

THE GOLDEN COUNTRY FARMS, INC., PETITIONER, VS. SANVAR DEVELOPMENT CORP., RESPONDENT.

G.R. No. 58027. September 28, 1992

Ponente: MELO, J.

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MELO, J.:

Before us is an appeal by certiorari from the decision of the then Court of First Instance of Rizal, Branch XX, Pasig, Metro Manila, at that time presided over by the Honorable Celso L. Magsino, and the order dated February 16, 1981 denying petitioner's and its co-defendant's joint motion for reconsideration wherein petitioner Golden Country Farm, Inc. (GCFI, for short) was declared in default.

The factual background of this case may be stated as follows:

On February 28, 1980, respondent Sanvar Development Corporation (Sanvar, for short) sued petitioner GCFI and its President, Armando T. Romualdez, for a sum of money representing the unpaid balance of construction materials purchased by petitioner from respondent.

Per return of the sheriff, summons and copy of the complaint were served on March 5, 1980 upon petitioner at its principal office through a certain Miss I.E. Lagrimas, clerk-typist of petitioner. On March 20, 1980, petitioner filed a motion to dismiss on the ground that summons was not properly served in accordance with Section 13, Rule 14 of the Revised Rules of Court. Petitioner's motion to dismiss was denied by the lower court on May 2, 1980 and copy of the denial order was received by petitioner on May 15, 1980. On May 30, 1980, petitioner, together with its president, filed a joint motion for reconsideration, the resolution of which was held in abeyance by the lower court. Subsequently, respondent filed an omnibus motion praying that the joint motion for reconsideration be denied and that petitioner be declared in default. On February 16, 1981, the lower court issued an omnibus order denying the joint motion for reconsideration and declaring petitioner in default for failure to file an answer within the reglementary period.

Pursuant to the order of default, respondent Sanvar presented its evidence ex-parte and based on said evidence, the lower court adjudged petitioner GCFI liable to respondent Sanvar in the principal sum of P105,362.50. The complaint against petitioner's president was, however, dismissed because he was sued in his capacity as president of petitioner. A copy of the decision was received by petitioner on August 14, 1981.

Hence, the instant appeal wherein petitioner raises the following issues:

- 1) Whether or not summons directed to petitioner corporation which was served through Miss Lagrimas, clerk-typist of the petitioner, is sufficient service for the trial court to acquire jurisdiction over said corporation.
- 2) Whether or not petitioner can be declared in default for not filing an answer to the complaint while its joint motion for reconsideration of the order denying its motion to dismiss remained pending for the court's consideration.

Service of process on a corporation is controlled by Sec. 13, Rule 14 of the Revised Rules of Court, thus --

"Sec. 13. Service upon private domestic corporation or partnership. -- If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent, or any of its directors."

Petitioner claims that the foregoing enumeration is exclusive and service of summons is without force and effect unless made upon any one of those enumerated. So in the case at bar, it is argued, the lower court did not acquire jurisdiction over petitioner-corporation since service of summons was effected through a mere clerk, a person who is not one of those authorized officers mentioned in the aforementioned Section 13 upon whom valid service of summons can be made.

We cannot accept the strict and literal interpretation of petitioner. Thus, in *G & G Trading Corp. vs. Court of Appeals* (158 SCRA 466, 469), we had occasion to rule:

"Although it maybe true that the service of summons was made on a person not authorized to receive the same in behalf of the petitioner, nevertheless since it appears that the summons and complaint were in fact received by the corporation through its said clerk, the Court finds that there was substantial compliance with the rule on service of summons. Indeed the purpose of said rule as above stated to assure service of summons on the corporation had thereby been attained. The need for speedy justice must prevail over a technicality."

In the case at bar, the fact that summons was received by petitioner through Miss Lagrimas, is not disputed; rather, petitioner admits that on March 18, 1980, the corporation and its legal counsel were informed by Miss Lagrimas of the summons she received (pp. 8 and 9, Rollo). And indeed, by virtue of the receipt of the summons, petitioner even filed a motion to dismiss.

