Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-50907. September 27, 1979]

ATTY. REYNALDO P. DIMAYACYAC and BRIGIDA ALLONES, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, HONORABLE JUDGE NELLY L. ROMERO VALDELLON, ETC., RIZAL PROVINCIAL SHERIFF and ALFREDO BARRO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; LIES WHEN APPEAL DOES NOT PROVE TO BE A MORE SPEEDY AND ADEQUATE REMEDY.**— That the ordinary remedy which should be availed by a party who has been declared in default and judgment rendered against him is that of appeal and not *certiorari* is a rule too elementary to be discussed herein. This rule, however, is not without exceptions for to insist on its application in all cases may not always serve the ends of justice. The object of procedural law is to facilitate the adjudication of conflicting claims. Thus, although an appeal is available, *certiorari* still lies when such appeal does not prove to be a more speedy and adequate remedy. (Martin, *Rules of Court,* Vol. 3, p. 172, citing *Valdez vs. Querubin,* 37 Phil. 774; *Leung Ben vs. O'Brien*, 38 Phil. 182; *Campos Y Cia vs. Del Rosario*, 41 Phil. 45; *Sabado vs. Gonzales, Inc.*, 53 Phil. 770; *Westminster Bank vs. Torres and Nassoor, Inc.*, 57 Phil. 422; *Claudio vs. Zandueta*, 64 Phil. 812; and *Saludes vs. Pajarillo and Bautista,* 78 Phil. 755. See also *Fernando vs. Vasquez,* L-26417, January 30, 1979, 31 SCRA 288.)

2. **ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; ESTABLISHED IN CASE AT BAR.**— Grave abuse of discretion means capricious and whimsical-exercise of judgment; it is the exercise of power in an arbitrary and despotic manner. Rule 20, Sec. 2 of the Rules of Court stipulates that "A party who fails to appear at a pre-trial conference may be non-suited or considered as in default." But the petitioners in the instant case did not fail to appear at the pre-trial conference on July 26, 1978, as ordered by the trial court. They were there. What they failed to do was to submit

Supreme Court E-Library

a pre-trial brief three days before the date which the Rules of Court do not require. In fact, the Court of Appeals correctly observed: "There is some merit to the claim that the petitioner was declared as in default somewhat hurriedly, just because he had failed to submit a pre-trial brief, three days before the scheduled date. Trial courts should use sparingly the power to declare a party as in default, because party thereby loses the right to offer evidence."

APPEARANCES OF COUNSEL

Reynaldo P. Dimayacyac & Associates for petitioners.
Carlos Villanueva for private respondent.

DECISION

ABAD SANTOS, *J.*:

The basic issue in this case is whether or not Judge Nelly L. Romero Valdellon of the Court of First Instance of Rizal, Branch XXII, committed a grave abuse of discretion by declaring petitioners Reynaldo P. Dimayacyac and Brigida Allones, defendants in Civil Case No. 29061, in default and rendering judgment against Dimayacyac under the circumstances recited hereunder.

Brigida Allones and Alfredo Barro were co-owners in equal shares of a parcel of land situated on P. Guanzon St., Makati, Metro Manila, with an area of one hundred and fifty (150) square meters. Allones sold her share to Reynaldo P. Dimayacyac allegedly for ₱30,000. Subsequently, Barro filed Civil Case No. 29061 against Dimayacyac and Allones in order to exercise his right of redemption. The defendants filed their joint answer with counterclaim within the reglementary period after which the plaintiff filed an answer to the counterclaim. Issues having been joined, Judge Valdellon set the pre-trial conference on July 26, 1978, and directed the parties to file their pre-trial briefs three days before that date. Defendants failed to file their pre-trial brief as ordered but on July 26, 1978, they attended the pre-trial conference and tendered their pre-trial brief with

Supreme Court E-Library

an explanation for the delay in its submission. The tender was not accepted and upon motion of the plaintiff's counsel, the defendants were declared in default and the court allowed the plaintiff to present his evidence *ex parte*. Even then defendants filed their pre-trial brief with the Clerk of Court and filed the next day an urgent motion to set aside the order of default with supplemental petition for reconsideration. The motion was denied.

On August 7, 1978, Judge Valdellon rendered a decision ordering Dimayacyac to reconvey to Barro for ₱11,250 the share he had bought from Allones and to pay Barro ₱10,000 as nominal damages plus ₱2,000 for attorney's fees.

