

**PEDRO M. AZUL, DOING BUSINESS UNDER THE NAMES AND STULES
OF JERLYN TRADING & CONSTRUCTION SUPPLIES &
BERLYN SERVICE CENTER, PETITIONER, VS. HON. JOSE P. CASTRO,
IN HIS CAPACITY ...**

G.R. No. 52241. November 19, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioner raises due process questions in this petition for certiorari contending that the respondent court gravely abused its discretion - (1) when it denied a motion to lift an order of default issued seven (7) days before the petitioner received the order to file responsive pleading; (2) when it denied a motion for new trial or reconsideration on the ground that it was pro-forma; (3) when it rendered a decision, not supported by the facts and the law, granting a total amount of P1,187,615.69 covering the principal and damages in a collection case for only P250,092.55; (4) when it issued orders denying an extension of time to file the record on appeal and dismissing the appeal; and (5) when it issued a writ of preliminary attachment on a bond of P250,000.00 with no basis for the allegation that he is about to remove or dispose of his properties to further defraud his creditors.

On March 14, 1979, respondent Rosalinda Tecson filed a complaint for collection of the sum of P250,092.55 with interests. Tecson also prayed for P100,000.00 actual and compensatory damages, P500,000.00 moral damages, exemplary damages as may be proved during the trial, twenty five percent (25%) attorney's fees, litigation expenses, and costs. The complaint alleged that Tecson, on various occasions, loaned a total of P391,822.78 to Azul to finance the latter's deliveries of supplies and cons-truction materials to the Armed Forces of the Philippines. As inducement for the loans in addition to her share of the profits, the private respondent alleged that she was authorized to collect the checks due to Azul from the AFP Finance Center. However, Tecson was able to collect only P141,730.23 thus leaving a balance of P250,092.55, subject matter of the suit filed with the Court of First Instance of Rizal at Quezon City, then presided by Judge Ulpiano Sarmiento.

The copy of the complaint was received by petitioner Azul on March 27, 1979. On April 10, 1979, the peti-tioner filed an urgent ex-parte motion for extension of time to file a responsive pleading. He asked for fifteen (15) days from April 11, 1979.

Judge Sarmiento having retired, Judge Lino Añoover took over the sala temporarily and gave Azul only five (5) days from April 11, 1979 within which to file his res-ponsive pleading.

Unfortunately, the petitioner received this order dated April 11, 1979 only on April 23, 1979 long after the lapse of the five-day period.

In the meanwhile, respondent Tecson filed a motion on April 17, 1979 to declare the petitioner in default since the extended period had expired.

On April 18, 1979, respondent Judge Jose Castro took over the sala vacated by Judge Sarmiento. Among his acts

on that first day in office was an order declaring Azul in default and directing the presentation of evidence ex-parte before the branch clerk of court "at such time and date convenient to both."

The reception of evidence was conducted by the court's commissioner on April 19, 1979. On April 27, 1979, the respondent court rendered the questioned decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered ordering the defendant to pay plaintiff as follows:

"a) The sum of P250,092.55 the principal obligation, with interest thereon at the legal rate from the date of the filing of the complaint on March 14, 1979 until fully paid;

"b) the sum of P100,000.00 as actual and compensatory damages in both causes of action;

"c) the sum of P350,000.00 as moral damages in both causes of action;

"d) the sum of P150,000.00 as exemplary damages in both causes of action;

"e) the sum equivalent to 25 percent of the total claims involved in all the causes of action in the complaint as attorney's fees;

"f) to pay the expenses of litigation and costs of suit."

On May 2, 1979, petitioner Azul, as yet unaware of the decision, filed a motion to lift the order of default. Together with the motion, he also filed his answer.

On May 7, 1979, the decision adverse to the petitioner was received by his counsel.

On June 6, 1979, the petitioner filed a motion for reconsideration or new trial.

On July 20, 1979, the court issued an order denying the motion to lift the order of default followed by another order on July 24, 1979 denying the motion for reconsideration or new trial.

On August 1, 1979, the petitioner filed a notice of appeal, appeal bond, and a motion for extension of time to file his record on appeal.

On August 3, 1979, the respondent court denied the motion for extension of time to file record on appeal stating that the motion was filed late. The petitioner asked that this denial be reconsidered because the decision was actually received on May 7, 1979. The petitioner explained that the date "May 5, 1979" given as the date of receipt was a clerical error and, therefore, the motion for extension of time to file record on appeal was filed within the reglementary period.

