

LORENZO P. LESACA, PETITIONER, VS. HON. COURT OF APPEALS AND ALFREDO RAVELO, RESPONDENTS.

G.R. No. 96432. October 21, 1992

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is an appeal by certiorari, under Rule 45 of the Revised Rules of Court, from the decision dated November 29, 1990 of the Court of Appeals which sets aside the decisions of the Metropolitan Trial Court (MeTC) and the Regional Trial Court (RTC) of Manila, Branch III, and remands the case to the MeTC for further proceedings and reception of the parties' evidence as provided in the Rule on Summary Procedure.

On February 23, 1990, the petitioner, as plaintiff, filed in the Metropolitan Trial Court of Manila (MeTC) a complaint for ejectment against the private respondent, Alfredo Ravelo, to oust him from the commercial premises located at 671 Sales Street, Sta. Cruz, Manila, on the grounds of: (1) expiration of the month-to-month lease contract between the parties; and (2) non-payment of rentals. Ravelo filed an answer to the complaint.

During the first preliminary conference on April 19, 1990, all the parties were present and duly represented by their respective counsel. However, the preliminary conference was reset to May 3, 1990, upon request of both parties, to give them time to explore the possibility of an amicable settlement and submit a compromise agreement.

On the scheduled date of the next conference, May 3, 1990, only the plaintiff (now petitioner) appeared. On motion of plaintiff's counsel, the MeTC declared defendant Ravelo "as in default" for failure to appear at the preliminary conference despite previous notice. The court considered the case submitted for decision "as warranted by the facts alleged in the complaint" (p. 35, Rollo).

On May 23, 1990, the MeTC rendered a decision ordering the defendant, Ravelo, to vacate the premises in question.

Said defendant appealed to the Regional Trial Court (RTC) of Manila. After the submission of the parties' respective memoranda, the RTC promulgated a decision affirming in toto the decision of the MeTC.

Ravelo filed a petition in the Court of Appeals for annulment of the decisions of the MeTC and RTC and to remand the case to the MeTC for reception of evidence.

On November 29, 1990, the Court of Appeals rendered a decision, the dispositive portion of which reads as follows:

"PREMISES CONSIDERED, the Metropolitan Trial Court decision and the respondent court's decision are hereby SET ASIDE. The case is remanded to the Metropolitan Trial Court, Manila, Branch III for further proceedings and reception of the evidence of the parties as provided in the Rule on Summary Procedure." (p. 21, Rollo.)

Hence, the present petition for review alleging that the Court of Appeals erred:

1. when it ruled that the only instance (when) Section 5 of the Summary Rule can be applied is when the defendant fails to answer.
2. when it ruled that should a party fail to attend/comply with the preliminary conference mandated under Section 6 of the Summary Rule, the court below is powerless and has no discretion but to still proceed under Section 6 of same rule to issue an order clarifying and defining the issues of the case and to proceed under Section 7 of same Rule for submission of affidavits of parties.
3. when it ruled that "as in default" declaration is prohibited by the Rule on Summary Procedure.

We find no merit in the petition for review.

Section 6 of the Rule on Summary Procedure provides:

"Sec. 6. Preliminary conference - Not later than thirty (30) days after the last answer is filed, the case shall be calendared for a preliminary conference. Among other matters, should the parties fail to arrive at an amicable settlement, the court must clarify and define the issues of the case, which must be clearly and distinctly set forth in the order to be issued immediately after such preliminary conference, together with the other matters taken up during the same."

As found by the Court of Appeals, when the private respondent (then defendant) and his counsel failed to appear at the pre-trial conference and no compromise agreement was reached by the parties despite the opportunity given them by the court, the situation was similar to that provided in Section 6 of the Summary Rule above quoted. The Court should have issued a "preliminary conference order" defining the issues in the case as provided in Section 6. Thereafter the parties should have submitted their affidavits and other evidence as provided in Section 7 of the Rule on Summary Procedure, to wit:

"Sec. 7. Submission of affidavits. - Within ten (10) days from receipt of the order mentioned in the next preceding section, the parties shall submit the affidavits of witnesses and other evidences on the factual issues defined therein, together with a brief statement of their positions setting forth the law and the facts relied upon by them."

Only when the defendant failed to answer the complaint may the Court proceed to judgment. Thus does Section 5 provide:

"Sec. 5. Effect of failure to answer. - Should the defendant fail to answer the complaint, crossclaim or permissive counterclaim within the reglementary 10-day period herein provided, the court motu proprio, or on motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein except as to the amount of damages which the Court may reduce in its discretion."

In this case, since Ravelo did file an answer to the complaint, the trial court may not declare him as in default (despite his absence and that of his counsel at the pre-trial conference on May 3, 1990) because a motion to declare the defendant in default is a prohibited pleading under Section 15 (h) of the Rule on Summary Procedure.

It is the policy of the law to have every litigated case tried on the merits. It is for this reason that judgments by defaults are generally looked upon with disfavor. As this Court observed in the "case of Coombs vs. Santos, 24 Phil. 446: a default judgment does not pretend to be based upon the merits of the controversy. Its existence is justified on the ground that it is the one final expedient to induce the defendant to join issue upon the allegations tendered by the plaintiff, and to do so without unnecessary delay. A judgment by default may amount to a positive and considerable injustice to the defendant; and the possibility of such serious consequences necessitates a careful

examination of the grounds upon which the defendant asks that it be set aside." (Trajano vs. Cruz, 80 SCRA 712, 713.)

The same doctrine was laid down by this Court in Rosario vs. Alonzo, 8 SCRA 397, where we ruled that "the defendants could, not be in default after they had answered the complaint."

WHEREFORE, the decision dated November 29, 1990 of the Court of Appeals in CA-G.R. SP No. 22801 is hereby AFFIRMED. Let the record of this case be remanded to the MeTC of Manila for further proceedings and reception of evidence in accordance with the Rule on Summary Procedure.

SO ORDERED.

Cruz, (Chairman), Medialdea, and Bellosillo, JJ., concur.

Padilla, J., no part, related to petitioner.

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