

PARAMOUNT INSURANCE CORPORATION, PETITIONER, VS. HON. ARTEMON D. LUNA, PRESIDING JUDGE, BRANCH XXXII, CFI, MANILA, CITY SHERIFF & DEPUTY SHERIFF SALVADOR DACUMOS, CITY HALL, ARR...

G.R. No. 61404. March 16, 1987

Ponente: PARAS, J.

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PARAS, J.:

The instant petition for Certiorari with preliminary injunction and Prohibition assails the Decision dated September 24, 1981 and the Writ of Execution dated February 18, 1982 issued by respondent Judge Artemon D. Luna, Presiding Judge of the Court of First Instance of Manila, Branch XXXII in Civil Case No. 122209 entitled "Doroteo Espiritu versus Romeo M. Hechanova and Paramount Insurance Corporation."

Hereunder are the background proceedings:

On March 8, 1979 herein private respondent Dr. Doroteo Espiritu filed a complaint for damages against petitioner Paramount Insurance Corporation, as surety and Romeo Hechanova as principal, in the Court of First Instance of Manila, docketed as Civil Case No. 122209, and assigned to the sala of respondent Judge, alleging, among other things that "in accordance with his undertaking under the Construction Agreement, Hechanova posted in favor of Dr. Espiritu, on October 20, 1978, a Performance Bond issued by Paramount Insurance Corporation through Speedbond Insurance Center, denominated as PSIC Bond No. 0169."

On May 15, 1979, petitioner Paramount Insurance Corporation through Atty. Reynaldo A. Pineda filed its Answer with Cross-claim and attaching thereto a copy of the Indemnity Agreement entered into by it and Romeo Hechanova.

On January 16, 1980, respondent Judge, upon motion of the plaintiff declared Hechanova in default for failure to file his answer.

On July 25, 1980, counsel for Paramount Insurance Corporation failed to appear despite due notice and so plaintiff was allowed to present his evidence ex-parte without prejudice, however, to cross-examination set on September 18, 1980 and October 1, 1980, both at 8:30 a.m.

On September 18, 1980, counsel for Paramount Insurance Corporation again failed to appear notwithstanding due notice, and therefore the respondent Judge issued an order cancelling and resetting the scheduled hearing on that day as well as that on October 1, 1980 to November 5 and 14, 1980 at 8:30 a.m.

On November 5, 1980, counsel for Paramount Insurance Corporation did not appear for the third time despite notice. Hence, the respondent Judge cancelled and re-set the trial to November 14, 1980 as previously scheduled.

On November 14, 1980 plaintiff Dr. Espiritu was allowed to continue with the direct examination of the same witness ex-parte, without prejudice to cross-examination by Paramount Insurance Corporation set for January 14,

1981 at 8:30 a.m.

On January 14, 1981, in view of the unjustified absence of both the Paramount Insurance Corporation and counsel, the respondent Judge issued an order declaring the cross-examination of plaintiff's witness as waived and giving plaintiff ten (10) days within which to make a formal offer of evidence and the defendant was given a like period of time to submit comments and/or objections thereto.

On January 30, 1981, plaintiff filed a "Motion to Admit Formal Offer of Evidence" together with the "Formal Offer of Evidence", copies of which were furnished to the defendant Paramount Insurance Corporation itself at Paramount Building, 434 Quintin Paredes St., Manila, and were actually received by said defendant as shown by its rubber stamp on it. As there was no objection on the part of the defendant, the respondent Judge ordered the admission in evidence of plaintiff's exhibits and set the reception of defendant's evidence on April 3, 1981 at 8:30 a.m.

On April 3, 1981, defendant and counsel were absent for trial and so, the scheduled hearing was cancelled and re-set to June 17, 1981 which was likewise cancelled and postponed to July 1, 1981 with a warning issued by the respondent Judge that if counsel and defendant persisted in being absent, the Court would be constrained to consider the case submitted for decision.

