

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. SANDIGANBAYAN (SECOND DIVISION), IMELDA R. MARCOS AND ESTATE/HEIRS OF THE LATE FERDINAND E. MARCOS, RESPONDENTS.

G.R. Nos. 109430-43. December 28, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Challenged in this petition for certiorari (with prayer for writ of preliminary injunction or temporary restraining order) is the resolution of public respondent Sandiganbayan (Second Division) dated 28 October 1992[1] which lifted its order of default of 6 April 1989 against private respondent Imelda R. Marcos in connection with the now well-known "ill-gotten wealth" cases pending before said court as well as the resolution of 6 January 1993[2] denying the motion to reconsider the order of 28 October 1992.

The Republic of the Philippines states assiduously that private respondent moved to regain her standing in court only on 8 July 1992, thereby incurring unreasonable delay, as demonstrated by the following circumstances: (a) The late Ferdinand E. Marcos died on 28 September 1989 and after his interment his widow, private respondent Imelda R. Marcos, was reasonably expected to regain her composure to enable her to attend to her cases; (b) She was exonerated in the racketeering case before the Southern District Court of New York on 2 July 1990 so that much of what public respondent considered as "abnormal burden" had "simply vanished or faded away;" and, (c) Upon her return to the Philippines in November 1991, she had every opportunity to personally take care of her cases being then fully aware of their pendency since 1987. From the moment she arrived, due diligence and reasonable promptness should have impelled her to take concrete steps in this regard; instead, she ran for the highest office of the land hoping that should she be successful in her bid all the cases against her would be rendered moot.

Petitioner likewise disputes the finding of the Sandiganbayan that private respondent has prima facie meritorious defenses. Petitioner further claims that res judicata has set in because the ruling in *Imelda R. Marcos v. Presiding Justice Garchitorena*,[3] has definitely settled the validity of the default order against private respondent.

We find no grave abuse in the exercise of public respondent's discretion under review.

First. Prefatorily, we shall resolve the claim of petitioner that the *Imelda R. Marcos v. Presiding Justice Garchitorena* cases have finally resolved the issue of whether the order of default was valid. It must be stressed that the resolution in said cases is conclusive only with respect to the default order for failure of the Marcoses to file their answer within sixty (60) days from 10 November 1988, the date the alias summonses were served. In other words, the central issue in those cases was whether there was valid service of summonses upon them in Hawaii.

In the case at bench, we are asked to rule on the propriety of the grounds and circumstances set forth by private respondent to justify her failure to file her answers, which the Sandiganbayan considered as meritorious when it lifted the default order on 28 October 1992. As the causes of action are different, res judicata cannot be invoked.

Second. Sec. 3, Rule 18, of the Rules of Court provides that "[a] party declared in default may at any time after discovery thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable neglect and that he has a meritorious defense x x x x" It is settled that whether the default order should be maintained under the circumstances attending a particular case, or whether it should be set aside, is addressed to the sound discretion of the trial court.[4] Absent any grave abuse, this Court will not interfere in the exercise of that discretion by the trial court. As a matter of fact, every presumption is in favor of the correctness of its action.[5]

While Sec. 3 of Rule 18 is explicit that the reglementary period for filing the motion to lift the order of default is at any time after discovery and before judgment, it is to the party's advantage that such motion is filed promptly and without unnecessary delay[6] because this is a factor taken into account in granting the prayer. In this regard, petitioner asserts that there was inordinate delay on the part of private respondent in filing her motion. Be that as it may, the records disclose that almost all of the "ill-gotten wealth" cases against private respondent and her family have not even reached the pre-trial stage such that no real injury against the interest of the State will result with the lifting of the default order. Besides, as will hereafter be shown, the peculiar circumstances of the present case justify the questioned resolutions of public respondent.

We agree with the ruling of the Sandiganbayan that the failure of private respondent to properly respond to the various complaints pending before it was due to fraud, accident and excusable neglect. At the time the complaints were instituted against private respondent, circumstances occurred which ordinary prudence could not have guarded against and by reason of which her rights were impaired. Thus, private respondent and her family were effectively barred by the government from returning to the Philippines. She was likewise burdened with numerous civil and criminal suits in the United States for alleged violation of the so-called RICO Act. Moreover, the deteriorating health of her husband aggravated the problems confronting her. Corollarily, the complexities of her legal battles necessitated extensive preparation but which she could not undertake as she was barred from coming back to the country. The claim of petitioner that she ran for the presidency for the purpose of rendering academic the cases against her in the event she succeeded is conjectural and speculative and deserves scant consideration.

