

MANUEL VILLAR AND LEONIDES DE LA CRUZ, PETITIONERS, VS. PHILIPPINE DEPOSIT INSURANCE CORP. AND ALEXANDER MALVEDA, RESPONDENTS.

G.R. No. 72323, November 09, 1989

Ponente: PARAS, J.

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PARAS, J.:

Before Us is a petition for review on certiorari of the decision[1] of the Intermediate Appellate Court (now known as the Court of Appeals) which affirmed with modification the decision[2] of the Court of First Instance (now known as the Regional Trial Court) Branch 145 of the National Capital Region in Civil Case No. 3392,[3] an action for recovery of sum of money and damages, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of plaintiffs⁴ and against defendants,⁵ ordering the latter to:

""(1) Jointly and severally return to plaintiff PDIC, the PDIC funds in the amount of Sixteen Thousand Two Hundred Seventy Pesos and Twenty-Five Centavos (P16,270.25), Philippine Currency, with legal rate of interest thereon from the date of illegal seizure thereof until fully returned, and the cash box with two keys;

""(2) Jointly and severally pay plaintiff Alexander Malveda the amount of Fifty Thousand Pesos (P50,000.00), Philippine Currency, as moral damages;

""(3) Jointly and severally pay plaintiff Alexander Malveda the amount of Ten Thousand Pesos (P10,000.00), Philippine Currency, as exemplary damages; and

""(4) To pay the costs of this suit.

"SO ORDERED." (pp. 27-28, Rollo)

In its judgment, the appellate court ruled:

"WHEREFORE, the decision appealed from is hereby AFFIRMED with the MODIFICATION that the amount of P50,000.00 awarded to Alexander Malveda is reduced to P30,000.00. The decision is AFFIRMED in all other respects.

"SO ORDERED." (pp. 33-34, Rollo)

The antecedent facts of the case are stated as follows:

Petitioner-Appellant de la Cruz was a Deputy Sheriff in the then Court of First Instance of Camarines Sur with official station at Naga City. Manuel Villar was one of the plaintiffs in Civil Case No. 1430, Court of First Instance of Camarines Sur entitled Rural Bank of Pasacao, Inc. v. Central Bank of the Philippines, et al.

It was established that on March 28, 1981, the Central Bank of the Philippines ordered the closure of the Rural Bank of Pasacao pursuant to Monetary Board Resolution No. 584 (Exh. "A"). In compliance therewith, the

Philippine Deposit Insurance Corporation (PDIC for brevity) through its Bank Examiner, Alexander Malveda, began payment of insured deposits in the closed bank. Meanwhile on February 15, 1982 et al.[6] was issued by the court in Civil Case No. 1430, the second paragraph of which reads as follows:

"The defendants[7] are also ordered to surrender the said bank together with its equipment, records, documents, collaterals, bank savings deposit books, and moneys or cash in the bank vault to the Acting Provincial Sheriff or her deputies in the person of Eddie de la Cruz and Nardito Gonowon who will receive all said properties of the bank who in turn are required to deliver them to the plaintiffs, who will resume the management, operation, and control over the said bank." (pp. 9-10, Rollo).

Sheriff Leonides de la Cruz, together with Manuel Villar and a group of men, proceeded to the premises of the closed bank to serve the aforementioned order. From the custody and possession of Alexander Malveda, duly authorized representative of PDIC, Sheriff de la Cruz took the amount of P16,270.25 and the cash box No. 105-80-5 with 2 keys over Malveda's claim that said amount belongs to PDIC. After issuing to Malveda a certification that he took such amount pursuant to the court order, de la Cruz deposited the confiscated amount and the cash box with keys with the Cashier/Clerk of Court, Rosario Torrecampo instead of turning them over to Manuel Villar as ordered by the Court because of the claim made by Malveda, in behalf of PDIC.

On February 19, 1982, pursuant to another Order of the Court, the Clerk of Court turned over to Manuel Villar the above-mentioned amount after requiring Manuel Villar to issue a receipt in acknowledgment thereof (pp. 11, Rollo).

PDIC moved for the return of said sum but the court declared the motion "moot and academic" in view of its previous order directing the Clerk of Court to turn the above-mentioned amount to plaintiff Manuel Villar.

