

ANTONIO GARCIA, PETITIONER, VS. THE COURT OF APPEALS (FIFTH DIVISION) AND SPS. WILLIAM UY AND MA. JAJORIE UY, RESPONDENTS.

G.R. No. 83929, June 11, 1992

Ponente: PADILLA, J.

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PADILLA, J.:

The issue raised in this petition for review on certiorari is not new. It is whether or not a defendant declared in default regains ipso facto his standing in court as to be entitled to notice of proceedings subsequent to a final judgment or order rendered against him. More precisely, is a party who has been declared in default entitled to notice of a motion for execution pending appeal of a judgment by default?

The undisputed facts, as culled from the decision of respondent court in CA-G.R. No. 12665, dated April 22, 1988,[1] are as follows:

"In May 1987, petitioner Antonio Garcia filed an action for damages against private respondent spouses, William and Ma. Jajorie Uy, before the RTC of Pasig, for padlocking the commercial stalls rented by petitioner from private respondents at Virra Mall Shopping Center, Greenhills, San Juan.

For failure of private respondents to file their answer within the reglementary period, petitioner moved to declare the former in default and for reception of his evidence ex-parte. In an order dated 7 July 1987, the trial court granted petitioner's motion and set the reception of evidence on 9 July 1987. A copy of the order was served on and received by private respondents on 14 July 1987.

On 1 July 1987, private respondents filed an appearance with motion for extension of time to file answer from said date. The trial court denied the motion for having been filed out of time.

In the meantime, petitioner presented his evidence ex-parte. On 10 August 1987, the trial court issued a judgment of default against private respondents, a copy of which was received by them on 18 August 1987. On 11 August 1987, petitioner filed an ex-parte motion for execution pending appeal which the trial court granted on 21 August 1987 and accordingly issued the writ upon petitioner's filing of a bond in the amount of P520,000.00.

Whereupon, private respondents appealed to respondent Court of Appeals, challenging the validity of the writ of execution because it was granted without proper notice to them and without hearing.

On 22 April 1988, respondent Court of Appeals rendered a decision granting private respondents' petition for certiorari and setting aside the order of the trial court dated 21 August 1987 granting the writ of execution. A motion to reconsider the above decision was denied on 16 June 1988. Consequently, this petition."

Respondent court's decision holding that after the judgment by default was rendered, the defendants (private respondent herein) automatically regained their standing and were entitled to notice of proceedings subsequent to the final judgment by default, is here challenged by petitioner. Citing Section 2, Rule 18 of the Rules of Court

which provides that a party declared in default is not entitled to notice of subsequent proceedings nor to take part in the trial, as well as Section 9, Rule 13 which states that the party in default is entitled to notice only of papers referring to substantially amended or supplemental pleadings and final orders or judgments, or in cases where the defaulting party files a motion to set aside the order of default, petitioner contends that nowhere in the Rules does it appear that a party who defaults shall automatically regain his lost standing and right to notice after rendition of a judgment by default.

Petitioner also assigns as error the finding of the respondent court that the ex parte motion for execution pending appeal was inappropriate and that the order granting the same without hearing was rendered without jurisdiction. Petitioner claims that Section 2, Rule 39 requiring notice to the adverse party is mandatory only in cases where the defendant has not been declared in default.

We find the petition devoid of merit.

The issue at bar was squarely resolved in the case of *S.C. Johnson & Son, Inc. vs. Court of Appeals, et al.*[2]

The facts in the aforesaid case are similar to those in the case at bar. In *S.C. Johnson*, petitioner therein (*S.C. Johnson*) was declared in default for its failure to file a responsive pleading within the reglementary period. Therein private respondent (as plaintiff) was allowed to present his evidence ex parte. Thereafter, a judgment by default was rendered by the trial court in favor of the plaintiff. After the rendition of the judgment, the plaintiff filed an ex parte motion to execute the judgment pending appeal, which motion was granted by the trial court. *S.C. Johnson* questioned before the Court of Appeals the failure of therein plaintiff to notify him of the motion for execution pending appeal and the trial court's ex-parte proceedings in granting said motion.

