

GUERRA ENTERPRISES COMPANY, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF LANAOS DEL SUR, BRANCH I, AND PABLO LUNA, RESPONDENTS.

G.R. No. L-28310. April 17, 1970

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

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REYES, J.B.L., Acting C.J.:

Petition for a writ of mandamus to require the of First Instance of Lanao del Sur to approve and certify the record of appeal filed by petitioner Guerra Enterprises Company, Inc., in Civil Case No. 1496 of the said Court, under date of 9 December 1966.

The essential facts that led to the filing of this petition may be summarized as follows:

On 8 October 1965, petitioner herein registered a complaint for damages and preliminary injunction against herein private respondent, Pablo Luna, in the Court of First Instance of Lanao. Acting upon defendant's motion to dismiss, the court, on 21 January 1966, issued in order dismissing the complaint. Copy of the order was received by counsel on 21 February 1966.

On 5 March 1966, the plaintiff filed an "Urgent Motion for Reconsideration", which was denied by the court by order of 20 October 1966.

On 21 November 1966, plaintiff, in a motion of the same date (Annex "M" of the Petition), stated that he was appealing to the Court of Appeals and prayed that he be given 30 days, more specifically, up to 31 December 1966, to perfect his appeal. On 2 December 1966, the court entered an order granting plaintiff "an extension of 15 days from receipt of this order" to file "an appeal bond and record of appeal", and copy whereof was received by appellant on 7 December 1966.

A formal notice of appeal was filed on 23 November 1966 (even before the extension was granted), and on 7 December an appeal bond in the sum of P120.00 was deposited with the Clerk of the Court of First Instance. On 10 December 1966, the record of appeal was submitted, and copies were sent to the defendant-appellee.

Upon objection of the defendant, the court a quo denied approval of the record of appeal, and dismissed the appeal by order of 29 April 1967 (Petition, Annex "S") on the grounds (1) that the "Urgent Motion for Reconsideration" of the order of dismissal filed by the plaintiff on 5 March 1966 was a pro forma motion that did not interrupt the 30-day appeal period; and (2) that the record of appeal submitted did not show on its face when counsel for appellant received copy of the order of 21 January 1966 dismissing the case, nor the date when counsel received copy of the order dated 20 October 1966 denying the motion for reconsideration.

Appellant thereupon-resorted to this Court for a writ of mandamus against the dismissal of its appeal.

We find the petition meritorious. Contrary to the finding of the court below that appellant's motion for reconsideration was merely pro forma because the arguments therein advanced are substantially the same as those

advanced in the memorandum submitted by appellant under date of 29 December 1965, our scanning of the motion for reconsideration convinces us that the same differs substantially from the 29 December memorandum in attacking the lower court's application of our ruling in *Arroyo vs. Granada and Gentero*, 18 Phil. 484, to the suit filed by attorney-in-fact Montaner in behalf and in the name of plaintiff Guerra Enterprises Co., Inc. This portion is not found in the memorandum of 29 December 1965; it could not be for the reason that, prior to the trial court's decision, plaintiff could not know that the *Arroyo* doctrine would be applied, by the court to the case. While the question of the personality of the attorney-in-fact to sue in the name and behalf of his principal had been put in issue by the defendant Luna, that did not preclude the plaintiff's contesting the legal grounds relied upon by the court in up-holding defendant's contention that there was lack of capacity to bring the action, and did not make its motion for reconsideration merely pro forma. Among the ends to which a motion for reconsideration is addressed, one is precisely to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence^[1] and in doing so, the movant has to dwell of necessity upon the Issues passed upon by the court. If a motion for reconsideration may not discuss these issues, the consequence would be that after decision is rendered, the losing party would be confined to filing only motions for reopening and new trial. We find in the Rules of Court no warrant for ruling to that effect, a ruling that would, in effect, eliminate subsection (c) of Section 1 of Rule 37.

It must also be remembered that the disallowance of pro forma motions for reconsideration or new trial is mainly predicated upon their being resorted to solely to gain time and delay the proceedings.^[2] In the case at bar, the filing of the urgent motion to reconsider the order of dismissal barely twelve (12) days after its receipt by counsel for the plaintiff strongly argues against its use as a mere delaying tactic.

On the second ground relied upon by the court a quo which is that the record of appeal tendered by appellant failed to specify the date when certain orders were received by counsel for petitioner-appellant, it is enough to observe that since the record of appeal was still within the control of the respondent court, all that was needed was to order appellant to make the requisite amendments, and not to bar the appeal. It is not amiss to point out that the date when appellant's counsel received copy of the order to dismiss can be gleaned from appellant's notice of appeal dated 21 November 1966, which explicitly recites that on that date -

"counsel has just received copy of the order of the Court dated October 20, 1966, denying the motion for reconsideration" (Petition, Annex "M").

Finally, private respondent's objection to the verification of the petition filed in this Court, on the ground that the same is done by counsel "to the best of my knowledge, information and belief", is un-meritorious, since this Court has ruled that such a verification by the attorney is adequate compliance with Rule 7, Section 6, it being presumed that facts by him alleged are true to his knowledge in view of the sanctions provided in Section 5 of the Rule *Arambulo vs. Perez*, 78 Phil. 387; *Cajefe vs. Fernandez*, L-15409, 19 October 1960).

Considering the petition to be one for certiorari, we hold that the court of origin gravely abused its discretion in dismissing the appeal of petitioner.

WHEREFORE, the respondent court's order of 29 April 1967 (Annex "S" of the Petition) is hereby set aside and the records are ordered remanded to the court of origin for further proceedings in conformity with this opinion.

Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, and Villamor, JJ., concur.
Barredo, J., did not take part.

[1] Rule 37, Section 1, subsection (c)

[2] Dacanay vs. Alvendia, L-22633, 31 October 1969.

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