

ANGELO KING, PLAINTIFF-APPELLEE, VS. PABLO JOE AND HENRY C. CORRO, DEFENDANTS-APPELLANTS.

G.R. No. L-23617. August 26, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Questioned herein is the validity of the order of the Court of First Instance of Manila of June 18, 1964 dismissing defendants' appeal thereto from the City Court's order which declared that said appeal was taken out of time. The incidents that gave rise to the issue thus raised is presently to be recited.

On March 5, 1964, the City Court of Manila[1] sentenced defendants to pay plaintiff the sum of P4,410.00 with 14% interest per annum from October 28, 1963, until fully paid, P500.00 as attorney's fees, and the costs.

On March 16, 1964, defendants were notified of the foregoing judgment.

On March 30, 1964, or 14 days after notice of the decision, defendants filed a motion for extension of time to file a motion for the reconsideration of the decision.

On April 6, 1964, the court denied this motion, upon the ground that the filing thereof was "purely for delay."

On April 7, 1964, plaintiff moved for the execution of the judgment, alleging finality thereof.

On April 13, 1964, resolution on the motion for execution was held in abeyance "[p]ending the receipt of the original of the order issued by this Court on April 6, 1964."

On April 20, 1964, defendants received the order of April 6, 1964 heretofore mentioned. Their next move was to appeal by filing a notice of appeal and appeal bond and paying the appellate docket fee, all on April 21, 1964.

On May 26, 1964, the case having been elevated to the Court of First Instance of Manila,[2] plaintiff moved to dismiss the appeal upon the averment that it was filed beyond the 15-day reglementary period - 21 days late.

On June 18, 1964 - after the motion to dismiss the appeal was submitted on memoranda of the parties - the Court of First Instance of Manila granted the motion to dismiss in an order, the dispositive part of which reads: "WHEREFORE, finding plaintiff's motion to be well founded, the appeal taken by the defendants, having been perfected out of time, is hereby dismissed."

Thwarted in their move to reconsider, defendants came direct to this Court on appeal.

Defendants' appeal from the City Court to the Court of First Instance must be dismissed. Because, it was perfected out of time.

The law gives a defeated party in the inferior court 15 days from notice of judgment within which to appeal to the Court of First Instance.[3] This period expired on March 31, 1964. And appeal was taken by defendants only on April 21, 1964 - long after the time therefor had elapsed.

Of course, defendants say that they filed a motion for extension of time within which to file a motion for reconsideration. But nothing in the record suggests the ground or reason why they sought such extension. Their brief did not mention said ground or reason or for that matter, any substantial defense that they could have on the merits. And more. They did not even manifest belligerence; they presented no evidence during the trial. Purely a motion for delay, it is patently without merit and correctly rejected by the City Court. Such motion - unlike a motion for new trial[4] - does not toll the reglementary period for perfecting the appeal. If a pro-forma motion for reconsideration or new trial does not stop the running of the period for appeal,[5] with greater reason should we say that a motion merely to extend the period for filing a motion for reconsideration purely for delay is similarly without merit.

The rule that a petition for extension of time to file a motion for reconsideration does not, by itself, interrupt the period fixed by law for the perfection of the appeal, has gained acceptance in jurisprudence. *Garcia vs. Buenaventura*, 74 Phil. 611, 613, gave a stern warning that the "pendency of a motion for extension of time to perfect an appeal x x x does not suspend the running of the period sought to be extended." We there gave as reason that "[i]f it did, the mere filing of a petition for extension at the eleventh hour would ipso facto extend the time - which is a glaring absurdity." This was followed by *Gibbs vs. Court of First Instance of Manila*, 80 Phil. 160, 164, where this Court once again ruled that a motion for extension of time to file a petition for new trial "did not stop the running of the reglementary period for perfecting the appeal." [6] As emphatic is the language of this Court in *Bello vs. Fernando*, L-16970, January 30, 1962, thus:

"There is no question here that both the record on appeal and the appeal bond of respondent Fernando were filed out of time. It is true that Fernando filed a motion to extend the period for the filing of both documents, but as we have repeatedly held, the filing of such motion for extension does not suspend the running of the period for appeal (*Escolin v. Garduño*, 57 Phil. 924; *Govt. v. Abad*, 56 Phil. 504; *Alejandro v. Endencia*, 64 Phil. 321; *Capinpin v. Hon. Ysip*, Aug. 31, 1959, L-14018), since the only purpose of such motion is to ask the court to grant an enlargement of the time fixed by law (*Escolin v. Garduño* and *Alejandro v. Endencia*, supra). The movant, therefore, has no right to assume that his motion would be granted, and should check with the court as to the outcome of his motion, so that if the same is denied, he can still perfect his appeal within his remaining period."

With the guidelines set forth in the jurisprudence just cited, we need but say that defendants filed their motion for extension of time to file a motion for reconsideration in the inferior court at the eleventh hour, just one day before the expiry of the period for appeal. The little time left for this purpose should have spurred them to press forthwith resolution of their said motion. They did not. They should not have taken for granted court's approval thereof. They did nothing but file that motion; that was at their own risk.[7] If their said motion was denied and if the period for their appeal had expired, they had nobody to blame. *Dy Cay vs. Crossfield & O'Brien*, 38 Phil. 521, 526, reminds us that public policy and sound practice demand that "at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law." And the appeal here was taken beyond the reglementary period. It must be dismissed.

For the reasons given, the order of June 18, 1964 dismissing defendants' appeal is hereby affirmed.

Costs against appellants.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, Zaldivar, Castro, Angeles, and Fernando, JJ., concur.

[1] In Civil Case No. 115073.

[2] Civil Case No. 56912.

[3] Section 2, Rule 40, Rules of Court.

[4] Sec. 4, Rule 40, Rules of Court.

[5] Arnaldo vs. Bernabe, 87 Phil. 379, 381; Garganta vs. Court of Appeals, 56 O.G. No. 26, pp. 4323, 4325, citing cases; Ferrer vs. Tabora, 57 O.G. No. 12, pp. 2138, 2139-2140; Elnar vs. Santos, 57 O.G. No. 42, pp. 7532, 7535.

[6] Citing Alejandro vs. Endencia, 64 Phil. 321, 325; emphasis supplied.

[7] Socco vs. Garcia, L-18231, October 31, 1962. See also: Abe vs. Foster Wheeler Corporation, L-14785 & 14923, November 29, 1960.

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