

JOAQUIN S. GAW, THRU HIS ATTORNEY-IN-FACT EUSEBIO S. MILLAR, PETITIONER, VS. COURT OF APPEALS, HON. BEN-JAMIN RELOVA, IN HIS CAPACITY AS PRESIDING JUDGE, BRANCH XI, COURT OF FIR...

G.R. No. 60783. October 31, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari with writ of preliminary injunction seeking to reverse and set aside: 1) the Decision* of the Court of Appeals dated May 7, 1982 in C.A. G.R. No. SP-13738-R entitled “Joaquin S. Gaw, thru his attorney-in-fact, Eusebio S. Millar vs. Honorable Benjamin Relova, in his capacity as Presiding Judge, Branch XI, Court of First Instance of Manila, Worldwide Philippine Marketing Corporation and the Sheriff of Manila”, dismissing the petition for certiorari with writ of preliminary injunction filed therein for lack of legal basis and merit; and 2) the Resolution** of the same Court dated June 10, 1982, denying petitioner’s motion for reconsideration for lack of merit.

Based from the records, the factual background of this case is as follows:

This action originated from the Court of First Instance of Manila, Branch XI, when private respondent Worldwide Philippines Marketing Corporation (WPMC for short) on February 2, 1981 instituted a complaint for sums of money with damages and preliminary attachment against petitioner Joaquin S. Gaw, which complaint was docketed as Civil Case No. 137703.

WPMC had its complaint amended twice, the last of which was dated May 22, 1981 to which an answer with counterclaim was filed by Joaquin S. Gaw on July 29, 1981.

In the amended complaint, WPMC alleged, among others, the following:

“5. That the defendant taking advantage of the foregoing personal and business relationship with the foregoing General Manager of the plaintiff, caused to be encashed several personal and postdated checks on various occasions ranging from Aug. 1980 to Jan. 1981 totalling to an aggregate and enormous amount of P315,332.00, Philippine currency, and specified hereunder, to wit:

CHECKS AMOUNT DATE

EBC Check 11289889 P 100,000.00 September 18, 1980

ABC Check 30064865 40,000.00 October 1, 1980

TMBC Check 16344241 34,750.00 December 27, 1980

TMBC Check 16376681 67,705.00 January 17, 1981

TMBC Check 16376603 72,877.00 February 2, 1981

TOTAL - - P 315,332.00

and xerox copies of which checks are hereto attached as Annexes “A”, “B”, “C”, “D” and “E” and all made an integral part of this amended complaint.”

(Rollo, pp. 51-52, Petition, Annex “B”, pp. 1-2)

In the answer, Joaquin S. Gaw raised among others, the following as his special and affirmative defenses:

“20. That with respect to the checks alleged in paragraph 5 of the amended complaint, defendant alleges the following:

(a) Equitable Banking Corporation (Divisoria Branch) Check No. 11289889 dated September 18, 1980 is not defendant’s check; that he has not withdrawn said check and he is not indebted to the plaintiff, much less to Charles E. Go and/or the latter’s father in the sum of P100,000.00;

(b) That he admits having drawn Allied Banking Corporation (Padre Rada Branch) Check No. 30064865 dated October 1, 1980, in the amount of P40,000.00 which evidenced the fact that he has obtained a loan from Charles E. Go in the said amount of P40,000.00; that he alleges that he has paid said loan of P40,000.00 but Charles E. Go refused to return to him said check, unless he pays all the loan obtained by persons whom he accompanied and who were granted loans by Charles Go, because, with respect to the loans obtained by the persons whom defendant merely accompanied, he has no liability.”

(Rollo, pp. 63-64, Petition, Annex “C”, pp. 5-6)

An order dated August 3, 1981 set the case for pre-trial hearing on August 25, 1981. On August 4, 1981, WPMC filed a motion for partial judgment on the pleadings alleging therein that Joaquin S. Gaw admits the genuineness and due execution of the checks copied or attached to the complaint because he failed to specifically deny them under oath and WPMC further claims that Joaquin S. Gaw’s answer failed to tender an issue and therefore, a judgment on the pleadings is proper.