Third. Equally important as the evidence on fraud, accident and excusable neglect is that private respondent has shown, prima facie at least according to public respondent, that she has meritorious defenses the tenability of which remains to be ascertained during the trial. The proffered defenses are: (a) She neither took advantage nor abused her late husband's position to acquire funds and other assets for her own personal benefit and aggrandizement; (b) Subject funds and assets were legally acquired by her and her husband using legitimately-sourced private funds; (c) Subject transactions were all entered at arm's length and did not, under any circumstances, cause prejudice nor damage to petitioner and the Filipino people; and, (d) Subject funds and assets were merely entrusted to the individuals and/or corporations concerned.

Fourth. Aside from the foregoing considerations, the most elementary sense of fairness and liberality appears to have prompted the Sandiganbayan to lift the order of default. Significantly, it is the avowed policy of the law to accord both parties every opportunity to pursue and defend their cases in the open and relegate technicality to the background in the interest of substantial justice. After all, petitioner had applied, on several occasions, for leave to file amended or expanded complaints which applications were invariably granted, notwithstanding the resulting delay. Perhaps, it is now the turn of private respondent to be the recipient of and enjoy the same procedural liberality if not compassion.

WHEREFORE, there being no grave abuse of discretion committed by public respondent Sandiganbayan (Second Division) in the issuance of the assailed resolution of 28 October 1992 lifting the order of default, as well as the resolution of 6 January 1993 denying the reconsideration thereof, the instant petition is DISMISSED.

SO ORDERED.

Quiason and Kapunan, JJ., concur.

Padilla, J., (Chairman), see concurring opinion.

Davide, Jr., J., see dissenting opinion.

[1] Rollo, pp. 27-54.

[2] Id., pp. 55-60.

[3] G.R. Nos. 90110-43.

[4] Montinola, Jr. v. Republic Planters Bank, G.R. No. 66183, 4 May 1988, 161 SCRA 45; Claridad v. Santos, No. L-29594, 27 January 1993, 120 SCRA 148; Pacweld Steel Corporation v. Asian Steel Corporation, No. L-26325, 15 November 1982, 188 SCRA 229.

[5] Ibid.

[6] See Philippine National Bank v. de Leon, G.R. No. 62370, 30 January 1990, 181 SCRA 583.

6 pt 6 pt 0 3

DISSENTING OPINION**DAVIDE, JR., J.:**

I regret that I cannot join the majority in the well-written ponencia of Mr. Justice Josue N. Bellosillo. I respectfully submit that the instant petition is impressed with sufficient merit and should be given due course.

Under the circumstances outlined by the petitioner, respondent Sandiganbayan extended beyond reasonable bounds "procedural liberality if not compassion" to lift an order of default long after its validity had been sustained by this Court. As I see it, the failure of the private respondent to file an answer was not due to fraud, accident, mistake, or excusable neglect.

Respondent Imelda Marcos' own comment recites the following Antecedent Facts:

"Private respondent Imelda R. Marcos and her late husband Ferdinand E. Marcos, together with others, were original defendants in Civil Cases Nos. 4, 5, 6, 8, 11, 14, 17, 24, 27, 30, 32, 34, 38, and 138 of the Sandiganbayan, Second Division, which the Petitioner filed on various dates in 1987.

At that time, respondent Imelda R. Marcos and her husband were on forced exile in Hawaii.

On motion of Petitioner, respondent Court authorized the issuance of alias summons to be served on said respondents then residing in Hawaii. When the Philippine Consul General Gomez and Assistant Solicitor General Romeo Dela Cruz could not serve personally the summonses, they effected the service by leaving copies of said summonses and the civil complaints at the gate of the residence of said respondents.

Insofar as said officials are concerned, the summonses were thus served on said respondents on November 10, 1988. As stated in said writs, they had sixty days from said date within which to file their answers to the civil complaints aforesaid, or up to January 9, 1989.

