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FIRST DIVISION

[G.R. No. L-48564. August 20, 1979]

RUPERTO MERCADER and SEVERINA MERCADER, *petitioners, vs.* **HON. AQUILINO P. BONTO, Judge of the Court of First Instance of Sorsogon, Branch II, ARSENIO OLIQUINO, BENJAMIN REVILLA and JOAQUINA *VDA. DE* PALANCA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; DEFAULT; ORDER OF DEFAULT; NOT PROPER WHEN FAILURE TO FILE AN ANSWER IS EXCUSABLE.**— The failure of defendants' counsel, Atty. Agustin Frivaldo, to file an answer on time and his being able to do so only after the expiration of the reglementary period, considering the attendant circumstances in this case, is excusable and do not warrant the declaration of default of defendants Ruperto Mercader and Severina Mercader. For one, defendants' counsel failed to file the answer on time because he overlooked the expiration of the reglementary period and the attributed this oversight or negligence to the following factors: first, his advanced age (77 years); second, he is suffering from high blood pressure and was hospitalized for cerebral stroke in 1972, which made him prone to forget dates or events that happened earlier; third, pressure of work; fourth, lack of personnel; and lastly, the length of time from the filing of the motion to dismiss the complaint for interpleader and its resolution by the lower court.

2. **ID.; ID.; ID.; CONCEPT.**— In the earlier case of *Heirs of Jose Fuentes vs. Macandog* (83 SCRA 648 [1978]), WE said: "*Default is not a mechanical gadget for the acceleration of judicial litigations*. The laudable intention of respondent judge to terminate the subject case promptly is no excuse for cutting corners that the rules have fixed to insure that the constitutional requirement of due process is observed and safeguarded. The expeditious dispatch of court matters does not have to be gained by causing unnecessary inconvenience to any of the parties. x x x *Whether or not to declare a defendant in default requires mature consideration of all attendant circumstances, a sound*

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discretion and a great deal of circumspection. A court is not supposed to grab the first opportunity, no matter how insubstantially grounded, to knock the defendant out of court." And in the landmark case of *Coombs vs. Santos* (24 Phil. 446 [1913]), WE stated that: "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 issues 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.*"

3. ID.; ID.; INTERPLEADER; WHEN PROPER.— Most importantly, the record shows that defendants Ruperto Mercader and Severina Mercader have a good and valid defense in plaintiff's action for interpleader. Defendants are claiming ownership over a parcel of land with an area of 154 square meters under Tax Declaration No. 16696 which they inherited from their late father, Alejandro Mercader. This parcel of land forms part of the large parcel of land owned by defendant Joaquina *Vda. de* Palanca, and on which parcel plaintiff Arsenio Oliquino had built his house.

4. ID.; RULES OF COURT; LIBERAL INTERPRETATION OF THE RULES OF PROCEDURE.— WE find no cogent reason in the case at bar to depart from the rule on the liberal interpretation of the rules of procedure and to adhere to the technical rules of procedure strictly, for to do so would not serve the ends of substantial justice and equity. As said in the recent case of *Galdo vs. Rosete* (84 SCRA 238 [1978]), this Court "frowns upon such application of procedural rules with pedantic rigor," citing the leading case of *Alonso vs. Villamor* (16 Phil. 315 [1910]) wherein WE stated: "Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities." Again, in *Gregorio vs. Court of Appeals* (72 SCRA 120 [1976]), WE said: "The rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override, substantial justice. If a technical and rigid enforcement

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of the rules is made, their aim would be defeated." And WE stressed in the case of *Lim Tanhu vs. Ramolete* (66 SCRA 425 [19751) that: "x x x the rules of procedure may not be misused and abused as instruments for the denial of substantial justice."

APPEARANCES OF COUNSEL

Agustin Frivaldo for petitioners.
Jaime G. Fortes for private respondents.