In his opposition dated August 13, 1981, Joaquin S. Gaw alleged that there is absolutely no allegation in WPMC’s complaint to the effect that the signature appearing on the checks as drawers are his signatures, for which reason, he need not specifically deny under oath the due execution and genuineness of said checks pursuant to and in accordance with Section 8, Rule 8 the Revised Rules of Court; and that with respect to the P40,000.00 check, he admits that said check is his check but he alleges that he has paid the same and considering that the defense is payment, he therefore, need not under oath, specifically deny the due execution and genuineness of said check.

On August 18, 1981, Joaquin S. Gaw prayed for the cancellation of the pre-trial scheduled for August 25, 1981 for the reason that his motion for leave to file third party complaint has not yet been resolved by the court, but the same was denied by the respondent judge in his order dated August 21, 1981. In the same order, the lower court ruled in part:

“x x x

Plaintiff’s motion for partial judgment dated August 3, 1981 is held in abeyance until the termination of the pre-trial hearing.

xxx.”

A motion for reconsideration of the order dated August 21, 1981 denying his motion for leave to file third party complaint was filed by Joaquin S. Gaw on August 22, 1981. In view of the pendency of such motion, an order dated August 25, 1981, resetting the pre-trial hearing on September 16, 1981 was issued.

September 1, 1981, a motion to admit third party complaint was filed by Joaquin S. Gaw and the same was admitted on September 4, 1981. After an exchange of pleadings between the parties, respondent judge issued an order dated September 16, 1981 granting Joaquin S. Gaw's motion to cancel the pre-trial hearing as follows:

“O R D E R

Finding defendant's motion to cancel the pre-trial hearing this morning meritorious, issues not having been joined, the same is hereby granted”. (Rollo, p. 21)

But on the same date, the trial court rendered a partial decision, the dispositive portion of which reads:

“WHEREFORE, partial judgment is hereby rendered, ordering the defendant to pay the plaintiff the total sum of P140,000.00, with interest thereon at the legal rate from the filing of the complaint.

SO ORDERED.”

(Rollo, p. 90; Petition, Annex “J”, p. 3)

On October 27, 1981, respondent judge issued an order, as follows:

“WHEREFORE, the motion for reconsideration is hereby granted with respect to ABC Check No. 30064865 in the sum of P40,000.00 and the decision is hereby modified and partial judgment on the pleadings is hereby rendered, ordering the defendant to pay the plaintiff the total sum of P100,000.00, with interest thereon at the legal rate from the filing of the complaint.

SO ORDERED.”

(Rollo, p. 111; Petition, Annex “O”, p. 3)

Meanwhile, on December 9, 1981, private respondent filed a petition for reconstitution of judicial records in view of the fire which razed the sala of the lower court at the City Hall of Manila including the court's records of this case.

Petitioner and intervenor Gaw Chee Hun filed a “Joint Manifestation with Motion for Time to Supply Deficiencies and Submit Additional Matters to Complete Judicial Records” which was granted on December 29, 1981.

On January 5, 1982, or even before respondent Judge could act on private respondent's petition for reconstitution of judicial records and petitioner's and intervenor's joint petition to supply deficiencies of said records, private respondent moved for the issuance of a writ of execution which was opposed by the petitioner.

On February 1, 1982, respondent judge issued an order declaring that the records of Civil Case No. R-81-500CV are reconstituted.

On February 4, 1982, respondent judge issued an order, the dispositive part of which reads:

“WHEREFORE, finding that the partial judgment of this Court dated September 16, 1981 as modified by the order of October 27, 1981, final and executory, the motion for the issuance of a writ of execution in the amount of P100,000.00 is hereby granted.

SO ORDERED.”

(Rollo, p. 143; Petition, Annex “Z”, p. 3)

On the same date, a writ of execution was issued (Rollo, p. 144; Petition, Annex “AA”).

On certiorari with preliminary injunction, the Court of Appeals affirmed the decision of the trial court in its decision promulgated on May 7, 1982, in the Tagalog dialect, the dispositive part of which reads:

“KAYA, ang kahilingan at karagdagang kahilingan iniharap ay pinawawalang saysay sa dahilang ang mga ito ay walang matibay na sandalan at kagalingan.

Siyang Ipinag-uutos.” (Rollo, p. 197)

A motion for reconsideration of the above-quoted decision filed by petitioner on May 27, 1982 was denied on June 10, 1982 for lack of merit.

Hence, this petition.

On May 9, 1984, the Second Division of this Court resolved to give due course to the petition (Rollo, 248).

