

BA FINANCE CORPORATION, PETITIONER, VS. HON. GREGORIO G. PINEDA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH XXII, AND ANTONIO SY, RESPONDENTS.

G.R. No. 61628, December 29, 1982

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

Private respondent Antonio Sy was adjudged liable in favor of the plaintiffs in Civil Case No. 7379 of the Court of First Instance of Nueva Ecija for damages resulting from a vehicular accident involving a cargo truck supposedly owned by him. Claiming that the adverse decision in said case was due to the mishandling of the same by the counsel who represented him therein, he filed on December 1, 1981 Civil Case No. 43869 before the Court of First Instance of Rizal, which was assigned to the sala presided over by the respondent Judge. Named as defendants in said Civil Case No. 43869 are herein petitioner BA Finance Corporation whom private respondent claims to be the real owner of the cargo truck involved in the accident; the Metro-Taisho Insurance Corporation, which issued the insurance policy covering the same; Atty. Ireneo Calderon, the counsel who represented him in the case filed in the Court of First Instance of Nueva Ecija; and Robert Chua, the driver of the other vehicle that figured in the accident.

Petitioner BA Finance Corporation was served summons on December 18, 1981. Eleven days later, or on December 29, 1981 petitioner, through counsel, filed a motion for extension of time to file answer and/or motion to dismiss. In an order dated January 4, 1982, served on petitioner's counsel on January 12, 1982, the respondent Judge gave the petitioner a period of 15 days, counted from January 2, 1982 and to expire on January 18, 1982 (sic), within which to file its answer or motion to dismiss the complaint.

On January 13, 1982, petitioner filed a motion to dismiss on the ground that the complaint states no cause of action. In his order dated March 1, 1982, a copy of which was served on the petitioner on March 8, 1982, the respondent judge denied the motion to dismiss, for being "devoid of merit."

On March 17, 1982, petitioner filed a motion for reconsideration of the order dated March 1, 1982. On March 24, 1982, petitioner received a copy of private respondent's motion to strike out the petitioner's motion for reconsideration on the alleged ground that the motion for reconsideration was filed out of time. It was argued by counsel for the private respondent that when the petitioner filed its motion to dismiss on January 13, 1982, it had already used 11 days out of the 15 days' extension granted to it by the Court in the order of January 4, 1982; that having received the order denying its motion to dismiss on March 8, 1982, the petitioner had only the remainder of 4 days or up to March 12, 1982 within which to file its answer to the complaint; consequently, the filing of the motion for reconsideration on March 17, 1982 was already beyond the reglementary period for filing the answer.

In the order of the respondent Judge dated April 5, 1982, the motion to strike out was granted, and the petitioner was declared in default for having failed to answer the complaint within the reglementary period, and private respondent was allowed to present his evidence ex-parte.

On April 19, 1982, the petitioner filed a motion to lift order of default. The order of the respondent Judge dated May 4, 1982, served on the petitioner on May 18, 1982, denied the petitioner's motion to lift order of default and directed the issuance of a pre-trial order for the other defendants who were not declared in default.

On May 28, 1982, the petitioner filed a motion for reconsideration of the order dated May 4, 1982.

On June 16, 1982, petitioner received a copy of an order dated June 10, 1982 setting aside the declaration of default of the herein petitioner and ordering it to file its answer to the complaint within 15 days from notice thereof. The petitioner had by then, or on May 11, 1982, already filed its answer.

The proceedings taken subsequent thereto are not clear from the record. According to the petitioner, on August 12, 1982, it received an order dated July 14, 1982, which reads as follows:

"O R D E R

For failure to file answer within the reglementary period despite due summons, as prayed for by plaintiff, defendant Roberto Chua is hereby declared in default and plaintiff is allowed to present evidence ex-parte against said defendant.