Defendants filed an urgent motion for reconsideration and to set aside the decision but it was denied by the Court. They then went to the Court of Appeals, not by ordinary appeal, but by means of a special civil action for *certiorari* with injunction alleging grave abuse of discretion on the part of the trial judge. The Court of Appeals dismissed the petition on the ground that the petitioners should have appealed the decision of the lower court; it also observed that the decision had become final and executory.

Petitioners, not satisfied with the decision of the Court of Appeals, have elevated the case to us for review. We required comment on the petition and after the same had been submitted, we issued the following resolution on September 14, 1979:

"Considering the allegations contained, the issues raised and the arguments adduced in the petition for review on *certiorari*, as well as the comment of the respondents, the Court Resolved: (a) to treat this case as a special civil action for *certiorari*; (b) to consider: (1) respondents' comment as answer to the petition; and (2) the case SUBMITTED for decision."

That the ordinary remedy which should be availed by a party who has been declared in default and judgment rendered against him is that of appeal and not *certiorari* is a rule too elementary to be discussed herein. This rule, however, is not without exceptions for to insist on its application in all cases may not always serve the ends of justice. The object of procedural law

Supreme Court E-Library

is to facilitate the adjudication of conflicting claims. Thus, although an appeal is available, *certiorari* still lies when such appeal does not prove to be a more speedy and adequate remedy. (Martin, *Rules of Court,* Vol. 3, p. 172, citing *Valdez vs. Querubin*, 37 Phil. 774; *Leung Ben vs. O'Brien*, 38 Phil. 182; *Campos y Cia vs. Del Rosario*, 41 Phil. 45; *Sabado vs. Gonzales, Inc.*, 53 Phil. 770; *Westminster Bank vs. Torres and Nassoor, Inc.*, 57 Phil. 422; *Claudio vs. Zandueta*, 64 Phil. 812; and *Saludes vs. Pajarillo and Bautista,* 78 Phil. 755. See also *Fernando vs. Vasquez*, L-26417, January 30, 1979, 31 SCRA 288.)

In the instant case, we agree with the petitioners that the more appropriate and adequate remedy is not ordinary appeal but the special civil action of *certiorari*. For as they have stated:

"How could petitioners appeal when there is nothing to be appealed? They were not given an opportunity by the Respondent Judge to present their evidence and therefore, nothing can be reviewed on appeal except the self-serving evidences adduced by the private respondent during the ex parte presentation of evidence.

Besides, the leading case of *Association of Beverage Employees vs. Figueras*, L-4813, May 28, 1952, and the provisions of Rule 65, Section 1 of the Rules of Court provide a remedy for an aggrieved party-litigant like herein petitioners, when a tribunal, board or officer exercising judicial functions acted with grave abuse of discretion.

To appeal the decision of the respondent judge would as contended by the respondents, amount to a recognition of the judgment itself, but the present petition is seeking for the annulment of the said decision on grounds therein outlined."

In the special civil action for *certiorari* under Rule 65, Rules of Court, no time frame, except that it be filed within a reasonable time, is required. Hence, it is unnecessary to discuss whether or not the decision of the lower court of August 7, 1978, had become final and executory.

We come now to the main question, *i.e.*, whether or not the trial court committed a grave abuse of discretion in declaring petitioners in default and rendering judgment against them. Under

Supreme Court E-Library

the circumstances as narrated, the answer must necessarily be in the affirmative.

Grave abuse of discretion means capricious and whimsical exercise of judgment; it is the exercise of power in an arbitrary and despotic manner.

Rule 20, Sec. 2 of the Rules of Court stipulates that "A party who fails to appear at a pre-trial conference may be non-suited or considered as in default." But the petitioners in the instant case did not fail to appear at the pre-trial conference on July 26, 1978, as ordered by the trial court. They were there. What they failed to do was to submit a pre-trial brief three days before the date which the Rules of Court do not require. In fact, the Court of Appeals correctly observed: "There is some merit to the claim that the petitioner was declared as in default somewhat hurriedly, just because he had failed to submit a pre-trial brief, three days before the scheduled date. Trial courts should use sparingly the power to declare a party as in default, because party thereby loses the right to offer evidence."

WHEREFORE, the instant petition is granted; the decision of the lower court dated August 7, 1978, is hereby vacated; and Civil Case No. 29061 is ordered to be re-tried after a pre-trial conference shall have been conducted. No special pronouncement as to costs.

SO ORDERED.

Barredo (Chairman), J., as noted by Justice Aquino, the decision of the Court of Appeals is correspondingly reversed.

Aquino, J., concurs with the observation that the decision of the Court of Appeals is hereby reversed.

Concepcion Jr. and *De Castro, JJ.*, concur.