

**VICTOR TORNO, RODOLFO TORNO, AND ELENA TORNO,
PETITIONERS, VS. HON. INTERMEDIATE APPELLATE COURT, HON.
WILLELMO C. FORTUN AND SPOUSES FELIPE AND ADA
MABILANGAN, RESPONDENTS.**

G.R. No. 72622. October 28, 1988

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

In this petition for review on certiorari, petitioners Victor Torno, et al. seek to set aside the decision,[1] dated August 27, 1985, of the then Intermediate Appellate Court, dismissing their appeal from the decision[2] of the Regional Trial Court of Quezon City, Branch 102, in Civil Case No. 039535, entitled "Victor Torno, et al. v. Hon. Fernando V. Gorospe, Jr., and Spouses Felipe and Ada Mabilangan."

The facts appearing on the records are as follows:

On October 28, 1980, private respondents-spouses Felipe and Ada Mabilangan instituted before the Metropolitan Trial Court of Quezon City, Branch 38, a complaint against petitioners Victor, Rodolfo and Elena, all surnamed Torno, for forcible entry into the premises covered by TCT No. 264594 located at 69 Montreal Street, Cubao, Quezon City, owned by said private respondents.[3]

After petitioners' answer was filed on January 21, 1981 and the pre-trial conference was terminated, trial on the merits commenced on February 13, 1981.

Two (2) years later, or on June 24, 1983, the hearing scheduled for the cross-examination of private respondents' last witness, Felisa Mabilangan, the forcible entry case, Civil Case No. 38696, was first called at 8:30 a.m. but only the counsel for the plaintiffs, now private respondents, was present. On its second call at 10:30 a.m. of that same day -- the time agreed upon by the parties as per records -- still only the counsel for plaintiffs was present and ready to present his last witness. In view of the failure of petitioners and their counsel to appear at the hearing despite due notice, the Metropolitan Trial Court of Quezon City, Branch 38, issued an order, upon motion of private respondents, declaring the cross-examination of the witness as waived and allowing private respondents to offer evidence and rest their case ex-parte. Civil Case No. 38696 was thereafter considered submitted for decision.[4]

On August 11, 1983, or after one and a half months from the issuance of the June 24, 1983 order, petitioners filed a motion for reconsideration claiming that the failure of petitioner's lawyer, Atty. Aurora S. Lagman, to appear at the hearing set on June 24, 1983, was due to an accident as she suddenly stepped on a piece of wood which caused her to lose her balance and to fall to the ground, as a result of which she sprained her ankle, to which motion, an affidavit of Atty. Lagman and a medical certificate, dated June 26, 1983, of Dr. Santiago M. Yabut were attached.

In their opposition, dated August 23, 1983, private respondents stated, among others, that the said motion for reconsideration is pro-forma as it does not contain the alleged affidavit of the attending physician and was not

likewise accompanied by an affidavit setting forth petitioners' meritorious defenses, citing as authority the decisions of the Supreme Court in the cases of *Fernandez v. Tan Tiong Tick*, G.R. L-15877, April 28, 1961, 1 SCRA 1138 and *Carandang v. Cabatuando*, G.R. L-25384, October 26, 1973, 53 SCRA 383.

On September 7, 1983, the Metropolitan Trial Court of Quezon City, Branch 38, issued an order^[5] denying petitioners' motion for reconsideration stating as grounds therefor, the lack of affidavit of merit to show that defendants have a valid and meritorious defense to be given another chance and that since the answer is not under oath, the court cannot consider the defense stated therein.

Dissatisfied, petitioners filed on October 4, 1983 an original petition for certiorari with the Regional Trial Court of Quezon City, Branch 102, contending that the lower court, in denying their motion for reconsideration as well as in considering Civil Case No. 38696 submitted for decision per its order of June 24, 1983, committed grave abuse of discretion amounting to lack of jurisdiction. The original action was docketed as Civil Case No. 039535.