On August 7, 1979, the court reconsidered its earlier denial and stated, "while the instant motion is not sufficiently meritorious, if only to give the defendant a final chance to ventilate his case on appeal and in the interest of justice, said defendant is given ten (10) days from receipt of this order within which to file his record on appeal."

The petitioner filed his record on appeal on August 21, 1979. The court approved it on August 27, 1979. However, acting on an August 30, 1979 opposition filed by respondent Tecson, the court on August 31, 1979 issued an order setting aside its August 27, 1979 order approving the record on appeal. On September 11, 1979 the respondent court issued the order dismissing the appeal.

We agree with the petitioner that he was denied due process. The constitutional provision on due process commands all who wield public authority, but most peremptorily courts of justice, to strictly maintain standards of fundamental fairness and to insure that procedural safeguards essential to a fair trial are observed at all stages

of a proceeding.

From the earliest inception of constitutional government in our country, the concepts of notice and hearing have been fundamental. A fair and enlightened system of justice would be impossible without the right to notice and to be heard. The emphasis on substantive due process and other recent ramifications of the due process clause sometimes leads bench and bar to overlook or forget that due process was initially concerned with fair procedure. Every law student early learns in law school the definition submitted by counsel Mr. Webster in *Trustees of Dartmouth College v. Woodward* (4 Wheat. 518) that due process is the equivalent of law of the land which means "the general law; a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial x x x that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society."

A sporting opportunity to be heard and the rendition of judgment only after a lawful hearing by a coldly neutral and impartial judge are essential elements of procedural due process.

We had occasion to emphasize in *Santiago v. Santos* (63 SCRA 392), which, unlike the case before us now, was only a summary action for ejectment that:

In an adversary proceeding, fairness and prudence dictate that a judgment, based only on plaintiff's evidence adduced ex parte and rendered without hearing defendant's evidence, should be avoided as much as possible. In order that bias may not be imputed to the judge, he should have the patience and circumspection to give the opposing party a chance to present his evidence even if he thinks that the oppositor's proofs might not be adequate to overthrow the case for the plaintiff. A display of petulance and impatience in the conduct of the trial is a norm of conduct which is inconsistent with the 'cold neutrality of an impartial judge'."

It is true that a party should be vigilant of his rights. It may be argued that when the petitioner's counsel asked for a fifteen (15) day extension from April 11, 1979 to file his answer, it was imprudent and neglectful for him to assume that said first extension would be granted. However, the records show that Atty. Fernando P. Camaya personally went to the session hall of the court with his motion for postponement only to be informed that Presiding Judge Ulpiano Sarmiento had just retired but that his motion would be considered "submitted for resolution." Since the sala was vacant and pairing judges in Quezon City are literally swamped with their own heavy loads of cases, counsel may be excused for assuming that, at the very least, he had the requested fifteen (15) days to file his responsive pleading.

It is likewise inexplicable why Judge Lino Añoover, who had not permanently taken over the sala vacated by the retired judge, should suddenly rule that only a five-day extension would be allowed. And to compound the petitioner's problems, the order was sent by mail and received only twelve (12) days later or after the five-day period. Before the much publicized Project Mercury of the Bureau of Posts, a court should have known that court orders requiring acts to be done in a matter of days should not be sent by mail. Meanwhile, the petitioner was declared in default. The motion to declare defendant in default is dated April 17, 1979. No copy was furnished the petitioner. It was acted upon on April 18, 1979, the very first day in office of the respondent judge in Quezon City.

Jurisprudence on default judgments is clear and abundant. Our ruling in *Amante v. Sunga* (64 SCRA 192) is appropriate:

"In the attendant circumstances, We cannot perceive how the interest of justice was served and promoted by the precipitate action of the trial court. A default judgment does not pretend to be based on the merits of the controversy. Its existence is justified by expediency. It may, however, amount to a positive and considerable injustice to the defendant. The possibility of such serious consequences necessarily requires a careful

examination of the circumstances under which a default order was issued. And when no real injury would result to the interests of the plaintiff by the reopening of the case, the only objection to such action would, therefore, be solely on a technicality. On such an infirm foundation, it would be a grievous error to sacrifice the substantial rights of a litigant. For the rules should be liberally construed in order to promote their objective in assisting the parties in obtaining just, speedy and inexpensive determination of their cases."

