

FIRST DIVISION

[G.R. No. 150241, November 04, 2004]

EDUARDO S. MERCADO, HEREIN REPRESENTED BY HIS COUNSEL, ATTY. ENRICO M. UYEHARA, PETITIONER, VS. THE COURT OF APPEALS, THE HONORABLE LETICIA P. MORALES, IN HER CAPACITY AS PRESIDING JUDGE OF BRANCH 140 OF THE REGIONAL TRIAL COURT OF MAKATI CITY, ESTATE OF CONCEPCION CLAUDIO GATMAITAN, CARMELIE C. GATMAITAN AND ARMANDO V. GATMAITAN, RESPONDENTS.

RESOLUTION

QUISUMBING, J.:

This special civil action for certiorari seeks to annul the Court of Appeals' **Resolutions** dated February 23, 2001^[1] and July 31, 2001,^[2] in CA-G.R. SP No. 62678, dismissing Eduardo S. Mercado's petition for certiorari for late payment of docket fees and denying his Motion for Reconsideration.

The facts and antecedent proceedings, as culled from records, are as follows:

On various dates from January to August 1988, private respondent Armando V. Gatmaitan obtained a series of loans from petitioner Eduardo S. Mercado totaling P850,000, to renovate and repair two houses located at 1827 Santan St., Dasmariñas Village, Makati City. Said houses were the conjugal properties of Armando and Concepcion Gatmaitan. The loan agreement was in writing.

The agreement stipulated that Armando was to lease the aforementioned houses and deliver all the rentals collected to Eduardo. Despite repeated demands, Armando did not pay any amount to Eduardo.

Sometime in 1989, Eduardo learned that Concepcion had filed a Complaint docketed as Civil Case No. 89-4506 against Armando for the separation and liquidation of their conjugal properties before the Regional Trial Court (RTC) of Makati City, Branch 149.^[3] Eduardo immediately filed a **Motion for Leave to File Complaint in Intervention**, claiming that he had an interest as a creditor in the unpaid loans he extended to Armando for the renovation of the conjugal properties subject of said civil case.

For failure to file his Answer, Armando was declared in default and Concepcion was allowed to present evidence *ex parte*. Petitioner then filed a Manifestation and Motion praying that the trial court hold in abeyance the resolution of the case pending resolution of his Motion for Leave to File Complaint in Intervention. Meanwhile, Armando moved to lift the **Order of Default** and sought to have his Answer admitted.

In two separate **Orders**, both dated February 19, 1990, the trial court denied Armando's **Motion to Lift Order of Default** and **Motion for Admission of Answer** as well as petitioner's **Motion for Leave to File Complaint in Intervention**.^[4] However, Eduardo allegedly did not immediately learn of the denial of his motion to intervene.

On January 7, 1994, the trial court handed down its Decision in Civil Case No. 89-4506. Again, Eduardo allegedly had no knowledge about the judgment or the subsequent appeal of said ruling.

On February 22, 1999, Eduardo, thru a different counsel, filed a **Motion for Early Resolution of the Motion for Leave to File Complaint in Intervention**, which was raffled to Branch 140 of the Makati City RTC. During the hearing of the motion, the trial court informed Eduardo that a Decision had already been rendered in Civil Case No. 89-4506 by Branch 149 and the appeal from said judgment had already been resolved by the Court of Appeals. Nonetheless, it directed the parties to file their respective position papers. Concepcion filed an **Opposition with Motion for Issuance of Writ of Execution** but she died on May 15, 1999, before her motion could be resolved.

In an **Order**^[5] dated September 27, 1999, Branch 140, denied Eduardo's motion for want of merit, pointing out that his Motion for Leave to File Complaint in Intervention had been dismissed previously by Branch 149 in its Order dated February 19, 1990, without any Motion for Reconsideration being filed from the aforesaid order of dismissal.

On September 30, 1999, the trial court granted the **Motion for Writ of Execution**.

Eduardo moved for reconsideration but this was denied on October 27, 1999. He then filed a **Petition for Relief** dated January 30, 2000, raising denial of due process and fraud as his grounds since he allegedly never received a copy of the Order of September 19, 1990, thus preventing him from moving for reconsideration. In paragraphs 14 and 15 of the Petition for Relief, however, petitioner admits he did receive an Order dated February 19, 1990.

In an Order dated April 6, 2000, the Regional Trial Court of Makati City, Branch 140, ruled on the petition, as follows:

Finding no cogent reasons to reverse or set aside the [O]rders dated September 27, 1999 and October 27, 1999, the petition for relief filed by petitioner-intervenor Eduardo S. Mercado praying that he be allowed to file complaint in intervention is hereby DENIED.

SO ORDERED.^[6]

On May 18, 2000, petitioner moved for reconsideration of the foregoing Order but this was denied in an Order dated September 26, 2000, a copy of which was received by petitioner on November 17, 2000.

Petitioner then filed a petition for certiorari with the Court of Appeals, which was dismissed for lack of jurisdiction due to late payment of docket fees. The appellate court found that while Eduardo filed his petition for certiorari by registered mail on