Thereafter on May 25, 1982, Civil Case No. 46071 (or Civil Case No. 3392) of the then Court of First Instance of Rizal was jointly instituted by PDIC and Malveda. During the pre-trial conference on August 23, 1983, defendant de la Cruz and his counsel failed to appear notwithstanding the notice in open court to counsel who requested for the postponement of the pre-trial to said date. The trial court declared defendant in default and allowed PDIC and Malveda to present their evidence ex-parte. Defendant de la Cruz moved to set aside the order of default, alleging that he was not notified of the pre-trial conference. The trial court rendered judgment in favor of plaintiffs. Defendant filed his motion for new trial which was likewise denied by the court together with his Motion to Lift Order of Default.

The defendants in the original case were Manuel Villar and Leonides de la Cruz but it was only the latter who appealed the decision of the Regional Trial Court to the Appellate Court which affirmed with modification the decision appealed from.

Hence the present petition with the following:

ASSIGNMENTS OF ERROR

I

THE INTERMEDIATE APPELLATE COURT ERRED IN TOTALLY IGNORING THE ISSUE OF WHETHER OR NOT APPELLANT DE LA CRUZ WAS VALIDLY DECLARED AS IN DEFAULT.

II

THE INTERMEDIATE APPELLATE COURT ERRED IN NOT ANNULING AND SETTING ASIDE THE PROCEEDINGS SUBSEQUENT TO AUGUST 23, 1983, INCLUDING THE DECISION OF THE REGIONAL TRIAL COURT.

III

THE INTERMEDIATE APPELLATE COURT MISAPPLIED THE DOCTRINE THAT "CLIENTS ARE BOUND BY THE CONDUCT, NEGLIGENCE AND MISTAKES OF THEIR COUNSEL."

IV

THE INTERMEDIATE APPELLATE COURT ERRED IN GIVING FULL CREDENCE TO APPELLEES' EVIDENCE EX-PARTE WITHOUT CONSIDERING THEIR PROBATIVE VALUE AND INHERENT INCREDIBILITY.

V

THE INTERMEDIATE APPELLATE COURT ERRED IN NOT DECLARING THAT APPELLANT DE LA CRUZ HAS A VALID AND MERITORIOUS DEFENSE WHICH HE CAN ESTABLISH IN EVIDENCE IF ALLOWED TO DO SO.

VI

THE INTERMEDIATE APPELLATE COURT ERRED IN FAILING TO CONSIDER THAT APPELLANT DE LA CRUZ, IN HIS CAPACITY AS DEPUTY SHERIFF, MERELY PERFORMED HIS DUTY OF ENFORCING AN ORDER ISSUED BY A COURT OF COMPETENT JURISDICTION.

Petitioners' appeal deserves our consideration.

During the pre-trial and trial of Civil Case No. 3392, it was alleged by plaintiffs PDIC and Alexander Maiveda that Sheriff de la Cruz and company were abusive in serving the court order to their damage and prejudice. It was alleged that de la Cruz drew his gun against Maiveda, shouting unprintable words while insisting that the latter should receive the court order in behalf of the Central Bank. When Maiveda tried to explain to them that the PDIC, by itself or thru Maiveda as its duly authorized representative was never in possession of equipment, records, documents, collaterals, bank savings deposit books or monies of the Rural Bank of Pasacao mentioned in the court order, de la Cruz and company were angered thus provoking defendant Manuel Villar to deliver a karate blow upon the person of Alexander Maiveda. It was further alleged that Sheriff de la Cruz at gun point seized the PDIC funds in the amount of P16,270.25 and the cash box No. 105-80-5 with two keys from the custody and possession of Alexander Maiveda despite the latter's objection in behalf of PDIC, and after which de la Cruz issued a certification on his taking of the cash box and money.

Such evidence presented by the plaintiffs to the trial court ex-parte was the sole basis of the judgment of the court in plaintiffs' (herein private respondents) favor.

On the other hand, the records show that the failure of petitioner's counsel to appear during the pre-trial conference on August 23, 1983 was due to the death of his aunt on August 22, 1983. Counsel lost no time in informing the court of such death and requesting postponement of the pre-trial conference in Civil Case No. 3392 set for August 23, 1983 via RCP1 telegram (Annex "A", p. 82, Folder Civil Case No. 3392). Copies of such telegram and receipt thereof were attached to the Motion to Lift Order of Default and for New Trial. It was

however unfortunate that for unknown reasons, through no fault of the defendant or his counsel that the said telegram sent on August 22, 1983 was not received in court, thus the issuance of the order of default against defendant.