During the critical period from November 10, 1988 to January 9, 1989, respondent Imelda R. Marcos and her late

husband failed to answer the complaints filed against them. On February 9, 1989, Petitioner filed a motion to declare defendants in default to which Atty. Rafael R. Recto by way of 'Special Appearance and Manifestation,' dated February 16, 1989, interposed for defendants an objection on the ground that the Court had not acquired jurisdiction over said defendants because the alias summonses were not properly served in accordance with the Rules of Court.

In a Resolution dated April 6, 1989, respondent Court declared the defendant Marcoses in default. Said Defendants appealed the said resolution to this Honorable Supreme Court in G.R. No. 90110-43.

On September 28, 1989, the late Ferdinand E. Marcos died in Hawaii.

On February 22, 1990, this Honorable Supreme Court issued a Resolution in G.R. Nos. 90110-43 holding as valid and effective the substituted service of alias summonses authorized by respondent Court and served out by the Honorable Assistant Solicitor General, and likewise holding as valid the resolution of respondent Court issued on April 6, 1989 declaring defendants in default.

After several requests to be allowed to return to the Philippines, private respondent Imelda R. Marcos was able to return to the Philippines in November 1991.

She run as candidate for President in the May 11, 1992 elections, but she lost.

On July 8, 1992, she filed a motion to lift the Order of Default of April 6, 1989 issued against her in the aforesaid civil cases, which have not yet been decided on their merits, even up to now.

On August 12, 1992, Petitioner filed its opposition thereto. On August 18, 1992, private respondent filed her reply. Petitioner filed a Rejoinder on October 1, 1992 and private respondent filed her Sur-rejoinder on October 20, 1992.

On October 28, 1992, respondent Court, holding that private respondent had been prevented from filing her answer to the civil complaints against her due to accident, fraud, and excusable neglect and that she had prima facie meritorious defenses, issued a Resolution (Annex A, Petition) granting private respondent's motion to set aside the Order of Default dated April 6, 1989.

On November 17, 1992, Petitioner filed a motion for reconsideration (Annex "C", Petition) of said Resolution. Private respondent filed her opposition thereto (Annex D, Petition).

On January 6, 1993, respondent issued a Resolution (Annex B, Petition), denying the said motion for reconsideration filed by Petitioner."

It is clear then that Mrs. Marcos was, as early as 16 February 1989, already represented by a well-known lawyer, Atty. Rafael Recto, who filed a Special Appearance and Manifestation to object to the motion to declare her in default. Note that the objection was based on lack of jurisdiction over her person due to invalid service of summons. Instead of filing a motion to lift the order of default of 6 April 1989, Mrs. Marcos came to this Court in G.R. Nos. 90110-43. On 22 February 1990, this Court dismissed the petition and sustained the validity of the service of alias summonses on her and of the order of default. Mrs. Marcos did nothing after the finality of the resolution. She should have immediately filed a motion to lift the order of default but she did not. Even after her return to the Philippines in November 1991, she did nothing to relieve herself of the default order. Instead, she got involved in politics by filing a certificate of candidacy for the Presidency and by campaigning vigorously in the May 1992 synchronized elections. It was only on 8 July 1992, after her defeat, that she thought of filing a motion to lift the order of default.

From her conduct, one can hardly see any indication that her failure to answer was due to fraud, accident, mistake,

or excusable neglect. Rather, what one can easily see is an invidious contempt of our judicial processes or gross negligence which merits no compassion from the Court. If a litigant loses a right for sleeping on it under the maxim *vigilantibus et non dormientibus jura subveniunt*, then with good reason may it be said that he should not be given equitable relief under rules of procedure which he disdains or which he fails to take advantage of by gross negligence. The Sandiganbayan thus acted with grave abuse of discretion when it set aside its own order of default after it had been sustained by the highest Court of the land and after Mrs. Marcos had allowed years and unhampered opportunities to seek the lifting of the default order to pass by.

I vote to grant the instant petition.