D E C I S I O N

MAKASIAR, *J.*:

This is a petition for review on *certiorari* of the order of respondent Judge Aquilino P. Bonto issued on February 25, 1976 in Civil Case No. 1006, declaring herein petitioners Ruperto Mercader and Severina Mercader in default, the order issued on May 24, 1976 denying petitioners' motion to set aside the order of default, the order dated July 13, 1976, denying the motion for reconsideration of the aforesaid May 24, 1976 order, and the order dated September 29, 1976, denying petitioners' second motion for reconsideration of the aforesaid order of May 24, 1976.

The record shows that herein petitioners are defendants in Civil Case No. 1006 of the Court of First Instance of Sorsogon, entitled "*Arsenio Oliquino,* plaintiff, *versus Ruperto Mercader, Severina Mercader, Benjamin Revilla and Joaquina Vda. de Palanca,* defendants."

In a complaint filed on August 20, 1975 before the Court of First Instance of Sorsogon, plaintiff Arsenio Oliquino (private respondent herein) instituted an action for interpleader against defendants Ruperto Mercader and Severina Mercader (petitioners herein), Benjamin Revilla and Joaquina *Vda. de* Palanca (private respondents herein), in order to determine the owner to whom he should make payments of the rents of the parcel of land that he is occupying as a lessee.

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The complaint alleges among others, that plaintiff Arsenio Oliquino has been renting since 1951, a portion of a large parcel of land situated in Gabao, Irosin, Sorsogon, belonging to defendant Joaquina *Vda. de* Palanca, by virtue of a verbal lease contract; that he built thereon a house in the same year and has been paying yearly rentals to defendant Joaquina *Vda. de* Palanca; that there are other lessees occupying the other portions of the said parcel of land, who have likewise been paying yearly rentals; that sometime in 1971, defendants Ruperto Mercader and Severina Mercader asserted ownership over a parcel of land with an area of 154 square meters covered by Tax Declaration No. 16696 in the name of Alejandro Mercader; that this parcel of land is only a portion of the large parcel of land owned by defendant Joaquina *Vda. de* Palanca and on which portion plaintiff and another lessee, Ester Grefaldeo, had built their house; that plaintiff is being harassed, threatened, and forced by defendants Ruperto Mercader and Severina Mercader to vacate the lot that he is occupying; that also sometime in 1971, defendant Benjamin Revilla asserted ownership over the entire parcel of land of defendant Joaquina *Vda. de* Palanca, including the portion which plaintiff had been occupying; that defendant Benjamin Revilla also resorted to ways and means to oust plaintiff and the other occupants from the property of defendant Palanca; that there are now three parties claiming ownership over one and the same property; and that these parties should be ordered to interplead with each other and litigate their respective claims of ownership over the property, a portion of which is being rented by the plaintiff (pp. 1-8, Record on Appeal).

The corresponding summonses, together with the complaint for interpleader and the order to interplead issued by the lower court on September 2, 1975, were served upon defendants Ruperto Mercader and Severina Mercader on September 25, 1975 and upon defendant Benjamin Revilla on October 4, 1975. The records, however, do not reveal when defendant Joaquina *Vda. de* Palanca was served with summons, together with the complaint and the order to interplead.

Instead of filing a responsive pleading, defendants Ruperto Mercader and Severina Mercader moved for the dismissal of

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the complaint for interpleader on October 7, 1975 (pp. 8-11, ROA). Defendant Benjamin Revilla likewise moved for the dismissal of the complaint on September 15, 1975, even before he was served with summons on October 4, 1975. Defendant Joaquina *Vda. de* Palanca filed an answer to the complaint but the records do not reveal the date of filing. On October 24, 1975, plaintiff Arsenio Oliquino filed his comment on the motion to dismiss of defendants Ruperto Mercader and Severina Mercader and defendant Benjamin Revilla (pp. 12-16, ROA).

By order dated January 6, 1976, the lower court denied the motion to dismiss filed by defendants Ruperto Mercader and Severina Mercader and defendant Benjamin Revilla (p. 17, ROA). The order of denial was received on January 16, 1976 by Atty. Agustin Frivaldo, counsel for defendants Ruperto Mercader and Severina Mercader. In the case of defendant Benjamin Revilla, the records do not show when his counsel, Atty. Archimedes Frivaldo, actually received the order of denial which was sent by registered mail on January 10, 1976.

