial Relations was invalid and must be set aside."

The two cases cited above are on all fours with the case at bar. Herein petitioners were incorrectly declared in default. Respondent Judge acted without or in excess of jurisdiction and with grave abuse of discretion. Petitioners were denied their day in court; there was lack of due process. Consequently, the decision rendered by respondent Judge is null and void and must be set aside. The writ of execution issued by respondent Judge and the levy made by the Sheriff on the properties of the petitioners and all orders and acts proceeding or emanating therefrom are hereby declared of no legal force and effect.

Petitioners' Motion to Dismiss the Complaint must be resolved by the trial court and if the Motion to Dismiss is

denied or if determination thereof is deferred, petitioners shall file their answer pursuant to Section 4, Rule 16 of the Rules of Court.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the order of default dated December 1, 1978 and the judgment of default rendered January 29, 1979 are hereby REVERSED and SET ASIDE, including the writ of execution and levy on the properties of petitioners. The records of this case are ordered remanded to the lower court for the resolution of petitioners' Motion to Dismiss the Complaint and thereafter proceed with the case in the regular course of law.

Petition granted.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Abad Santos, De Castro, and Escolin, JJ., concur.
Aquino, J., is on leave.

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