

EMMA TURQUEZA AND LEO TURQUEZA, PETITIONERS, VS. HON. HAROLD HERNANDO, JUDGE OF THE COURT OF FIRST INSTANCE OF ABRA, BRANCH I, AND MARINA ELVENA-PACAPAC, RESPONDENTS.

G.R. No. 51626. April 30, 1980

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court sets aside the questioned order issued by respondent judge to reopen the case below for reception of respondent-defendant's evidence notwithstanding the lapse of the reglementary grace period within which respondent could file a petition for relief from judgment. The judgment therein had long become final and had in fact been executed. It is now the law of the case and is beyond the jurisdiction and power of the lower court or of this Court for that matter to modify or set aside.

On March 23, 1977, petitioner Emma Turqueza, joined by her husband Leo Turqueza as plaintiffs, filed against the CDCP Mining Corporation and respondent Marina Elvena-Pacapac as defendants in the Court of First Instance of Abra, the action for recovery of damages, docketed therein as Civil Case No. 1066. The CDCP Mining Corporation was later excluded from the complaint with the conformity of the petitioners-spouses.

Petitioner Emma Turqueza was injured in an accident which happened on October 20, 1972 in the Municipality of Bangued, Province of Abra involving a Ford pick-up vehicle belonging to the CDCP Mining Corporation and a Willy's passenger jeep owned and operated by respondent Marina Elvena-Pacapac and driven at the time by her son, Oscar Pacapac. Emma was pinned down and suffered multiple serious injuries, with her pelvic bones and lower limbs broken, which left her lame and crippled for life.

After respondent had filed her answer to the complaint, the case was set for pre-trial on October 25, 1977 but neither private respondent nor her lawyer appeared despite due notice to both of them. On motion of petitioners, respondent judge declared respondent in default and petitioners were allowed to submit their evidence.

Thereafter, respondent judge rendered the decision "(1) Declaring the defendant Marina Elvena-Pacapac in default and awarding the plaintiff Emma A. Turqueza the amount of P50,000.00 as moral and compensatory damages which shall include her expenses at the Bobila Clinic and at the National Orthopedic Hospital; (2) Granting her an award of P3,000.00 for transportation expenses whenever she goes to Manila for medical check-up including her meal allowance; and (3) Another P3,000.00 as attorney's fees." Petitioner was thus awarded a total amount of P56,000.00. No appeal was taken and the judgment became final and executory.

On July 13, 1978, upon motion of petitioner's counsel, a writ of execution of the judgment was issued. The same was enforced on September 1, 1978 and in full satisfaction of the judgment, twelve parcels of rice-lands of respondent were sold at public auction to herein petitioners as the only bidders for the same amount of P56,000.00.

The present controversy arose from the lower court's "special order" of November 6, 1978 granting respondent's

belated "Motion to Reopen Case" dated October 16, 1978 which invoked respondent judge's "magnanimity and benevolence" to set aside the final and executed judgment of October 25, 1977 and the proceedings subsequent thereto on the ground that the said judgment rendered by default against respondent was due to the fault or negligence of her lawyer. The "Special Order" of November 6, 1978, reads as follows:

"The decision of this Court dated October 25, 1977 is one rendered ex-parte because the defendant was in default. Let this decision remain undisturbed. However, the defendant Marina Elvena Pacapac is hereby ordered or allowed to present her evidence in support of her Answer which is found on pages 10 and 11 of the records of this case and which must be received formally before this Court on November 28, 1978 at 2:00 o'clock in the afternoon."[1]

Respondent judge denied petitioners' motion for reconsideration of the "special order" in his Order dated January 9, 1979, begging the question raised that he no longer had any authority after the lapse of the reglementary period to grant any relief in the premises, and ruled off-tangent that -

"Judgments by default are frowned upon specially in the appellate courts. It is but fair and to give justice to the defendant her day in Court a full blown litigation. Anyway, the Order of this Court dated November 6, 1978 expressly provides that the Decision shall remain undisturbed in the meantime in order to allow the defendant her day in Court and to adduce her evidence in support of her defenses."[2]

Hence, the instant petition to restrain respondent judge from further hearing Civil Case No. 1066 and to declare the case finally term-inated and closed. Under our resolution of October 22, 1979, a temporary restraining order was issued against respondent judge from further hearing the case.

