

TOMAS Q. SORIANO, PETITIONER, VS. TEOFILO ABETO, ET AL., RESPONDENTS.

G.R. No. L-19635. February 28, 1964

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for certiorari and prohibition with preliminary injunction against the Court of Appeals to review and annul its resolution dated 9 February 1962 reinstating the appeal interposed by respondents Abeto and Unson after the same had been thrice dismissed, to restore the resolution dated 2 January 1962 dismissing the appeal for the third time, to seek judgment from this Court to command the respondent court to desist from further proceedings in the case at bar, and to seek an order from this Court to restrain respondent court from further proceeding in the instant case during the pendency of this petition.

The facts are not disputed, and are stated in petitioner's memorandum, as follows:

"The complaint in this case was filed on September 20, 1957 with the Court of First Instance of Rizal by plaintiff, herein petitioner, and on February 4, 1960, the lower court rendered a decision in favor of plaintiff. Defendants Abeto and Unson, herein respondents, appealed from said decision to the respondent Court of Appeals' which appeal was perfected on April 12, 1960.

"On August 12, 1960, the respondent Court of Appeals notified respondents Abeto and Unson to pay the cost of printing of their record on appeal within 15 days from receipt thereof. Subsequently:

"1. On August 30, 1960, respondents Abeto and Unson filed a motion asking for an extension of 30 days within which to pay the cost of printing the record on appeal. This motion was granted by the respondent Court of Appeals in its resolution of September 22, 1960. (Copies of said motion and resolution are attached to the petition as Annexes "A" and "B", respectively) * * *.

"2. On October 7, 1960, i.e., the last day for paying the cost of the printing the record on appeal, respondents Abeto and Unson failed to pay the same and filed for a second time a motion dated October 18, 1960, praying that the payment of the docket fee and partial deposit of the cost of printing the record on appeal be accepted and that they be given an extension of 15 days from the aforesaid date within which to pay the balance. This motion was granted by the respondent Court of Appeals in its resolution of October 21, 1960. (Copies of said motion and resolution are attached to the petition as Annexes "C" and "D" respectively) * * * *.

"3. After the expiration of the 15 day period or on November 2, 1960, respondents Abeto and Unson for the third time failed to pay the balance of the cost of printing of the record on appeal, and in view thereof, respondent Court of Appeals in its resolution of November 22, 1960, DISMISSED APPELLANTS' APPEAL AND ORDERED THE RECORD OF THE CASE TO BE REMANDED TO THE COURT OF ORIGIN. (Copy of said resolution, is attached to the petition as Annex "E") * * *.

"4. After almost a month from the issuance of the resolution dismissing the appellants' appeal, respondents Abeto and Unson filed a motion for reconsideration dated December 19, 1960, praying that they be given a last extension up to January 16, 1961 within which to deposit the balance of the cost of printing their record on

appeal, Again, the said motion was granted by respondent Court of Appeals in its resolution of January 6, 1961. ***.

"5. One day after the expiration of the last extension on January 16, 1961, respondents Abeto and Unson filed a motion praying for an extension up to January 31, 1961 within which to pay the balance of the cost of printing of their record on appeal. Surprisingly enough, the said motion was granted by the respondent Court of Appeals in its resolution of January 25, 1961. * * *.

"6. On the last day for paying the balance of the record on appeal or on January 31, 1961, respondents Abeto and Unson again failed for the fourth time to pay the balance thereof and for this reason respondent Court of Appeals in its resolution of February 17, 1961 Dismissed Appellants' Appeal for the Second Time and Ordered the Case to be Remanded to the Court of Origin. * * *.

"7. After more than one and a half months after the issuance of the second resolution dismissing the appeal, respondents Abeto and Unson filed a motion, for reconsideration on April 5, 1961 (but dated March 30, 1961) praying that the said resolution be reconsidered. Instead of denying this motion the same was again granted by the respondent Court of Appeals in its resolution of April 11, 1961, and in addition, another extension of 30 days from notice thereof was given to respondents Abeto and Unson. * * *.

"8. On April 20, 1961, herein petitioner filed a motion for reconsideration of the aforesaid resolution of April 11, 1961, which motion was denied by respondent Court of Appeals in its resolution* of May 9, 1961. * * *.

"9. On August 21, 1961, a notice was sent to respondents Abeto and Unson to file their brief within 45 days from receipt thereof with respondent Court of Appeals and said notice was received by respondents Abeto and Unson on September 6, 1961, as evidenced by the registry return card attached to the records. * * *.

"10. After the 45-day period expired on October 21, 1961, within which to file respondents Abeto and Unson's brief, the latter failed to file the same but 18 days thereafter or on November 8, 1961, they filed a motion for leave to file their brief within 30 days and this motion was granted by respondent Court of Appeals in its resolution dated November 17, 1961, the extension to begin from October 21, 1961. * * *.

