

CONTINENTAL CEMENT CORPORATION, PETITIONER, VS. COURT OF APPEALS AND MUNICIPALITY OF NORZAGARAY, RESPONDENTS.

G.R. No. 88586. April 27, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

The question involved in this case is quite simple and not even new. A little research could have easily resolved it and avoided this litigation that has come up all the way to this Court. If we are rendering a full-blown decision instead of disposing of the issue by a short resolution, it is not only because we see the need to reiterate certain basic rules that should be well-settled by now. What we especially intend is to impress upon bench and bar the value of keeping abreast of the doctrines announced by the Court in the interpretation of its Rules.

The facts are easily recounted.

On February 1, 1985, the Municipality of Norzagaray filed a complaint for recovery of taxes against the petitioner in the Regional Trial Court of Malolos, Bulacan. Before the expiration of the 15-day reglementary period to answer, the petitioner filed two successive motions for extension of time to file responsive pleadings, which were both granted. The last day of the second extension was May 28, 1985. On May 25, 1985, the petitioner filed a motion to dismiss the complaint on the ground of the plaintiff's lack of capacity to sue and lack of a cause of action. The motion was denied on July 16, 1985, "both for lack of merit and for having been improperly filed." On July 25, 1985, the plaintiff moved to declare the petitioner in default for having filed only the motion to dismiss and not a responsive pleading during the extension granted. This declaration was made on August 2, 1985, and evidence for the plaintiff was thereafter received ex parte, resulting in a judgment in its favor on February 4, 1986. The judgment was affirmed by the respondent court in its decision dated April 7, 1989,[1] which is the subject of the present petition.

Our ruling follows.

The default order was clearly erroneous and should not have been sustained on appeal. There is no question that the motion to dismiss was filed seasonably, within the period of the second extension granted by the trial court. It is true that such a motion could not be considered a responsive pleading as we have held in many cases.[2] Nevertheless, it is also true that in Section 1 of Rule 16 of the Rules of Court, it is provided that "within the time for pleading, a motion to dismiss the action may be made" on the grounds therein enumerated, including the grounds invoked by the petitioner.

Moreover, it is clearly provided in Section 4 of the same Rule that:

Sec. 4. Time to plead. - If the motion to dismiss is denied or if determination thereof is deferred, the movant shall file his answer within the period prescribed by Rule 11, computed from the time he received notice of the denial or deferment, unless the court provides a different period.

The motion to dismiss was filed on May 25, 1985, three days before the expiration of the second extension.

Notice of its denial was served on the petitioner on July 29, 1985. From that date, the petitioner had 15 days within which to file its answer, or until August 13, 1985. It was unable to do so, however, because of the default order issued by the trial court on August 2, 1985. On that date, the petitioner still had eleven days before the expiration of the 15-day reglementary period during which the petitioner was supposed to file his answer.

The respondents are reminded of our ruling in *Barraza v. Campos*,^[3] to wit:

Under the facts of the case at bar, respondent judge had granted petitioners an extension of fifteen (15) days to file their answer, or up to November 18, 1978. Instead of filing the answer, petitioners filed a Motion to Dismiss the Complaint on November 17, 1978, one (1) day before the expiration of the period as extended by the court. This is clearly allowed under Section 1, Rule 16, Rules of Court. A motion to dismiss is the usual, proper and ordinary method of testing the legal sufficiency of a complaint. The issue raised by a motion to dismiss is similar to that formerly raised by a demurrer under the Code of Civil Procedure. (*Zobel v. Abreu*, 98 Phil. 343). A motion to dismiss under any of the grounds enumerated in Section 1, Rule 8 (now Section 1, Rule 16) of the Rules of Court, must be filed within the time for pleading, that is, within the time to answer. (*J.M. Tuason v. Rafor*, L-15537, June 30, 1962, 5 SCRA 478.)

Private respondents' argument that although a motion to dismiss interrupts the running of the period within which to file an answer, this refers to the original period of fifteen (15) days within which to file the responsive pleading and not to the extension of time within which to file the answer, is without merit. There is nothing in the Rules which provides, directly or indirectly, that the interruption of the running of the period within which to file an answer when a motion to dismiss the complaint is filed and pending before the court, refers only to the original period of fifteen (15) days and not to the extension of time to file the answer as granted by the court. It may be true that under Section 4 of Rule 16, if the motion to dismiss is denied or if the termination thereof is deferred, the movant shall file his answer within the time prescribed by Rule 11, computed from the time he received notice of the denial or deferment, unless the court provides a different period.

This Section 1 of Rule 11 in relation to Section 4 of Rule 16 allows the defendant to file his answer not only within the original fifteen (15) days period but also within "a different period (as) fixed by the court." (Emphasis supplied.)

The above ruling was a reiteration of *Mandac v. Gumarad*,^[4] where we also set aside a default order upon a showing that the motion to dismiss was filed before the expiration of the extension granted by the trial court for the filing of the answer.

As for the period allowed the defendant to file its answer following the denial of the motion to dismiss, the Court clearly held thus in *Acosta-Ofalia v. Sundiam*:^[5]

x x x the period for filing a responsive pleading commences to run all over again from the time the defendant receives notice of the denial of his motion to dismiss.

