

ERNESTO R. RODRIGUEZ, JR., ERNESTO LL. RODRIGUEZ III, SACHA DEL ROSARIO, JOSE P. GENITO, ZENAIDA Z. RODRIGUEZ, AND ENECERIO MONDIA, PETITIONERS, VS. INTERMEDIATE APPELLATE COURT...

G.R. No. 74816. March 17, 1987

Ponente: PARAS, J.

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PARAS, J.:

Before Us is a petition to review by certiorari 1) respondent court's decision which sets aside the order of default rendered by the trial court and 2) respondent court's resolution dated April 18, 1986 denying petitioners' (plaintiffs-appellees' therein) motion for extension of time to file motion for reconsideration of its decision.[1]

The antecedent facts of the case are as follows:

Plaintiffs (petitioners herein) filed on December 16, 1980, an action for abatement of a public nuisance with damages against defendant (private respondent herein). After being granted four (4) extensions of time to file an answer, defendant moved to dismiss the complaint on February 27, 1981 upon the ground that the lower court has no jurisdiction to hear the instant case and for lack of cause of action. However, the motion was denied by the court on April 3, 1981, a copy of which decision was received by the defendant on April 23, 1981. On May 5, 1981 defendant filed a motion for reconsideration which motion was denied on July 7, 1981.

Instead of filing an answer, petitioner filed with Us in G.R. No. 57593, Daytona Construction & Development Corporation vs. Rodriguez, et al. a motion for extension of time to file a petition for review, but it never filed one, prompting Us to issue a resolution dated October 5, 1981 informing the parties and the trial court that no petition for review was filed within the period that expired on August 15, 1981.

Upon motion of plaintiffs, the court declared the defendant in default on November 4, 1981, and authorized the plaintiffs to present evidence ex-parte. Upon learning of the said order, the defendant on November 9, 1981 filed a motion to set aside the order of default and a motion to admit answer with counterclaim which motions were denied by the lower court in an order dated November 23, 1981.

On June 30, 1982, the court a quo rendered judgment for the plaintiffs and against defendant, its dispositive portion reading as follows:

"WHEREFORE, judgment is hereby rendered as follows:

- Declaring the operation of the cement batching plant of the defendant corporation as a nuisance and ordering its permanent closure;
- Ordering the defendant to pay plaintiff Ernesto Rodriguez, Jr. the amount of P250,000.00 as moral damages and the amount of P5,000.00 as nominal damages;

- Ordering the defendant to pay plaintiff Ernesto Ll. Rodriguez III the amount of P200,000.00 as actual damages, the amount of P500,000.00 as moral damages and the amount of P5,000.00 as nominal damages;
- Ordering the defendant to pay plaintiff Sacha del Rosario the amount of P20,000.00 as actual damages, the amount of P50,000.00 as moral damages and the amount of P5,000.00 as nominal damages;
- Ordering the defendant to pay plaintiff Zenaida Z. Rodriguez the amount of P100,000.00 as actual damages, the amount of P100,000.00 as moral damages and the amount of P5,000.00 as nominal damages; and
- Ordering the defendant to pay the plaintiffs the amount of P50,000.00 as attorney's fees, plus the costs of suit.

"SO ORDERED." (pp. 63-64, Record on Appeal)

In an order dated July 9, 1982, the trial court upon motion of plaintiffs granted execution pending appeal it indeed appearing as alleged in the motion that the continued operation of the cement batching plant of the defendant poses a "great menace to the neighborhood, both in point of health and property."

On July 23, 1982, defendant filed a petition for relief which was however denied by the lower court. On July 29, 1982, defendant filed a petition for injunction with the Intermediate Appellate Court which found the petition unmeritorious.[2] The appellate court promulgated on October 5, 1983, a decision denying due course to defendant's petition.

Its motion for reconsideration having been denied by the Appellate Court, defendant went on appeal by certiorari to the Supreme Court (G.R. No. 66097) which, after the submission of plaintiffs' comment and defendant's reply thereto, denied its petition for lack of merit.

The petition for injunction having been denied by both the IAC and this Court, defendant pursued the remedy of appeal in respondent IAC, assigning the following errors:

"I. THE TRIAL COURT ERRED WHEN IT DECLARED APPELLANT IN DEFAULT DESPITE THE FACT THAT ITS FAILURE TO FILE ITS ANSWER ON TIME WAS DUE SOLELY TO THE NEGLIGENCE OF ITS COUNSEL AND DESPITE THE FACT THAT THE MOTION TO DISMISS THAT IT HAD FILED COULD HAVE VERY WELL STOOD AS THE ANSWER OF THE APPELLANT.