6 pt 6 pt 0 3

CONCURRING OPINION

PADILLA, J.:

I concur in the ponencia of Mr. Justice Bellosillo. I am also gratified that the Sandiganbayan (Second Division) in its Resolution dated 28 October 1992 lifted its order of default of 6 April 1989 issued against private respondent Imelda R. Marcos in the "ill-gotten wealth" cases pending before said court. In 1990, in a dissenting opinion in G.R. Nos. 90110-43 entitled "Spouses Ferdinand E. Marcos and Imelda R. Marcos vs. Hon. Presiding Justice Francis E. Garchitorena, et. al.," I expressed strong disapproval of such order of default. I would like to reproduce herein pertinent parts of that dissenting opinion which have been obviously followed by the Sandiganbayan in a change of heart and is apropos to the present case.

"To my mind, the real issue is, after the petitioners had been validly served with summons, and in the light of their continuing and persistent pleas to return to the Philippines in order to defend themselves in the cases to which they have been summoned - but which the Philippine Government has repeatedly denied - can petitioners be validly declared in default for their failure to file answer in said cases?"

It is my view that petitioners should not be declared in default. Consistent with my dissenting opinion in G.R. Nos. 88079 and 88211, upholding the constitutional and human right of every Filipino to return to his country, I submit that petitioners have the same constitutional and human right to return and defend themselves personally in the cases to which they have been summoned by the Sandiganbayan. In addition, Rule 138, Section 34, Rules of Court, provides:

'Sec. 34. By whom litigation conducted. - In the court of a justice of the peace a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney, and his appearance must be either personal or by a duly authorized member of the bar. (emphasis supplied)'

To the extent then that petitioners' declared default is based on failure to answer within the period stated in the alias summons, the same must be set aside, given the fact that petitioners have been denied the basic constitutional and human right to return to the country to properly answer and face these cases.

In succinct but dialogue form, the situation at bar may be described thus:

'Sandiganbayan: You (addressing extra-territorially the Marcoses) have been charged with ill-gotten wealth in several cases filed with us by the Phil. government. You are hereby summoned to answer these complaints.

Petitioners: We are coming to personally answer and defend ourselves in these cases.

Phil. Government: You cannot come. You can only be represented by your lawyers or agents.

Petitioners: But we want to come as we are in the best position to answer and defend ourselves.

Sandiganbayan: You cannot; you are now in default.

Petitioners: Wait a minute; let us discuss this matter further.

Sandiganbayan: The default stands. We will proceed with or without your lawyers or agents.'

It is to me of little moment that the Sandiganbayan cases involved are civil and not criminal in nature. An almost lifetime of experience in litigation is the best witness to the indispensability of party's presence (aside from his lawyer, in case he has the assistance of counsel) in order to litigate with any reasonable opportunity of success. An answer, true enough, may be prepared by remote control, with counsel and client separated thousands of miles apart, with the luxury of a given or extended period to prepare. But in the actual trial of cases, especially during the cross-examination of adverse party's witnesses - where the truth must be determined - every counsel worth his salt must have the assistance and presence of his client on the spot, for the client invariably knows the facts far better than his counsel. In short, even in civil cases, the presence of party (as distinguished from his lawyer alone) is essential to due process.

There are other aspects of litigation that require parties' presence, which we need not dwell on lengthily here. It suffices, I believe, to point out that due process demands that abundant opportunity be given to anyone who is brought to court to adequately prepare his answer and defense. The name of the game, in other words, is fairplay not foulplay. We cannot allow a legal skirmish where, from the start, one of the protagonists enters the arena with one arm tied to his back.

Today, it is the Marcoses; tomorrow, it may be another; and the next tomorrow, it may still be another. Whoever they may be, let the courts of the land be impeccably impartial and accord to everyone an equal dose of due process, in short, fairplay. Those who may have suffered under the past regime will say that the standard of justice we advocate was denied to them by said regime. We do not question the validity of their own experience; but this Court exists to see to it that we dispense justice today not in terms of what it could have been in the past, but in accordance with what is RIGHT.

ACCORDINGLY, I vote to - 1) lift the orders of default issued by the Sandiganbayan in all the cases pending therein, to which petitioners have been summoned extra-territorially; and 2) to suspend further proceedings therein, as to petitioners, until such time as surviving petitioner Imelda R. Marcos has the opportunity to personally defend petitioners in said cases."

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