

MANILA ELECTRIC COMPANY, PETITIONER, VS. HON. COURT OF APPEALS, HON. TERESITA DIZON-CAPULONG, AS PRESIDING JUDGE, REGIONAL TRIAL COURT, VALENZUELA, METRO MANILA, BRANCH 172, AND...

G.R. No. 88396. July 04, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

This petition for review on certiorari impugns the decision of respondent court in CA-G.R. SP No. 15452, dated May 19, 1989,[1] dismissing herein petitioner's original action for certiorari which sought the nullification of the judgment by default and the orders of the Regional Trial Court of Valenzuela, Bulacan in its Civil Case No. 2769-V-88.

The generative facts of the case, as correctly reported in the decision of respondent court, are as follows:

"On February 15, 1988, a petition for preliminary injunction was filed before the public respondent to enjoin the petitioner MERALCO from disconnecting electrical service to the private respondent Polystyrene Manufacturing Co., Inc.

"On February 17, 1988, the public respondent Judge issued a Temporary Restraining Order, commanding the defendant Meralco to maintain the status quo and not to disconnect electric service to Polystyrene at the same time, setting the hearing on the prayer for preliminary injunction.

"At the hearing on February 23, 1988 on the prayer for the writ of preliminary injunction, respondent Polystyrene presented evidence in support of its prayer. Petitioner MERALCO'S counsel appeared and manifested that he would not be presenting any documentary evidence and instead requested that he be given until February 29, 1988 within which to file his written opposition to the petition. This was granted by the respondent Judge.

"On March 7, 1988, the respondent Judge granted the prayer for the issuance of a writ of preliminary injunction, the dispositive portion of her order reads, as follows:

‘WHEREFORE, let the Writ of Preliminary Injunction prayed for to be (sic) issued whereby defendant or any person acting in its behalf is hereby enjoined from disconnecting the electrical service to plaintiff provided plaintiff posts an injunction bond in the amount of P500,000.00 conditioned that plaintiff will pay all damages which defendant may suffer by virtue of the issuance of the same writ.

SO ORDERED.’

"On March 23, 1988, petitioner MERALCO filed its Answer with affirmative defenses and counter-claims.

"On March 21, 1988, the respondent Judge issued an Order setting the pre-trial conference for April 28, 1988 at 8:30 a.m. with notice to both parties' counsels, to wit:

X X X X X X X X

'Enclosed herewith is a copy of the notice of the same reference to your client which you are required to serve upon him. You are also directed to inform your client of the purposes of such conference.'

"Notices to plaintiff and defendant were also sent.

"On the date set i.e. April 28, 1988, for the pre-trial, petitioner MERALCO's counsel failed to appear. Upon verbal motion of Polystyrene, MERALCO was declared as in default and Polystyrene was allowed to present its evidence ex-parte on April 29, 1988 before a commissioner.

"On April 29, 1988, and on the evidence presented ex-parte, the respondent Judge rendered a judgment in default, the dispositive portion of which reads, as follows:

'WHEREFORE, finding the evidence presented by the plaintiff sufficient to support their (sic) petition, judgment is hereby rendered in favor of the plaintiff and against the defendant:

1. Ordering the defendant to cease and desist permanently from disconnecting its electrical services to plaintiff;
2. Ordering the defendant to pay plaintiff exemplary damages in the amount of P50,000.00;
3. Ordering the defendant to pay attorney's fees in the sum of P50,000.00;
4. Ordering the defendant to pay the cost of suit.

SO ORDERED.'

"A copy of the Decision was received by MERALCO's counsel on May 18, 1988.

"On June 1, 1988, or on the 14th day, after receipt of the Decision, MERALCO filed a Motion for Reconsideration to Lift Order of Default and to Vacate Judgment by Default.

"The main reason given for the failure of MERALCO's counsel to appear in the pre-trial conference was that he was incapacitated by influenza. A medical certificate was submitted to support this allegation.

"After the Opposition and Reply and Rejoinder were filed, the respondent Judge denied the motion for reconsideration. The pertinent portion of her assailed Resolution of July 6, 1988 reads:

X X X X X X X X

"Defendant's counsel is referred to the ruling in the case of Jose Carandang vs. Hon. Jose R. Cabatuando etc., et al G.R. No. L-25384, October 26, 1973. In following the ruling of this case, the Court is guided by the fact that due to the unexcusable negligence of defendant's counsel, nothing can be gained by lifting the Order of Default and setting aside the judgment, except delay in the disposition of the case and tacit subservience by the Court to the explicit indifference of counsel appearing before it.

'Motion for Reconsideration is DENIED.'

"On July 20, 1988, MERALCO's counsel, Atty. Romeo M. Flores, filed his withdrawal of appearance and simultaneously, the latter's new counsel entered their appearance on July 22, 1988. The new counsel for MERALCO filed a Petition for Relief from Judgment praying that the Decision dated April 29, 1988 be set aside and a new trial be held on the merits.

"On July 25, 1988, private respondent, Polystyrene was ordered to answer. After trial, the respondent Judge issued an order dated August 19, 1988 dismissing the petition for relief from judgment and, considering that the decision had become final and executory, issued a writ of execution.