While the certiorari proceedings was pending before the Regional Trial Court of Quezon City, Branch 102, the Metropolitan Trial Court of Quezon City, Branch 38, rendered its decision^[6] on December 2, 1983 in the forcible entry case in favor of the herein private respondents Spouses Felipe and Ada Mabilangan ordering, among others, herein petitioners to vacate the premises at 69 Montreal St., Cubao, Quezon City and to restore its possession to private respondents herein. A copy of the decision was received by petitioners on February 6, 1984. Although a reconsideration was sought by petitioners, which was, however, denied on February 29, 1984, the records show that no appeal was taken from said decision.

Meanwhile, on February 14, 1984, the Regional Trial Court of Quezon City, Branch 102, upon motion of herein petitioners, issued a temporary restraining order enjoining the Metropolitan Trial Court of Quezon City, Branch 38, from further proceeding with Civil Case No. 38696 until after resolution of the petition for certiorari and until after further orders from the said court.^[7]

On August 22, 1984, the Regional Trial Court of Quezon City, Branch 102, rendered its decision^[8] dismissing the petition for certiorari for failure of petitioners herein to show that there was grave abuse of discretion committed by the Metropolitan Trial Court of Quezon City, stating among others, that the failure of petitioners to attach to the motion for reconsideration the affidavit of merit showing that they have a valid and meritorious defense is a fatal defect which warrants the denial of said motion for reconsideration considering that said motion partakes of the nature of a motion to lift an order of default or a petition for relief from judgment where an affidavit of merit is an indispensable requirement.

Undaunted, petitioners filed on October 3, 1984 before the then Intermediate Appellate Court a petition for review on certiorari of the decision of the Regional Trial Court of Quezon City, Branch 102, which was however dismissed outright in a decision^[9] dated November 13, 1984 on the ground that said petition was actually an appeal on certiorari pursuant to Section 17, Rule 41 of the Rules of Court, for which petitioners failed to show that a timely notice of appeal was filed with the Regional Trial Court pursuant to Sections 19 and 20 of the Interim Rules.

On a motion for reconsideration of petitioners herein, the Intermediate Appellate Court, on January 3, 1985, set aside its decision of November 13, 1984 in the interest of justice and reinstated petitioners' appeal by requiring the parties to submit their respective memoranda.^[10]

Eventually, on August 27, 1985, the Intermediate Appellate Court, now Court of Appeals, rendered its decision^[11] dismissing the appeal of the herein petitioners. It found that no grave abuse of discretion was committed by the Regional Trial Court of Quezon City, Branch 102, thus, sustaining the ruling of the lower court

that since the motion for reconsideration partakes of the nature of a motion to lift order of default or a petition for relief from judgment, the affidavit of merit is an indispensable requirement in order that it be given due course, and the absence of which warrants its denial.

Petitioners filed a motion for reconsideration but the same was denied on October 21, 1985.

Hence, the instant petition.

On August 29, 1988, this Court, upon petitioners' urgent joint motion for the cancellation/annulment of writ of execution and for the issuance of temporary restraining order, issued a Temporary Restraining Order, on equitable considerations, restraining the Metropolitan Trial Court of Quezon City, Branch 38, from enforcing and/or carrying out the writ of execution dated June 1, 1988, the notice to vacate dated July 28, 1988, and the order dated August 17, 1988, all issued in Civil Case No. 38696 of the Metropolitan Trial Court of Quezon City, Branch 38.[12]

In seeking to set aside the decision of the respondent appellate court and the remand of the instant case to the MTC of Quezon City, Branch 38, for further proceedings, petitioners now rely on the application of Section 2, Rule 1 of the Rules of Court on the liberal interpretation of the rules of procedure.

Apparently convinced that their motion for reconsideration of the order dated June 24, 1983 filed before the MTC of Quezon City, Branch 38, already included an affidavit of merit, which, as they admitted in their petition, is couched in general terms by merely stating therein that they had a valid and meritorious defense, it is the contention of petitioners that since an answer had already been filed, the attached affidavit of merit, while couched in general terms, should not have been disregarded for non-compliance with the formal requirements of an affidavit of merit.