On February 9, 1976, plaintiff Arsenio Oliquino, through his counsel, Atty. Jaime G. Fortes, filed a motion to declare defendants Ruperto Mercader and Severina Mercader and Benjamin Revilla in default, upon the ground that the reglementary period for the filing of an answer to the complaint had already expired without any answer having been filed within said period (pp. 17-19, ROA).

On the date set for the hearing of the motion on February 16, 1976, defendants Ruperto Mercader and Severina Mercader filed a motion for postponement so they could file an opposition to the plaintiff's motion, which motion the court granted.

Then *on February 20, 1976, defendants Ruperto Mercader and Severina Mercader*, through their counsel, *filed an opposition to the motion to declare them in default and attached thereto the answer to the complaint with a petition to admit said answer* (pp. 19-21, ROA). In their answer, which was supported by an affidavit of merits, they alleged that they are claiming ownership over a parcel of land with an area of 154 square meters covered by Tax Declaration No. 16696,

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which they inherited from their late father, Alejandro Mercader; that their father sold to the Palanca family two parcels of land under Tax Declaration No. 16695 and Tax Declaration No. 12097; that in the consolidation of the latter two parcels of land sold to them, the Palanca family erroneously consolidated the parcel of land claimed by the defendants under Tax Declaration No. 16696 with the parcel of land under Tax Declaration No. 16695, instead of the parcel of land under Tax Declaration No. 12097; that the parcel of land under Tax Declaration No. 16696 is presently occupied by defendant Severina Mercader, but a portion of said lot is being occupied by plaintiff Arsenio Oliquino where he had built his house; and that defendants have no interest in the lots covered by Tax Declarations Nos. 16695 and 12097 (pp. 21-27, ROA).

On February 25, 1976, the respondent Judge Aquilino Bonto issued an order declaring defendants Ruperto Mercader and Severina Mercader in default, the dispositive portion of which reads as follows:

"WHEREFORE, in view of the foregoing, defendants Ruperto Mercader and Severina Mercader, having failed to answer within the reglementary period, are hereby declared in default. Resolution on the motion for default with respect to defendant Benjamin Revilla is hereby held in abeyance until after the plaintiff shall have presented a certificate from the Postmaster at Irosin, Sorsogon, showing therein the date of the receipt by Atty. Archimedes Frivaldo of the registered letter No. 118 mailed on January 10, 1976" (Annex C, Petition for *Certiorari*, pp. 19-20, rec.).

A copy of the February 25, 1976 order was served upon defendants' counsel on March 10, 1976. On March 17, 1976, defendants Ruperto Mercader and Severina Mercader filed a motion to set aside the order of default, stating the facts constituting their failure to answer on time and the good and meritorious defenses they rely upon to controvert the complaint (Annex D, Petition, pp. 21-24, rec.). Subsequently, respondent Judge issued an order dated May 24, 1976 denying defendants' motion to set aside the order of default, which is herein below quoted as follows:

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"A careful examination of the grounds relied upon by the defendants Ruperto Mercader and Severina Mercader in their motion to set aside the order of default dated February 25, 1976, shows that the circumstances for their failure to answer do not constitute excusable neglect.

"WHEREFORE, the motion to set aside is hereby denied for lack of merit (Annex A, Petition, p. 16, rec.).

A motion for reconsideration of the aforequoted order was filed by defendants Ruperto Mercader and Severina Mercader on June 16, 1976 (Annex E, Petition, pp. 25-28, rec.). This was, however, denied by the trial court in its order dated July 13, 1976 (Annex B, Petition, pp. 17-18, rec.). On July 24, 1976, defendants filed a notice of appeal with the trial court but the same was later withdrawn when they filed a second motion for reconsideration with a motion to dismiss on August 3, 1976 (pp. 39-42, ROA). Plaintiff, through his counsel, filed on August 6, 1976 his opposition to the said motion (pp. 42-43, ROA). By order dated September 29, 1976, the trial court denied defendants' second motion for reconsideration (pp. 43-44, ROA).

