

**BERNARDO MARGATE, GORGONIO MALBAS, DANIEL MARGATE,
AND NENITO OCAY, PETITIONERS, VS. COURT OF APPEALS,
VIRGINIA TUPAZ AND THE REGISTER OF DEEDS OF MANILA,
RESPONDENTS.**

G.R. No. L-38255. June 18, 1974

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petitioners filed this petition seeking to nullify the resolution of respondent Court of Appeals, dated January 7 and 30, 1974 as well as February 15, 1974, dismissing their appeal, which they pray should be reinstated, and for the admission of their record on appeal filed on January 11, 1974.

Petitioners are daily wage earners without any property to mortgage or sell to raise the necessary amount to print or mimeograph their record on appeal. It appears that petitioners filed Civil Case No. 68257 in the Court of First Instance of Manila entitled "Bernardo Margate, et al. vs. Virginia Tupaz, et al.," praying for the annulment and cancellation of the award, deed of sale and certificate of title No. 86359 in favor of private respondent Virginia Tupaz covering lot 44, block No. 9 of the Fabie estate in Paco, Manila, which was purchased by the government to be sold to those who have been occupying said estate since prior to such sale to the government, on the ground that private respondent Virginia Tupaz is not residing in and occupying the said lot as she is residing in another lot of the same Fabie estate.

From an adverse decision of the Court of First Instance, they appealed to the Court of Appeals, which directed the petitioners to pay the docket fee and to file their record on appeal within 60 days from receipt of the notice dated September 26, 1973.

On November 28, 1973, herein petitioners filed a motion for an extension of 30 days from said date within which to file 40 copies of their record on appeal, which extension was granted by respondent Court of Appeals in a resolution dated December 7, 1973 with a warning that petitioners may file printed or mimeographed but not typewritten record on appeal. The deadline granted for the submission of their record on appeal under said resolution would be December 28, 1973.

On December 21, 1973, herein petitioners filed a motion for a second and last extension of 15 days "from November 28, 1973" --- should have been December 28, 1973 --- within which to file their mimeographed copies of the record on appeal on the ground that the printing of the same could not be finished immediately as it was Christmas season. Herein petitioners made the inadvertent mistake of stating that the 15 days should be counted "from November 28" instead of from December 28, 1973 as granted in the resolution of December 7, 1973.

In a resolution dated January 7, 1974, the respondent Court of Appeals denied their motion for a second and last extension of 15 days "from November 28, 1973" and dismissed their appeal thus:

"Plaintiffs-appellants' second motion:

"WHEREFORE, it is most respectfully prayed that the herein plaintiffs-appellants be given a second and last extension of time of at least fifteen (15) days from November 28, 1973 within which to file their mimeographed copies of their record on appeal.

Manila, December 21, 1973.'

"RESOLVED: Denied; appeal dismissed." (Annex "E", p. 22, Record.)

The petitioners submitted actually their mimeographed copies of the record on appeal on January 11, 1974.

Petitioners filed their motion dated January 17, 1974 for the reconsideration of the resolution dated January 7, 1974, stating that they committed an error when they prayed in their motion for a second and last extension of 15 days that the said 15-day period should begin "from November 28, 1973" instead of from December 28, 1973; that they actually filed their record on appeal on January 11, 1974, well within 15 days from December 28, 1973; and that the petitioners intended to have their record on appeal printed but the same had to be mimeographed because of the high cost of printing and the inability of the printer to meet the deadline, to emphasize their genuine interest in prosecuting their appeal.

In its resolution dated January 30, 1974, respondent Court of Appeals denied said motion for reconsideration in this manner:

"Plaintiffs-appellants' motion:

"WHEREFORE, it is most respectfully prayed that, in the interest of justice and in order to afford appellants ample opportunity to ventilate before this Honorable Court the real issues involved in this case, the resolution of this Honorable Court dated January 7, 1974, denying plaintiffs-appellants' second motion for last extension and dismissing the instant appeal be reconsidered and set aside; and, in lieu thereof, another resolution issue admitting appellants' record on appeal and, consequently giving due course to appellants' appeal.