Petitioners' contention is erroneous.

Petitioners failed to apprehend, in the first place, that in pleading for the reopening of the forcible entry case, Civil Case. No. 38696, by filing a motion for reconsideration of the questioned order of June 24, 1983, their plea, as correctly interpreted by the respondent appellate court, partakes of the nature of a petition for relief from judgment, or order, or other proceedings under Rule 38 of the Rules of Court. Secondly, petitioners failed to apprehend that Atty. Aurora Lagman's motion for reconsideration or, more properly, petition for relief from the order or proceedings under Rule 38 of the Rules of Court, was flawed by serious defects deemed to be fatal to their cause under the circumstances of the case.

By statutory requirements,[13] a petition for relief "must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioners' good and substantial cause of action or defense, as the case may be." This is an indispensable requirement under Section 3, Rule 38 of the Rules of Court which must be strictly observed[14] considering that the affidavit of merit serves as the jurisdictional basis for a court to entertain a petition for relief.[15] When said petition for relief is flawed by such serious defect, the court with which such petition is filed is not called upon to entertain the same.[16]

In the instant case, neither an affidavit of merit nor an affidavit of the declared absolatory causes (fraud, accident, mistake or excusable negligence) as regards the lawyer's failure to appear at the hearing, strictly sufficient in form and substance, as explicitly required under Section 3, Rule 38 of the Rules of Court, in relation to Section 7, Rule 133 of the Rules of Court, was attached to the motion for reconsideration. There was in other words, no declaration under oath to establish the lawyer's claimed illness (sprained ankle), conformably with the rule governing evidence on motion under Section 7 of Rule 133 of the Rules of Court.[17]

Evidently containing statements couched in general terms, as petitioners did admit in the petition, by merely stating that the “defendants have a very strong and valid defense and there will be a miscarriage of justice if they will not be given a chance to cross-examine witness Felisa Mabilangan and afterwards present their evidence,” the supposed affidavit of merit in the instant case is not, within the meaning of Section 3, Rule 38, affidavit of merit of petitioners' valid and meritorious defense.

As emphatically noted in *Dirige v. Biranya*, 17 SCRA 840 (1966), “x x x Relief from judgment is premised on equity. It is granted only in exceptional cases. It is an act of grace. It is not regarded with favor. The sine qua non conditions for proper allowance include, amongst others, excusable negligence, good and substantial defense.” While invoking the equity jurisdiction of the court in filing the motion for reconsideration, petitioners allowed one and a half months to lapse before seeking reconsideration from the court, without in the meantime, taking appropriate and immediate action after the occurrence of the claimed illness. Apparently, the filing of the motion for reconsideration was a mere afterthought calculated to delay the disposition of the case which had been pending for three (3) years at the time of the filing of the said motion.

It is significant to note that this is a simple case of forcible entry under Rule 70 of the Rules of Court. By its nature, actions for forcible entry or unlawful detainer under Rule 70 of the Rules of court are summary proceedings intended to provide an expeditious means of protecting actual possession or right to possession of property, without consideration of the question of title.[18] Such actions involve perturbation of social order which must be resolved as promptly as possible, and, accordingly, technicalities or details of procedure which may cause unnecessary delay should carefully be avoided.[19]

In *Mabalot v. Madala, Jr.*, 121 SCRA 351 (1983) where the issue of jurisdiction of the city court was raised, the Court noted that petitioners' submission therein, as in the instant case, are typical examples of the arguments advanced by defendants in ejectment cases in their attempt to prolong their occupancy of premises over which they ceased to have valid ground to possess, by keeping alive the litigation involving their ejectment therefrom. The Court further noted that “(I)t is ironic that forcible entry or detainer case which is intended to be disposed of in summary fashion has oftentimes proved to be the most cumbersome and difficult to terminate. It has become a truism that, if a landlord would like to eject a tenant in the shortest possible time, the worst thing that he could do is to file an ejectment case. It is, indeed, about time that this situation be remedied if only to contribute to the solution of the worsening problem of court congestion, by refusing to edify these cases by giving them a full-blown treatment in all courts in the judicial structure, and thereby save the courts the expenditure of precious time and energy which could otherwise be devoted to more significant and vital litigations.”