Anent plaintiff's Motion to Remove From the Records Answer of Defendant BA Finance Corporation, the record shows on March 1, 1982 this Court issued an order denying defendant BA Finance Corporation's Motion to Dismiss. On March 17, 1982 counsel for BA Finance received the order denying the motion to dismiss. Under the new Rules, if the motion to dismiss is denied or if determination thereof is deferred, the movant shall file his answer within the reglementary period under Rule 11, computed from the time he received notice of the denial or deferment, unless the court provides a different period. In other words, the period for filing a responsive pleading commences to run all over again from the time the defendant receives notice of the denial of his motion to dismiss. In the case at bar, since defendant received notice of the denial of its motion to dismiss on May 17, 1982, it had fifteen (15) days from March 17, 1982 or up to April 1, 1982 to file its answer. But on March 17, 1982 defendant filed its Motion for Reconsideration of the order denying the motion to dismiss. The motion for reconsideration is without proof of service; the registry receipt attached to the motion is not the proof of service required by the Rules. Without proof of service, a motion is nothing but a scrap of paper. It did not merit the attention of the court; it was stricken out of the record. Defendant allowed the reglementary 15-day period to answer to elapse without filing its answer. It failed to file its answer on or before April 1, 1982. Since this fact had supervened, this Court, when it issued the order dated April 5, 1982, properly declared defendant BA Finance Corporation in default.

On April 19, 1982, said defendant filed its Motion to Lift Order of Default which on May 4, 1982 was denied.

On May 28, 1982, said defendant filed its Motion for Reconsideration which on June 10, 1982 was granted and the order of April 5, 1982 was lifted. On June 11, 1982, said defendant filed its answer. Hence, plaintiff's Motion To Remove From the Records the Answer of Defendant BA Finance Corporation. Plaintiff observes BA Finance Corporation's Motion for Reconsideration filed May 28, 1982 is identical with that of its Opposition (To Plaintiff's Motion to Declare Defendant BA Finance Corporation in Default and Motion to Strike Out Motion for Reconsideration of BA Finance) filed on March 29, 1982, and thus concludes that the former (Motion for Reconsideration) is a pro-forma motion resorted to solely to gain time and delay proceedings whereby in this case said defendant was able to file its answer on June 11, 1982. It is a settled rule that pro-forma motion for reconsideration is disallowed and is not worth the attention of the court for it is mere scrap of paper. And the order of the Court based on such motion pro-forma is null and void.

In view of the foregoing, the order of this Court dated June 10, 1982 is hereby set aside and declared null and void. And the answer filed on June 11, 1982 is hereby stricken out of the record.

Let the pre-trial be set anew on August 6, 1982, at 2:00 P. M.

SO ORDERED.

Pasig, Metro Manila, July 14, 1982.

[s] Gregorio G. Pineda

[t]GREGORIO G. PINEDA

Judge"

(Rollo, pp. 77-78.)

Petitioner further alleged that on August 31, 1982, it received a copy of the decision rendered in Civil Case No. 43869 dated August 17, 1982 which orders the defendants therein, including herein petitioner, but excluding Atty. Ireneo Calderon, to pay unto the private respondent the total sum of P228,255.64 as moral and exemplary damages, and attorney's fees.

In their "Opposition" to the petition which they intended as their Comment thereon, the respondents claimed that after private respondent Antonio Sy filed an opposition to the petitioner's motion for reconsideration, the petitioner succeeded by false representations in securing the order lifting the order of default and allowing it to file an answer to the complaint; that upon discovering such irregularity, private respondent filed a "Motion to Remove From the Records Answer of Defendant BA Finance Corporation"; and that it was on the basis of said motion that the respondent Court issued its order of July 14, 1982 which declared its previous order of June 10, 1982 as null and void and ordered the answer to be stricken out from the record.

After the respondents have filed their comment to the petition, We issued a temporary restraining order in the Resolution of October 11, 1982 enjoining the respondent Judge from further acting on Civil Case No. 43869 until further orders from this Court.