"Manila, January 17, 1974.

"RESOLVED: Movants own motion for last extension asked '15 days from November 28, 1973', Record on Appeal filed 11 January, 1974. In view whereof, DENIED." (Annex "G", p. 29, Record.)

Petitioners' second motion for reconsideration dated February 11, 1974 likewise met the same fate, for respondent Court of Appeals rejected the same in its resolution of February 15, 1974 as follows:

"Plaintiffs-appellants' second motion for reconsideration:

"WHEREFORE, it is most respectfully prayed that:

"1. The phrase 'fifteen (15) days from November 28, 1973' stated in the prayer of appellants' second motion for last extension, dated December 21, 1973 should instead be read 'fifteen (15) days from December 28, 1973';

"2. The resolution dated January 7, 1974, denying appellants' second motion for last extension and dismissing the appeal, be reconsidered and set aside;

"3. Appellants' second motion for last extension dated December 21, 1973, be granted; or their mimeographed copies of the record on appeal filed on January 11, 1974, be admitted; and

"4. The appeal given due course.

"Manila, February 11, 1974.

"RESOLVED: What this Court notes is that it is the impression of appellants that when they file motion, second motion, for extension, - even in the way they count it now, - that this Court was bound to grant, - this is

wrong, any party can move to extend, but it is for the Court to approve, and here, this Court already granted a first extension but appellant did not take advantage, and this Court decided not to grant any further extension consistent with its warning, this Court understands that mimeographing of a record on appeal is mechanical, should have been attended to by appellant with least possible delay.

IN VIEW WHEREOF, DENIED." (Annex "I, p. 36, Record.)

The resolution of the respondent Court of Appeals dated January 7, 1974 denying the motion of the herein petitioners dated December 21, 1973 for a second and last extension of fifteen (15) days counted from December 28, 1973 unreasonably failed to accord sympathy to the reasons for said extension advanced by herein petitioners who are lowly wage earners without any asset to sell or mortgage to secure funds to defray expenses of printing or mimeographing their record on appeal. Neither did the respondent appellate court realize the fact that it being Christmas season, the petitioners and the printer could not possibly finish the record on appeal before December 28, 1973, the last day for the first extension of thirty (30) days it had granted. Respondent Court of Appeals should have appreciated the fact that during the Yuletide season people are burdened with preparations, especially herein petitioners, who, by reason of their low economic status, had to scrimp for the necessary wherewithal to insure that the members of their families would enjoy Christmas and that the printers are usually swamped with rush printing orders for calendars and Christmas cards.

Worse, the respondent Court of Appeals issued the resolution of January 7, 1974 long after the deadline for the first extension lapsed or expired on December 28, 1973, despite the fact that herein petitioners filed their motion for a second and last extension on December 21, 1973, seven (7) days before the deadline for the first extension.

The respondent Court of Appeals did not comply with OUR injunction in *Reyes, et al. v. Sta. Maria, et al.* (G.R. No. L-29554, November 20, 1972, 48 SCRA, pp. 1, 6) that such motions should be resolved promptly or before the lapse of the said required period "so as to apprise the appellant whether or not his obligations to file the record on appeal x x x is dispensed with (*Semira v. Enriquez*, 88 Phil. 228, 231; Section 1, Rule 135, Rules of Court) so that the parties or their counsel may avail themselves of the proper remedy if the motion is denied."

The court resolution of January 7, 1974 denying the motion for a second and last extension of fifteen (15) days "from November 28, 1973" to file mimeographed record on appeal and dismissing the appeal, seems to carry the impression that the denial was predicated on the fact that the motion was filed on December 21, 1973 which was already beyond fifteen (15) days counted from November 28, 1973. The respondent Court of Appeals should have noted that paragraph 2 of the motion dated December 21, 1973 for a second and last extension of fifteen (15) days, expressly states that the first extension would expire on December 28, 1973 and that therefore the fifteen (15)-day extension prayed for should commence from said date December 28, 1973, and not from November 28, 1973 as mistakenly stated in the petitory portion of said motion. (See Annex "D", pp. 18-19, rec.)