In addition to the reasons stated above which warrant the denial of the instant petition, the fundamental considerations of public policy and sound practice likewise demand that the instant petition be denied considering that no practical relief can be granted to petitioners herein in the event of a ruling in their favor because a decision had already been rendered in the main case of forcible entry, Civil Case No. 38696, on December 2, 1983 by the MTC of Quezon City, Branch 38, in favor of the herein private respondents ordering petitioners to vacate the premises in question. There is no mention in the petition that an appeal was taken by petitioners to the proper Regional Trial Court pursuant to Sections 22 and 39 of B.P. 129 and Section 20 of the Interim Rules and Guidelines.

Records show that petitioners received a copy of the decision on February 6, 1984 and their motion for reconsideration was denied on February 29, 1984. By not filing a notice of appeal from said decision or by allowing the period of appeal to lapse, the decision of the MTC of Quezon City, Branch 38, has perforce become final and executory by operation of law. The Court has said time and again that the doctrine of finality of judgments is grounded on fundamental considerations of public policy and sound practice that at the risk of

occasional errors, the judgments of courts must become final at some definite date fixed by law.[20] Once a judgment becomes final, it is basic that the prevailing party is entitled as a matter of right to a writ of execution the issuance of which is the trial court's ministerial duty.[21]

WHEREFORE, the petition is DENIED. The decision of the Intermediate Appellate Court, now Court of Appeals, dated August 27, 1985 is hereby affirmed. The temporary restraining order issued on August 29, 1988 is hereby lifted. This decision is immediately executory.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Penned by Justice Milagros A. German, with concurrence of Justices Jose A.R. Melo and Nathaniel de Pano, Jr., Third Special Cases Division, Rollo, p. 50

[2] Rollo, p. 36

[3] Civil Case No. QE-38696

[4] Rollo, p. 42

[5] Rollo, p. 43

[6] Rollo, p. 29

[7] Decision dated August 22, 1984, RTC of Quezon City, Branch 102, Rollo, p. 36

[8] Ibid

[9] Rollo, p. 44

[10] Rollo, p. 41

[11] Rollo, p. 50

[12] Rollo, p. 135

[13] Section 3, Rule 38, both of the old and new Rules of Court.

[14] Hagosojos v. Hon. Court of Appeals, G.R. No. 59690 (October 25, 1987); Arcilla v. Arcilla, 138 SCRA 560 (1985); Director of Lands v. Romamban, 131 SCRA 431 (1984); Concepcion v. Presiding Judge, Br. V, CFI of Bulacan, 119 SCRA 222 (1982); Ong Tiao Seng v. Court of Appeals, 81 SCRA 417 (1978); Samonte v. Samonte, 64 SCRA 524 (1975); Palomares v. Jimenez, 90 Phil. 773

[15] Fernandez v. Tan Tiong Tick, 1 SCRA 1138, 1145 (1961)

[16] Ibid

[17] Minister of Natural Resources and Director of Lands v. Heirs of Orval Hughes, et al., G.R. No. 62664 (Nov. 12, 1987)

[18] Co Tiac v. Natividad, et al., 80 Phil. 127

[19] Salvador v. Salamanca, 144 SCRA 276 (1986)

[20] Turqueza v. Hernando, 97 SCRA 489 (1980); King v. Joe, 20 SCRA 1117 (1967); Ferinion v. Sta. Romana,

16 SCRA 370 (1966)

[21] Pamantasan ng Lungsod ng Maynila v. IAC, 143 SCRA 311 (1986); Balintawak Construction supply Corporation v. Velenzuela, 124 SCRA 331; Santos v. Sibug, 104 SCRA 520; Carreon v. Buissan, 70 SCRA 57

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