Thereafter, a notice of appeal and an appeal bond were filed on October 7, 1976 by defendants Ruperto Mercader and Severina Mercader which were approved by the trial court (p. 44, ROA). The appeal having been perfected, the trial court, in its order dated October 27, 1976, directed the clerk of court to transmit the records of the case to the Supreme Court (p. 46, ROA). The records of the case were forwarded to the Supreme Court on June 1, 1978. On June 14, 1978, the Court resolved to require defendants Ruperto Mercader and Severina Mercader to file a petition for review on *certiorari*. Defendants filed on July 13, 1978 a motion for extension of time of fifteen (15) days within which to file their petition, which the Court granted.

This petition for review on *certiorari* was filed on July 24, 1978 (pp. 10-28, rec.). Required to comment on the petition, defendant Joaquina *Vda. de* Palanca (private respondent herein) filed her comment on September 12, 1978 (pp. 34-38, rec.). Atty. Jaime G. Fortes, counsel for plaintiff Arsenio Oliquino

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(private respondent herein), and Atty. Archimedes Frivaldo, counsel for defendant Benjamin Revilla (private respondent herein), failed to file their respective comments on the petition. Thus, on November 3, 1978, the Court required Attys. Jaime G. Fortes and Archimedes Frivaldo to show cause why they should not be cited for contempt for such failure, and to file their respective comments. On December 12, 1978, Atty. Archimedes Frivaldo filed his explanation and/or comment on the petition (pp. 40-41, rec.). On March 2, 1979, the Court resolved to impose on Atty. Jaime G. Fortes a fine of two hundred pesos (₱200.00) or imprisonment in case of non-payment for failure to file comment on the petition. On March 28, 1979, Atty. Fortes filed a motion for reconsideration of the resolution of March 2, 1979, and the comment on the petition (pp. 47-52, rec.). In OUR resolution of April 6, 1979, the Court resolved to reduce the fine imposed on Atty. Fortes to one hundred pesos (₱100.00) and resolved further to give due course to the petition and declared the case submitted for decision.

The sole issue to be determined in the instant case is whether or not the respondent Judge abused his discretion in declaring the defendants (petitioners herein) in default and in refusing to set aside the order of default.

It is OUR view that the failure of defendants' counsel, Atty. Agustin Frivaldo, to file an answer on time and his being able to do so only after the expiration of the reglementary period, considering the attendant circumstances in this case, is excusable and do not warrant the declaration of default of defendants Ruperto Mercader and Severina Mercader.

For one, defendants counsel failed to file the answer on time because he overlooked the expiration of the reglementary period and the attributed this oversight or negligence to the following factors: first, his advanced age (77 years); second, he is suffering from high blood pressure and was hospitalized for cerebral stroke in 1972, which made him prone to forget dates or events that happened earlier; third, pressure of work; fourth, lack of personnel; and lastly, the length of time from the filing of the motion to dismiss the complaint for interpleader and its resolution

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by the lower court. As previously mentioned, the complaint in the present case, together with the summons and the order to interplead, was served upon defendants Ruperto Mercader and Severina Mercader on September 25, 1975, then on October 7, 1975, or three (3) days before the expiration of the reglementary period for the filing of an answer, defendants moved to dismiss the complaint. Said motion was, however, denied by the lower court on January 6, 1976, and copy of the order of denial was received on January 16, 1976 by defendants' counsel. Therefore, the motion to dismiss was resolved by the lower court only after three (3) months from the filing of said motion. Considering this fact, together with the other factors aforesaid, it would not have been impossible or unusual for defendants' counsel to have overlooked the expiration of the reglementary period. Thus, defendants' counsel overlooked the fact that he had still three (3) days left from January 16, 1976, or up to January 19, 1976, within which to file an answer to the complaint.

Moreover, WE consider the fact that when plaintiff Arsenio Oliquino filed on February 9, 1976 a motion to declare defendants Ruperto Mercader and Severina Mercader in default, and before they were declared in default, defendants' counsel, realizing that the reglementary period had already expired, diligently prepared and immediately filed on February 20, 1976 an opposition to the motion and attached thereto the answer to the complaint with a petition to admit the same, a proof of his intention to comply with the rules of procedure. This circumstance excludes also the intention to unduly delay the case. It should be added also that the late filing of the answer did not in any way prejudice the plaintiff Oliquino who as lessee is not claiming ownership over the land nor deprive him of any substantial right or interest, considering that his complaint was only an action for interpleader against several persons asserting ownership over said land. Furthermore, when the defendants were declared in default on February 25, 1976 and they received a copy of the order of default on March 10, 1976, they immediately applied for relief within a reasonable time by filing a motion to lift the order of default on March 17, 1976.

