

101 Phil. 455

[ G. R. No. L-9439. May 17, 1957 ]

**CÁNDIDO BUENA, PETITIONER, VS. HON. JUDGE JOSÉ T. SURTIDA, ET AL.,  
RESPONDENTS.**

**D E C I S I O N**

**ENDENCIA, J.:**

The facts that gave rise to the present case are as follows:

On December 8, 1953, petitioner received a copy of the adverse decision rendered by the respondent judge in Civil Case No. 1767 of the Court of First Instance of Camarines Sur, wherein petitioner was plaintiff and the other respondents were defendants.

On January 5, 1954, petitioner filed (1) his notice of Peal and (2) a motion to extend the period for filing his appeal bond and record on appeal which he set for hearing on January 9, 1954. On this date the motion was heard, and on January 11, 1954 the trial court issued an order granting petitioner 15 days within which to file the appeal bond and the record on appeal.

On January 13 or, to be more exact, within the extended period, petitioner filed his record on appeal and appeal bond.

On January 23, 1954, upon objection of the defendants in the aforesaid case, the trial court disapproved the record on appeal on the ground that the period for perfecting the appeal expired on January 7, 1954, and therefore it had lost jurisdiction over the case and consequently the order of the court of January 11, 1954 granting the plaintiff an extension of 15 days was null and void, for petitioner's motion for extension was acted upon by the trial court after the expiration of the 30 days' period required by law for the filing of the notice of appeal, appeal bond and record on appeal.

On January 29, 1954, petitioner moved for the reconsideration of the trial court's order of

January 23, 1954, but said motion for reconsideration was denied on February 9, 1954. On February 16, 1954, another motion for reconsideration was filed, but in vain,, hence the present petition for mandamus to compel the respondent judge to approve the record on appeal and give it due course.

Under section 3 of Rule 41 of the Rules of Court, the notice of appeal, the appeal bond and the record on appeal should be filed within 30 days, but the trial court, at its sound discretion, may extend this period and, in the case at bar, the trial court rightly exercised said discretion when on January 11, 1954 it issued an order granting 15 days to petitioner within which to file the appeal bond and the record on appeal. And within the extended period petitioner filed said appeal bond and record on appeal, for which reason we find the present case to be quite similar to the case of the heirs of Mariano Arroyo Singbengco, petitioners, vs. The Hon. Francisco Arellano, etc., et al., respondents, (99 Phil., 952) where we held:

“It appears that petitioners received copy of the decision on the merits on October 24, 1952. On November 24, 1952, the last day of the period for the perfection of the appeal, they filed a motion for extension of time to file their record on appeal. This motion was granted on November 28, 1952. Two more motions for extension were filed, each on the last day of the extension period, and both motions were granted. And on the last day of the period allowed by the trial court, or on January 3, 1953, petitioners finally filed their record on appeal. These facts clearly indicate that, while the order of the court granting the last extension was not issued before the expiration of the period previously extended, the record on appeal was however filed within the additional period granted to petitioners by the trial court. In the circumstances, we hold that the record on appeal was filed on time and the Court of Appeals erred in considering the appeal to have lapsed and in dismissing the petition for mandamus on that ground. ‘Our reason for this ruling is clear. While this Court has held that ‘The pendency of a motion for extension of time to perfect an appeal or to file a brief does not suspend the running of the period sought to be extended’ (Garcia vs. Buenaventura, 74 Phil., 611), however, it was also held ‘that when the order granting extension of time is issued and notice thereof served after the expiration of the period fixed by law, said, extension of time must be counted from the date notice of the order granting it is received’ (Alejandro vs. Endencia, 64 Phil., 321, 325), which implies that once a motion for extension, is favorably acted upon, the

appeal may still be perfected within the period so extended. And s is justified under the ruling long observed in this jurisdiction that motions of this kind are addressed to the sound discretion of e court and may be granted if there are justifiable reasons that want them (*Moya vs. Barton*, 76 Phil., 831; *Reyes vs. Court of Apeáls*, 74 Phil., 235). Here there are good reasons as pointed by the trial court in its order of April 23, 1953.”

There is no dispute that (1) before the expiration of the 30-day reglementary período fixed by section 3, Rule 41 e we Rules of Court, the petitioner filed his motion for extension of that period within which to file his appeal bond and record on appeal; (2) that he was granted such extension; and (3) within the extended period said appeal bond and record on appeal were filed. In view of these facts and in the light of the doctrine enunciated in the aforequoted case, we hold that the petitioner has perfected his appeal in the aforesaid civil case No. 1767 which should be given due course. But the trial court disallowed the record on appeal, claiming that when it granted on January 11 an extension of 15 days within which petitioner may file his appeal bond and record on appeal, it had no longer jurisdiction over the case due to the expiration of the 30-day period fixed by law for perfecting the appeal. The trial court, however, lost sight of the fact that there was a motion for extension of time for the filing of the appeal bond and record on appeal which was then unacted upon and over which the trial court had still jurisdiction to exercise its sound discretion. And when on that same date the trial court acted favorably on petitioner’s motion for extension, it cannot be pretended that it has no longer jurisdiction over the case, for it has still jurisdiction to act thereon or, to be more exact, to use its discretion to grant or not to grant the motion for extension. And because the trial court had granted it, we hold that the petitioner has acquired right to have his record on appeal and appeal bond approved by the trial court pursuant to our previous ruling in several cases to the effect that section 3, Rule 41, should be liberally construed in the light of the provisions of section 2, Rule 1 of the Rules of Court. Wherefore, the petition is hereby granted and the respondent judge ordered to approve and certify the record on appeal in the aforesaid Civil Case No. 1769 in ‘accordance with law, without costs.

*Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., and Félix, JJ., concur.*

*Petition granted.*

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