The respondent Court of Appeals likewise had the opportunity to rectify its apparent misapprehension from the prayer of the second and last motion for extension that the fifteen (15)-day period had already expired on December 21, 1973; because herein petitioners explained in their first motion dated January 17, 1974 for reconsideration of the resolution dated January 7, 1974 their mistake in stating in their prayer that the fifteen (15)-day period should be counted "from November 28, 1973," instead of from December 28, 1973. Instead of correcting its mistake, although partly induced by the mistake of the petitioners when they stated in their prayer that the fifteen (15)-day period should commence from November 28, 1973, the respondent Court of Appeals in its resolution of February 15, 1974 denying the second motion for reconsideration dated January 30, 1974, repeated its own error by stating "RESOLVED: Movants own motion for last extension asked '15-day period from November 28, 1973' Record on Appeal filed January 11, 1974. In view whereof, DENIED."

The respondent Court of Appeals likewise erred in stating in its resolution of February 15, 1974 that "it decided not to grant any further extension consistent with its warning. x x x." The Court did not issue any warning that the first extension of 30 days from December 28, 1973 was the last extension or that the Court will not grant any further extension. The only warning contained in its resolution of December 7, 1973 is that petitioners may file their printed or mimeographed but not typewritten record on appeal. (Annex "C", p. 17, rec.)

In *Limon v. Candido*, (47 SCRA 1166, 1169), Chief Justice Makalintal, then Associate Justice, enunciated in behalf of the Court, that while motions for extension or postponements are addressed to the sound discretion of the court, "such discretion should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case the ends of justice and fairness would be served thereby. When no substantial rights are affected and the intention to delay is not manifest x x x it is sound judicial discretion to allow the same. (*Panganiban v. Vda. de Sta. Maria*, G. R. No. L-25529, February 29, 1968)." There is no showing that the rights of the herein private respondent would be adversely affected by such second extension of only fifteen (15) days. It is obvious that the motion for second and last extension was not intended to delay the case, which is underscored by the fact that herein petitioners actually filed their record on appeal on January 11, 1974, well within the 15-day period prayed for. The doctrine in the *Limon* case was re-enunciated in *Piedad v. Batuyong, et al.* (G. R. No. L-38024, February 28, 1974) where WE observed that the petitioner therein, like the petitioners in the case at bar, had "been unduly put to great effort and expense to seek just recourse from this COURT and the time and the attention of the Court which it could well devote to meritorious cases have been needlessly taken up -- due to respondent Court's improper refusal to accede to the just and reasonable plea of the petitioner x x x." The same rule and observation were reiterated in the very recent case of *Cucio v. Court of Appeals* (G.R. No. L-38020, May 24, 1974; see also *Macasa, et.al. v. Herrera*, 101 Phil. 44, 48).

Under the circumstances, We are constrained to hold that respondent Court of Appeals gravely abused its discretion in denying petitioners' motion for a second and last extension from December 28, 1973 within which to file forty (40) copies of their mimeographed record on appeal, which were actually filed on January 11, 1974, one day before the fifteen (15)-day period would expire counted from December 28, 1973.

WHEREFORE, THE RESOLUTIONS OF THE RESPONDENT COURT OF APPEALS DATED JANUARY 7 AND 30, 1974 AS WELL AS FEBRUARY 15, 1974 ARE HEREBY ANNULLED AND SET ASIDE AND SAID APPELLATE COURT IS HEREBY DIRECTED TO REINSTATE THE APPEAL AND TO ADMIT HEREIN PETITIONERS' RECORD ON APPEAL. NO COSTS.

Makalintal, C.J., Castro, Teehankee, Esguerra, and Muñoz Palma, JJ., concur.

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