

**PHILIPPINE VIRGINIA TOBACCO ADMINISTRATION (PVTA),
PETITIONER, VS. HON. WALFRIDO DE LOS ANGELES AS JUDGE OF
THE COURT OF FIRST INSTANCE OF RIZAL (QUEZON CITY, BRANCH
IV), AND AB...**

G.R. No. L-29736. October 31, 1974

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ANTONIO, J.:

Petition for certiorari with mandamus, to annul the order of respondent Court in Civil Case No. Q-11728 Abra (Agricultural Association, Inc. vs. Philippine Virginia Tobacco Administration and Farmers' Virginia Redriers, Inc.), dated October 16, 1968, dismissing the appeal of petitioner for its failure to file the record on appeal within the reglementary period and to compel said Court to give due course to the appeal.

We find the petition unmeritorious.

In dismissing this petition, this Court reaffirms the rule that the filing of a motion for extension of the period for the filing of a record on appeal does not suspend the running of the period for appeal, since the only purpose of such motion is to ask the court to grant an enlargement of the time fixed by law.[1] Evidently, the movant 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 the remaining period.[2] Thus, if the motion for extension filed within the reglementary period is not acted upon by the court and the extension period asked for lapses without the record on appeal having been filed, the motion does not suspend the period to appeal and the right to appeal is lost.[3] It is true that in *Berkenkotter*, We said that if the motion is granted, the extension requested is tacked to the original period, even if the favorable order is issued after the expiration of the latter.[4] In the case at bar, the motions for extension were never granted.

Thus, petitioner, through the Corporate Counsel, received notice of the judgment of the trial court on June 22, 1968. On July 19, 1968, petitioner filed with the court a quo an appeal bond and notice of appeal to the effect that it was appealing the judgment to the Supreme Court. On the same date petitioner also filed a "Motion for Extension of Time to File Record on Appeal," alleging that due to the voluminous records that had to be copied and included in the record on appeal, it may not be able to file the same on time, and asking for extension of fifteen (15) days counted from July 22, 1968. The respondent Court did not act on this motion for extension. Instead of verifying from the Court whether or not its motion for extension was favorably acted upon, petitioner through inaction permitted the original period of thirty (30) days to lapse on July 22, 1968. On July 31, 1968, or nine (9) days after the expiry of the reglementary period, petitioner filed a second "Motion for Extension of Time to File Record on Appeal." In the aforementioned pleading, petitioner alleged that on July 20, 1968, the other defendant, Farmers' Virginia Tobacco Redriers, Inc. (FVTR) filed a motion for reconsideration of the trial court's decision, and the said motion, together with the Court's resolution thereon, would necessarily form part of the petitioner's record on appeal, hence, the said record on appeal could not possibly be completed and filed before the resolution of FVTR's motion. The petitioner prayed in its second motion that its period for filing the record on appeal be extended until such time as the FVTR's motion for reconsideration shall have been resolved finally, and

that it be given ten (10) days from its receipt of the Court's resolution within which to file its record on appeal. This was opposed by private respondent on September 11, 1968, said party alleging that the second motion for extension filed by the PVTA was not meritorious as whatever action the Court may take on FVTR's motion for reconsideration would not be material to the appeal of petitioner, since the said motion for reconsideration referred only to the portion of the decision ordering FVTR to reimburse the PVTA whatever amount the latter had been adjudged to pay private respondent. Private respondent likewise alleged that the filing of the motion was purely dilatory.

After the petitioner filed its reply to private respondent's motion of September 19, 1968, the trial court issued an order on October 16, 1968, which, among others, reads as follows:

"x x x It will be noted that the opposition of the plaintiff for the extension of the period to file the record on appeal by the said defendant PVTA was centered on the second motion for extension which prayed for an indefinite period. In the opposition filed by the plaintiff against the said extensions of time, it was likewise prayed that the appeal interposed by the defendant PVTA be now dismissed on the ground that the period to appeal has already elapsed and that the same is purely for purposes of delay and dilatory tactics. Subsequently, plaintiff presented a supplemental allegations and/or arguments to support the motion to dismiss appeal. Plaintiff alleged in the said supplemental pleading that the evidence on record strongly and firmly support the claim of the plaintiff, consisting as they do, mainly of testimonies and documents originating from defendant PVTA itself, such as (a) the testimony of Mr. Quirico T. Samonte, head of the PVTA Trading Department, favorable to plaintiffs claim coupled with his certification dated March 18, 1965 (Exh. R), attesting to the tobacco shipments subject of the claim; (b) the letter of Mr. Federico B. Moreno, PVTA Officer-in-Charge, to the Auditor General dated January 9, 1968 (Exh. DD), stating that the tobacco shipments in question come under the original allocation of defendant FVTR (Exh. DD-1); and (c) Resolution No. 241 of the PVTA Board of Directors, dated August 28, 1964 (Exh. CC), requiring the PVTA to pay tobacco shipments beyond the original two million kilo allocation; that even the Government Corporate Counsel himself, as counsel for the defendant PVTA, in his letter dated July 2, 1968 to the Officer-in-Charge of said defendant stated as follows: 'In the light of the evidence presented in the case, including ours, as well as the circumstances obtaining in the instant case, we feel that an appeal from the decision rendered in this case would not prosper and would only entail waste of time and effort and at considerable expense considering that interest will continue to run on the principal amount due until the same is paid and considering, that it will take at least two or three years before the appeal would be resolved.'

