

MAXIMO REYES, PETITIONER AND APPELLANT, VS. ROMAN CATHOLIC ARCHBISHOP OF MANILA ET AL., RESPONDENTS AND APPELLEES.

G. R. No. L-3507. April 20, 1951

Ponente: PARAS, C.J.

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PARAS, C.J.:

On December 24, 1948, in civil case No. 6226 of the Municipal Court of Manila, the herein petitioner-appellant was declared in default and a decision was rendered against him and in favor of the herein respondent-appellee Roman Catholic Archbishop of Manila. On December 27, 1948, the appellant filed a motion to lift the order of default, which was denied by the Municipal Court on December 29, 1948. On January 4, 1949, the appellant received a copy of a decision of the Municipal Court rendered on December 24, 1948. On January 6, 1949, the appellant filed an exception and notice of appeal, which was given due course. Upon motion of the appellee Roman Catholic Archbishop of Manila, the Court of First Instance of Manila, on March 14, 1949, dismissed the appeal interposed by the appellant, on the ground that the latter had no right to appeal. On May 17, 1949, after denial of his motion for reconsideration, the appellant filed the present petition in the Court of First Instance of Manila for relief from the judgment of the Municipal Court of December 24, 1948, under Rule 38 of the Rules of Court. On May 26, 1949, the appellee filed a motion for the dismissal of the petition for relief, on the ground that the same was filed beyond the reglementary 60-day period. Upon opposition of the appellant, the court denied appellee's motion to dismiss. However, upon motion for reconsideration filed by the appellee on July 14, 1949, to which the appellant filed an opposition, followed by appellee's reply, the Court of First Instance of Manila, on August 29, 1949, dismissed appellant's petition for relief. From the order of dismissal the present appeal was taken by the petitioner.

Under section 3 of Rule 38, a petition for relief must be filed "within sixty days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six months after such judgment or order was entered, or such proceeding was taken." As the appellant learned of the decision of the Municipal Court of Manila on January 4, 1949, the petition for relief filed on May 17, 1949, is excessively beyond the reglementary 60-day period, one hundred and thirty-three days having elapsed from January 4 to May 17, 1949. In other words, the petition for relief was late by seventythree days.

It is contended, however, for the appellant that the period of from January 6, 1949 (when the appellant perfected his appeal in the Municipal Court) to May 10, 1949 (when the appellant was notified of the order of the Court of First Instance of Manila denying his motion for the reconsideration of the order dismissing his appeal), should be deducted, because the pendency of said appeal suspended the reglementary period of 60 days. This contention is clearly untenable, since, as we have already held in *Lim Toco vs. Go Fay*, (80 Phil., 166) a defendant in default has no right to appeal from the judgment on the merits. The appeal attempted to be taken by the appellant from the decision of the Municipal Court of Manila was, therefore, ineffectual. Indeed, the Court of First Instance of Manila dismissed said appeal upon the authority of the case just cited.

The appellant also argues that a petition for relief can be filed only after the judgment has become final. In the case at bar, there can be no question that the decision of the Municipal Court of December 24, 1948, in fact became final on said date or, at the latest, on January 19, 1949, or 15 days after the appellant received notice of the decision on January 4, 1949, the appellant having, as already stated, no right to appeal. Wherefore, the appealed order is affirmed, and it is so ordered with costs against the appellant.

Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Jugo and Bautista Angelo JJ., concur.

PARAS, C. J.:

I certify that Mr. Justice Reyes voted to affirm.

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