

ANDRES C. SARMIENTO, PETITIONER, VS. THE HON. CELESTINO C. JUAN, PRESIDING JUDGE, BRANCH X, COURT OF FIRST INSTANCE OF MANILA AND BELFAST SURETY & INSURANCE CO., INC., RESPONDENTS.

G.R. No. 56605. January 28, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

In this petition for review on certiorari, petitioner Andres C. Sarmiento seeks to set aside a decision rendered by the respondent Court of Appeals in CA-G.R. No. SP-10649 which denied due course to a petition for certiorari filed therein by the herein petitioner to annul two orders issued by the Court of First Instance of Manila in Civil Case No. 126113. The instant petition was given due course in the Resolution of September 14, 1981 and the parties ordered to submit their respective memoranda. The petitioner filed a memorandum in his behalf but the private respondent merely adopted its comment on the petition as its memorandum.

Civil Case No. 126113 was an action filed by private respondent Belfast Surety & Insurance Co., Inc. against herein petitioner and his father Benjamin R. Sarmiento, Sr. for indemnification under an Indemnity Agreement executed by them in connection with a bail bond. The case was assigned to Branch X of the Court of First Instance of Manila presided over by respondent Judge Celestino C. Juan who had since retired.

After the petitioner filed an answer with compulsory counterclaim, private respondent filed a motion to dismiss the case against defendant Benjamin R. Sarmiento, Sr., and to schedule the case for pre-trial. This motion was granted by Judge Juan and the pre-trial was set on February 5, 1980, at 8:30 a.m.

At the said pre-trial, nobody appeared except Atty. Federico T. Castillo, Jr., counsel for the private respondent. However, the petitioner sent to the Court on the same date an urgent motion for postponement stating therein that when he was preparing to go to the Court, he felt severe stomach pain followed by loose bowel movements, and he accordingly prayed that the pre-trial be postponed to another date.

The urgent motion for postponement filed by the petitioner was denied in the order of Judge Juan dated February 5, 1980. On motion of Atty. Castillo, the petitioner was "declared non-suited" (should have been "as in default") and the private respondent allowed to present its evidence ex-parte on February 26, 1980, at 8:30 a.m.

On February 25, 1980, the petitioner filed a motion for reconsideration of the order of February 5, 1980. In his order of February 26, 1980, Judge Juan denied the said motion for reconsideration "for lack of merit," and reiterated the permission for the private respondent to present its evidence ex-parte.

It does not appear whether the ex-parte presentation of evidence by the private respondent had already been accomplished, nor that a decision thereon had been rendered. That such proceedings had not taken place could, however, be gathered from the fact that on March 19, 1980, the petitioner filed a petition for certiorari with the Supreme Court docketed as G.R. No. 53399 to annul the aforementioned orders of Judge Juan dated February 5,

1980 and February 26, 1980. The said petition was remanded to the Court of Appeals pursuant to the Resolution of the First Division of this Court dated March 28, 1980. It was docketed in the Court of Appeals as CA-G.R. No. SP-14649. In a decision promulgated on August 29, 1980 by the Special First Division of the Court of Appeals, the petition was denied due course and ordered dismissed for lack of merit. Said decision is the subject of the present appeal by certiorari.

The petitioner assails the refusal of the respondent Court of Appeals to disturb the questioned orders of Judge Juan which petitioner claims to have been issued in excess of jurisdiction and with grave abuse of discretion. He contends that (a) the pre-trial was premature inasmuch as, there having been no answer filed by the private respondent to the petitioner's counterclaim alleged in his answer, the "last pleading" has not yet been filed so as to authorize a pre-trial to be conducted in accordance with Section 1, Rule 20, of the Rules of Court; (b) there being no valid pre-trial, the trial court had no authority to declare him as "non-suited", or more correctly, as in default, for his failure to appear at the said pre-trial; (b) assuming that there was a valid pre-trial, the trial court could not legally declare the petitioner as in default due to his failure to be present thereat inasmuch as the private respondent itself made no valid appearance at said pre-trial because only its counsel appeared without any special authority to represent his client at the said pre-trial; and (c) it was a grave abuse of discretion on the part of the trial court to deny the petitioner's urgent motion for postponement despite the merit of the ground alleged therein, and the same thing is true with the denial of his motion to set aside or lift the order declaring him in default.

We see no merit in the petitioner's contention that the pre-trial was prematurely scheduled on the supposed ground that the last pleading had not been filed. In the petition for certiorari docketed as G.R. No. 53399, the petitioner has alleged that he filed his answer to the complaint containing a compulsory counterclaim on December 21, 1979 which was served on the counsel for the private respondent on the same date. (Rollo, p. 19.) The pre-trial was scheduled to be held on February 5, 1980 or a month and a half after the petitioner had filed his answer to the complaint in Civil Case No. 126113 and private respondent served with a copy of the same. While it may be true that the private respondent had not filed any answer to the counterclaim contained in the petitioner's answer, such circumstance does not prevent the trial court from conducting the pre-trial. As was observed by the respondent Court of Appeals in its questioned decision: "If no answer (to the counterclaim) is timely filed, the pre-trial order may issue. Otherwise, an unscrupulous party litigant can hold court processes by the simple expedient of failing to answer."