"11. After more than a month from the expiration of the extended period on November 21, 1961 without appellants having filed and served their brief, the respondent Court of Appeals in a resolution dated January 2, 1962 DISMISSED FOR THE THIRD TIME respondents Abeto and Unson's appeal and ordered that the records of the case be remanded to the Court of origin. * * *.

"12. Twenty days after the third dismissal of the appeal or on January 22, 1962, respondents Abeto and Unson filed a motion for reconsideration, and to admit appellants' brief dated January 21, 1962. * * *.

"13. On February 16, 1962, herein petitioner filed a motion praying that respondents' brief filed on January 22, 1962, be stricken from the records for having been filed out of time. However, Ending the resolution of said petitioner's motion, the respondent Court of Appeals issued on February 9, 1962 the resolution in question which petitioner is now seeking to annul. * * *.

"14. On March 1, 1962, herein petitioner received a copy of a resolution of the respondent Court of Appeals dated February 23, 1962, denying his motion of February 16, 1962. * * *.

"15. On March 6, 1962, herein petitioner filed a motion for reconsideration praying that the respondent Court of Appeals reconsider its resolution of February 9, 1962, by maintaining its resolution dated January 2, 1962 DISMISSING FOR THE THIRD TIME the appellants' appeal. The aforesaid motion for reconsideration was denied by respondent Court of Appeals in its resolution of March 13, 1962. " * *.

Our study of the Court of Appeals record reveals that at least three characteristics of respondents-appellants' petitions for extension and reinstatement clearly reveal their intent to stretch out the periods granted them to the

maximum and delay the appeal as much as possible. These are:

- (1) That not one of appellants' numerous motions whether for extension or for reinstatement of the appeal, was supported by oath;
- (2) That in none of said motions did the appellants submit proof of the truth of the various excuses they alleged to mitigate their defaults;
- (3) The motions for reinstatement of the dismissed appeal were filed invariably on the 14th or 15th day after notice of the resolution for dismissal. In other words, appellants in every case waited until the last day before the dismissal orders became final before asking their reconsideration.
- (4) Except for the motion of December 19, 1960 to be allowed to pay the balance of the cost of printing the record of appeal, appellants' numerous petitions for delay or reinstatement were never filed on time, before the expiration of the periods granted them, as required by the Rules. And this is true even of the periods voluntarily fixed by appellants themselves. To illustrate:
 - (a) In their motion of October 18, 1960, appellants stated that the balance of P131.00 would be remitted "within a period of 15 days from today". Upon the extension being granted, appellants took no steps to obtain further prorogation, but allowed the periods to lapse. Nothing was heard of them until after two months, on December 19, 1960, when they asked for the reconsideration of the resolution dismissing the appeal.
 - (b) Again, on January 16, 1961, pleading "tightness of money", the appellants asked for reinstatement of the appeal and promised to pay the balance "by the end of January, 1961" (in their previous pleading they had manifested that the extension to January 16 "will be for the last time"). No move for further prolongation of time was filed by them on or before January 31, 1961. It was only after the appeal was dismissed for the second time that appellants gave signs of life and once more asked, on March 30, 1961 (forty-five days after the due date set by them), for the reinstatement of the appeal, which the Court of Appeals again granted.
 - (c) On November 6, 1961, appellants asked that the term for filing their brief be in turn extended, and manifested that they could file it in 30 days, which would be around December 6. Yet nothing further was heard from them until January 21, 1962, when they prayed for the reinstatement of the appeal, which was ordered dismissed for the third time on January 2, 1962.

No other evidence is needed to prove that appellants Abeto and Unson showed no interest whatever in having their appeal speedily passed upon, and that the Court of Appeals invariably yielded to appellants' importunities, while inflexibly over-ruling the protests of the petitioner-appellee. Respondents-appellants were thus permitted to delay payment for the printing of the record of appeal from August 12, 1960 (when they received the clerk's notice) to April 27, 1961, prolonging the normal period of 15 days to more than eight (8) months. They were likewise enabled to extend the original 45 days allotted by the Rules, from September 6, 1961 to February 12, 1962, i.e., to over 160 days.

We believe that the respondents-appellants' conduct was a deliberate violation of the Rules of Court that tended to set at naught the periods fixed therein, and to bring them to discredit and contempt. In this they were aided and abetted by the passivity of the court below. While we are loath to interfere with the Court of Appeals' discretion, we do think that the unwanted magnanimity here displayed, if tolerated, would ultimately erase the boundary between benevolence and partiality.

We, therefore, find that the resolution of February 12, 1962, ordering for the third time that the appeal of Teofilo Abeto, et al., be reinstated, as well as the resolution of February 23, 1962 denying the appellee's motion to dismiss the appeal, were issued in abuse of discretion amounting to lack of jurisdiction.

Wherefore, the writs prayed for are granted, and the Resolutions of the Court of Appeals dated February 12, 1962

and February 23, 1962 set aside, and the appeal of private respondents Abeto and Unson ordered dismissed. Costs against said respondents.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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