

PHILIPPINE RABBIT BUS LINES, INC., PETITIONER, VS. HON. LUDIVICO D. ARCIAGA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF ILOCOS SUR, BRANCH I VIGAN, ILOCOS SUR, TAURINO SINGSON A...

G.R. No. L-29701. March 16, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the August 5, 1968 Resolution of the Court of Appeals in CA-G.R. No. 41582-R[*] which dismissed petitioner's petition for certiorari and mandamus with preliminary injunction on the ground that the allegations made therein are insufficient to justify further process.

The undisputed facts of this case, as found by the Court of Appeals, are as follows:

"On August 24, 1960, Taurino Singson, resident of Cabugao, Ilocos Sur, as paying passenger on board bus No. 215 belonging to the Philippine Rabbit Bus Lines, Inc. sustained multiple serious physical injuries when the said bus crashed against an acacia tree at Balaoan, La Union, so he brought a complaint for contractual tort (Record 27-31). In its answer, defendant interposed the defense that the collision was due to a fortuitous event (Rec. 42). The case was set for trial on December 23, 1965 (45), but upon motion of both counsels, the same was transferred to February 3 and 4, 1966 (55). On October 6, 1966, the Court noted that no pre-trial has ever been conducted in the case and so both parties were ordered to confer with one another for a compromise agreement at the office of the Philippine Rabbit at Tarlac, Tarlac, and the trial was postponed to November 14, 1966 (57), and then transferred again upon petition filed by counsel for Philippine Rabbit for January 20, 1967 (58) and then postponed again to April 29, 1967. At the scheduled trial of April 29, 1967, at 8:40 a.m., only the defendant Philippine Rabbit appeared and upon motion of its counsel, the Court dismissed the case for nonappearance of plaintiff (59).

"It appears that the order of dismissal of April 29, 1967 alluded to was sent to Atty. Constante Pimentel, counsel for plaintiff Taurino Singson, at Vigan, Ilocos Sur, by registered mail on May 3, 1967 and was received by Miss May Altuna, addressee's agent, on May 6, 1967 (70). On July 6, 1967 (61 days from receipt of dismissal), counsel for plaintiff Taurino Singson filed a Petition for Relief accompanied by an affidavit of said plaintiff alleging that on April 29, 1967 (the date of the trial), he went to Vigan for the purpose of attending the trial of his case, boarding a passenger jeepney at Cabugao, his hometown, but when the vehicle reached Lapog, it had engine trouble, causing him to reach the court 15 minutes late and found thereupon that the court had already dismissed the case (60-62). Opposition was filed to the Petition for Relief by defendant Philippine Rabbit. On August 16, 1967, the lower court granted plaintiff Taurino Singson's Petition for Relief (66). On September 14, 1967, counsel for Philippine Rabbit filed a motion for reconsideration of the order granting the petition for Relief (67-69). In an order dated November 28, 1967, the lower court denied the motion for reconsideration of the Philippine Rabbit on the ground that 'considering the particular nature and circumstances of the case at bar and also the fact that petition for relief under Rule 38 is premised on equity and is allowed on exceptional circumstances, and that as far as possible failure of justice should be avoided; and that, further, in the absence of a clear lack of intention to delay, a case should not be allowed to go off on

procedural points to the end that technicalities should not override the merits of the case, this court believes that justice is best served if in this particular case the plaintiff will be given his day in court' (71-72)." (pp. 22-25, Rollo)

On July 9, 1968, herein petitioner Philippine Rabbit Bus Lines, Inc. filed a Petition for Certiorari and Mandamus with Preliminary Injunction in the Court of Appeals, docketed therein as CA-G.R. No. 41582-R.

In a Resolution dated August 5, 1968, the Court of Appeals denied the petition on the ground that the allegations made therein are insufficient to justify its giving it due course. Petitioner moved for a reconsideration, but in a Resolution dated October 1, 1968, the Court of Appeals denied the same. Hence, the instant petition (Record, pp. 4-20).

In a Resolution dated November 15, 1968 (*Ibid.*, p. 47), this Court gave due course to the petition.

On January 23, 1969, petitioner filed its Brief (*Ibid.*, p. 56), and on February 19, 1969, private respondent filed his Brief (*Ibid.*, p. 63). On March 29, 1969, petitioner filed its Reply Brief (*Ibid.*, p. 67).