The requirement that the pre-trial shall be scheduled "after the last pleading has been filed" (Section 1, Rule 20, Rules of Court) is intended to fully apprise the court and the parties of all the issues in the case before the pre-trial is conducted. It must be remembered that the issues may only be ascertained from the allegations contained in the pleadings filed by the parties. The last permissible pleading that a party may file would be the reply to the answer to the last pleading of claim that had been filed in the case, which may either be the complaint, a cross-claim, a counterclaim or a third party complaint, etc. (Secs. 2 and 11, Rule 6, Rules of Court.) Any pleading asserting a claim must be answered, and the failure to do so by the party against whom the claim is asserted renders him liable to be declared in default in respect of such claim. (Sec. 10, Ibid.) There are, however, recognized exceptions to the rule, making the failure to answer a pleading of claim as a ground for a default declaration, such as the failure to answer a complaint in intervention (Sec. 2(c), Rule 12, Rules of Court), or a compulsory counterclaim so intimately related to the complaint such that to answer the same would merely require a repetition of the allegations contained in the complaint. (*Zamboanga Colleges, Inc. vs. Court of Appeals*, 1 SCRA 870; *Ballecer vs. Bernardo*, 18 SCRA 291; *Agaton vs. Perez*, 18 SCRA 1165.)

In the case presently considered, the nature of the counterclaim in the petitioner's answer has not been made clear, except to categorize it as a compulsory counterclaim. Such being the case, it is likely to be one where the

answering thereof is not necessary, and the failure to do so would not be a ground to be declared in default. In any event, the private respondent's failure to answer the petitioner's counterclaim after the period to file the answer had lapsed is no obstacle to holding a pre-trial. The requirement that the last pleading must have been filed before a pre-trial may be scheduled should more appropriately be construed to mean not only if the last pleading had been actually filed, but also if the period for filing the same had expired.

We, however, find merit in the petitioner's two other contentions. The denial by Judge Juan of the petitioner's motion to postpone the pre-trial scheduled on February 5, 1980 may have appeared valid at the outset, considering that it was filed at the last minute and was not accompanied by a medical certificate although the ground alleged was illness on the part of the petitioner. Nonetheless, a different appraisal of the petitioner's plea should have been made after the petitioner filed a motion for reconsideration which was made under oath. Due regard should have been given to the repeated pronouncements by this Court against default judgments and proceedings that lay more emphasis on procedural niceties to the sacrifice of substantial justice. After all, the ex-parte presentation of evidence had not yet been conducted nor had a decision been rendered in the case. It appeared to be a simple matter of giving the petitioner a chance to have his day in court in order to defend himself against the claim filed by the private respondent. As it turned out, the procedure adopted by the trial court proved unprofitable and disadvantageous to all parties concerned, including the courts. The case would have been disposed of in a much easier and more expeditious manner if the trial court had heeded the petitioner's simple plea for a chance to be heard. Thereby, all the proceedings taken subsequent to the disputed orders of the trial court could have been avoided, and the Court of Appeals and the Supreme Court spared from the trouble of resolving the petitions filed before them.

The petitioner also has valid reason to complain about the apparent over-anxiousness of the trial court to finish the case in summary fashion. The petitioner had manifested to the Court that his inability to appear before the pre-trial was due to a sudden ailment that befell him while he was preparing to go to Court. While it is true that the motion for postponement was not accompanied by a medical certificate, it must be considered that not every ailment is attended to by a physician, or if so, a medical certificate under oath as required by the Rules could be secured within the limited time available. There has been no refutation of the cause of the non-appearance of the petitioner as claimed by the latter. Said cause had been reiterated under oath in the petitioner's motion for reconsideration to which the trial court turned a deaf ear. Any suspicion that the petitioner was merely suing for delay is readily dispelled by the fact that the pre-trial was being set for the first time, and that the petitioner took immediate steps against the refusal of the trial court to set aside the default declaration and to pursue remedies steadfastly against the same in the higher tribunals.

The declaration default on the part of the petitioner may not be considered as entirely proper under the circumstances surrounding the same. It is undenied that nobody appeared at the pre-trial except the counsel for the private respondent. Under settled doctrines, not even the private respondent may be considered as having appeared at the said pre-trial, it not having made appearance thereat through a duly authorized representative. In such a situation, the trial court would have acted more properly if it dismissed the case, or declared the private respondent as plaintiff therein as non-suited, instead of declaring the petitioner as in default (erroneously stated by it as "non-suited.") This is because while the court may declare the plaintiff non-suited for non-appearance at the pre-trial or dismiss the case for his non-appearance at the trial without motion on the part of the defendant (Sec. 3, Rule 17), the latter may not be declared in default without such motion on the part of the plaintiff. (Sec. 1, Rule 18; *Trajano vs. Cruz*, 80 SCRA 712.) A plaintiff who makes no valid appearance at pre-trial may not ask that the defendant be punished for the same shortcoming it was equally guilty of.

WHEREFORE, the judgment of the Court of Appeals rendered in CA-G.R. No. 10649 promulgated on August

29, 1980, and the Resolution issued in said case dated March 29, 1981 which denied a motion for the reconsideration of the said judgment are hereby REVERSED and SET ASIDE. The orders of the Court of First Instance of Manila in Civil Case No. 126113 dated February 5, 1980 and February 26, 1980 are ordered ANNULLED and SET ASIDE. Let the said case be rescheduled for pre-trial and for subsequent proceedings thereafter. Costs against the private respondent.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova and Gutierrez, Jr., JJ., concur.

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