

**HIGINIO DIZON, PETITIONER-APPELLANT, VS. SHERIFF OF MANILA,
HON. AMBROSIO GERALDEZ, JUDGE, CITY COURT OF MANILA AND
THE CORPORACION FRANCISCANA, RESPONDENTS-APPELLEES.**

G.R. No. L-24964. September 28, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

On December 18, 1964 Higinio Dizon filed a petition docketed as Civil Case No. 59353 of the Court of First Instance of Manila, praying for relief from the judgment by default rendered against him on January 25, 1964 by the city court of Manila in an ejectment suit, Civil Case No. 117229.

In that judgment he was ordered to vacate the premises located at 2536-A Lamayan Street, Sta. Ana, Manila and to pay back rentals to plaintiff Corporacion Franciscana. Dizon's petition has a defective verification. He alleged therein that the contents of his petition were true and correct according to the best of his know-ledge and belief (See sec. 6, Rule 7, Rules of Court; 1 Moran's Comments on the Rules of Court, 1970 Ed., p. 309).

Corporacion Franciscana filed a motion to dismiss the petition on the ground that it was filed beyond the reglementary periods of sixty days and six months fixed in Rule 38 of the Rules of Court, which provides:

"SEC. 3. Time for filing petition; contents and verification. - A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negli-gence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be."

Dizon opposed the motion. The lower court in a minute order dated May 20, 1965 dismissed the petition on the ground that it was filed after the expiration of sixty days from the date when Dizon learned of the judgment by default. Dizon appealed to this Court.

The appeal is palpably devoid of merit because even if the reglementary sixty-day period were to be counted from August 17, 1964, when Dizon was served with a copy of the city court's order denying his motion for reconsideration, neverthe-less, his petition was filed out of time.

He invokes the rule allegedly laid down in *Follosco vs. Director of Lands*, 92 Phil. 810, that the petition for relief may be filed even after six months from the time the judgment or order was entered. There is no such ruling in the *Follosco* case. Evidently, Dizon's counsel had not read the case.

The *Follosco* case cites the comment of Chief Justice Moran, which sustains the lower court's order of dismissal, that in section 3 of Rule 38 there are two periods of time to be taken into account. "The first is sixty (60) days after petitioner learns of the judgment, order or proceeding complained of. And the second is six (6) months after such judgment, order or proceeding has taken place. The second period is a limitation to the first. The peti-tion

must be filed within 60 days after knowledge is acquired of the proceeding, provided it is not beyond six months after the proceeding has actually occurred." Those periods are non-extendible and cannot be suspended. (2 Moran's Comments on the Rules of Court, 1970 Ed., pp. 237-239).

Dizon also invokes the ruling in *Abellana vs. Dosdos*, L-19498, February 26, 1965, 13 SCRA 244, that execution may be suspended if after a judgment has become final there is evidence of new facts and circumstances which would affect or change the rights of the parties thereto.

As a basis for invoking that ruling, Dizon alleged for the first time on appeal that *Corporacion Franciscana* increased the rental for the premises in question from six pesos a month to twenty pesos and later to twenty-eight pesos only after it had consulted a so-called "Tenant's Committee" without Dizon's consent.

Corporacion Franciscana countered that there was no truth at all to that assertion of Dizon. Its counsel said that Dizon's motive for making an untruthful statement was to becloud the issue in this appeal.

The new matter injected into his case by Dizon is irrelevant to the issue as to the timeliness of his petition for relief from the judgment by default.

We examined meticulously the expedientes of the ejectment suit and the case decided by the lower court so as to be sure that no injustice would be committed against Dizon in the disposition of his appeal herein.

We are satisfied that *Corporacion Franciscana* never alleged in its ejectment complaint that it raised the rental upon the advice of a "Tenant's Committee". Dizon's counsel did not read carefully the ejectment complaint. His petition for relief does not accurately reflect the proceedings that transpired in the city court.

Parenthetically, we noticed that in paragraph 2 of its complaint (a mimeographed form used in different ejectment cases where the blanks were filled up to suit the facts of each particular case) *Corporacion Franciscana* alleged that it is the owner "of a house of strong materials located at 2536-A Lamayan, Sta. Ana, Manila". That allegation gives the impression that Dizon was being ejected from a house owned by *Corporacion Franciscana*.

Dizon in his answer admitted that paragraph 2 but by way of avoidance he alleged that he is the owner of the house and that *Corporacion Franciscana* is the owner of the lot (with an area of 156 square meters) from which he is being ejected.

The city court ejected Dizon from "the premises described in the complaint". That means that the city court ejected Dizon from his own house. That mistake was not noted by Dizon and his counsel.

Whether that error would preclude the enforcement of the city court's judgment against Dizon is a point that is not decided in this case.

WHEREFORE , the lower court's order of dismissal is affirmed with costs against petitioner-appellant Dizon.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Concepcion, Jr., JJ., concur.

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