Shortly afterwards, the often cited case of *Lim Tanhu v. Ramolete* (66 SCRA 425) reiterated the same principle:

"After careful scrutiny of all the above-related proceedings in the court below and mature deliberation, the Court has arrived at the conclusion that petitioners should be granted relief, if only to stress emphatically once more that the rules of procedure may not be misused and abused as instruments for the denial of substantial justice. A review of the record of this case immediately discloses that here is another demonstrative instance of how some members of the bar, availing of their proficiency in invoking the letter of the rules without regard to their real spirit and intent, succeed in inducing courts to act contrary to the dictates of justice and equity, and, in some instances, to wittingly or unwittingly abet unfair advantage by ironically camouflaging their actuations as earnest efforts to satisfy the public clamor for speedy disposition of litigations, forgetting all the while that the plain injunction of Section 2 of Rule 1 is that the 'rules shall be liberally construed in order to promote their object and to assist the parties in obtaining' not only 'speedy' but more imperatively, 'just . . . and inexpensive determination of every action and proceeding.' We cannot simply pass over the impression that the procedural maneuvers and tactics revealed in the records of the case at bar were deliberately planned with the calculated end in view of depriving petitioners and their co-defendants below of every opportunity to properly defend themselves against a claim of more than substantial character, considering the millions of pesos worth of properties involved as found by respondent judge himself in the impugned decision, a claim that appears, in the light of the allegations of the answer and the documents already brought to the attention of the court at the pre-trial, to be rather dubious. What is most regrettable is that apparently, all of these alarming circumstances have escaped respondent judge who did not seem to have hesitated in acting favorably on the motions of the plaintiff conducive to the deplorable objective just mentioned, and which motions, at the very least, appeared to be of highly controversial merit, considering that their obvious tendency and immediate result would be to convert the proceedings into a one-sided affair, a situation that should be readily condemnable and intolerable to any court of justice."

The defendant's failure to answer on time was excusable. Moreover, the lower court was presented with defenses which, on their face, appeared to warrant a setting aside of the default order and a full-fledged hearing where both parties could present their respective evidences. The petitioner stated:

"11. That defendant has good and valid defenses consisting of:

"a) I did not borrow the huge sum of THREE HUNDRED NINETY ONE THOUSAND EIGHT HUNDRED TWENTY TWO PESOS & 78/100 (P391,822.78) from plaintiff Rosalinda Tecson;

"b) I did not issue to Rosalinda Tecson the receipt mentioned in par. 8 of her complaint;

"c) That the same receipts mentioned in par. 8 of her complaint did not state that sums of money stated on the face of these receipts were received as loan, in fact it does not appear on the face of the receipts for what purpose the said money were allegedly received;

"d) That the checks she mentioned in par. 8 were issued by her and encashed by her which is very unnatural for a person who is lending money to another;

"e) That there is pending between Rosalinda Tecson and myself Civil Case No. 113565 of the Court of First Instance of Manila entitled '*RIZAL COMMERCIAL BANKING CORPORATION versus PEDRO M. AZUL, ROSALINDA P. TECSON and PURITA DE CASTRO*,' where the said amount of THREE HUNDRED NINETY ONE THOUSAND EIGHT HUNDRED TWENTY TWO PESOS & 78/100 (P391,822.78) and in

addition the same amount of ONE HUNDRED FORTY ONE THOUSAND SEVEN HUNDRED THIRTY PESOS & 20/100 (P141,730.20) mentioned in pars. 8 and 9 of plaintiff's complaint are the subject matter of compulsory cross-claim between the said parties;

"f) Plaintiff was never authorized to withdraw, collect and receive the checks whose face value amounted to ONE HUNDRED FORTY ONE THOUSAND SEVEN HUNDRED THIRTY PESOS & 20/100 (P141,730.20) mentioned in par. 9 of her complaint;

"g) Plaintiff was never authorized to endorse and encash the checks mentioned in par. 9 of her complaint;

"h) Plaintiff up to this time was not able to show any authority authorizing her to withdraw, receive and endorse checks intended for me;

"i) The estafa case, I.S. 78-20883, I filed against plaintiff before the City Fiscal's Office of Quezon City is valid and fully supported by a document and in fact, it was filed with and was endorsed by the authorities at Camp Crame after an investigation was conducted, wherein plaintiff Rosalinda Tecson was given the opportunity to present evidence;

"j) That I filed the said estafa case in the exercise of my right and within legal bounds;

"12. That, if given the opportunity to present my evidence before this Court, I would be able to prove my defenses and support them with sufficient documentary and oral evidence; that I need only about three (3) hours to present my evidence in support of these defenses;

"13. Attached to this motion is an affidavit of merits as required by the Rules of Court."