In the case at bar, the petitioners received the notice of the denial of their motion to dismiss on September 24, 1975. Hence, they had fifteen (15) days from said date or up to October 9, 1975, within which to file their answer. The petitioners were declared in default on September 29, 1975, i.e., ten (10) days before the expiration of the time for filing their answer. Obviously, the order of default made on September 19, 1975, was premature and is, therefore, null and void as well as the reception of private respondents' evidence ex parte, the decision rendered thereon, and the writ of execution, having been predicated on a void order of default.

Manifestly, respondent Judge acted with grave abuse of discretion when he declared the petitioners in default. (Emphasis supplied.)

On the basis of the above doctrines, the Court recapitulates the rules as follows:

1. The trial court may in its discretion and on proper motion extend the 15-day reglementary period for the filing of responsive pleadings.
2. During the original reglementary 15-day period, or any extension of such period, the defendant may file a motion to dismiss the complaint.
3. If the motion to dismiss is denied, the defendant is allowed another fifteen days from notice of the denial to file the responsive pleading. The full 15-day reglementary period starts all over again.

Accordingly, we hold that in issuing the order of default before the expiration of the period for the filing of its answer, the trial court deprived the petitioner of the opportunity to be heard in its defense. The judgment by default thereafter rendered, on the basis only of the evidence of the plaintiff, was therefore also invalid.

We do not agree with the respondent court that the petitioner should have first filed a motion to set aside the default order before challenging the judgment by default on appeal. The evidence that the default order was not served on the petitioner has not been refuted. It is not explained why the default judgment was served on the correct counsel of the petitioner but the default order was not.^[6] At any rate, the default order was a total nullity and produced no legal effect whatsoever because it was issued even before the petitioner could file its answer. This was clearly a violation of due process.

We come finally to the timeliness of the present petition.

The private respondent contends that it was filed out of time on July 22, 1989, because the appealed decision had already become final and executory before that date.

The record shows that the decision of the Court of Appeals was rendered on April 7, 1989, and notice thereof was served on the petitioner on April 17, 1989. On April 28, 1989, the petitioner filed a motion for reconsideration, which was denied on June 1, 1989. Notice of the denial was served on June 8, 1989, and on June 21, 1989, the petitioner asked this Court for a 30-day extension within which to file the present petition. The extension was granted up to July 23, 1989.

The private respondent contends that the petition was filed late because the 15-day reglementary period should be counted from April 17, 1989, when the decision of the respondent court was served on the petitioner. Its reason is that the motion for reconsideration was pro forma and did not suspend the running of the said period, which thus expired on May 3, 1989. The basis of this argument is the wording of the denial, which ran as follows:

The issues raised and the arguments contended in the Motion for Reconsideration of defendant-appellant are the same issues and arguments presented in the appellant's brief, reply brief and supplemental reply brief, which have been discussed in plaintiff-appellee's brief and resolved in the decision of this Court dated April 7, 1989.

After close scrutiny of the Motion for Reconsideration, We find no cogent reason to reverse Our decision.

WHEREFORE, the Motion for Reconsideration is DENIED for lack of merit.^[7]

While mindful of the decision cited by the private respondent,^[8] we call attention to our later pronouncement on this matter, in the case of *Siy v. Court of Appeals*:^[9]

In the first place, the very purpose of a motion for reconsideration is to point out the findings and conclusions of the decision which in the movant's view, are not supported by law or the evidence. The movant, therefore, is very often confined to the amplification on further discussion of the same issues already passed upon by the court. Otherwise, his remedy would not be a reconsideration of the decision but a new trial or some other remedy.

Conformably, we must hold that the motion for reconsideration was not pro forma. Hence, it did have the effect of suspending the reglementary period of appeal until the denial of the motion was notified to the petitioner.

The rest of the petition deals with the substantive issue of whether the respondent Municipality of Norzagaray has the power to impose business taxes on the petitioner as a manufacturer and distributor of cement. This issue involves not only legal but also factual considerations that have not been fully examined because the petitioner was not given its day in court. A fair resolution of this issue requires a hearing where both parties will be given an opportunity to present their respective sides in accordance with the procedure prescribed by the Rules of Court. No less than full compliance with procedural due process will suffice. Hence, it is imperative that this case be remanded to the court a quo for a full trial on the merits.

WHEREFORE, the decision of the respondent court dated April 7, 1989, the default order of the trial court dated August 2, 1985, and the judgment by default dated February 4, 1986, are SET ASIDE. Civil Case No. 7971-M is REMANDED to the Regional Trial Court of Malolos, Bulacan, for further proceedings in accordance with the rules laid down in this decision. Costs against respondent Municipality of Norzagaray.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Penned by Ejercito, J., with the concurrence of Pe and Victor, JJ.

[2] Ong Peng v. Custodio, 1 SCRA 780; Rodriguez, Sr. v. Fernan, 3 SCRA 486; Rep. v. Ilao, 41 SCRA 106; Soledad v. Manañgun, 8 SCRA 110; Dauden-Hernandez v. De los Angeles, 27 SCRA 1276.

[3] 120 SCRA 881; see also B.A. Finance Corp. v. Pineda 119 SCRA 493.

[4] 87 Phil. 278.

[5] 85 SCRA 412.

[6] Rollo, pp. 9, 10, 88.

[7] Resolution denying the petitioner's motion for reconsideration promulgated on June 1, 1989; rollo, p. 80.

[8] Dacanay v. Alvendia, 30 SCRA 40.

[9] 138 SCRA 536.

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