"II. THE TRIAL COURT ERRED WHEN IT ASSUMED JURISDICTION OVER THE CASE AND WHEN IT RENDERED JUDGMENT BY DEFAULT AGAINST THE APPELLANT ON GROUNDS AND/OR BASIS NOT ALLEGED IN THE COMPLAINT FILED AGAINST THE APPELLANT.

"III. THE TRIAL COURT ERRED WHEN IT DID NOT ALLOW RELIEF FROM JUDGMENT IN THE FACE OF THE REASONS PRESENTED TO IT AS BASIS FOR SUCH RELIEF.

"IV. THE TRIAL COURT ERRED WHEN DESPITE THE APPEAL HAVING BEEN DULY PERFECTED, IT DETAINED THE CASE WITH IT AND THEREAFTER, ISSUED AN ALIAS WRIT OF EXECUTION PENDING APPEAL WITHOUT APPROPRIATE PRIOR NOTICE TO THE APPELLANT." (pp. 1-2, Appellant's Brief)

On March 21, 1986, respondent court promulgated its decision, the decretal portion of which is as follows:

"WHEREFORE, the Decision appealed from is hereby reversed and set aside and another one entered, remanding the case to the court of origin for further proceedings and thereafter, to render judgment accordingly."

"No pronouncement as to costs."

Notice of respondent Court's decision was received by plaintiffs-appellees thru counsel on April 3, 1986.

Plaintiffs filed on April 15, 1986 a motion for extension of 30 days from April 18, 1986 or up to May 18, 1986 to file a motion for reconsideration. However, on May 10, 1986, they filed a 24-page motion for reconsideration.

Meanwhile, on April 23, 1986, defendant's opposition to the motion for extension and counter-motion to enter final judgment were received by plaintiffs. Plaintiffs countered with a reply filed April 29, 1986. (Annex "C-2") Plaintiffs' counsel was surprised to receive on April 24, 1986, respondent Court's resolution dated April 18, 1986, denying the motion for extension. Plaintiffs requested respondent Court to treat their aforesaid reply filed on April 29, 1986 as a motion for reconsideration of the said resolution of April 18, 1986, received by them on April 21, 1986, the request being contained in their opposition dated May 22, 1986, to defendant-appellant's motion to strike out the said opposition attached thereto as Annex "C-3". Neither the motion for reconsideration (converted from the reply filed on April 29, 1986) nor the motion for reconsideration of the decision itself was acted upon by respondent court.

Hence this petition to review, petitioners alleging that "Respondent court's challenged resolution purporting to deny appellees' motion for extension of time to file a motion for reconsideration is a nullity because the decision in *Habaluyas v. Japson* case,[3] solely relied on by the said resolution has been made by the Supreme Court to operate prospectively and thereby rendered inapplicable to parties situated as petitioners are, in order precisely to spare them from unfair and unjust deprivation of their right to appeal."

In Our resolution, promulgated May 30, 1986 in the *Habaluyas* case itself (G.R. No. 70895), We set aside the original judgment therein, thus:

"However, the law and the Rules of Court do not expressly prohibit the filing of a motion for extension of time to file a motion for reconsideration of a final order or judgment.

"In the case of *Gibbs vs. Court of First Instance* (80 Phil. 160), the Court dismissed the petition for certiorari and ruled that the failure of defendant's attorney to file the petition to set aside the judgment within the reglementary period was due to excusable neglect, and, consequently, the record on appeal was allowed. The Court did not rule that the motion for extension of time to file a motion for new trial or reconsideration could not be granted.

"In the case of *Roque vs. Gunigundo* (Administrative Case No. 1684, March 30, 1979, 89 SCRA 178), a division of the Court cited the *Gibbs* decision to support a statement that a motion to extend the reglementary period for filing the motion for reconsideration is not authorized or is not in order.

"The Intermediate Appellate Court[4] is sharply divided on this issue. Appeals have been dismissed on the basis of the original decision in this case.