Finally, on July 1, 1981, due to the Unexplained absence of defendant and counsel, the respondent Judge issued an order submitting the case for decision.

On September 24, 1981, the respondent Judge rendered his decision, the dispositive portion of which reads:

"ACCORDINGLY, judgment is hereby rendered in favor of the plaintiff and against the defendants Romeo Hechanova and Paramount Insurance Corporation, ordering the said defendants, jointly and severally, to pay plaintiff:

- P22,796.00 as actual and compensatory damages;
- P5,000.00 as exemplary damages;
- P5,000.00 as attorney's fees; and
- To pay the costs

SO ORDERED."

No appeal having been taken from the above decision, it became final and executory, hence, plaintiff filed a motion for execution on November 14, 1981 which was set for hearing on November 18, 1981 at 8:30 a.m.

Before respondent Judge could act on plaintiff's motion for execution, a fire broke out on November 19, 1981 and gutted the entire fourth floor of the City Hall of Manila wherein some branches of the Court of First Instance of Manila including Branch XXXII were housed. Most unfortunately, not a single record of Civil Case No. 122209 was saved. Hence, a motion for reconstitution was filed by the plaintiff on January 7, 1981, docketed as Civil Case No. R-82-1624.

On February 18, 1982, the respondent Judge issued an order granting plaintiff's motion for reconstitution as well as his motion for execution.

Then on July 29, 1982, the petitioner Paramount Insurance Corporation filed a petition for relief from the decision of September 24, 1981, in the Court of First Instance of Manila, docketed as Civil Case No. 82-11372 and assigned to Branch II thereof. The petition however was not given due course and therefore was dismissed, for not

being sufficient in form and substance, in the order of the presiding Judge of Branch II dated August 3, 1982. Petitioner's motion for reconsideration was denied, hence, on August 16, 1982, petitioner filed before this Court the instant petition for certiorari with preliminary injunction and prohibition.

The question is thus poised: whether or not the present action which seeks to invalidate the decision and the writ of execution issued by respondent Judge in Civil Case No. 122209, is the proper remedy considering that the decision here sought to be voided has already become final and executory.

For this procedural problem, the solution lies in the determination of the validity of the assailed decision, for against a void judgment, petitioner's recourse would be proper. (*Macabingkil vs. People's Homesite and Housing Corporation* 72 SCRA 326).

The petitioner maintains that the court in Civil Case No. 122209 did not acquire jurisdiction over its person because it was not duly served with summons. Consequently, the decision rendered by it is allegedly null and void.

Jurisdiction over the person of the defendant in civil cases is acquired either by his voluntary appearance in court and his submission to its authority or by service of summons. The purpose of summons is to give notice to the defendant or respondent that an action has been commenced against it. The defendant or respondent is thus put on guard as to the demands of the plaintiff or petitioner.

In the case at bar, the record indicates beyond doubt that petitioner was adequately given in the case below the necessary notice. It was validly served with summons together with a copy of the complaint. It filed its answer to the complaint through counsel Atty. Reynaldo Pineda and even invoked the jurisdiction of the court for affirmative relief against its co-defendant, Romeo Hechanova. Such filing of answer with crossclaim against Romeo Hechanova is equivalent to voluntary appearance and cured the defect if any, of the summons, (Sec. 23, Rule 15, Rules of Court).

Petitioner's now belated assertion that Atty. Reynaldo Pineda was not authorized to appear for and in its behalf is untenable, for the following reasons:

- a) The mere filing of the answer with crossclaim raised a presumption of authority to appear for petitioner Paramount Insurance Corporation in favor of Atty. Reynaldo Pineda, in accordance with Section 21, Rule 138 of the Rules of Court. Such presumption is rebuttable, but only by clear and positive proof for obvious reasons. In the absence of such clear and positive proof thereof, the presumption of authority in favor of Atty. Reynaldo Pineda should prevail over the petitioner's self-serving denial of such authority.
- b) The authority of Atty. Reynaldo Pineda to appear for petitioner was disclosed by no less than Atty. Pineda himself. His legal services, according to him, were engaged by petitioner Paramount Insurance Corporation through its agent, the Speedbond Insurance Center. (Annex '5', Answer) It is the same agent who issued Performance Bond No. 0169, subject matter of Civil Case No. 12209.
- c) Another circumstance that strongly militates against petitioner's assertion that Atty. Pineda was not authorized to appear in Civil Case No. 122209, is the well-prepared answer with crossclaim filed by said counsel. Consisting of eleven (11) pages, the answer is replete with material and relevant details and supported by a document, the Performance Bond. An explanation is conspicuously absent as to how and why these vital details and document came to the knowledge and possession of Atty. Pineda. Moreover, the eleven-page document contains nothing prejudicial to the rights and interest of petitioner. Significantly, it alleges numerous defenses against the complaint, one of which is the alleged novation of the contract which has been adopted by petitioner in its present petition. d) Interestingly, the "Motion to Admit Formal Offer of Evidence" together with the "Formal Offer of Evidence" reveals that petitioner, contrary to its pretense is fully aware of Civil Case No. 122209, as shown by the rubber stamp mark bearing its name showing that it actually received copies thereof

on January 30, 1981. Despite this knowledge, petitioner did not take steps to repudiate the representation taken in its behalf by Atty. Pineda.

"Insolvency proceedings were instituted against Tan Lua and her children and grandchildren. Tan Lua was at the time, and had been for a year, in Amoy, China. Chua Chito, her eldest son, who was in Manila, employed Attorney Gregorio Perfecto to represent him, his mother and her various descendants in the insolvency proceedings. Tan Lua appeared to have full knowledge thereof, but did not take steps to repudiate the representation taken in her behalf by Atty. Perfecto. Tan Lua and her correspondents were declared insolvent debtors. Tan Lua subsequently instituted action for relief from the effects of the judgment, on the proceedings and that the attorney who represented her was not authorized by her to appear in her behalf.

The Court overruled plaintiff's contention, holding that under the facts as above-stated, she was represented in the insolvency proceedings by the attorney with proper authority.

"If the attorney chosen by her son had no authority to represent her in the insolvency proceedings, she should at least have acted with due diligence, and by not so acting, she must be taken to have acquiesced in the employment of the attorney. By so doing she must also be said to have ratified the act. It must be remembered that authority to employ an attorney does not have to be proved by a public document, nor even by a paper writing. Its existence may be inferred from circumstantial evidence, and in law it is even assumed prima facie that every attorney who appears in court does so with sufficient authority. Of course this is not a conclusive presumption, and in a timely direct attack upon the judgment a person may undoubtedly establish that, in a particular case, the authority did not in fact exist. But the security of judicial proceedings requires that the evasions and tergiversations of unsuccessful litigants should not be received in such a matter with undue favor." (Tan Lua vs. O'Brien, 55 Phil. 53) (Underscoring supplied.)"

Under the foregoing circumstances, it is evident that the trial court acquired jurisdiction over the petitioner, then defendant Paramount Insurance Corporation. It follows that its judgment, dated September 21, 1981, may not be corrected, much less annulled in the instant proceeding. If the court has jurisdiction of the subject matter and of the person, the orders and rulings upon all questions pertaining to the cause are orders and rulings within its jurisdiction and cannot be corrected by certiorari.

Finally, the reopening and remand of the case to the trial court will not serve any useful purpose because the petition fails to state a good and substantial defense to justify a new trial. Paraphrasing what this court stated in *Paner vs. Yatco*, 87 Phil. 271 cited in *Arcilla vs. Arcilla*, 138 SCRA 560, it would be pointless to re-open this case, "for like a mirage it would merely raise false hopes and in the end avail her (him) nothing."

WHEREFORE, the instant petition for certiorari is hereby DISMISSED. Costs against petitioner.

SO ORDERED.

Fernan, (Chairman), Alampay, Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

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