The appeal therefore being taken now by the same counsel for the PVTA could be considered as manifestly and palpably frivolous and dilatory.

"IN VIEW OF THE FOREGOING, the appeal interposed by the defendant PVTA is hereby ordered dismissed for failure to file the record on appeal within the reglementary period. The second motion for extension of time praying for an indefinite suspension of the period to file the record on appeal could not be considered by the Court, the running of the period within which to perfect an appeal could not be suspended by the Court, hence the period within which defendant PVTA must perfect its appeal has already expired; and, even assuming that defendant PVTA was able to perfect the appeal within the period, yet the same must necessarily be dismissed for being patently frivolous and a dilatory tactic to delay the termination of this case."

Petitioner claims that respondent judge committed grave abuse of discretion amounting to excess of jurisdiction in dismissing its appeal because (a) it had seasonably filed the motion for extension of time to file its record on appeal based on valid grounds, which motion respondent judge failed to resolve; (b) respondent judge is empowered to grant extensions of time to file records on appeal in meritorious cases, as in this case, where the completion of the record on appeal must necessarily await resolution of the FVTR's motion for reconsideration, the inclusion of which in the record on appeal is necessary so as to avoid multiplicity of suit; and (c) appeal of the

petitioner cannot be considered as frivolous and dilatory.

As already stated, petitioner's second motion for extension was filed nine (9) days after the expiry of the reglementary period granted by Section 3 of Rule 41 of the Revised Rules of Court. It is true petitioner filed a "Motion for Extension of Time to File a Record on Appeal" on July 19, 1968, but it had no right to assume that the same could be granted. It was petitioner's duty to take steps to verify from the Court whether or not its motion for extension had been granted, considering that its time was running out.

Petitioner contends that it was erroneous on the part of the trial court to hold that its second motion for extension of time to file the record on appeal, which in effect was a motion to suspend the running of said period until the motion for reconsideration of the other defendant shall have been acted upon, was late because "the period within which defendant PVTa must perfect its appeal has already expired," because no action had been actually taken by the court on its first motion for extension one way or the other. In this connection, it will be recalled that in *Berkenkotter*, supra, this Court held that the approval by the trial judge of the record on appeal, even if made after the period for the appeal has already expired, is tantamount to a valid order granting the extension prayed for by appellant, if any such motion has been filed. We now hold that conversely, the dismissal of the appeal by the judge-constitutes a denial of the extension, in which eventuality, the only question that can arise is as to whether or not the trial judge has gravely abused his discretion in denying such extension. In the circumstances of the present case, it has not been sufficiently shown that there was a grave abuse of discretion.

We have always emphasized that Section 3, Rule 41, of the Rules, "requires that the notice of appeal, the appeal bond, and the record on appeal be all filed in court, and served on the adverse party, within thirty (30) days from notice of judgment, deducting the time when a motion for reconsideration is pending: an compliance with this period for appeal is considered absolutely indispensable for the prevention of needless delays and to the orderly and speedy discharge of judicial business (*Altavas Conlu v. C.A.*, L-14027, January 29, 1960), so that if said period is not complied with, the judgment becomes final and executory and the appellate Court does not acquire jurisdiction over the appeal (*Layda v. Legaspi*, 38 Phil. 83; *Pamplona v. Suiza*, 12 Phil. 99; *Caisip v. Cabangon*, L-14684, Aug. 26, 1960)."[5]

WHEREFORE, the petition is dismissed, with costs against petitioner.

Fernando (Chairman), Barredo, Fernandez, and Aquino, JJ., concur.

[1] *Escolin v. Garduno*, 57 Phil. 924; *Govt. v. Abad* 56 Phil. 504; *Alejandro v. Endencia*, 64 Phil. 321; *Capinpin v. Hon. Bonifacio Ysip, et al.*, 106 Phil. 168.

[2] *Bello v. Fernando*, 4 SCRA 135.

[3] *Cumplido v. Mendoza*, II SCRA 477. 481; *Reyes v. Sta. Maria*, 48 SCRA 1. 6.

[4] *Berkenkotter v. Court of Appeals*, 53 SCRA 228. 223-234.

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