

**ALEX LINA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS;
HONORABLE GREGORIO PINEDA, AS PRESIDING JUDGE OF THE
COURT OF FIRST INSTANCE OF RIZAL, BRANCH XXI AT PASIG; AND
NORTHE...**

G.R. No. 63397. April 09, 1985

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal by certiorari from the decision of the then Court of Appeals in CA-G.R. No. 14943-SP, dated November 29, 1982, affirming (a) the order of default issued by respondent judge in a collection suit instituted by private respondent Northern Motors, Inc. against petitioner; and, (b) the judgement of default in the same case.

On March 31, 1982, private respondent Northern Motors, Inc. filed with the then Court of First Instance of Rizal (Pasig) a case for sum of money with damages, docketed as Civil Case No. 4520.

On April 22, 1982, petitioner Alex Lina was served with summons together with a copy of the complaint.

On May 8, 1982, when no answer or motion to dismiss was filed by petitioner, private respondent Northern Motors, Inc. filed a motion to declare him in default. The motion was set for hearing on May 21, 1982.

On May 19, 1982, petitioner filed his opposition to the aforesaid motion inviting attention to the fact that he had filed a motion for extension of time to file responsive pleading within the reglementary period. On May 26, 1982, respondent judge issued an order declaring defendant (herein petitioner) in default and allowing plaintiff (herein private respondent) to adduce its evidence ex parte.

On May 27, 1982, defendant (petitioner) filed his answer to the complaint.

On July 28, 1982, respondent court rendered its decision in favor of plaintiff (herein private respondent).

On August 11, 1982, petitioner filed a motion to set aside decision dated July 28, 1982.

On August 25, 1982, respondent judge issued an order denying petitioner's motion to set aside decision.

On October 6, 1982, petitioner filed with the then Court of Appeals a petition for certiorari/prohibition, which was denied in its decision dated November 29, 1982 on the ground that -

“x x x when the private respondent filed on May 8, 1982, its motion to declare defendant in default because the last day for him to file an answer under the summons was May 7, 1982, the petitioner has not filed an answer. So, there was actually a valid ground for the motion, and the respondent court could have validly declared the defendant in default, especially because, at that time it was still unaware of the fact that on May 5, 1982, the herein petitioner had sent to it, by registered mail, a motion for extension of twenty days from May 7, 1982, within which to file an answer, and which motion was received by the respondent court only on May 19, 1982.

"But, then the respondent court did not immediately act on the motion to declare defendant in default, so that

by May 19, 1982, the herein petitioner was still able to file an opposition to the motion asking him to be declared in default. The principal ground of the opposition of the petitioner was the fact that he had sent, by registered mail, a motion for extension of time to file responsive pleading, and he even attached to his opposition a copy of the motion for extension.

"On May 26, 1982, the respondent court resolved the motion to declare defendant in default by granting the motion. Now since on May 26, 1982, the motion for extension of time to file responsive pleading was already before the court, as it received the same on May 19, 1982, and aside from this, a copy thereof was attached to the petitioner's opposition to the private respondent's motion to declare defendant in default, it is conclusively assumed that the respondent court, in resolving the motion to declare defendant in default, had taken into consideration the motion for extension, especially because the ground of petitioner's opposition to the motion to declare defendant in default is the fact that he had asked for extension of time to file responsive pleading. Now, then, when the respondent court declared the defendant in default, it is a clear and inevitable implication, without the need of an express statement to that effect, although it would have been more desirable, that the motion for extension of time to file responsive pleading was denied. In other words, the Order of May 26, 1982 had the necessary and logical implication that the petitioner's opposition to the motion to declare defendant in default, based upon the ground that he had asked for extension of time to file responsive pleading, was disapproved or denied by the court." (pp. 22-23, Rollo)

Coming to this Court on a petition for certiorari/prohibition, petitioner raised the following issues, to wit:

1. Whether or not the order of default was issued in grave abuse of discretion amounting to lack of jurisdiction.
2. Whether or not certiorari is proper in a case where judgment by default was rendered without an order of default being furnished petitioner and where meritorious defenses exist, which are for the trial court to evaluate and which evaluation was not done in this case.