It is distressing to note that a provision of the Revised Rules of Court which had been in force since January 1, 1964, or for the last 19 years, on a subject as significant or as commonplace as the period to file an answer to the complaint could be misapplied and misconstrued by a court of first instance in a major metropolitan area. It can only be hoped that a similar unfamiliarity with the Rules is not true with other courts in more remote areas of the country. The provision in question, Section 4 of Rule 16 of the Rules of Court, cannot be any clearer:

"SEC. 4. Time to plead. — If the motion to dismiss is denied or if determination thereof is deferred, the movant shall file his answer within the period prescribed by Rule 11, computed from the time he received notice of the denial or deferment, unless the court provides a different period."

Admittedly, the above provision is a departure from the doctrine previously upheld as to the period when to file an answer in case a motion to dismiss the complaint is denied. While the above-quoted provision is new, there being no similar provision in the Rules of Court of 1940, the language thereof is clear and leaves no doubt as to the intent thereof. It has received a categorical interpretation from the Supreme Court since January 31, 1969 in *Matute vs. Court of Appeals*, 26 SCRA 768, wherein this pronouncement was made:

"Rule 11, section 1 of the Revised Rules of Court gives the defendant a period of fifteen (15) days after service of summons within which to file his answer and serve a copy thereof upon the plaintiff, unless a different period is fixed by the court. However, within the period of time for pleading, the defendant is entitled to move for dismissal of the action on any of the ground enumerated in Rule 16. If the motion to dismiss is denied or if determination thereof is deferred, the movant shall file his answer within the period prescribed by Rule 11, computed from the time he receives notice of the denial or deferment, unless the court provides a different period (Rule 16, section 4). In other words, the period for filing a responsive pleading commences to run all over again from the time the defendant receives notice of the denial of his motion to dismiss." (See also,

Acosta-Ofalia v. Sundiam, 85 SCRA 412.)

Had the respondent Court exhibited a modicum of awareness of the law and jurisprudence directly applicable to the question presented for its determination, this proceeding would not have been filed at all. It is undisputed that the petitioner was given an extension of time within which to file its answer which was to expire on January 18, 1982. On January 13, 1982, it filed a motion to dismiss which was denied, and notice of which was served on the petitioner on March 8, 1982. When the petitioner filed a motion for reconsideration on March 17, 1982, it was well within the 15-day period within which to file the answer counted from the date it received notice of the denial of its motion to dismiss which was on March 8, 1982. Yet on the erroneous belief that the petitioner had only to its credit the balance of the period to answer that it did not consume by the time it filed its motion to dismiss, the respondent Judge ruled that the filing of the motion for reconsideration on March 17, 1982 was already beyond the reglementary period and forthwith declared the defendant in default.

We could have stopped further discussion of the instant petition at this point. However, We cannot allow to pass unnoticed the subsequent developments in the case which had been characterized not only by obscurity, but also by actuations which are less than commendable. After declaring the petitioner in default in the order of April 5, 1982 and after denying the motion to lift order of default in the order of May 4, 1982, the respondent Judge made a complete turnabout in his order of June 10, 1982 by setting aside the default declaration of the petitioner, giving no reason therefor except the catch-phrase "in the interest of justice." Then, another change of mind on the part of the respondent Judge was manifested in his order of July 14, 1982 which reiterated the order of April 5, 1982 declaring the petitioner in default. This time, the respondent Judge woke up to his mistake and ruled that the petitioner had 15 days from the date it received notice of the denial of its motion to dismiss on March 17, 1982 within which to file its answer.

Nonetheless, respondent Judge stubbornly persisted in maintaining his view that the answer of the respondent to the complaint was filed out of time by alleging two new grounds, namely: (1) the motion for reconsideration filed by the petitioner against the denial of its motion to dismiss is a mere scrap of paper for lack of proof of service; and (2) the motion for reconsideration filed by the petitioner against the order of May 4, 1982 which denied the petitioner's motion to lift order of default is pro-forma for being identical to petitioner's opposition to the plaintiff's motion to declare the petitioner in default. The lack of palpable merit of said grounds leads to a natural impression that the respondent Judge was determined to prevent the petitioner from being given a chance to defend itself in the case filed against it by the private respondent, contrary to repeated exhortations and pronouncements from the Supreme Court frowning upon judgments by default on purely technical grounds. The new arguments resorted to by the respondent Judge were not even mentioned in the motion of the private respondent to strike out the answer, nor were they mentioned by the respondent Judge in his first order declaring the petitioner in default. The motion to strike out filed by the private respondent and the order of the respondent Judge dated April 5, 1982 declaring the petitioner in default made reference only to the alleged fact that the motion for reconsideration of the denial of the motion to dismiss was filed beyond the reglementary period. Such ground, as aforementioned, had been acknowledged by the respondent Judge himself in his order of July 14, 1982 to be erroneous.

