

ISAGANI M. JUNGCO, PETITIONER, VS. HON. COURT OF APPEALS, AND G. A. MACHINERIES, INC., RESPONDENTS.

G.R. No. 78051. November 08, 1989

Ponente: PARAS, J.

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PARAS, J.:

The instant petition for review seeks the setting aside of the order of default issued by the lower court against petitioner (defendant below) and that petitioner be allowed to present evidence in his behalf.

The facts are clear:

"On August 19, 1980, G.A. Machineries, Inc. filed a complaint for collection against petitioner-defendant Isagani M. Jungco, in the Court of First Instance of Quezon City, Branch LI1 presided over by Judge Concepcion Buencamino. The complaint was duly answered and the case was set for pre-trial. On July 15, 1982, the Court issued an Order stating as follows: 'It appearing that the defendant has not been claiming his mail, the pre-trial is terminated and the case is set for hearing on October 27, 1982 at 8:30 o'clock in the morning.' Judge Buencamino retired. The Judiciary Reorganization took place and the case was re-raffled and re-assigned to another branch, No. 105 of the RTC of Quezon City, presided by Judge Johnico Serquina; who set the case for Pre-trial hearings on August 15, 1984 and October 5, 1984. Defendant failed to appear but there was no proof of notification, and the pre-trial was reset to November 9, 1984, and reset again to March 1, 1985. At the hearing on March 1, 1985 defendant-petitioner herein, filed a motion for postponement asking for a resetting of the hearing to April 5, 1985. Unfortunately, April 5, 1985 was a holiday (Good Friday), so the pre-trial hearing was reset to March 22, 1985.

"On April 30, 1985, petitioner-defendant received an Order dated March 22, 1985, declaring him as in default and allowing plaintiff to present evidence ex-parte. Petitioner filed a Motion for Reconsideration, alleging among others that he was not duly notified of the hearing on March 22, 1985.

"On June 19, 1985, the Court denied the Motion for Reconsideration.

"On July 12, 1985, petitioner filed a motion to set aside order of default but said motion was denied on July 22, 1985 for failure to comply with the requirements of Sections 4 and 5 of Rule 15.

"On August 2, 1985, petitioner refiled his motion to set aside order of default furnishing copy to opposing counsel.

"On August 16, 1985, the said motion was denied by the Court for being devoid of merit.

"On September 6, 1985, petitioner mailed his motion for reconsideration of the order dated August 16, 1985. The same was denied by the Court on October 9, 1985." (CA decision, pp. 17-18, Rollo, Annexes omitted)

On appeal to the then Intermediate Appellate Court (now Court of Appeals, or CA), the lower court's orders were affirmed in the now questioned decision[*] with the following decretal portion:

"WHEREFORE, in view of the foregoing, the petition is DISMISSED for lack of merit, and the temporary

restraining order previously issued is hereby lifted." (CA Decision, p. 21, Rollo)

The petitioner's subsequent Motion for Reconsideration likewise failed as it was denied in a minute resolution dated March 30, 1987 (vide, p. 85, CA Records), hence this petition.

Meanwhile, after the CA's disputed decision was promulgated, the trial court (presided over by Judge Tomas V. Tadeo, Jr.), upon motion of private respondent, received the tatter's evidence ex-parte and then issued a Judgment by Default dated August 18, 1987 (see p. 40, Rollo). Petitioner was ordered to pay private respondent the aggregate amount of P8,330.00 as principal, plus interest, and P2,082.50 in damages and attorney's fees. A "Manifestation or Notice of Appeal with Notice of Appearance" (p. 88, Rollo) was filed by petitioner whereby he sought the setting aside of the said August 18, 1987 Judgment for being subjudice in view of this pending action. Acting on the said Manifestation, the trial court denied petitioner's prayer to set aside its August 18, 1987 Decision, but considered the same manifestation as a notice of appeal, which said court approved. (see p. 35, Rollo)

Considering now the respective submission of the parties and the evidence of record, We rule to dismiss the petition.

Mainly, petitioner argues that the trial court gravely abused its discretion in considering him as in default. We do not think so. Pursuant to Section 1, Rule 20 of the Rules of Court, the appearance of the parties at the scheduled pre-trial conference is mandatory. And to ensure the enforcement of such mandate, Section 2 of the same Rule gives to the trial court the discretion to declare a party who fails to appear at said conference as in default or non-suited.

The records show that the case was set for pre-trial on March 22, 1985 as it appears in the notice of hearing dated January 22, 1985 (vide, p. 54, Original Records). And as correctly found by Judge Serquina in his June 19, 1985 Order (p.17, CA records), the return card attached at the back of a copy of the said notice of hearing shows that plaintiff's (should read defendant's) counsel received a copy" of the latter. Under the foregoing, the ruling that factual findings of the trial court are entitled to great weight (Pring v. CA, 138 SCRA 785) is well in point. And since We find no compelling reason to deviate from said finding of the trial court. We uphold the same.

To pursue his argument that the lower court gravely abused its discretion in declaring him in default, petitioner cites the case of Continental Leaf Tobacco (Phil.), Inc. v. IAC (140 SCRA 269) and adds that he has a meritorious defense as he goes on to narrate the latter. Before disposing of this contention, a distinction first must be made between a party in default (Sec. 1, Rule 18) and one declared as in default (Sec. 2, Rule 20). In the former case, one is declared in default due to his failure to file his answer to the complaint within the period required by the Rules. On the other hand, the latter contemplates a scenario wherein the defendant in a suit had already filed his answer (therefore had set up both his negative and affirmative defenses) but failed to comply with the mandate of the Rules in not appearing at the scheduled pre-trial hearing.

Taking into account the above distinction, reliance on the Continental Leaf Tobacco case (supra) is not in place since the said case involves a defendant declared in default for failure to file an answer. In the case at bar, petitioner was declared as in default by the trial court for failure to appear at the scheduled pre-trial hearing despite due notice thereof. Consequently, petitioner may not insist that the trial court set aside its Order of default in view of his meritorious defense since such defense, as it appears in his answer (see p. 64, Rollo), is already within the knowledge of said court prior to the issuance of the disputed Order. In fact, present jurisprudence show that a "Motion to Set Aside Order of Default" is not the proper remedy of a party who had been so declared as in default, a Motion for Reconsideration being the relevant remedy (Lucero v. Dacayo, 22 SCRA 1004) without need for a recital of defendant's "meritorious defenses" simply because the said defenses of the defendant are

already laid down in the answer (Regalado, Remedial Law Compendium, 1986 ed., p. 167).

Coming now to petitioner's prayer that We set aside the Judgment by Default rendered by the trial court on August 18, 1987, suffice it to say that the same Judgment is now on appeal with the Court of Appeals wherein petitioner can raise his exceptions.

WHEREFORE, the present petition is hereby DENIED and the questioned decision AFFIRMED. No costs.

SO ORDERED.

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

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

[*] Promulgated on September 24, 1986, penned by Justice Bienvenido C. Ejercito and concurred in by Justices Jorge R. Coquia and Antonio M. Martinez.

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