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Most importantly, the record shows that defendants Ruperto Mercader and Severina Mercader have a good and valid defense in plaintiff's action for interpleader. Defendants are claiming ownership over a parcel of land with an area of 154 square meters under Tax Declaration No. 16696 which they inherited from their late father, Alejandro Mercader. This parcel of land forms part of the large parcel of land owned by defendant Joaquina *Vda. de* Palanca, and on which parcel plaintiff Arsenio Oliquino had built his house. It appears that the late Alejandro Mercader sold to the Palanca family two (2) parcels of land under Tax Declarations Nos. 16695 and 12097. In the consolidation of these two lots, the Palanca family erroneously consolidated with the parcel under Tax Declaration No. 16695 the parcel of land under Tax Declaration No. 16696, instead of the parcel of land under Tax Declaration No. 12097. Therefore, defendants have an interest in the parcel of land under Tax Declaration No. 16696 and their presence is indispensable in order that they may protect such interest. They should be given a day in court.

This Court has always opted for a liberal interpretation of the rules of procedure whenever procedural technicalities are involved in a case. Thus, in a case analogous to the case at bar, the Court, adopting a liberal posture, considered as excusable the failure of the public counsel to incorporate in the notice of appeal the material dates showing the timeliness of the appeal where such omission was due to his "mistake, inadvertence and negligence considering the given circumstances of confusion caused by heavy pressure of work aggravated by lack of personnel and equipment x x x" (*Canturna vs. Court of Appeals, et al.*, 70 SCRA 563 [1976]).

In the case of *Cusio vs. Court of Appeals, et al.* (57 SCRA 64 [1974]). the counsel for the petitioner asked for a third and last extension of time to file his appellants brief and cited in support of his motion his advanced age (67 years), his recurrent attacks of arthritis, the distance of 150 kilometers he had to travel from his office in Guimba, to Manila for the preparation of his brief and the pressure of other professional work. The appellate court denied petitioner's urgent motion as well as his motion for reconsideration and ordered the dismissal of the

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appeal. This Court set aside the appellate court's resolutions denying the third and last extension of time and the motion for reconsideration, and gave due course to the appeal.

In another case, WE considered as excusable negligence the failure of the defendant's lawyer to file an answer within the reglementary period because his wife underwent a Caesarian operation and subsequently got sick, and said lawyer had to attend to her personally and it does not appear that he had partners in his law office (*Eduque vs. Court of Appeals, et al.,* 10 SCRA 632 [1964]).

And in a 1909 case, the failure of the provincial fiscal to file his answer within the time prescribed by law due to the many urgent demands on his time and attention in the performance of his duties, was likewise considered excusable negligence (*Siquenza vs. Municipality of Hinigaran,* 14 Phil. 495 [1909]).

In the instant case, the respondent Judge, in declaring the defendants in default, applied the rules of procedure strictly, disregarding the liberal stance that WE have always adopted and the mandate under Section 2, Rule 1 of the Revised Rules of Court that "these rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding."

WE find no cogent reason in the case at bar to depart from the rule on the liberal interpretation of the rules of procedure and to adhere to the technical rules of procedure strictly, for to do so would not serve the ends of substantial justice and equity. As said in the recent case of *Galdo vs. Rosete* (84 SCRA 238 [1978]), this Court "frowns upon such application of procedural rules with pedantic rigor," citing the leading case of *Alonso vs. Villamor* (16 Phil. 315 [1910]) wherein WE stated:

"Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities."

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Again, in *Gregorio vs. Court of Appeals* (72 SCRA 120 [1976]), WE said:

"The rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override, substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated."