The private respondent contends that the default judgment has become final and executory and may no longer be set aside. As in the *Lim Tanhu* case, we cannot simply pass over the impression that the procedural maneuvers and tactics revealed in the records of the case at bar were deliberately planned with the calculated end in view of depriving petitioners of an opportunity to defend themselves, not only against the claim of P250,092.55 but damages and attorney's fees quadruple that amount and of the right to elevate the decision to a higher court.

The petitioner cryptically refers to an "unseen hand" orchestrating proceedings. His counsel, Atty. Camaya, went to court with a motion for extension of time to file answer. Instead of being informed that even with the retirement of the presiding judge, he had only five (5) days to answer, he was told to file the motion and consider it submitted. The order granting five days extension was mailed with the near certain knowledge he would not get it on time and after petitioner's being knocked out by an order declaring him in default, there was the well-founded "hope that procedural mistakes along the way will bury forever the presence of an irregularity."

The fears of the petitioner turned out to be justified. His counsel fell into some procedural lapses as the respondent's counsel ably blocked every attempt to set aside the default judgment and keep it from becoming final.

Not only was the petitioner not furnished a copy of the motion to declare him in default but no time and date of hearing were fixed. The motion is dated April 17, 1979. It was granted on April 18, 1979. On April 19, 1979, evidence was presented ex-parte before the branch clerk of court. About one week later, the decision was rendered. In addition to the principal claim of P250,092.55, the court awarded interest at the legal rate until paid, P600,000.00 in damages, and P237,523.14 attorney's fees for counsel whose most difficult work up to that point was preparing the complaint and the motion to declare the defendant in default and presenting evidence ex-parte before the branch clerk of court.

The July 24, 1979 order of the lower court denied the petitioner's motion for reconsideration or new trial on the

ground that it is "pro forma". Even a cursory appraisal of the motion will indicate that it is far from pro forma. The motion discusses in seven (7) type-written legal size pages why the defendant's failure to file responsive pleading should be excused on grounds of excusable mistake and negligence and why the default judgment should be deemed null and void. The lower court which had just awarded extravagantly liberal damages in a default judgment should have given better reasons for rejecting the motion instead of relying on the conventional finding of a "pro forma" presentation.

On August 1, 1979, the petitioner filed a notice of appeal and a motion for extension of time to file record on appeal. The lower court denied the motion for extension of time to file record on appeal on August 3, 1979 on the ground that it was filed two days late. Upon a motion for reconsideration explaining a typographical error which mistakenly indicated that a decision actually received on May 7 was received on May 5, the court granted ten (10) days extension to file the record on appeal only to reverse itself when on September 11, 1979, it granted the respondent's motion to dismiss appeal.

The private respondent capitalizes on procedural errors allegedly committed by the petitioner's counsel after he failed to file his answer within the given five-day period. Counsel has explained the delays but without going into the merits of the explanations, we find the delays insufficient reason to warrant our countenancing the denial of due process in this case and the disregard of our many admonitions for courts to be wary and reluctant in deciding cases through default judgments.

The petitioner alleges that the decision awarding P1,187,615.69 to the private respondent is not supported by the facts elicited during the hearing ex-parte before the branch clerk of court. The merits of the collection case should be determined after both petitioner and respondent are afforded full opportunity to present their respective evidences.

The petitioner's mention of an "unseen hand" orchestrating the proceedings in this case should also be referred to the Office of the Court Administrator for investigation and appropriate action.

WHEREFORE, the petition for certiorari is hereby GRANTED. The respondent court's order dated March 19, 1979 issuing a writ of preliminary attachment, the order dated April 18, 1979 declaring the petitioner in default, the decision dated April 27, 1979, the order dated July 20, 1979 denying the motion to lift the order of default, the order dated July 24, 1979 denying the motion for reconsideration or new trial, the order dated September 11, 1979 dismissing the appeal, and the order dated October 29, 1979 issuing a writ of execution to enforce the court's judgment are SET ASIDE as NULL and VOID. The appropriate branch of the Regional Trial Court at Quezon City is ordered to ADMIT the ANSWER filed by the petitioner and CONDUCT trial on the merits. The Acting Court Administrator is ordered to conduct an INVESTIGATION as abovestated.

SO ORDERED.

Teehankee, Acting C.J., Melencio-Herrera, Plana, Relova, and De La Fuente, JJ., concur.

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