

**CONTINENTAL LEAF TOBACCO (PHIL.) INC. PETITIONER, VS.
HONORABLE INTERMEDIATE APPELLATE COURT, HONORABLE
RAFAEL T. MENDOZA, IN HIS CAPACITY AS PRESIDING JUDGE
REGIONAL TRIAL COUR...**

G.R. No. 69243. November 22, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioner alleged that the Intermediate Appellate Court committed grave abuse of discretion in upholding a judgment by default rendered by the trial court which ordered it to pay the private respondent a P77,500.00 principal obligation, interests at 12 percent per annum, P10,000.00 attorney's fees, and costs.

On August 8, 1983, respondent Pennel Commercial Co., Inc. filed a complaint for sum of money against petitioner Continental Leaf Tobacco (Phil.) Inc. alleging in substance that the petitioner engaged its services for the transportation and delivery of container vans loaded with unmanufactured flue cured tobaccos from Manila to Bacnotan and vice-versa but despite the services so rendered and the repeated demands made by the respondent, the petitioner refused to pay the service fee in the amount of P77,500.00.

The petitioner in its answer alleged that while the packing list which was duly acknowledged and signed by the respondent's driver showed that eighty two (82) cases of tobacco were loaded in each of the first eight container vans and that seventy six (76) cases of tobacco were loaded in each of the last two (2) container vans, only fifty-seven (57) cases of tobacco were received in each container van by its foreign buyers and, therefore, fifty (50) cases of tobacco valued at one hundred sixty-three thousand and two hundred sixteen pesos (163,216.00) were missing due to the respondent's gross negligence. The petitioner further alleged that since both parties are creditors and debtors of each other for sum of money, the claim of the respondent should therefore have been fully compensated. The petitioner also asked, by way of counterclaim, P163,216.00 for moral damages and P20,000.00 for attorney's fees.

On April 13, 1984, the case was set for a pre-trial conference with due notice to both parties. Neither petitioner nor its counsel appeared. On motion of the respondent, the petitioner was declared as in default. On the same date, the petitioner filed a motion to lift the order of default which was granted by the respondent court and the case was again set for pre-trial on May 11, 1984.

On the above date, the petitioner's counsel appeared and manifested that he was duly authorized with a special power of attorney but that considering that it was his first time to meet the respondent's counsel, he requested for time to discuss with the respondent the possibility of settling the case amicably. Thus, the pre-trial conference was cancelled and reset by agreement of the parties to June 4, 1984.

On June 4, 1984, neither petitioner nor its counsel appeared. On motion of the respondent, the petitioner was declared as in default.

On June 5, 1984, the private respondent presented its evidence ex parte and the next day, the respondent court rendered the questioned decision in favor of Pennel Commercial Co. Inc. The dispositive part of the decision reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the defendant to pay plaintiff:

1. P77,500.00 representing principal obligation plus interest at the rate of 12% from the date of the filing of the complaint until fully paid;
2. to pay attorney's fees in the amount of P10,000.00; and
3. costs."

Meanwhile on June 8, 1984, the petitioner received a copy of the order of default and on June 11, 1984, it received a copy of the aforequoted decision.

On June 20, 1984, the petitioner filed a motion to lift the order of default and to set aside the decision stating that on June 3, 1984, its counsel suffered from flu and upper respiratory tract infection and was advised by the doctor to rest from 3 to 5 days; and that since there was no telephone in the residence of its counsel, the latter was not able to communicate with his law office in Makati and inform said office of his physical condition. The petitioner's counsel, therefore, maintained that his failure to appear on June 4 was caused by accident and/or excusable negligence.

On July 6, 1984, the petitioner received a copy of the trial court's order dated June 29, 1984, denying its motion. On July 26, 1984, the petitioner filed a petition before the respondent appellate court for certiorari, prohibition, and mandamus with prayer for a writ of preliminary injunction.

On September 28, 1984, the appellate court dismissed the petition, ruling that since the remedy of appeal was available to the petitioner, the latter should not have filed the above petition since the writs prayed for only issue when there is grave abuse of discretion or the lower court is without jurisdiction over the case and not in cases of misjudgment.

It is now the contention of the petitioner that "the respondent appellate court acted with grave abuse of discretion, tantamount to lack or excess of jurisdiction in virtually affirming the whimsical and capricious act of the respondent judge in declaring petitioners in default and in rendering the judgment of default which acts positively deprived petitioner of its right to due process." According to the petitioner, the respondent judge had been so hasty and his action on the case was characterized by unusual speed, considering that the order of default was issued on June 4, 1984, reception of evidence was made the following day and on June 6, 1984, the questioned decision was rendered; that all these were effected even before the petitioner could receive its copy of the order of default; and that no substantial rights of the respondent corporation, could possibly have been affected as to warrant such action from the court.

After a careful analysis of the records, we are constrained to agree with the petitioner. We, therefore, grant the petition.

Although the general rule is that certiorari cannot be availed of when the remedy of appeal is available, there are certain exceptions to the rule and the case at bar is one of them.