The main issue in this case is: Whether or not the respondent Appellate Court committed grave abuse of discretion in dismissing the petition for certiorari holding that appeal is the proper remedy.

The petition is impressed with merit.

It will be recalled that on September 16, 1981, when the lower court rendered a partial judgment on the pleadings against the defendant (herein petitioner) for the following reason:

“Considering that the checks in question had been attached to the complaint and made integral parts thereof as Annexes “A” and “B” of the amended complaint, the allegations of the defendant’s answer that he denies the same and which is not under oath tendered no issue. Under the rules, said answer was an admission that the defendant executed said checks and that the plaintiff failed to recover the amounts stated in the two checks. Under Rule 19, Sec. 1 of the Rules of Court, judgment on the pleadings is well taken.” (Rollo, pp. 89-90, Petition, Annex “J”, pp. 2-3)

there was no hearing, the pre-trial hearing having been cancelled and as found by the same trial court in its Order dated Sept. 16, 1981, the issues have not yet been joined. (Rollo, p. 21)

Under similar circumstances this Court ruled that the lower court’s exercise of judicial authority in granting the motion for judgment on the pleadings and in rendering a decision without conducting a hearing to allow the parties to present their respective evidence was oppressive and amounted to excess of jurisdiction and grave abuse of discretion. The petition was considered a special civil action of certiorari (*Marina vs. Eastern Quezon College*, 168 SCRA 105-106 [1988]) reiterating an earlier ruling that certiorari is available despite the existence of the remedy of appeal in such cases. (*Co Chuan Seng v. C.A.*, 128 SCRA 308 [1984]) Hence, respondent Appellate Court erred in ruling that appeal and not certiorari is the proper remedy.

Not unlike the foregoing situations, the instant case does not fall within the purview of Sec. 1 Rule 19 of the Rules of Court which provides that the lower court may, on motion of a party, direct judgment on the pleadings “where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party’s pleadings.”

A careful perusal of the complaint filed by the private respondent against the petitioner will readily show that there was an absence of an allegation to the effect that the check in question in the amount of P100,000.00 bears the latter’s signature. On the contrary, petitioner in his answer stressed that it was not his check, that he has not drawn said check, and he was not indebted to the private respondent and/or to the latter’s father.

It is therefore evident that petitioner’s answer not only tendered an issue but clearly contested private respondent’s allegations in the complaint. Accordingly the lower court should not have rendered judgment on the pleadings.

The lower court went further by stating that a judgment on the pleadings was proper due to petitioner's lack of specific denial under oath as to the genuineness and due execution of the questioned check.

Section 8, Rule 8 of the Rules of Court provides for the rule on implied admission (by failure to make a sworn specific denial) of the genuineness and due execution of a document or instrument subject of an action or defense, but the same is not without exception. One of the exceptions is when the adverse party does not appear to be a party to the instrument, as held in the case of *Lim Chingco v. Terariray, et al.*, 5 Phil, 120 [1906] cited in *Paras, Rules of Court Annotated*, Vol. I, Rules 1-56, 1989 Second Edition, pp. 258-259 and under which petitioner clearly falls, as there was no allegation in the complaint that the aforementioned check was drawn by the petitioner nor that the signature affixed thereto belongs to him. He is therefore under no obligation to specifically deny under oath the genuineness and due execution of the said check.

Furthermore, where there are factual issues in the answer that had to be ascertained at a hearing and not on the basis of the bare allegations in the pleadings, or evidence had yet to be submitted by the parties and to be assessed by the trial court, it is improper for the judge to rule on the strength alone of the plaintiff's allegations and to disregard the defendants' expressed denial thereof in their answer (*Rocamora vs. Regional Trial Court-Cebu*, G.R. 65037, 23 November, 1988).

Undoubtedly said partial judgment being a clear denial of due process is null and void and it follows that the same did not gain finality; hence, a proper subject of this petition for certiorari.

PREMISES CONSIDERED, the assailed decision and resolution of the respondent Court of Appeals are hereby REVERSED and SET ASIDE and the records of this case are hereby REMANDED to the lower court for further proceedings.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Penned by Justice Onofre A. Villaluz and concurred in by Justices Crisolito Pascual and Guillermo P. Villazor.

** Penned by Justice Onofre A. Villaluz.

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