And WE stressed in the case of *Lim Tanhu vs. Ramolete* (66 SCRA 425 [1975]) that:

"x x x the rules of procedure may not be misused and abused as instruments for the denial of substantial justice."

Thus, respondent Judge should not have been unduly strict in applying the rules of procedure and should have avoided such a precipitate action declaring the defendants in default because judgments by defaults are never looked upon with favor.

This Court has already declared "its disapproval of default judgments and cautioned the courts to be more circumspect before declaring a defendant in default" (*Luis Peggy, et al., vs. Hon. Lauro Tapuan, et al.*, L-45270, February 28, 1979; *Corsino, et al. vs. Hon. Arnold Savella, et al.*, L-38367, November 24, 1978).

In the earlier case of *Heirs of Jose Fuentes vs. Macandog* (83 SCRA 648 [1978]), WE said:

"*Default is not a mechanical gadget for the acceleration of judicial litigations.* The laudable intention of respondent judge to terminate the subject case promptly is no excuse for cutting corners that the rules have fixed to insure that the constitutional requirement of due process is observed and safeguarded. The expeditious dispatch of court matters does not have to be gained by causing unnecessary inconvenience to any of the parties. x x x *Whether or not to declare a defendant in default requires mature consideration of all attendant circumstances, a sound discretion and a great deal of circumspection.* A court is not supposed to grab the first opportunity, no matter how insubstantially grounded, to knock the defendant out of court" (italics supplied).

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And in the landmark case of *Coombs vs. Santos* (24 Phil. 446 [1913]), WE stated that:

"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 issues 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*" (italics supplied).

Likewise, respondent judge should have been more liberal in the exercise of his discretion by setting aside the order of default especially so because the defendants filed their answer together with their opposition to the motion to declare them in default, and, after having been declared in default, immediately filed a motion to set aside the order of default within a reasonable time.

"x x x when the motion to set aside the order of default was made without any loss of time and before a date was set for the hearing of the case on its merits, and is accompanied by a sworn statement of merit and copies of documents which constitute *prima facie* a just and valid defense, such failure is insufficient to deprive a defendant of his rights, as in the present case, and the refusal to set aside the order of default constitutes an abuse of discretion, and especially when such setting aside of the order of default will in no way prejudice the plaintiff" (*Trajano vs. Cruz*, 80 SCRA 712 [1977]; *Tumambing vs. Ganzon,* 18 SCRA 411 [1966]; Bañares *vs. Flordeliza and Gavito,* 51 Phil. 786 [1928]).

And furthermore, this Court, in the case of *Heirs of Jose Fuentes vs. Oacandog* (*supra*), citing the case of *Pineda vs. Court of Appeals* (67 SCRA 228 [1975]), declared:

"WE maintain fealty to the principle that courts should be liberal in setting aside orders of default, for default judgment is frowned upon, and unless it clearly appears that the reopening of the case is intended for delay, it is best that trial courts give both parties every chance to fight their case fairly and in the open, without resort to technicality."

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In conclusion, considering that the late filing of defendants' answer was due to excusable negligence and that they appear to have a meritorious defense; that defendants filed an answer before they were declared in default; and that the late filing of the answer did not in any way prejudice or deprive the plaintiff of any substantial right, nor was there intention to unduly delay the case, WE hold that the respondent judge committed an abuse of discretion in declaring the defendants in default and in refusing to set aside the order of default.

WHEREFORE, THE PETITION IS HEREBY GRANTED AND THE ORDERS OF RESPONDENT JUDGE DATED FEBRUARY 25, 1976, MAY 24, 1976, JULY 13, 1976 AND SEPTEMBER 29, 1976 ARE HEREBY SET ASIDE AS NULL AND VOID, WITH COSTS AGAINST RESPONDENT ARSENIO OLIQUINO.

SO ORDERED.

Teehankee (Chairman), Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.,* concur.

SECOND DIVISION

[G.R. No. L-49616. August 20, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GENARO MENDIGUARIN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; WHEN NOT ESTABLISHED.— There are significant indications in the record that Genaro and Virginia committed simple fornication which is not a crime. The circumstances that Virginia admitted that she and Genaro embraced and kissed each other in a hotel room long before