Since a judgment by default presupposes proceedings where the defendant is absent and cannot possibly present any evidence in his behalf, a court should use it with thoughtful hesitation only as a last expedient to induce the defendant to join issue upon the allegation tendered by the plaintiff. As early as 1913, the Supreme Court made

this clear in *Coombs vs. Santos* (24 Phil. 446) because such a judgment cannot pretend to be based on the merits of the case.

The records must be free from even the slightest suspicion that the trial court seized upon an opportunity either to free itself from the usual burdens of presiding over a full blown court battle or worse, to give undue advantage or favors to one of the litigants. As pointed out in *Heirs of Fuentes v. Macandog* (83SCRA-648) default is not a mechanical gadget for the acceleration of judicial litigation. An intent to terminate a case promptly is no excuse to cut corners and avoid the rules established to safeguard due process rights of litigants.

In this case, the petitioner was declared in default on June 4, 1984 even as, it was later proved, its counsel was suffering from an illness which kept him from appearing in court. Not even a token notice of the pre-trial hearing was furnished to the defendant itself on the ground given in hindsight that on another occasion, the counsel had formally manifested that he had a special power of attorney. On June 5, 1984, at 2:00 P.M., the private respondent was allowed to present its evidence *ex parte*. The following day, a decision was already rendered. It was only on June 11, 1984 that the petitioner learned of the decision and the default order which made it possible.

The petitioner did not have a chance to present evidence in its favor. Even after satisfactorily explaining its absence at the pre-trial hearing, it was denied the opportunity to regain its standing in court.

Thus, while the remedy of appeal or petition for relief was still technically available to it, such remedies would have been futile as far as the petitioner was concerned since its evidence would not form part of the records to be reviewed by the court.

In the case of *Dimayacyac v. Court of Appeals* (93 SCRA 265, 267, 268), we ruled:

"That the ordinary remedy which should be availed by a party who has been declared 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. (*Martin, Rules of Court*, Vol. 3, p. 172, citing *Valdez vs. Querubin*, 37 Phil. 774; *Leung Ben vs. O'Brien*, 38 Phil. 182; *Campos Y Cia vs. Del Rosario*, 41 Phil. 45; *Sabado vs. Gonzales, Inc.* 53 Phil. 770; *Westminster Bank vs. Torres and Nassoor, Inc.*, 57 Phil. 422; *Claudio vs. Zandueta*, 64 Phil. 812; and *Saludes vs. Pajarillo and Bautista*, 78 Phil. 755. See also *Fernando vs. Vasquez*, L-26417, January 30, 1979, 31 SCRA 288).

"In the instant case, we agree with the petitioners that the more appropriate and adequate remedy is not ordinary appeal but the special civil action of certiorari. For as they have stated:

"How could petitioners appeal when there is nothing to be appealed? They were not given an opportunity by the Respondent Judge to present their evidence and therefore, nothing can be reviewed on appeal except the self-serving evidences adduced by the private respondent during the *ex parte* presentation of evidence."

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Time and again we have held that judgments by default are not looked upon with favor for such a judgment may amount to a positive and considerable injustice to the defendant and the possibility of such serious consequences necessitates a careful examination of the grounds upon which the defendant asks that it be set aside. (See *Mercader v. Bonto*, 92 SCRA 665, 676). Given a good reason, the trial court should set its order of default aside.

Petitioner in its answer appears to have a meritorious defense which deserves to be examined by the court. The buyer stated that each container van had only fifty seven (57) cases of tobacco inside it, thus indicating a loss of fifty cases in that shipment. If it can be proven that there was indeed a loss of 50 cases of tobacco valued at

P163,216.00 due to the alleged gross negligence of the respondent company, then the issue of compensation should have been considered by the court. There would have been no need for the petitioner to litigate such a claim in a separate action. This basis would have sufficed for the setting aside of the order of default and the judgment by default.

The case of *Yellow Ball Freight Lines, Inc. v. Belfast Surety and Insurance Company, Inc.* (119 SCRA 106, 110) is applicable:

At any rate, judgments by default are not looked upon with favor for they are made without contest from the defendant. Litigants should be given every opportunity to fight their cases in court, fairly and in the open, so that where a defendant can give a credible explanation for his failure to file the answer within the reglementary period, the court should not hesitate to lift an order of default or vacate the judgment already rendered thereon. 'While a petition for relief as a rule is addressed to the sound discretion of the court, however, when it appears that a party has a good and meritorious defense and it would be unjust and unfair to deny him his day in court, equity demands that the exercise of judicial discretion be reconsidered if there are good reasons that warrant it (*Tecson vs. Tecson*, 49 O.G. 4308).'

WHEREFORE, the petition is GRANTED and the questioned orders, decision, and resolution as well as the writ of execution issued by the respondent trial court are hereby annulled and set aside. The Temporary Restraining Order issued by this Court on January 9, 1985 is made permanent. The case is remanded to the Regional Trial Court, Makati Branch CXXXV for further hearing and reception of the petitioner's evidence. No costs.

SO ORDERED.

Teehankee, (Chairman), Plana, De La Fuente, and Patajo, JJ., concur.

Melencio-Herrera and Relova, JJ., on leave.

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