We are in agreement with respondent appellate court's affirmance of the questioned order of the trial court. The granting of additional time within which to file an answer to a complaint is a matter largely addressed to the sound discretion of the trial court. "While trial courts are persuaded, as a matter of policy, to adopt a basically flexible attitude in favor of the defendant in this area of our adjective law, the defense should never be lulled into the belief that whenever trial courts refuse a second request for extension to file an answer, the appellate courts will grant relief (*Naga Development Corporation vs. Court of Appeals*, 41 SCRA 105)."

In the case at bar, it was on May 5, 1982 or two (2) days before the expiration of the fifteen-day reglementary period given to defendant to file his responsive pleading when petitioner moved for an extension of twenty (20) days from May 7 within which to file his answer. Upon motion of private respondent and over the objection of petitioner, respondent judge issued an order declaring petitioner in default.

Under the Rules of Court, the remedies available to a defendant in the Court of First Instance (now Regional Trial Court) are:

- a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has a meritorious defense; (Sec. 3, Rule 18)
- b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;
- c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and
- d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even

if no petition to set aside the order of default has been presented by him. (Sec. 2, Rule 41)

Petitioner in this case did not avail himself of any of the above remedies. Instead, he went to the appellate court on certiorari/prohibition. On this point, respondent appellate court aptly said:

“x x x where the judgment rendered by the respondent court is the one sought to be annulled, a petition for relief, under Rule 38 of the Revised Rules of Court, which is a remedy in the ordinary course of law, could have been just as plain, adequate and speedy as certiorari. Such a remedy could have been granted by the respondent court. And if the respondent court still denies the petition, then petitioner can take an appeal on the order denying the petition, and in the course of such appeal, petitioner can also assail the judgment on the merits upon the ground that it is not supported by the evidence, or it is contrary to law.” (p. 25, Rollo)

ACCORDINGLY, the petition is DISMISSED. Without costs.

SO ORDERED.

Teehankee, (Chairman), Plana, Gutierrez, Jr., De La Fuente, and Alampay, JJ., concur.
Melencio-Herrera, J., see dissenting opinion.

DISSENTING OPINION

MELENCIO-HERRERA, J.:

I am of the opinion that the Order of default was issued with grave abuse of discretion.

The following dates are pertinent:

May 7, 1982

-

Last day to file answer.

May 5, 1982

-

Petitioner filed Motion for Extension of 20 days from May 7, 1982 to file answer.

May 8, 1982

-

Private respondent filed motion to declare petitioner in default.

May 19, 1982

-

Petitioner filed opposition.

May 19, 1982

-

Court received petitioner's motion for extension to file answer.

May 26, 1982

-

Court declared petitioner in default.

May 27, 1982

-

Petitioner filed answer (last day of extended period)

July 28, 1982

-

Court rendered judgment by default.

Clearly, petitioner's Motion for extension to file Answer was already before the Court when it declared petitioner in default. What is more, the Answer had already been filed within the extended period requested when judgment by default was rendered.

It has been the consistent ruling of this Court that cases should be resolved on the merits rather than on technicalities. Every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, free from the constraints of technicalities (*A-One Feeds, Inc. vs. Court of Appeals*, 100 SCRA 590 (1980)).

Respondent Trial Court should have resolved the Motion for Extension before declaring petitioner in default. I do not think that it can be "conclusively assumed" that it had taken the same into consideration when it issued the Order of default, although that was petitioner's ground in his opposition to the default Motion.

It is true that a defendant should not presume that a Motion for extension would be favorably acted on. However, under the circumstances of the case, it was petitioner's first Motion for extension; said Motion was filed before the expiration of the reglementary period within which to submit an Answer; and the Answer having been filed within the extended period requested, in the interest of substantial justice, the Order of default should not have been issued.

Certiorari was a proper remedy. In *Dimayacyac vs. Court of Appeals*, 93 SCRA 265, 267 (1979), this Court ruled:

"That the ordinary remedy which should be availed of by a party who has been declared in default and judgment rendered against him is that of appeal and not certiorari is a rule too elementary to be discussed herein. This rule, however, is not without exceptions for to insist on its application in all cases may not always serve the ends of justice. The object of procedural law is to facilitate the adjudication of conflicting claims. Thus, although an appeal is available, certiorari still lies when such appeal does not prove to be a more speedy and adequate remedy." x x x x x

Upon the foregoing considerations, I vote to grant the Petition and to set aside the Order of default.

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