

CATHAY PACIFIC AIRWAYS, LTD., PETITIONER, VS. HON. MANUEL V. ROMILLO, JR., ETC., ET AL., RESPONDENTS.

G.R. No. 64276. March 04, 1986

Ponente: PLANA, J.

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PLANA, J.:

This is a petition for certiorari, prohibition and mandamus with prayer for a temporary restraining order directed against respondent Judge's order declaring petitioner in default, judgment by default; and the order denying petitioner's motion to set aside said order and judgment.

Samir Beiruty and Mohammed Al-Sulain arrived at the Manila International Airport via Cathay Pacific Airways, Ltd. (CPA) from Hongkong, but they were denied entry for lack of visas and they had to return to Hongkong.

Having lost two luggages on the way back to Hongkong allegedly because CPA personnel in Manila negligently gave their claim tags to other persons, the said passengers subsequently filed a complaint for damages with the former Court of First Instance of Rizal against CPA.

Summons was served on the defendant on May 5, 1982. CPA filed two motions for extension to file its answer: the first was for 15 days or up to June 4, while the second was for 10 days or up to June 14, 1982. No action was taken by the court on either motion. Before the expiration of the second extension requested, CPA filed its answer, i.e., on June 11, 1982.

After the answer had been filed, the plaintiffs filed a motion to declare the defendant in default. That was on June 25. Cathay received a copy of the motion on June 29 and filed its opposition on July 2, 1982. On June 30, however, even before CPA filed its opposition, the court issued the order of default. (For some unknown reason, this order was not served on CPA until December 9, 1982, i.e., more than four months later.)

Thus, plaintiffs presented their evidence ex-parte before a deputy clerk of court. On November 9, 1982, a decision was rendered by the trial court, the dispositive portion of which reads:

"WHEREFORE, judgment by default is hereby rendered ordering the defendant to pay plaintiffs the following:

- a) P412,960.00 as actual or compensatory damages;
- b) P19,500,000.00 as and for loss of earnings or unrealized profits;
- c) P3,000,000.00 as moral damages;
- d) P500,000.00 as exemplary damages;
- e) P500,000.00 as and for attorney's fees; and
- f) the costs of suit." (Rollo, p. 68.)

Copies of the decision including the order of default were served on CPA on December 9, 1982. It was only then

that CPA came to know of the order of default.

Within thirty days from receipt of the decision or on January 7, 1983, CPA filed a motion to lift the order of default and set aside the default judgment.

The motion was denied in an order dated February 15, 1983 (received by CPA on February 22, 1983) principally on the ground that the motion was filed almost seven months from the issuance on June 30, 1982 of the default order and the decision by then (February 15, 1983) had already become final and executory.

On February 22, 1983, the trial court granted a writ of execution, also on the ground that the judgment by default had become final and executory, the motion to lift the order of default and set aside the judgment filed by defendant not having the effect of suspending the period for perfecting an appeal.

The following day, February 23, CPA filed a notice of appeal. This was, however, declared by the trial court to have been filed out of time, for which reason, the records of the case have never been elevated to the appellate court.

It was against this backdrop that petitioner has filed the instant petition assailing the order of default and the default judgment, and praying that the said order and judgment be annulled and set aside, that respondent Judge be enjoined from executing the assailed decision, and that he be ordered to admit petitioner's answer and proceed to set the case for pre-trial and trial on the merits.

Upon the filing of the petition, the Court issued a temporary restraining order enjoining the respondents from executing the judgment by default dated November 9, 1982 and from holding any aircraft or properties of petitioner preparatory to execution. (Rollo, p. 130.)

We find the petition meritorious.

It was after petitioner had filed its answer to the complaint (within the second extension of time sought) that private respondents, as plaintiffs, moved that petitioner be declared in default, which the trial court did although there was no indication of an intent on the part of petitioner to delay the case or that admission of the answer would in any way prejudice private respondents.

In *Ladislao vs. Pestano*, 96 Phil. 890, this Court ruled:

"x x x no prejudice could have been caused to plaintiff by the admission of defendant's answer, since the latter had not yet been declared in default and plaintiff had not yet presented her evidence on the merits. The lower court, therefore, in the exercise of its discretion, should have admitted defendant's answer instead of declaring her in default." (p. 893.)

Similarly in *Trajano vs. Cruz*, 80 SCRA 712, we set aside an order of default upon facts closely similar to the case at bar.

"The conclusion that becomes inescapable from the fact that petitioners filed their answer before respondents asked for a declaration of default is that respondents were not particularly diligent in the exercise of their rights and that they were not in any way prejudiced by the late filing of the answer by petitioners. Further, there was no evidence showing that petitioners intended to unduly delay the case. On the contrary, petitioners even attached their 'Answer' to the complaint upon the filing of their 'Motion for Admission of Answer' and did not even file an extension of time to file the same or any other dilatory motion.

x x x

"Consequently, We hold that the trial court erred in issuing the order dated January 21, 1977 setting aside the order of November 4, 1976 and in maintaining its stand in the order dated March 21, 1977." (p. 716.)

It should be borne in mind that the policy of the law is to have every litigated case tried on the merits as much as possible. It is for this reason that judgments by default are frowned upon.

The needless delay and trouble spawned by the unfortunate order of default and judgment by default assailed in the instant case warrant calling attention once more to a previous reminder made by this Court through Mr. Justice Claudio Teehankee:

"Time and again the Court has enjoined trial judges to act with circumspection and not to precipitately declare parties in default, needlessly compelling the aggrieved party to undergo the additional expense, anxiety and delay of seeking the intervention of the appellate courts and depriving them of the much needed time and attention that could instead have well been devoted to the study and disposition of more complex and complicated cases and issues." (Akut vs. Court of Appeals, 116 SCRA 213, 220.)

Accordingly, the questioned order of default dated June 30, 1982, the default judgment of November 9, 1982, the order of February 15, 1983 denying the motion to lift the said order and judgment, and all proceedings taken thereafter in the court a quo are hereby annulled and set aside. The Executive Judge of the Regional Trial Court in Pasay City is directed to cause the re-raffle of Civil Case No. 0018-P (Beiruty and Al-Sulain vs. Cathay Pacific Airways, Ltd.). The lower court is ordered to admit thereafter petitioner's answer and set the case for pre-trial and trial on the merits, after which another judgment shall be rendered upon the evidence present-ed. Treble costs against private respondents.

Respondent Judge is hereby ordered to show cause within ten (10) days from notice why he should not be dealt with administratively for having awarded in favor of private respondents what per se appear as outrageously exorbitant damages.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Gutierrez, Jr., De La Fuente, and Patajo, JJ., concur.

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