The Court finds merit in the petition. There is no justification in law and in fact for respondent judge's void act of ordering the reopening of the case which has long become final and which has in fact been executed. It is settled that once a decision becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend, much less revoke it.[3] As the Court stated in the case of *Lee Bun Ting vs. Aligaen*,[4] "Reasons of public policy, judicial orderliness, economy and judicial time and the interests of litigants as well as the peace and order of society, all require that stability be accorded the solemn and final judgments of the courts or tribunals of competent jurisdiction."

It further appears that respondent through counsel had promptly filed a motion to lift the order of default and set aside the decision of October 25, 1977[5] and respondent judge did grant the motion per his Order of October 27, 1977 so as "to give the defendant her day in Court" that she "present her evidence without any postponement whatsoever on December 8, 1977 at 2:00 o'clock in the afternoon" failing which "the decision of the Court dated October 25, 1977 shall be reinstated in toto." The hearing of December 8, 1977 was deferred however by agreement of the parties with the assurance that they would submit an amicable settlement to terminate the case. When the settlement did not materialize, respondent judge declared the decision of October 25, 1977 final and executory per his Order dated January 20, 1978. The judgment was in fact executed and satisfied as per the sheriff's auction sale on September 1, 1978, as above stated. Obviously, respondent did not take any step to protect her interest and allowed the judgment to become final and executory, notwithstanding respondent judge's having conditionally lifted the default order and setting the case anew for the reception of her evidence on December 8, 1977.

The motion to reopen the case in the lower court was in effect a second petition for relief from judgment and could no longer be entertained because, as pointed out by petitioners in their motion for reconsideration of the "special order", the motion was filed out of time long after the lapse of the reglementary period therefor under Rule 38 (60 days from learning of the judgment and 6 months from entry of judgment)[6] and respondent judge had therefore lost all authority and jurisdiction to act on the same. As stressed by petitioners in their petition, "the

filing of the motion to reopen on October 16, 1978, was made exactly eleven (11) months and five (5) days after petitioner learned of the judgment, and likewise it was made seven (7) months and twenty-one (21) days after Entry of Judgment and consequently the Special Order dated November 6, 1978 granting the same is not in accordance with law." Furthermore, the matter of respondent not being entitled to such relief already became res judicata with respondent judge's unappealed order of January 20, 1978 in effect denying the first petition for relief, which culminated to the execution of the judgment.

The Court has said time and again that the doctrine of finality of judgments is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional error, the judgments of courts must become final at some definite date fixed by law. The law gives an exception or "last chance" of a timely petition for relief from judgment within the reglementary period (within 60 days from knowledge and 6 months from entry of judgment) under Rule 38, supra, but such grace period must be taken as "absolutely fixed, inextendible, never interrupted and cannot be subjected to any condition or contingency. Because the period fixed is itself devised to meet a condition or contingency (fraud, accident, mistake or excusable neglect), the equitable remedy is an act of grace, as it were, designed to give the aggrieved party another and last chance" and failure to avail of such last chance within the grace period fixed by the statute or Rules of Court is fatal. Much more so is this true in the present case, where as above stated, respondent had in fact been given such last chance already in October, 1977 but had failed to avail of it nor to reach an amicable settlement, leading to the reinstatement of the decision of October 25, 1977 and declaration of its finality as per respondent judge's order of January 20, 1978.[7]

The Court notes that respondent judge himself took up the cudgels for respondent and in defense of his challenged order by filing his own extended five-page "Comment and Answer" dated October 18, 1977 praying for dismissal of the petition "for lack of merit". The Court has heretofore reminded the judges of the lower courts that under Section 5 of Rule 65 of the Rules of Court, a judge whose order is challenged in an appellate court does not have to file any answer or take active part in the proceeding unless expressly directed by order of this Court.[8] It is the duty of the private respondent to appear and defend, both in his/her behalf and in behalf of the Court or judge whose order or decision is at issue. The judge should maintain a detached attitude from the case and should not waste his time by taking an active part in a proceeding which relates to official actuations in a case[9] but should apply himself to his principal task of hearing and adjudicating the cases in his court. He is merely a nominal party to the case and has no personal interest nor personality therein.[10]