"After considering the able arguments of counsels for petitioners and respondents, the Court resolved that the interest of justice would be better served if the ruling in the original decision were applied prospectively from the time herein stated. The reason is that it would be unfair to deprive parties of their right to appeal simply because they availed themselves of a procedure which was not expressly prohibited or allowed by the law or the Rules. x x x" (pp. 3-4; Resolution dated May 30, 1986 in G.R. No. 70895; underscoring supplied)

This Court further elucidated:

"1.) Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court. Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny the extension requested." (p. 4; underscoring supplied)

The above new rules are made effective no earlier than June 30, 1986. In the instant case, respondent Court's

decision was received by plaintiffs on April 3, 1986. Plaintiffs or petitioners herein filed on April 15, 1986 a motion for extension of 30 days from April 18, 1986 or up to May 18, 1986 to file a motion for reconsideration. On May 10, 1986, plaintiffs filed their motion for reconsideration. Plaintiffs' motion for extension of time was not intended for delay but upon showing of good cause, to wit: "for lack of material time due to heavy pressure of work on the part of petitioners' counsel presently taking charge thereof, what is more the counsel handling this case was doing so for the first time in substitution of Atty. Emmanuel Pelaez, who was recently appointed Philippine Ambassador to the U.S."

It is clear therefore that petitioners' motion was based on good cause and was filed opportunely making the act of respondent Court unwarranted in denying petitioners' motion for extension of time to file its motion for reconsideration.

Another important issue raised by the petitioners is that the "subject decision which purports to set aside the order of default rendered by the trial court is a nullity because respondent court arbitrarily ignored in grave abuse of discretion amounting to lack of jurisdiction 1) the conclusive effect of the trial court's final and unappealed order denying defendant's motion to set aside the default order," and 2) the res judicata effect of the appellate court's final judgment in the injunction case aforementioned upholding the trial court's order granting execution of its judgment pending appeal and, necessarily, the default order as well 3) the law of the case effect of the appellate court's express ruling in the said injunction case sustaining the default order.

Petitioners' contentions merit our consideration.

It has been Our consistent ruling that a default order, being interlocutory, is not appealable but an order denying a motion or petition to set aside an order of default is not merely interlocutory but final and therefore immediately appealable.[5]

Since the trial court's order of November 13, 1981, denying defendant's motion to set aside the order of default was appealable but was not appealed by defendant, the necessary conclusion is that the default order became final. Clearly therefore, respondent Court committed a grave abuse of discretion in disregarding the finality of the default order.

The validity and finality of the default order was upheld by the judgment of the Appellate Court in the injunction case (which passed upon the merits of the issuance of an order of execution pending appeal) by virtue of the principle of res judicata and the doctrine re the law of the case.

There is no question that there were good reasons for the trial court to issue the order of execution pending appeal. The order categorically stated that there was a need for the closure and stoppage of the operation of defendant's (Daytona Construction) cement batching plant because it posed "a great menace to the neighborhood both in point of health and property." The trial court thus stated:

"From the uncontroverted evidence presented by the plaintiffs, there is hardly any question that the cement dust coming from the batching plant of the defendant corporation is injurious to the health of the plaintiffs and other residents in the area. The noise, the vibration, the smoke and the odor generated by the day and night operation of the plant must indeed be causing them serious discomfort and untold miseries. Its operation therefore violates certain rights of the plaintiffs and causes them damage. It is thus a nuisance and its abatement justified." (Decision, p. 5; p. 90, Rollo)

after taking into consideration evidence presented by plaintiffs (petitioners herein) as follows:

"The evidence shows that the defendant is a domestic corporation duly organized and existing under the laws of the Philippines with business address at 252 Don Mariano Marcos Avenue (actually South Zuzuarregui

Avenue), Quezon City. It was issued by the Quezon City government a business permit (Exhibit B) for the manufacture of road and building concrete materials such as concrete aggregates, with cement batching plant. Among the conditions set forth in the permit are that the said batching plant shall (1) institute measures to prevent dust emission during the manual charging of cement from bags to the receiving hopper of the bucket elevator of the batching plant; (2) remove all sediment deposit in the settling of tank for process water and proper maintenance should be observed at all times. While the original permit issued to the defendant stated that its operation at the place shall 'not (be) beyond Dec. 31, 1979' (Exhibit B-2), it was somehow allowed to operate way beyond said period.