The allegation that the motion for reconsideration of the denial of the motion to dismiss filed by the petitioner lacks the requisite notice of hearing and proof of service is a factual distortion. On page 4 of said motion for reconsideration which has been attached as Annex "F" of the petition (Rollo, pp. 51-54), it clearly appears that the petitioner's counsel set the said motion for hearing on April 16, 1982 and that a copy of the same was sent by registered mail to the counsel for the private respondent on March 17, 1982. The private respondent filed a motion to strike out the said motion for reconsideration (Rollo, pp. 55-58) dated March 24, 1982), thereby showing that

private respondent had notice of the motion for reconsideration long before the scheduled hearing thereof on April 16, 1982.

The imputation that the motion to reconsider the order of May 4, 1982 which denied the petitioner's motion to lift order of default is pro-forma reveals a misconception of the concept of pro-forma motions for reconsideration. It is not every motion for reconsideration that reiterates grounds or arguments aired in a previous motion that may be declared pro-forma. It will be noted that the motion for reconsideration herein involved is of an interlocutory order, and not of a final judgment or final order. There should be a distinction in determining whether a motion for reconsideration may be declared pro-forma depending on whether it is directed against a final judgment or order, or only against an interlocutory order. In the case of the former, a re-petition of arguments or grounds already sufficiently discussed in prior incidents may properly be categorized as being merely for purposes of delay. In the case of interlocutory orders, a reiteration of the ground or argument previously advanced is not necessarily indicative that the movant filed the motion merely for gaining delay. It must be remembered that, normally, when an interlocutory order is sought to be reviewed or annulled by means of any of the extra legal remedies of prohibition or certiorari, it is required that a motion for reconsideration of the questioned order must first be filed, such being considered a speedy and adequate remedy at law which must first be resorted to as a condition precedent for filing of any of such proceedings (Secs. 1 and 2, Rule 65, Rules of Court). There is no similar requirement in taking an appeal from a final judgment or order. Should the questioned interlocutory order be subject to attack only on one ground, as in the case of the default declaration herein involved, a motion for reconsideration against the order complained of would necessarily and inevitably contain a repetition of the ground previously alleged. In so doing, the movant is praying the court to give his motion a second look, in the hope that the court would realize its supposed error, correct the same, and thereby preclude the necessity of seeking relief in a higher tribunal.

In the case presently considered, the reiteration of the argument that the respondent Judge committed error in his computation of the period to file an answer after a motion to dismiss shall have been denied becomes a necessity in view of the fact that, although the first motion for reconsideration of the order of default was granted, the respondent Judge subsequently revoked his favorable action thereon. The motion to reconsider the order of revocation must necessarily invoke the same ground showing why the ground upon which the default order is based is erroneous. That said argument is no idle reiteration of the reason previously alleged, or that the motion for reconsideration was not filed for purposes of delay is indubitably shown by the fact that the respondent Judge sustained the same and corrected his error with respect to the period of time within which to file an answer on the basis thereof.

By and large, it adequately appears that the questioned actions of the respondent judge in this case have been characterized not only by palpable error but also by grave abuse of discretion which should be corrected and warned against.

WHEREFORE, the petition is hereby granted. All the proceedings conducted by the respondent Judge in Civil Case No. 43869, including the judgment rendered therein dated August 17, 1982, insofar as the herein petitioner is concerned, are hereby ANNULLED and SET ASIDE. The answer with counterclaim filed by the petitioner dated June 10, 1982 shall be deemed ADMITTED. Costs against private respondent.

SO ORDERED.

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

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