The Court of Appeals in the *S.C. Johnson* case, dismissed *S.C. Johnson's* petition for lack of merit. Hence, *S.C. Johnson* appealed to this Court raising the same issue raised in the instant petition.

This Court in the *S.C. Johnson* case categorically answered in the affirmative the question posed at the start of this decision. Thus:

"We hold that a party declared in default is entitled to notice of the motion for execution pending appeal. This interpretation is consistent with the nature and effects of being in default as well as with what has been jurisprudentially laid down with respect to executions pending appeal."[3]

Petitioner's argument that notice to the adverse party becomes mandatory only in case the defendant has not been declared in default utterly fails in the light of the ruling in the above-stated case, which states:

"The remedy of the defaulted party is to file a motion to set aside the order of default if no judgment has been rendered yet. If there is already judgment, the defendant's recourse is to file a motion for new trial, or a petition for relief from judgment, or appeal the judgment, or file a special civil action for certiorari. This is the reason why a defaulted defendant is entitled to notice of final orders or judgments.

Consistent with this right to notice of final order or judgment is the right to notice of the motion for execution pending appeal of the default judgment. Without such notice, the various recourses available to the defaulted party after judgment would be rendered illusory. For once a judgment has been executed, restitution, although provided for in a case of reversal, is oftentimes incomplete and unsatisfactory as damages may arise which cannot be fully compensated."[4]

Petitioner's citation of Section 2, Rule 39 of the Rules of Court to support his aforesaid argument cannot aid his cause. We again cite the pertinent ruling in the *S.C. Johnson* case:

"Moreover, in the same case of *Aguilos vs. Barrios*, this Court held that 'a party has a right to rely upon the rules of court and to expect that she would be given notice as required thereby. As being in default does not

imply a waiver of rights, as aforesaid, the defaulted party has the right to expect compliance with the requisites for executing a judgment pending appeal under Section 2 of Rule 39, thus:

'Sec. 2. Execution pending appeal. – On motion of the prevailing party with notice to the adverse party the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein.'

More so when we consider that as early as the case of *Monteverde vs. Jaranilla*, involving defaulted defendants, this Court has ruled 'that the court abuses its discretion in ordering the execution of a judgment from which an appeal is pending, without previous notice to the adverse party and there being no special ground therefor.' This doctrine was restated in the subsequent case of *Aguilos vs. Barrios* where we emphatically said: 'The requirement about motion by the prevailing party and notice to the adverse party, which was not complied with in the instant case, is mandatory and is precisely an innovation introduced in the new rules to remove the doubt suggested in *Gamay vs. Gutierrez David* and to restate the doctrine laid down in *Monteverde vs. Jaranilla*.' [5]

As for private respondents' (defendant's) loss of standing in court, by reason of having been declared in default, again we rule that a party in default loses the right to present his defense and examine or cross-examine witnesses. It does not mean that being declared in default, and thereby losing one's standing, constitutes a waiver of all rights; what is waived only is the right to be heard and to present evidence during the trial while default prevails. A party in default is still entitled to notice of final judgments and orders and proceedings taken subsequent thereto.

WHEREFORE, the petition is DENIED. The decision appealed from is hereby AFFIRMED with costs against the petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), and Regalado, JJ., concur.

Paras, J., No part. Wife participated in CA dec.

Nocon, J., on leave.

[1] Penned by Justice Conrado T. Limcaoco, with Justices Vicente V. Mendoza and Gloria C. Paras concurring.

[2] G.R. No. 54040, August 14, 1990, 188 SCRA 579.

[3] p. 582, *ibid*.

[4] pp. 583-584, *ibid*.

[5] pp. 584-585, *ibid*.

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