

THIRD DIVISION

[G.R. No. 125034, July 30, 1998]

VICTORY LINER INC., PETITIONER, VS. COURT OF APPEALS AND VIRON TRANSPORTATION COMPANY, RESPONDENTS.

D E C I S I O N

PURISIMA, J.:

At bar is a Petition for Review on Certiorari under Rule 65 of the Revised Rules of Court, seeking to reverse and set aside the Decision of the Court of Appeals^[1] in CA-G.R. SP No. 37543 affirming the Order of Default dated May 26, 1995 and the subsequent Order of June 9, 1995 of the Metropolitan Trial Court of Manila, Branch 4,^[2] in Civil Case No. 144592-CV.

From the records on hand, it appears that:

On June 22, 1994, private respondent Viron Transportation Company brought an action against the herein petitioner Victory Liner, Inc., for Damages arising from a vehicular accident of May 6, 1994, docketed as Civil Case No. 144592-CV before the Metropolitan Trial Court of Manila, Branch 4.

Petitioner having filed its Answer to the Complaint on March 27, 1995, pre-trial of the case was scheduled on April 27, 1995, but was reset to May 23, 1995, at 2:00 o'clock in the afternoon, upon motion of the petitioner.

On May 23, 1995, Atty. Atilano B. Lim appeared for petitioner, without any representative from defendant Victory Liner, Inc.. He arrived at the sala of Presiding Judge Leonardo P. Reyes, after the Court had adjourned its session. Consequently, petitioner was declared **as in default** and the private respondent, Viron Transportation Company, was allowed to present its evidence ex-parte.

On May 24, 1995, petitioner Victory Liner, Inc. presented a Motion to Lift Order of Default on the alleged ground, that:

"The undersigned counsel's failure to come on time on 23 May 1995 was due to a heavy traffic at the junction of Abad Santos Avenue and Rizal Avenue caused by a vehicular accident between a delivery truck and a Baliwag Transit bus, and further aggravated by the fact that counsel has to locate this Honorable Court sala, he arrived in Court at 2:30 o'clock after the Court already adjourn."^[3] [Underscoring, supplied]

Two days after the filing of the said motion or on May 26, 1995, to be precise, Presiding Judge Leonardo P. Reyes denied the same; ruling, thus:

"DEFENDANTS were declared as in default when they and their counsel failed to appear, despite due notice, at the pre-trial conference on May

23, 1995 at two o'clock in the afternoon. Through counsel, Atty. Atilano Huaben B. Lim, they now want the default order lifted and/or reconsidered.

The Court is not inclined to agree.

Primarily, the main justification cited by the counsel for his late arrival: heavy traffic, is unacceptable.

Secondly, counsel's alleged unfamiliarity with this Court's sala is equally unacceptable.

Thirdly, defendants were also absent, hence, even if counsel's late presence would be considered, still the pre-trial conference will not push through.

The presence of parties and counsels at the pre-trial is required. In this particular case, there is no showing that a special power of attorney had been executed in favor of counsel.

Fourthly, this case has been pending for sometime and unless expedited, it will be relegated to memory's bin.

WHEREFORE, for all the foregoing, defendants' motion to lift order of default is hereby DENIED.

SO ORDERED"^[4]

On June 7, 1995, petitioner filed a Motion for Reconsideration but to no avail. It was denied on June 9, 1995, by an Order which stated, that:

"The Court finds no compelling reason to disturb its Order dated May 26, 1995. Hence, defendants' motion for reconsideration is hereby regrettably DENIED."

Aggrieved, petitioner went to the Court of Appeals on a Petition for Certiorari. However, on May 22, 1996, the Court of Appeals dismissed the petition, affirmed the questioned Orders and authorized the plaintiff (private respondent herein) to proceed with the presentation of evidence ex parte.^[5]

Undaunted, petitioner has come to this Court via the present petition; posing the following questions:

I.

HAS THE COURT COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION, AND THEREFORE AN (sic) REVERSABLE ERROR, IN AFFIRMING THE MAY 26, 1995 AND JUNE 9, 1995 ORDERS OF THE METROPOLITAN TRIAL COURT OF MANILA, BRANCH 4, WHICH TOTALLY DEPRIVED PETITIONER'S RIGHT TO ITS DAY IN COURT AND THE OPPORTUNITY TO FULLY PRESENT ITS CASE ON THE MERITS AND NOT BY MERE TECHNICALITIES?