Petitioner claims that should he be given the chance to adduce evidence and cross-examine the witnesses presented by plaintiffs (private respondents) there is a great possibility that the decision would not be against him. In his Motion to Lift Order of Default for New Trial he claims valid and meritorious defense in that he had only faithfully complied with his duty in enforcing the processes of the court and he had never committed the acts attributed by the plaintiff Alexander Malveda. Petitioner contends that the testimony of Malveda aside from being self-serving and without basis is also inherently incredible as against the natural course of events and against ordinary human experience. In asserting his position, petitioner poses the following questions:

"x x x (I)f it were true that the PDIC funds were forcibly seized at about 3:00 o'clock in the afternoon of February 16, 1982,

'(a) why did appellant de la Cruz still issue a receipt (Exh. 'B') for the money and cash box?

'(b). how come that appellee Malveda and Jose Gonzales stayed in the bank building until past 5:00 P.M.? (tsn, 29 August, 1983, pp. 44-45)

'(c) why did not appellee Malveda or Jose Gonzales report the alleged untoward incident to the police authorities or to any competent authority?

'(d) why was not the alleged untoward incident reported to Atty. Rosario B. Torrecampo, Ex-officio Provincial Sheriff, when on February 17 or 18, 1982, both appellee Malveda and Jose Gonzales complained against the taking by appellant de la Cruz of the sum of P16,270.25?

'(e) why was the alleged untoward incident never mentioned, even inferentially, when appellees PDIC and Malveda caused the filing in Court on February 19, 1982 of the motion for the return by the sheriff of the sum of P16,270.25?

'(f) why was it that appellee Malveda made his report (Exh. 'C') wherein he mentioned the alleged untoward incident only on February 23, 1983, or five (5) days after the Court ordered as 'moot and academic' the motion of appellees to have the sum of P16,270.25 returned by the Sheriff?" (p. 20, Rollo)

The answers to the aforementioned questions and to the allegations of petitioner could have been determined by the court in a trial on the merits if petitioner was given the chance to be heard. It is on record that only petitioner's counsel was notified in open court of the rescheduling of the pre-trial conference to another date (August 23, 1983). Counsel, aware of his duty to inform his client about the change of schedule, allegedly tried to inform his client regarding such matter but that the latter could not easily be reached as he was in the remote places of Camarines Sur serving court processes in his capacity as Deputy Sheriff.

Moreover, plaintiffs (private respondents herein) in their opposition to the Motion to Lift Order of Default and for New Trial have failed to cite any real injury to their rights which could result from the lifting of the default order or the granting of a new trial. Where the failure to appear at a pre-trial conference was due to fraud, accident, mistake or excusable negligence and when the existence of a good and substantial defense (Sec. 3, Rule 18, Rules of Court) has been shown as in the case at bar, default orders are judicially frowned upon and unless it clearly appears that the reopening of the case is intended for delay, it is best that the trial court give both parties every chance to fight their case fairly and in the open, without resort to technicality. Undoubtedly, the present case falls within the letter and spirit of Sec. 3, Rule 18 of the Rules of Court. The denial therefore by the lower court of the relief sought amounted to a grave abuse of discretion, as it denied petitioner de la Cruz of his constitutional right

to be heard, since the absence of the requisite notice of the pre-trial schedule to petitioner through no fault or negligence on his part, nullified the order of default issued by the lower court.

WHEREFORE, premises considered, the assailed orders declaring petitioner in default are hereby declared NULL and VOID and SET ASIDE. Let the record of the case be remanded to the court a quo for trial on the merits.

SO ORDERED.

Padilla (Acting Chairman), Sarmiento, and Regalado, JJ., concur.

Melencio-Herrera, J., (Chairperson), on leave.

[1] Penned by Justice Jorge R. Coquia, concurred in by Justices Mariano A. Zosa, Floreliana Castro-Bartolome and Bienvenido C. Ejercito.

[2] Penned by Judge Job B. Madayag.

[3] Docketed as Civil Case No. 46071 prior to the Judiciary Reorganization Act of 1983.

[4] Private respondents herein.

[5] Petitioners herein.

[6] Issued by Judge Delfin Vir. Sunga.

[7] Central Bank of the Philippines, et al.

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