

SIXTEENTH DIVISION

[CA-G.R. SP No. 129960, June 17, 2014]

PERLITA L. OBANAN, PETITIONER, VS. HONORABLE JUDGE ELEUTERIO L. BATHAN (PRESIDING JUDGE OF REGIONAL TRIAL COURT OF QUEZON CITY, BR. 92) AND FITZGERALD DELA CRUZ, REPRESENTED BY ARMANDO S. DELA CRUZ (FATHER), RESPONDENTS.

D E C I S I O N

MACALINO, J:

This is a petition for certiorari^[1] under Rule 65 of the Rules of Court, which assails the following Orders of the Regional Trial Court of Quezon City, Branch 92 in Civil Case No. Q-12-71674:

- a) the October 15, 2012 Order^[2] which declared petitioner Perlita L. Obanan in default;
- b) the December 14, 2012 Order^[3] which denied petitioner's Omnibus Motion; and
- c) the February 18, 2013 Order^[4] which denied petitioner's Motion for Reconsideration of the above Orders.

The facts as related by petitioner in her Memorandum^[5] are hereunder reproduced as follows:

"PERLITA L. OBANAN is the registered owner of a passenger jeepney with Plate No. PVR 379 which was involved in an accident on February 6, 2012.

At the time said incident took place, petitioner's jeepney was driven by her driver **ROWHEIN M. EROJO**.

Consequently, a criminal case for Reckless Imprudence resulting in Serious Physical Injuries was filed by private respondent **FITZGERALD DELA CRUZ, as represented by his father ARMANDO S. DELA CRUZ** against **EROJO** which case is now pending before the Metropolitan Trial Court of Quezon City Branch 42.

Later, private respondent also filed an Action for Damages against **EROJO, OBANAN, MARIA THERESA ARIZOBAL ("ARIZOBAL") AND OLIMPIO ACAIN ("ACAIN")**, which case was raffled before the Public Respondent, Honorable Presiding Judge of RTC, Br. 92, Quezon City. xxx.

In the above complaint **Private Respondent**, as Complainant, alleged among others that **Petitioner** should be made to answer for damages caused by **EROJO** on account of the fact that Petitioner was negligent in

the selection of her driver/s specifically in taking steps necessary to determine or ascertain their driving proficiency and history.

On September 14, 2012, Petitioner **OBANAN** went to undersigned counsel's law office to engage its legal services. She presented a copy of private respondent's complaint which she claimed to have received on September 5, 2012.

Assessing the impossibility of the filing of Petitioner's Answer on time considering the handling counsel's heavy workload and hectic work schedule, she immediately filed on that same day of September 14, 2012 the undersigned law office's **Formal Entry of Appearance with Urgent Motion for Extension of Time to File Answer**. xxx.

On October 3, 2012, Petitioner filed her **Verified Answer**. xxx.

However, **on October 5, 2012**, Petitioner's counsel received a copy of private respondent's **Motion to Declare Defendant Perlita L. Obanan in Default** dated **25 September 2012**. xxx.

In the said motion, counsel for **Private Respondent** excitedly moved to declare **Petitioner** in default for allegedly failing to file her Answer on time. Further, the motion stated that petitioner's Entry of Appearance with Urgent Motion for Extension to File Answer does not contain notice of hearing as required by Sections 4 and 5, Rule 15 of the Rules of Court as it is considered as a mere scrap of paper and it would not stop the running of the period to file **Petitioner's** Answer. **Private Respondent** therefore prayed that defendant Perlita L. Obanan be declared in default and that the plaintiff be allowed to present his evidence ex-parte.

On **October 15, 2012** Public Respondent, Hon. Eleuterio L. Bathan, issued an Order which was received by Petitioner's counsel on November 27, 2012. xxx.

In the said Order, Public Respondent among others **GRANTED** Private Respondent's Motion to Declare Defendant Perlita L. Obanan in Default and at the same time refused to admit **Petitioner's** Answer on the ground that it was belatedly filed, hence considered as a mere scrap of paper. xxx.

On **December 12, 2012**, Petitioner, through counsel, filed her **Omnibus Motion** praying for the Honorable Court to issue an order to (a) Lift Order of Default dated October 15, 2012; (b) Admit Defendant (herein Petitioner) OBANAN's Verified Answer filed on October 3, 2012 and (c) Dismiss the Complaint for Damages with Prejudice for Willful and Deliberate Forum Shopping, committed by Plaintiff's counsel. xxx.

On the date of hearing, **December 14, 2012**, of the Omnibus Motion however, Petitioner's handling counsel was indisposed. She was not able to attend the scheduled hearing. Moreover, on that same day, there were no other associates of the undersigned law office available on her stead.

Hence, on **December 14, 2012**, for failure of Petitioner to appear, her Omnibus Motion was **denied** by the Honorable Court. xxx.

On **January 18, 2013**, Petitioner filed her Motion for Reconsideration to the Order of the Honorable Court denying her Omnibus Motion, stating therein that Petitioner's counsel's failure to appear was due to sickness. xxx.

The hearing for said Motion for Reconsideration was set on **January 17, 2013**. During the hearing, the Honorable Court ordered the Plaintiff/Private Respondent to file his Comment/Opposition on Petitioner's Omnibus Motion. xxx.

On March 20, 2013, Petitioner received a copy of an Order issued by the Honorable Court **denying her Omnibus Motion** on the Order dated **October 15, 2012** and Motion for Reconsideration on the Order dated December 14, 2012. xxx."^[6] (Citations omitted.)

The issuance of the above-mentioned Orders prompted petitioner to file this petition for certiorari raising the following issues:

"I. WHETHER OR NOT PUBLIC RESPONDENT, THE HONORABLE PRESIDING JUDGE, GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DECLARING PETITIONER IN DEFAULT.

II. WHETHER OR NOT PUBLIC RESPONDENT, THE HONORABLE PRESIDING JUDGE, GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION."^[7]

Petitioner insists that her "Verified Answer"^[8] should have been admitted by the trial court. She argues that the "Formal Entry of Appearance with Urgent Motion for Extension to File Answer"^[9] does not need notice of date and place of hearing because it does not prejudice private respondent's rights. She further insists that she should have not been declared in default considering that her answer was filed prior to the issuance of the order declaring her in default.

Private respondent on the other hand, contends that a notice of hearing is not a procedural rule that may be arbitrarily disregarded. He points out that even if the trial court relaxed the rule on notice of hearing and petitioner's motion for extension of time to file answer was granted, the answer was still belatedly filed. Private respondent elaborates:

"It bears stressing that the Sheriff's Return of Summons clearly shows that petitioner was served with summons on September 1, 2012. Applying Section 1, Rule 11 of the 1997 Rules of Civil Procedure, the last day for the filing of the Verified Answer is September 16, 2012, or September 17, 2012, considering that the former date falls on a Sunday.

xxx

Recall that petitioner's *Formal Entry of Appearance with Urgent Motion for Extension of Time to File Answer* prayed for an additional period of fifteen (15) days within which to file the answer. Assuming that the said motion can be given due course despite the absence of notice of hearing, the period of fifteen (15) days should be reckoned from September 16,