G.R. No. 154040

FIRST DIVISION

[G.R. NO. 154040, August 28, 2005]

ADVANCE TEXTILE MILLS, INC., PETITIONER, VS. WILLY C. TAN, DOING BUSINESS UNDER THE NAME WCT MANUFACTURING, RESPONDENT.

R E S O L U T I O N

QUISUMBING, J.:

Before us is a petition for review on certiorari of the **Decision**[1] dated June 17, 2002 of the Court of Appeals in CA-G.R. CV No. 49607 which set aside the **Order of Default** dated April 5, 1995 and the **Decision**[2] dated April 19, 1995 of the Regional Trial Court of Makati City, Branch 147, in Civil Case No. 94-1683.

Petitioner Advance Textile Mills, Inc., allegedly sold textile materials to Willy C. Tan of WCT Manufacturing. After a few attempts at collecting the unpaid balance of P1,751,892.67, on November 11, 1993, petitioner sent respondent a final demand letter giving him ten days to settle his debt on pain of legal action.[3] Respondent still failed to pay. Thereafter, petitioner instituted an action for collection of a sum of money before the Regional Trial Court of Makati City.[4]

In his **Answer**,[5] respondent denied purchasing fabric materials on credit from the petitioner and alleged that all his purchases were paid in cash basis. He likewise denied receiving any demand letter from the petitioner.

A pre-trial conference was scheduled on March 6, 1995.[6] On motion of respondent's counsel, the trial court granted the **motion to cancel and reset the pre-trial** conference on April 5, 1995.[7] Both on said date respondent and counsel failed to appear, so the trial court, upon petitioner's motion, declared respondent in default and thereafter allowed the presentation of evidence *ex parte.*

On April 19, 1995, the trial court rendered a **Decision** ordering respondent to pay petitioner the amount of P1,751,892.67 with interest at the legal rate of 12% per annum from the time the complaint was filed until the obligation shall have been totally paid; the amount of P150,000 as attorney's fees; and the cost of the proceedings.[8]

Respondent appealed the decision to the Court of Appeals. On June 17, 2002, the appellate court ruled that the Order of Default was null and void, for failure of the trial court to serve the respondent with notice of pre-trial. The Court of Appeals held that the notice of pre-trial should be sent to both the party-litigant and his counsel on record and not merely to the counsel. The decretal portion of the decision reads:

WHEREFORE, premises considered, the assailed Decision dated April 19, 1995 as well as the Order dated April 5, 1995 declaring appellant in default, are hereby **ANNULLED** and **SET ASIDE**. This case is ordered **REMANDED** to the court a quo for further appropriate proceedings.

SO ORDERED.[9]

Aggrieved, petitioner elevated the case to this Court and raised the following issues:

I WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN DISREGARDING THE TRIAL COURT'S AUTHORITY TO DECLARE THE [RESPONDENT] IN DEFAULT AS A RESULT OF HIS FAILURE TO APPEAR AT THE PRE-TRIAL CONTRARY TO THE SETTLED JURISPRUDENCE ON THE PRESUMPTION OF CORRECTNESS OF THE COURT'S ACTION.

II WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN NULLIFYING AND/OR SETTING ASIDE THE TRIAL COURT'S JUDGMENT BY DEFAULT AND REMANDING THE CASE FOR FURTHER APPROPRIATE PROCEEDINGS, IN EFFECT RENDERING NUGATORY THE OBJECTIVE OF ATTAINING A SPEEDY AND INEXPENSIVE DISPOSITION OF CASES.[10]

Simply put, the main issue for our resolution is whether a separate notice resetting pre-trial date is required before the party-litigant can be declared in default for his failure to attend the reset pre-trial.

Petitioner contends that respondent, in filing the *Ex-parte* Motion to Cancel Hearing, impliedly acknowledged the sufficiency of the first notice served solely upon his counsel. Petitioner maintains that respondent may not now insist and claim that the subsequent notice of pre-trial sent to his counsel was defective and inadequate. Petitioner cites *Five Star Bus Co., Inc. v. Court of Appeals,*[11] where this Court held that service of such notice on a party-litigant shall preferably be made through his counsel who has the duty to see to it that the former received such notice and attends the reset pre-trial.

Petitioner contends that the trial court's order declaring respondent in default was proper since the latter's failure to appear at the pre-trial conference was not due to fraud, accident, mistake or excusable negligence. Lastly, petitioner calls attention to the fact that respondent failed to put up a meritorious defense to allow a full hearing on the substantive issues raised.

On the other hand, respondent insists that the rules call for separate notices to counsel and to party, otherwise the judgment is void.

Prefatorily, we note that the proceedings before the lower court happened in the years 1994 to 1995, and thus governed by the old Rules of Civil Procedure. Under the old rules, particularly Rule 20, Section 1,[12] a notice of pre-trial must be served on the party affected, separately from his counsel,[13] otherwise the proceedings will be null and void.[14] The general rule that notice to counsel is notice to parties