

**ROSA BRACAMONTE AND EUSEBIO CALDERON, PETITIONERS, VS.
COURT OF APPEALS ET AL., RESPONDENTS.***G.R. No. L-4441. October 29, 1952*

Ponente: PARAS, C.J.

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In civil case No. 488 of the Court of First Instance of Negros Occidental, Rosa Bracamonte et al. vs. Jose J. Justiniani, judgment was rendered on September 3, 1949, dismissing the action. The plaintiffs (herein to be referred to as petitioners) received notice on September 13, 1949. On September 19, 1949, they filed a motion for new trial based on newly discovered evidence, which was denied on October 7, 1949. The petitioners received notice of the denial on the same date. On October 31, 1949, the petitioners filed a notice of appeal and an appeal bond, but the record on appeal was filed only on November 7, 1949. The defendant (herein to be referred to as respondent) resisted the approval of the record on appeal on the ground that it was filed seven days after the expiration of the reglementary 30-day period, excluding the time during which the motion for new trial was pending. In reply to the respondent's opposition, the petitioners argued that the delay in the filing of the record on appeal was due to the fact that the attorney handling the case brought with him the records to Cebu City to escape political persecution, and did not return to his home in San Carlos earlier than November 4 because of the typhoon of November 1, 1949. After hearing, Judge Eduaido Enriquez issued an order dated November 26, 1949, dismissing the appeal on the ground that the record on appeal was filed out of time.

On December 7, 1949, the petitioners filed an ex parte motion for relief, praying that the judgment of September 3, 1949, be set aside and a new trial ordered, it being alleged:

"That said judgment was rendered on the failure of the plaintiffs to present the original copy of the Deed of Sale which is the basis of the complaint.

"That the plaintiffs' failure to present said original copy of the Deed of Sale is due to honest mistake and excusable negligence on the part of the undersigned counsel; "and

"That the plaintiffs have taken notice that the original copy of the Deed of Sale is on file with the office of the Register of Deeds for the province of Negros Occidental."

After hearing, Judge Jose Teodoro, Sr., denied the motion for certiorari against Jose J. Justiniani and Judges received by the petitioners on January 24, 1950. On February 12, 1950, the petitioners filed an amended record on appeal. This was disallowed by Judge Teodoro on February 18, 1950. Their motion for reconsideration filed on February 27, 1950, having been denied on March 17, 1950, the petitioners filed in the Court of Appeals a petition for certiorari against Jose J. Justiniani and Judges Eduardo Enriquez and Jose Teodoro, Sr., praying "that a writ of certiorari be issued ordering the proceedings herein complained of to be forthwith certified up for review, and after due hearing to declare the judgment rendered in this case by the Court of First Instance of Negros Occidental null and void, with costs against the individual respondent." In their petition, the petitioners allege that respondent Judge Enriquez acted with a grave abuse of discretion in issuing the judgment of September 3, 1949, and the order

of November 26, 1949, dismissing petitioner's appeal, and that respondent Judge Teodoro acted with grave abuse of discretion in issuing the order of February 18, 1950, disapproving the amended record on appeal, and in denying the petitioners' motion for reconsideration of February 27, 1950.

The Court of Appeals denied the petition for certiorari with costs. The petitioners have appealed to this Court by way of a petition for certiorari.

In sustaining the order of respondent Judge Teodoro, disapproving the amended record on appeal, the Court of Appeals ruled that, in addition to the record on appeal, the petitioners should have filed a notice of appeal and an appeal bond within the reglementary period. It is noteworthy that the copy of the amended record on appeal attached to the petition for certiorari instituted in the Court of Appeals does not contain any notice of appeal or appeal bond, while said notice on appeal and appeal bond, both dated February 13, 1950, are incorporated in the copy of the amended record on appeal attached to the petition for review on certiorari filed before us. The petitioners therefore contend that the Court of Appeals erred on this score. On the basis of the record before it, the Court of Appeals was correct in finding that the petitioners failed to perfect their appeal.

Moreover, it appears that the motion for relief filed by the petitioners was predicated on the allegation that their failure to present in evidence the original copy of the controverted deed of sale was due to honest mistake or excusable negligence on the part of their counsel; and the petitioners prayed in said motion for relief that 'the judgment of September 3, 1949, be set aside and a new trial ordered.

In *Medran vs. Court of Appeals*, (46 Off. Gaz., 4277, 4279; 83 Phil., 164), invoked by the petitioners, we made the following observation: "The order of the Court of First Instance of February 19, 1946, dismissing the appeal was undoubtedly valid, because the defeated parties had failed to submit an appeal bond in due time. The would be appellants could obtain a revocation of that order, upon a motion for relief from accident, mistake or excusable negligence, pursuant to Rule 38. However, if their petition for relief is denied, they should appeal. They should not submit motions for reconsideration to one judge after another, hoping to obtain from the former what was refused by the latter."

This observation is not applicable to the petitioners' case, because it is clear that the motion for relief referred to in the *Medran* case is for the purpose of obtaining a revocation of the order dismissing the appeal for failure of the defeated parties to file an appeal bond in due time. In other words, the motion for relief should be directed against the order preventing the perfection of an appeal. In the case at bar, the petitioners sought in their motion for relief the setting aside of the judgment of September 3, 1949, and not the revocation of the order disapproving the petitioners' record on appeal on the ground that it was filed beyond the reglementary period. This becomes more evident by the fact that in the petition for certiorari filed in the Court of Appeals, the petitioners prayed that the various proceedings had in Civil Case No. 488 be declared null and void, and by the fact that the petitioners filed merely an amended record on appeal. The result of petitioners' strategy is to renew their original appeal, already dismissed by the order of November 26, 1949, for being admittedly out of time, and not merely to ventilate the propriety of said dismissal, taking into account the allegation that the petitioners failed to file the record on appeal within the reglementary period due to force majeure arising from the contention that the attorney handling the case fled to Cebu City and was not able to return to San Carlos sooner than November 4, 1949, because of a typhoon. It is elementary that what cannot be done directly should not be done indirectly.

Apart from any procedural objection, the Court of Appeals found, as a matter of fact, against the petitioners as to the latter's defense of force majeure, and this finding is conclusive in present appeal by certiorari.

Wherefore, the decision of the Court of Appeals is affirmed, and it is so ordered with costs against the petitioners.

Pablo, Bengzon, Padilla, Montemayor, Jugo, and Bautista Angelo, JJ., concur.

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