"On August 26, 1988, MERALCO filed a Notice of Appeal from the Order dated August 19, 1988, to this Court of Appeals. On September 8, 1988, respondent Polystyrene filed its Opposition to MERALCO's Notice of Appeal.

"Earlier, on September 6, 1988, respondent Polystyrene in this instant action (CA-G.R. No. SP-15452) filed a Special Appearance with Manifestation, calling our attention to the fact that before petitioner Meralco filed the instant Petition for Certiorari on August 27, 1988, it had already filed a Notice of Appeal before the court a quo on August 26, 1988." [2]

As earlier stated, respondent court dismissed the said petition for certiorari therein for lack of merit. Hence, the instant petition with the following submissions which allegedly warrant our review of the assailed decision, viz.:

1. The Court of Appeals erred when it ruled that the petition for certiorari filed with it was not the proper remedy to assail the questioned orders and judgment by default rendered by the respondent judge;
2. The Court of Appeals erred when it found that certiorari was availed of by petitioner MERALCO only after its right to appeal had lapsed into finality; and
3. The Court of Appeals not only departed from the usual course of proceeding, but also decided questions of substance contrary to law and the applicable decisions of this Honorable Court, when it refused to issue the equitable writ of certiorari to correct the palpable grave abuse of discretion committed by the respondent judge in issuing the questioned orders and judgment by default. [3]

After a careful consideration of the issues raised, which we shall rule upon conjointly, we find the petition devoid of merit.

While the special civil action of certiorari may be availed of in the alternative situation where an appeal would not constitute a plain, speedy and adequate remedy, this is on the theoretical assumption that the right to appeal is still available in the case. If, however, the remedy by appeal had already been lost and the loss was occasioned by petitioner's own neglect or error in the choice of remedies, certiorari cannot lie as a substitute or a tool to shield the petitioner from the adverse consequences of such neglect or error. The two remedies are mutually exclusive and not alternative or successive. [4]

Applying this fundamental principle to the case at bar, it is readily evident that petitioner had ample opportunities to appeal the default judgment rendered against it by the court a quo, to wit, after the default judgment itself was rendered and, later, after its motion to lift the order of default and to vacate the default judgment was denied by the trial court. It nevertheless deliberately allowed the period for appeal to pass without interposing one. Worse, despite the then availability of the remaining period for appeal from the denial of its motion to lift the order of default and to vacate the default judgment, it opted to wait and subsequently file a petition for relief from the judgment [5] which by then was final and executory, with the added misfortune that said petition could not claim any procedural validity both technically and on the merits.

On reglementary technical grounds, it is a firmly established doctrine that the relief provided for by Rule 38 of the Rules of Court is of equitable character and is allowed only in exceptional cases, that is, where there is no other available or adequate remedy. A petition for relief is not regarded with favor and judgment will not be disturbed where the party complaining has, or by exercising proper diligence would have had, an adequate remedy at law, [6] as in the present case where petitioner could have proceeded by appeal to vacate or modify the default judgment.

It is no creditable argument that petitioner supposedly preferred respondent judge to correct her own alleged errors. Being a special remedy, a petition for relief is available only under exceptional circumstances, [7] in which

equity and justice will prompt the court to give the petitioner a last chance to defend his right or to protect his interest. Even so, the relief will not be granted to a party, like the petitioner, when the loss of remedy at law was due to his own negligence or a mistaken mode of procedure, otherwise, the petition for relief will be tantamount to reviving the right of appeal which had already been lost.[8]

On the merits of the petition for relief, we likewise do not find excusable the failure of petitioner's counsel to attend the pre-trial hearing as to justify the grant of relief. It is of record that petitioner was represented in the case below by a number of readily available lawyers belonging to its own legal department who could have easily been sent to attend the pre-trial conference or, at the very least, to move for its postponement if they were not prepared for such hearing. Petitioner, however, utterly failed to comply with the rules to protect its interests. Certainly, the patent lack of coordination among or the cavalier response of the members of its own legal staff, despite due notice of the pre-trial conference, cannot exculpate petitioner from the adverse consequences of the default judgment.

As aptly revealed by private respondent in its comment to the basic petition:

"In the instant case, petitioner is represented by a battery of lawyers headed by Attys. Gerardo R. Gonzales, Amador B. Factura, Vicente M. Montero and Romeo M. Flores. These lawyers appear as counsel on record for petitioner as shown no less in page 21 of the Answer (Annex 'M' of Annex 'D', Petition) and page 12 of the Opposition to Injunction (Annex 'K' of Annex 'D', Petition).

"If indeed Atty. Romeo M. Flores was sick of influenza, one of the lawyers aforementioned should have had the decency to appear at the pre-trial even just to reset the same if such be their pleasure, but certainly not to snub the Honorable Court, for such an actuation would further aggravate the seeming disrespect that some lawyers have for court orders.