"Plaintiff Ernesto L.I. Rodriguez III testified that he has three parcels of residential lots adjacent to the Daytona compound. He informed the Court that his property, with an area of 8,892 square meters has been over-run by effluence from the cement batching plant of the defendant. The sediment settled on the lots and all forms of vegetation have died as a result, and the land tremendously diminished in value. His three lots are located in a prime residential zone and each square meter in the area is easily valued at P500.00. While he would like to sell at least a part of his property, he finds no buyer because of its condition. It would cost him no less than P250,000.00 to be able to repair the damage done to his property, and since its present condition has been existing during the last five years, he claimed that the interest on his loss would be about P5,000.00. He has agreed to his counsel's fee of P200,000.00. Zenaida Rodriguez testified that she owns a lot with an area of 1,500 square meters. Two thirds of this area has been damaged by the cement dust, emanating from the defendant's cement batching plant. The continuous flow of cement dust into her property affected her deep well, their source of drinking water, and most of their fruit-bearing and ornamental trees dried up. She also said that she has had sleepless nights and became nervous as a result of the batching plant operation. Even her previous pedigreed poodles have been afflicted by all sorts of illnesses, many of them dying in the process. She claimed to have sustained damages amounting to P370,000.00.

"Sacha del Rosario testified that her house has to close its windows most of the time because of the dust pollution and her precious plants have been destroyed by the cement powder coming from the constant traffic of trucks and other vehicles carrying the product of the batching plant passing through her area. She claims damages amounting to more than P100,000.00.

"A chemical engineer, Alexander Cruz, said that the effluence deposited on the properties of Ernesto L.I. Rodriguez III and Zenaida Rodriguez has a very high PH, 11.8, and the soil is highly alkaline and cannot support plant life; that pollution coming from the batching plant can cause stomach disorder and skin problems; that the place of Ernesto L.I. Rodriguez III is bare of grass and the trees are dying, (Exhibits J, J-1 and J-2) and that there is also a high degree of calcium on the property in question.

"Witness Guido L. Quiban, a civil engineer, testified that on the basis of his examination of the property of Rodriguez III affected by the pollution, it would cost at least P250,000.00 for the excavation filling, concreting of canal and rental of equipment to repair it or restore it to its status quo ante.

"Lawyer Ernesto R. Rodriguez, Jr., the 70-year old father of both Ernesto III and Zenaida Z. Rodriguez, submitted a medical certificate that he had recently been taken ill with acute bronchial asthma, hypertension and atherosclerotic heart disease. (Exhibits L, L-1 to L-4). His physician, a specialist graduate from the University of London and connected with various hospitals in Manila, advised him against exposure to environmental allergens, specifically cement dust and pollution. He also submitted as exhibits various newspaper clippings (Exhibit M) and excerpts from a book (Exhibits N and N-1) showing that pollution can irritate the eye, sear lungs and destroy vegetation, raise blood pressure, increase cholesterol levels, interfere with sleep, cause ulcer, trigger heart attacks and the like; that it is the common denominator of respiratory diseases, especially asthma chronic bronchitis, bronchial asthma and emphysema; and that polluted air can develop abnormalities in lung function.

"Dr. Raul I. del Rosario, a neighboring physician, testified that he had treated several patients who traced their

sickness to the pollution caused by defendant Daytona batching plant. He said that cement dust produces broncho-pulmonary obstructive diseases, broncho fibriotic lesions which may produce cardio pulmonary complications, and the people living in the neighborhood of the batching plant are the most susceptible to these diseases. He reported many cases of bronchial asthma in both children and adult who live in the vicinity of the cement batching plant and these cases have been intermittently admitted and discharged from the Quirino Labor Hospital where he presently works as a resident physician. He had intended to open a medical clinic at his residence but he could not do so because the washings from the cement mixers are dumped on the access road in front of his house and when these washings are dried up they pollute the neighborhood, rendering his intended medical clinic unfit and impractical for the treatment of patients, particularly those suffering from respiratory ailments.

"Another lawyer, Eliseo Alampay, Jr., who likewise resides a few meters away from the site of the Daytona batching plant, testified that the said plant is certainly injurious to the health; that the cement dust are agents of lung ailments, impair the growth of plants and even kill the birds in their cages; that it is a demonstrable nuisance because its uncontrolled engine noise and nightlong pounding prevent the neighborhood from being able to sleep soundly and peacefully. He told the court that there was a time when he felt like organizing the whole neighborhood into a demolition team to forcibly dismantle the entire Daytona plant because 'the authorities concerned apparently have chosen to close their eyes and leave us to our miserable plight.' He said that the homes in the community all look dirty and dusty because of the pollution that the batching plant of the defendant causes." (Decision in Injunction Case, AC-G.R. No. 14602-SP, pp. 10-14)

Anent the default order, the appellate court in the injunction case said:

"From the foregoing, it appears that petitioner was recreant in failing to file an answer after respondent judge denied its motion to dismiss the complaint. The motion to dismiss was denied in the order of the lower court under date of April 3, 1981, a copy of which was received by petitioner on April 23, 1981. A motion for reconsideration of the order of denial filed by petitioner on May 7, 1981 was denied by said court on July 7, 1981. Instead of filing an answer promptly, petitioner filed with the Supreme Court a motion for extension of time to file a petition for review, but it never filed one, prompting the Supreme Court to issue a resolution dated October 5, 1981 informing the parties that no petition for review was filed within the period that expired on August 15, 1981. In spite of the Supreme Court's resolution, petitioner still failed to file any answer or pleading to arrest the running of the prescriptive period. It was only on July 23, 1982, when petitioner filed its Petition for Relief which was nine (9) months after the Supreme Court's resolution was issued. Petitioner's assertion in its Petition for Relief that the failure to file the answer was caused by 'the unforeseen sickness of its corporate secretary who has custody of the records necessary for the preparation of its defense' cannot be taken without much doubt and hesitation. Petitioner did not even point out who was the supposed corporate secretary or explain why the records were in the possession of the corporate secretary instead of the counsel handling the case." (Decision in Injunction case, p. 16; underscoring supplied)

With reference to defendant's allegation that it thought that the period within which to answer (after its motion to dismiss had been denied) had been suspended by its having filed a petition for review before the Supreme Court, same is without merit. The circumstances of the case point to a deliberate desire to delay: the corporation, governed as it is by knowledgeable business executives, should have taken steps to prevent its being declared in default. The corporation waited six (6) months before verifying the status of the case: in the meantime it had been declared in default, a judgment by default had been rendered against it, execution was already pending before it woke up to file the case at hand.

We agree with Justice Luis A. Javellana in his concurring opinion in the injunction case before the appellate court, thus:

"Petitioner's conduct here appears to me to be tainted with fraud and intended simply to delay the disposition

of the case. When its motion to dismiss the complaint was denied, and its motion for reconsideration of that denial was, likewise, denied, it manifested its intention to elevate these orders to the Supreme Court on a petition for review. Yet, it did nothing to this end. The purpose of the ploy is obvious. Once it had announced its intention to go to the Supreme Court, it effectively suspended the proceedings in the trial court, or, at least, that was the effect. This enabled it to continue with its operations and it would have done so indefinitely if it had not been declared in default and private respondents allowed to present their evidence. It is quite apparent that petitioner really had no intention of elevating the case to the Supreme Court, otherwise, it would not have allowed the extended period given to it by the Supreme Court to lapse without filing the petition. Or, if it was in good faith, then, it should have informed the trial court that it was no longer pursuing its remedy in the Supreme Court, after it had decided that it was no longer availing of such remedy. Instead, it concealed this fact from the trial court and the adverse party, and allowed matters to take their course. It was not until it received the adverse decision that it frantically sought to set things right. I do not think that petitioner deserves any consideration for trifling with the administration of justice." (pp. 3-4; underscoring supplied)

WHEREFORE, the assailed decision and resolution are hereby SET ASIDE, and a new judgment is hereby rendered REINSTATING the decision of the trial court with the modification that all awards for nominal damages are hereby eliminated. Costs against private respondent.

SO ORDERED.

Fernan, (Chairman), Padilla, and Cortes, JJ., concur.

Gutierrez, Jr., J., separate concurring statement.

Bidin, J., no part. See footnote on page 1.

CONCURRING

GUTIERREZ, JR., J.,

As a rule, I am against substantial damages being awarded ex parte through default judgments. In this case, the evidence is completely one-sided as the private respondent was unable to present any defenses nor to refute the evidence put forward by the plaintiffs regarding the damages allegedly inflicted upon them. However, I find from the records that there is hardly any legal reason why the private respondent should not suffer the negligence of its counsel, not only in the trial court but even in this court.

I, therefore, concur in the results.

[1] PENNED by Justice Marcelino R. Veloso concurred in by Justices Porfirio V. Sison, Abdulwahid A. Bidin, Ramon B. Britanico & Josue N. Bellosillo in A.C.-G.R. No. 02052.

[2] A.C.-G.R. No. 14602-SP penned by Justice Jose A.R. Melo concurred in by Justices Simeon M. Gopengco & Jose. F. Racela, Jr.; dissenting opinion, Justice Vicente V. Mendoza; separate concurring, Justice Luis A. Javellana.

[3] 138 SCRA 46.

[4] Now known as the Court of Appeals.

[5] Sitchon vs. Sheriff of Occidental Negros, 80 Phil. 397; Ongsiaco vs. Natividad, 79 Phil. 3; Rios vs. Ros, 79 Phil. 243.

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