

PHILIPPINE NATIONAL BANK, PETITIONER, VS. HON. ROSALIO A. DE LEON, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH II AND TOWERS ASSURANCE CORPORATION, RESPONDE...

G.R. No. 62370. January 30, 1990

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The Philippine National Bank (hereafter PNB) filed a petition for certiorari with a prayer for a writ of preliminary injunction to annul the order of respondent Judge Rosalio A. De Leon setting aside the judgment by default which his predecessor, Judge Abelardo M. Dayrit, had earlier rendered in Civil Case No. 143796 of the Court of First Instance of Manila, Branch II, entitled "Philippine National Bank vs. Towers Assurance Corporation." The petitioner prays that Judge De Leon be enjoined from rehearing the case.

On or about August 25, 1976, the PNB extended to Carmen Mindanao Mining Consolidated, Inc. (hereafter CMMCI) an export advance line of P600,000 in consideration of which CMMCI executed two (2) promissory notes (one for P400,000 dated September 8, 1976 and another for P200,000 dated October 5, 1976), both of which were delivered to the PNB to be paid under the terms and conditions provided therein.

To secure the faithful performance by CMMCI of the two promissory notes, said debtor executed a deed of assignment in favor of PNB of the sales proceeds of gold mined by it. In addition, CMMCI posted a surety bond executed by it and the Towers Assurance Corporation (hereafter TOWERS) as surety, binding themselves solidarily to pay the sum of P600,000 to PNB. For failure of CMMCI to fully pay the principal obligation, PNB sued its surety, the Towers Assurance Corporation, for the unpaid balance of P712, 895.22 on the obligation.

Summons and a copy of the complaint were received by Towers on October 21, 1981. On October 30, 1981, it filed an "Ex-Parte Motion for Extension of Time to File Responsive Pleading." The court gave it an extension of fifteen (15) days from November 5, or up to November 20, 1981.

However, it failed to file its Answer on November 20, 1981. On plaintiff's motion, it was declared in default on January 8, 1982. Coincidentally, on the same date, Towers tardily filed its Answer to the complaint, but the court ignored it.

On March 29, 1982, the court, through Judge Abelardo M. Dayrit, rendered judgment by default in favor of PNB, ordering Towers "to pay the former the sum of P600,000 with legal rate of interest per annum from the time of the filing of this complaint, the sum of P1,000 as attorney's fees, and costs of this suit" (p. 29, Rollo).

A copy of this decision was received by Towers, through counsel, on July 19, 1982. On August 9, 1982, Towers filed "Motions for Reconsideration and to Admit Answer with Alternative Prayer to Dismiss," alleging that its Answer had been prepared and signed for filing on or before the deadline on November 20, 1981, but the burning of the Manila City Hall on November 19, 1981 prevented its messenger from filing said Answer on November 20,

1981, because guards posted around the city hall did not allow him to enter the premises; that repeatedly failing to locate the office of the clerk of court and the sala of Branch II of the court, he returned the Answer to the office and placed it in the drawer of the typist, Vicky Solayao, who did not discover it until January 8, 1982. She immediately caused it to be filed without consulting defendant's counsel who had been ill of coronary insufficiency from October 1981 to April 1982. Towers further alleged that PNB has no cause of action against its surety bond No. G(16)0853 (Annex A of the Complaint) because this bond does not secure the promissory notes of CMMCI, and it is not the collateral adverted to in the agreement which is Surety Bond (Towers) No. G(16)0573; that the Surety Bond No. G(16)0853 secures "payment of any unpaid balance of the account of the principal x x x granted to Carmen Mindanao Mining Consolidated, Inc. x x x" (p. 35, Rollo), i.e., the loan obtained by CMMCI from the bank before the issuance of Surety Bond No. G(16)0853 dated June 14, 1976.

Furthermore, the Promissory Notes themselves allegedly provide that the collateral therefor is "L/C No. 12 of Banque de Pariset des Pays - Bas Belgique for \$1,000,000 expiring 2/5/77" (p. 35, Rollo); that compliance of CMMCI with its agreement has been rendered impossible by the Central Bank's exclusive take-over of the exportation of gold; that PNB failed to include CMMCI as party plaintiff as provided in Section 2, Rule 3 of the Rules of Court for a complete determination of the case; that Towers did not receive on time a copy of the "Motion to Declare Defendant in Default" which was sent by registered mail on January 5, 1982, nor of the court's Order of Default dated January 8, 1982 and setting the ex parte reception of evidence on January 12, 1982; that in the interest of justice, the decision of March 29, 1982 and the Order of December 8, 1981 should be set aside; and that the defendant's Answer dated November 20, 1981 (but filed on January 8, 1982) be admitted. The plaintiff opposed the motion.

On August 26, 1982, respondent Judge Rosalio A. De Leon, who succeeded Judge Abelardo Dayrit as presiding judge of Branch II, granted the defendant's Motion for Reconsideration which he found to be meritorious and which the plaintiff did not oppose. He set aside the decision on March 29, 1982 and the Order of December 8, 1981, admitted the defendant's answer to the complaint and set the pre-trial of the case on October 5, 1982 at 8:30 a.m. The PNB filed a Motion for Reconsideration of that Order which the court denied on September 15, 1982 (p. 54, Rollo).

The PNB's second Motion for Reconsideration was likewise denied (pp. 59 & 62, Rollo).

On November 16, 1982, PNB filed this petition for certiorari and injunction against Judge de Leon and Towers Assurance Corporation. On December 1, 1982, the Court issued a temporary restraining order enjoining the respondents from further proceeding in Civil Case No. 143796 (pp. 67-69, Rollo) and ordering the respondents to comment on the petition.

After considering the allegations and arguments of the petition, the comment thereto of the respondents, the petitioner's reply, and the parties' memoranda, the Court resolved to deny the petition for certiorari for the lower court did not abuse its discretion in granting Towers' motion to set aside the order and judgment by default.

That fire gutted the Manila City Hall on November 19, 1981 with resultant upheaval, chaos and dislocation of many offices and records, so that the private respondent was unable to file its answer to the complaint on November 20, 1981, is not disputed. Those events constituted force majeure which completely excused the late filing of the defendant's answer to the complaint. Furthermore, the records show that the answer was filed on the same day that the court (through Judge Abelardo Dayrit) issued its order of default.

A motion to set aside an order of non-suit, like a motion to lift an order of default, should be considered with liberality when it is presented promptly and without unnecessary delay and not much inconvenience will be caused either to the court or to the adverse party (*People's Realty Brokerage Corporation vs. Lustre*, 85 SCRA

545, 551).

Considering that the claim of P600,000 against Towers is not picayune, the court should give said defendant a sporting chance or reasonable opportunity to prove its defenses to the complaint. We have in the past admonished trial judges against issuing precipitate orders of default as these have the effect of denying a litigant the chance to be heard, and increase the burden of needless litigations in the appellate courts where time is needed for more important or complicated cases. While there are instances when a party may be properly defaulted, these should be the exception rather than the rule, and should be allowed only in clear cases of obstinate refusal or inordinate neglect to comply with the orders of the court (Leyte vs. Cusi, Jr., 152 SCRA 496; Tropical Homes, Inc. vs. Hon. Villaluz, et al., G.R. No. L-40628, February 24, 1989).

WHEREFORE, the petition for certiorari is denied for lack of merit with costs against the petitioner. The temporary restraining order which we issued in this case is hereby set aside. This decision is immediately executory.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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