"Petitioner and counsel were notified of the pre-trial setting. They knew that they did not attend the same. Good judgment and due diligence would have dictated that petitioner's counsel (a battery of them) should have called up or visited the Court to inquire as to what transpired during the pre-trial, which move they did not do through sheer gross negligence and apathy. 'The standard of care required of a defendant is that which an ordinary prudent man bestows upon his important business.' (Gaylord vs. Berry, 169 N.C. 733, 86 SE 623)

x x x

"x x x. Moreover, Annex '2' of petitioner's motion to lift (Annex 'P' of Annex 'D', Petition) which is the medical consultation slip issued by Dr. Rogelio Sanchez of the J. F. Cotton Hospital (the hospital of Meralco located at the back of their main building in the same company compound), reveals that as early as April 27, 1988, Atty. Romeo Flores already knew that he was to be confined at home for such was the advice of the company doctor: 'Advice: for house confinement and to report back to J. F. Cotton Hospital.' Diligence, reason, prudence and practice dictates that Atty. Flores, (one of petitioner's counsel) should have gone back to his office which is in the same compound or called up his office from the doctor's office by intercom (local station) and advised the legal staff or his secretary of his situation so that the legal office could have sent the other lawyers (as appearing in the pleadings) to attend and postpone the pre-trial to be held the next day, April 28. For petitioner's Atty. Flores to claim now that he did not have the means to communicate with his legal staff is purely an afterthought designed merely as a subterfuge to escape the consequences of his negligence as was his feigned illness. As aforesaid, the hospital (J. F. Cotton) where Atty. Flores had his check-up is a company hospital and in the same compound as the Meralco Building, where he holds office."[9] (Underscoring in the original).

It is not arguable that negligence of counsel is binding on the client, just as the latter is bound by the mistakes of his lawyer.[10] This is especially true in petitioner's case where its lawyers are its own house attorneys who should have been more circumspect and vigilant in protecting the interests of their client which is also their

employer.

With regard to petitioner's contention that the order declaring it in default is a nullity due to its lack of notice of the pre-trial hearing, the findings of fact both of the trial court and the respondent court, which are conclusive upon us there being absent any showing of grave abuse of discretion in the appreciation of such facts, belie such contention. Says the trial court on this issue:

"Defendant assails the decision as a nullity because notice of pre-trial to defendant Manila Electric Company was just enclosed in the notice of pre-trial to Atty. Romeo Flores. Suffice it to say that there were two different notices sent for the pre-trial of April 28, 1988, one for defendant Manila Electric Company and another to Atty. Flores. The enclosure of said notice in one envelope was necessary because both of them are in one and the same building and address - that of 5th Floor Lopez Building, Ortigas Avenue, Pasig, Metro Manila. There was no problem regarding the procedure because both notices were received by both the said defendant and its counsel prior to the pre-trial date." [11]

Indeed, even if the address of a party be different from that of the counsel, it is best that the trial courts uniformly serve such notice to the party through or care of his counsel at counsel's address, with the express imposition upon counsel of the obligation of notifying the party of the date, time and place of the pre-trial conference and assuring that the party either appear thereat or deliver to counsel a written authority to represent the party with power to compromise the case, with the warning that a party who fails to do so may be non-suited or declared (as) in default. [12]

Premises considered, we find no reversible error in the dismissal by respondent court of petitioner's special civil action for certiorari. It may not be amiss to stress at this juncture that while defaults are frowned upon and courts are encouraged as much as possible to hear cases and determine them on the merits; and that the rules of procedure ought not to be applied in a very rigid, technical sense but should be used to help secure and not to override substantial justice, this does not mean that a party may, by any remedy it chooses to pursue and at any time it decides to do so, expect to obtain a desired favorable result, in this case the nullification of the default order or the setting aside of the default judgment. Needless to say, a proper and timely challenge is a requisite provided by the rules and compliance therewith is essential for the orderly and expedient administration of justice for which said rules, in the first place, were primarily framed and prescribed.

WHEREFORE, the petition is DENIED and the decision appealed from is hereby AFFIRMED. The temporary restraining order of September 13, 1989 is hereby lifted.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

* Impleaded per Resolution of June 19, 1989.

[1] Penned by Justice Ricardo J. Francisco, with Justices Nicolas P. Lapeña, Jr. and Minerva Gonzaga-Reyes concurring.

[2] Rollo, 43-46.

[3] Ibid., 13-14.

[4] *Limpot vs. Court of Appeals, et al.*, 170 SCRA 367 (1989).

[5] Rollo, 174-180.

[6] Palomares, et al. vs. Jimenez, et al., 90 Phil. 773 (1952); Arante, etc. vs. Rosel, et al., 93 Phil. 18 (1953); Fajardo vs. Bayona, etc., et al., 98 Phil. 659 (1956).

[7] Gordulan vs. Gordulan, 3 SCRA 205 (1961).

[8] Espinosa vs. Yatco, etc., et al., 7 SCRA 78 (1963).

[9] Rollo, 253-255.

[10] Vivero vs. Santos, et al., 98 Phil. 500 (1956).

[11] Rollo, 98.

[12] Service Specialists, Inc. vs. Sheriff of Manila, et al., 145 SCRA 139 (1986), citing Taroma, et al. vs. Sayo, etc., et al., 67 SCRA 508 (1975).

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