Respondent judge has failed to familiarize himself with the Rules on remedies available to a party who has been declared in default in a Court of First Instance and the period within which such remedies may be availed of. In justifying his issuance of the "special order" reopening Civil Case No. 1066, he contends - erroneously - in his Comment and Answer that "Section 3, Rule 18 of the Revised Rules of Court requires that the motion to set aside the order of default may be filed at any time after the discovery of the judgment by default x x x." [11] The rule referred to provides as follows:

"Sec. 3. Relief from order of default. A party declared in default may at any time after discovery thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable neglect and that he has a meritorious defense. In such case the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice." (italics supplied)

A simple reading of the cited Rule readily shows that the same does not refer to a judgment by default but rather to an order of default. As observed by the late Chief Justice Moran, the Rule "allows relief from an order of default prior to the rendition of judgment on the merits." Hence, a petition for relief from the order of default may be filed at any time after discovery of the default order and before judgment - not any time after discovery of the

judgment by default under his grossly erroneous reading and perception of the Rule. Where a judgment by default has already been rendered, the party's remedy is to file an appeal within the 30-day reglementary period^[12] and where he had failed to do so, to file in appropriate cases a petition for relief from judgment as a last chance within the reglementary period of 60 days from knowledge of the judgment and 6 months from entry of judgment, under Rule 38 of the Rules of Court. Respondent judge's failure to apply the plain provisions of the Rule and the basic doctrine of finality of judgments has thus needlessly compelled petitioners to come on certiorari to this Court and taken up the Court's time and attention which it could well have devoted to truly controversial cases.

Respondent judge is finally admonished to exercise proper care and restraint in his language. In his Comment and Answer of October 18, 1979, he refers to the petition which the Court had found to be well-grounded and meritorious as "reckless and stupid." His choice of words, aside from being baseless, betrays a lack of judicial decorum which requires that a magistrate of the law must at all times be temperate in his language.

Accordingly, respondent judge's questioned "special order" of November 6, 1973 and order of January 9, 1979 are hereby set aside and declared null and void and Civil Case No. 1066 is declared terminated and closed. The restraining order issued by the Court on October 22, 1979 is hereby made permanent. With costs against private respondent. Let a copy hereof be attached to the record of respondent judge.

SO ORDERED.

Makasiar, Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

[1] Italics supplied.

[2] Idem.

[3] Samson vs. Montejo, 9 SCRA 419; De la Cruz vs. Plaridel Surety and Insurance Co., 10 SCRA 727; Ocampo vs. Caluag, 19 SCRA 97; Py Eng Chong vs. Herrera, 70 SCRA 130 (1976).

[4] 76 SCRA 416 (1977), per Antonio, J.

[5] Rollo, p. 21.

[6] "SEC. 2. Petition to Court of First Instance for relief from judgment or other proceeding thereof. - When a judgment or order is entered, or any other proceeding is taken, against a party in a Court of First Instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment, order or proceeding be set aside.

"SEC. 3. Time for filing petition; contents and verification. - A 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; and 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."

[7] Soliven vs. WCC, 77 SCRA 518 and 79 SCRA 649, citing Luzsteveco vs. Reyes, 71 SCRA 655 and other cases.

[8] Montalban vs. Canonoy, 38 SCRA 1 (1971).

[9] Sec. 5, Rule 65, Rules of Court.

[10] Tan vs. Lantin, L-28849, Resolution of July 29, 1968; Pinza vs. Aldovino, et al., 25 SCRA 221 (Sept. 27, 1968).

[11] Page 4, Comment and Answer of respondent judge; italics supplied.

[12] Rule 41, section 2 permits parties declared in default to appear from the judgment rendered against them.

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