In its brief, petitioner raised the following assignment of errors:

I

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE 60-DAY PERIOD PROVIDED IN SEC. 38 OF THE RULES OF COURT IS MANDATORY AND NON-EXTENDIBLE.

II

THE COURT OF APPEALS ERRED IN APPLYING THE RULE OF EQUITY IN THE CASE AT BAR.

III

THE COURT OF APPEALS ERRED IN HOLDING THAT CERTIORARI DOES NOT LIE IN THE INSTANT CASE.

The petition is impressed with merit.

Sec. 3 of Rule 38 of the Rules of Court clearly states that "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 said proceeding was taken."

It is undisputed that the Petition for Relief in this case was filed 61 days from receipt of the notice of dismissal or one day late. In fact, the records show that counsel for private respondent learned of the dismissal on the same day, April 29, 1967, when he arrived late for the hearing so that the Petition for Relief was at least eight (8) days late. The records further show that counsel for private respondent did not move for reconsideration of the Order of dismissal, nor for new trial. Neither did he appeal, thereby allowing the decision to become final and executory. As a last resort, he could have availed of the sixty day period provided for by Rule 38 to file a Petition for Relief from judgment but again he allowed this opportunity to lapse. Indeed, to him is applicable, the well known maxim that "equity aids the vigilant, not those who slumber on their rights." (*Henson v. Director of Lands*, 55 Phil. 586).

In the case of *Turqueza v. Hernando* (97 SCRA 488 [1980]) the Supreme Court in disallowing the reopening of the case which has become final, ruled that there is no justification in law and in fact, for respondent judge's void act of ordering the reopening of the case which has become final and executory.

Thus, the Court held:

"The Court has said time and again that the doctrine of finality of judgments is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional error the judgments of courts must become final at some definite date fixed by law. The law gives an exception or 'last chance' of a timely petition for relief from judgment within the reglementary period (within 60 days from knowledge and 6 months from entry of judgment) under Rule 38 supra, but such grace period must be taken as 'absolutely fixed, inextendible, never interrupted and cannot be subject to any condition or contingency. Because the period fixed is itself devised to meet a condition or contingency (fraud, accident, mistake or excusable neglect), the equitable remedy is an act of grace, as it were, designed to give the aggrieved party another and last chance' "and failure to avail of such last chance within the grace period fixed by the statute or Rules of Court is fatal." (Turqueza v. Hernando, supra).

In expressly reiterating the above-quoted decision the Supreme Court in *Arcilla v. Arcilla* (138 SCRA 56 [1985]), held that the Rule is that, for a petition for relief under Rule 38 to be entertained by the court, the petitioner must satisfactorily show that he has faithfully and strictly complied with the provisions of said Rule. Consequently, it is incumbent upon the petitioner to show that the said petition was filed within the reglementary period specified in Sec. 3, of the same, otherwise on this ground alone, the petition should be dismissed.

For the foregoing reasons, neither can private respondent invoke equity as a ground for the reopening of the case "there being an express provision of law under which the remedy can be invoked." (*Barrios v. Go Thong & Co.*, 7 Phil. 542 [1963]). The rule is, "equity follows the law" and as discussed in *Pomeroy's Equity Jurisprudence* Vol. 2 pp. 188-189 (as cited in Appellant's Brief p. 20), the meaning of the principle is stated as follows:

"There are instances, indeed, in which a court of equity gives a remedy, where the law gives none; but where a particular remedy is given by the law, and that remedy is bounded and circumscribed by particular rules, it would be very improper for the court to take it up where the law leaves it and to extend it further than the law allows."

In the same manner, the issue as to whether or not certiorari is proper in the instant case, has been laid to rest in the case of *Turqueza vs. Hernando*, (supra) where a petition for certiorari directly filed with the Supreme Court was granted and the Court set aside the questioned order issued by respondent judge to reopen the case below for reception of respondent-defendant's evidence notwithstanding the lapse of the reglementary period within which respondent could file a petition for relief from judgment.

PREMISES CONSIDERED, the resolution of the Court of Appeals in CA-G.R. No. 41582-R and the questioned Order dated August 16, 1967 of Judge Ludivico D. Arciaga in Civil Case No. 2539 are hereby REVERSED and SET ASIDE; and said Civil Case is declared TERMINATED.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

Alampay, J., on leave.

[*] Penned by Justice Antonio G. Lucero concurred in by Justices Nicasio A. Yatco and Jose M. Mendoza.

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