We, therefore, agree with the lower court's findings that:

"...The actual receipt by the clerk-typist of the correct address of the corporation must be construed as receipt on behalf of the officer of the corporation holding office at that address. Mr. Romualdez, the general manager was holding office at that address, he received the summons, and that summons must be binding on him personally and on the corporation of which he is the general manager. It is to be observed that the law firm of Avila, de los Santos and Associates is the same counsel for both defendants, and it is simply absurd to split the personality of defendant Romualdez between himself as general manager of defendant corporation and the defendant corporation of which he is the general manager for purposes of service of summons." (Annex H, pp. 38-39, Rollo)

The court a quo thereupon concluded:

"... inasmuch as the spirit and purpose of the rule is 'to bring home to the corporation notice of the filing of the action'. . . and it appearing that said defendant had actually received the summons and a copy of the complaint albeit thru its clerk-typist Miss Iluminada E. Lagrimas, and in fact has filed this instant motion, the Court hereby considers the same as substantial compliance with the rules and therefore denies the aforesaid motion." (Annex B, p. 22, Rollo).

There was, therefore, substantial compliance with the rules on service of summons since it appears that the summons and complaint were actually received by the petitioner corporation through its clerk, thereby satisfying the purpose of notice (*Rebollido vs. Court of Appeals*, 170 SCRA 800, 811).

We do not agree with petitioner's claim that it cannot be declared in default for not filing an answer while resolution of its joint motion for reconsideration of the order denying its motion to dismiss was held in abeyance by the lower court.

Petitioner received the denial order of its motion to dismiss on May 15, 1980; hence, by mathematical computation, the 15-day period to file an answer provided in Section 1, Rule 77 of the Revised Rules of Court expired on May 30, 1980. However, on May 30, 1980, which was the last day to file its answer, petitioner filed a joint motion for reconsideration, instead of filing an answer. In this regard, we share the opinion of the lower court that petitioner's joint motion for reconsideration which merely reiterated the grounds in its motion to dismiss was pro forma and did not toll the running of the period to file an answer.

In the case of *PCIB vs. Escolin* (67 SCRA 202) this Court ruled that a motion for reconsideration which does not make out a new matter sufficiently persuasive to induce modification of judgment will be denied and that a repetition of arguments or grounds already discussed in prior incidents may properly be categorized as merely for purposes of delay.

An answer, not a motion for reconsideration of the order denying its motion to dismiss, should have been filed within the reglementary period. The record does not disclose that the proper answer was in fact filed. Withal, there can be no serious challenge to the reception of evidence for the plaintiff thereafter.

Moreover, notwithstanding its receipt of the order of default on March 6, 1981, petitioner did not even bother to take any steps to lift said order of default, but it simply folded its arms for five months until the decision was handed down on July 15, 1981. Further weakening the position of the petitioner is the absence of a viable defense against the documented claims of respondent for unpaid construction materials purchased by petitioner.

As we have ruled in the case of *Philippine Bank of Commerce vs. Jose M. Aruego* (102 SCRA 530, 537):

"It has been held that to entitle a party to relief from a judgment taken against him through his mistake, inadvertence, surprise or excusable neglect, he must show to the court that he has a meritorious defense. In other words, in order to set aside the order of default, the defendant must not only show that his failure to answer was due to fraud, accident, mistake or excusable negligence but also that he has a meritorious defense."

In the case of *Development Insurance Corp. vs. Intermediate Appellate Court* (143 SCRA 62), this Court also ruled that a default judgment will not be lifted if defendant has no valid defense.

It is to be noted in this regard that not even once, not in its motion to dismiss and not now in its appeal has there been the least intimation on petitioner's part that the claim of respondent has been paid. All that petitioner can harp at is the alleged defective service of summons.

WHEREFORE, the decision and order appealed from are hereby affirmed, with costs against petitioner.

SO ORDERED.

Bidin, Davide, Jr., and Romero, JJ., concur.

Gutierrez, Jr., J., (Chairman), on leave.

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